

Legal Services
**COMMANDERS' LEGAL GUIDE TO MILITARY CRIMINAL LAW,
ADMINISTRATIVE LAW, AND LEGAL SERVICES FOR SOLDIERS**

History. This supersedes Fort Hood Pamphlet 27-6, dated 15 July 1995.

Applicability. This pamphlet applies to all III Corps and Fort Hood units and Major Subordinate Commands (MSCs). Use of the masculine gender includes the feminine gender whenever used.

Changes. In order to retain consistency with the latest revisions of statutes, court cases, and Army regulations, the Staff Judge Advocate, III Corps and Fort Hood, issues changes to this pamphlet as

necessary. Provide suggested changes to the Chief of Criminal Law, Office of the SJA, III Corps and Fort Hood.

Suggested Improvements. The proponent of this pamphlet is the SJA, III Corps and Fort Hood. Users are invited to send comments and suggested improvements directly to that office.

Supplementation. Supplementation of this pamphlet is prohibited without prior approval of the SJA, III Corps and Fort Hood.

FOR THE COMMANDER:

WILLIAM J. LENNOX JR.
Brigadier General, USA
Chief of Staff



//signed//

MICHAEL R. BORDERS
LTC, SC
DOIM

DISTRIBUTION:
IAW FORT HOOD FORM 1853, S

Contents

Part I: Introduction • 5, page 5

**Chapter 1: Introduction To Military Criminal
Law, Administrative Law, And Legal
Services • page 5**

Introduction • 1-1, page 5
References • 1-2, page 5
Explanation Of Abbreviations And Terms • 1-3, page 5
Commander's Role In The Military Justice System •
1-4, page 5
Command Influence • 1-5, page 6
Options Available To The Commander • 1-6, page 9
Reserve Considerations • 1-7, page 9

Part II: Military Criminal Law • page 10

**Chapter 2: Pretrial Confinement And Other
Pretrial Restraints On Liberty • page 10**

Introduction • 2-1, page 10
Effect Of Pretrial Restraint • 2-2, page 10
Conditions On Liberty • 2-3, page 10

Restriction • 2-4, page 10
Arrest • 2-5, page 10
Pretrial Confinement • 2-6, page 10
Reserve Considerations • 2-7, page 13

Chapter 3: The Court-Martial System • page 13

Introduction • 3-1, page 8
Preferral Of Charges • 3-2, page 13
Summary Courts-Martial • 3-3, page 13
Special Courts-Martial • 3-4, page 14
Bad-Conduct Special Courts-Martial • 3-5, page 14
General Courts-Martial • 3-6, page 15
Reserve Considerations • 3-7, page 15

**Chapter 4: The Commander's Duties Before
Trial • page 15**

Introduction • 4-1, page 15
Considerations For A Commander • 4-2, page 15
Disposition Of Charges • 4-3, page 16
Psychiatric Evaluations • 4-4, page 17
An Accused's Right To A Speedy Trial • 4-5, page 17
Discharge In Lieu Of Trial By Court-Martial,

AR 635-200 (Enlisted Personnel, (Chapter 10 •
4-6, *page 17*
Reserve Considerations • 4-7, *page 18*

**Chapter 5: Search And Seizure, Inspections,
Inventories, And Apprehensions • *page 18***

Definitions • 5-1, *page 18*
Probable Cause Searches Based On Warrant Or
Authorization • 5-2, *page 19*
Probable Cause Searches Without Warrants
("Extingencies") • 5-3, *page 209*
Searches And Seizures Not Requiring Probable
Cause • 5-4, *page 210*
Inspections And Inventories • 5-5, *page 22*
Investigative Detention: Stop And Frisk • 5-6, *page*
23
Apprehension • 5-7, *page 233*
Reserve Considerations • 5-8, *page 24*

**Chapter 6: Confessions And The Right Against
Self-Incrimination • *page 24***

Introduction • 6-1, *page 24*
Article 31, UCMJ • 6-2, *page 25*
Who Must Give The Warning? • 6-3, *page 25*
When Must Warnings Be Given? • 6-4, *page 25*
Who Must Be Warned? • 6-5, *page 26*
The Content Of The Warning • 6-6, *page 26*
How To Take A Statement • 6-7, *page 28*
Rights Warnings And Searches Distinguished •
6-8, *page 29*
Summary • 6-9, *page 29*
Reserve Considerations • 6-10, *page 29*

Chapter 7: Non-Judicial Punishment • *Page 29*

Applicable Policies • 7-1, *page 29*
Imposition Authority • 7-2, *page 29*
Formal Article 15 Procedures • 7-3, *page 30*
Article 15 Punishments • 7-4, *page 32*
Appeals • 7-5, *page 33*
Summarized Article 15 • 7-6, *page 34*
Filing The Article 15 • 7-7, *page 34*
Reserve Considerations • 7-8, *page 35*

**Chapter 8: Reserve Component Jurisdiction
• *Page 35***

Introduction • 8-1, *35*
Policy • 8-2, *35*
Involuntary Active Duty And Pretrial Confinement
Article 2 (d), UCMJ) • 8-3, *35*
Extending RC Soldiers On Active Duty • 8-4, *page 36*
Preservation Of Jurisdiction And Punishment And
Punishment (Article 3(d)) • 8-5, *page 36*
Non-Judicial Punishment (Article 15) • 8-6, *page 36*

Summary Court-Martial (SCM) • 8-7, *page 36*
Special And General Courts-Martial • 8-8, *page 37*
Forfeitures • *page 37*

Part III: Administrative Law • *page 37*

**Chapter 9: Counseling And Rehabilitative
Transfer
• *page 37***

Introduction • 9-1, *page 37*
Counseling • 9-2, *page 37*

Mandatory Counseling Before Initiation Of Separation • 9-3, page 37**Optional Counseling Before Initiation Of Separation • 9-4, page 38****Rehabilitative Transfer • 9-5, page 38****References • 9-6, page 38****Chapter 10: Corrective Training • Page 38**

Introduction • 10-1, page 38

Examples • 10-2, page 38

References • 10-3, page 39

Chapter 11: Admonitions And Reprimands • page 39

Introduction • 11-1, page 39

Departure From Command Before Completion Of Action • 11-2, page 39

References • 11-3, page 40

Chapter 12: Drug And Alcohol Abuse Identification And Rehabilitation • page 40

Recommended Actions By Commander • 12-1, Page 40

Prohibited Actions By Commander • 12-2, page 41

Discharge Of The Alcohol Or Drug Abuser • 12-3, page 41

References • 12-4, page 41

Chapter 13: Bar To Re-Enlistment • page 41

Introduction • page 41

Mandatory Bar To Re-Enlistment • 13-2, page 42

Approval Authority For Bar To Re-Enlistment • 13-3, page 42

Review And Removal Of Bar To Re-Enlistment • 13-4, page 42

References • page 43

Chapter 14: Deferment Or Withdrawal Of Discretionary Benefits • page 43

Introduction • 14-1, page 43

Withdrawal Of Pass Privileges • 14-2, page 43

Withdrawal Of Allowance For Quarters • 14-3, page 43

Withdrawal Of Separate Rations • 14-4, page 44

Suspension And Revocation Of On-Post Driving Privileges (Non-DWI) • 14-5, page 44

Revocation Or Suspension Of On-Post Driving Privileges (DWI) • 14-6, page 45

Termination Of Family Quarters For Misconduct • 14-7, page 48

Off-Duty Employment • 14-8, page 48

Withdrawal Of Privileges Regarding Appropriated

And

Nonappropriated Fund Facilities • 14-9, page 48

Off-Limits Firms, Establishments, And Areas • 14-10, page 49

Bar To Entry On Installation • 14-11, page 49

Possession/Consumption Of Alcohol In Enlisted Barracks • 14-12, page 49

Chapter 15: Adverse Administrative Actions Short Of Elimination • page 50

General • 15-1, page 50

Relief For Cause • 15-2, page 50

Removal Of Enlisted Soldiers Form Local Promotion Lists • 15-3, page 50

Removal Of Enlisted Soldiers From Centralized Promotion Lists • 15-4, page 51

Reduction In Enlisted Grade For Inefficiency Or Civil Conviction • 15-5, page 51

Removal Of Officers From Promotion Lists • 15-6, page 52

Adverse Comments In Evaluation Reports • 15-7, page 52

Chapter 16: Administrative Actions Affecting Military Qualifications • page 53

General • 16-1, page 53

Suspension Or Revocation Of Security Clearance • 16-2, page 53

Reclassification Of Enlisted Soldiers' MOS • 16-3, page 54

Chapter 17: Administrative Separation Of Enlisted Soldiers • page 54

General • 17-1, page 54

Procedures For Administrative Separations • 17-2, page 55

Involuntary Separation Due To Parenthood (Chapter 5-8) • 17-3, page 55

Personality Disorder (Chapter 5-13) • 17-6, page 55

ADAPCP Failure • 17-5, page 55

Unsatisfactory Performance (Chapter 13) • 17-6, page 55

Civil Convictions • 17-7, page 56

Patterns Of Misconduct • 17-8, page 56

Serious Misconduct • 17-9, page 59

Homosexuality (Chapter 15) • 17-10, page 57

Voluntary Separation Of Soldiers Denied Re-Enlistment (Chapter 16) • 17-11, page 57

Failure To Meet Body Fat Standards (Chapter 18) • 17-12, page 58

Other Separation Actions • 17-13, page 58

Chapter 18: Administrative Separation Of Officers

- *page 59*
- General • 18-1, *page 59*
- Administrative Elimination Actions • 18-2, *page 59*
- Elimination Of Probationary Officers • 18-3, *page 61*
- Involuntary Release From Active Duty • 18-4, *page 60*
- Resignations • 18-5, *page 62*
- Failure To Be Selected For Promotion • 18-6, *page 62*
- Dropping Officers From The Rolls Of The Army • 18-7, *page 62*

Chapter 19: Liaison With Local Civilian Prosecution And Investigative Authorities • *page 63*

Introduction • *page 63*

Prosecutions By Special Assistant United States Attorneys • *page 63*

Federal Law Enforcement Agencies • *page 64*

Concurrent Investigative Jurisdiction • *page 64*

Liaison With Authorities From Bell And Coryell Counties • *page 64*

Disciplinary Proceedings After Exercise Of Jurisdiction By Civilian Authorities • *page 64*

Execution Of Civil Arrest Warrants On Fort Hood • *page 65*

Requisites Of Warrant • *69*

Chapter 20: Informal Investigations Under AR 15-6 • *page*

Introduction • *page 69*

Types Of Investigations And Boards • *page 69*

Function Of Investigations And Boards • *page 65*

Use Of Results • *page 65*

Appointment • *page 66*

Legal Advice • *page 66*

General Guidance For Informal Procedures • *page 66*

Findings And Recommendations • *page 67*

Report Of Proceedings • *page 67*

Submission Of Report • *page 67*

Legal Review • *page 67*

Chapter 21: Reports Of Survey • *page 67*

Introduction • *page 67*

Accountability And Responsibility • *page 68*

Accountable Officers • *page 69*

The Report Of Survey System • *page 69*

Chapter 22: Line Of Duty Investigations • *page 72*

General • *page 72*

Requirement For Line Of Duty Investigation • *page 72*

Effect Of Adverse Determination • *page 72*

Rebuttable Presumptions • *page 72*

Definitions • *page 73*

Investigation Procedures • *page 73*

Soldier's Rights • *page 73*

Role Of The Military Attorney • *page 79*

Chapter 23: Gifts And Travel • *page 74*

Gifts From Outside Sources • *page 74*

Gifts Between Employees • *page 75*

Use Of First-Class Airline Accommodations On Official Travel • *page 76*

Frequent Flyer Benefits • *page 76*

Incidental Travel Benefits • *page 77*

Chapter 24: Private Organizations • *page 77*

Introduction • *77*

Definition • *page 77*

Policy Overview • *page 77*

Restrictions • *page 77*

Types Of Private Organizations • *page 77*

Requirements • *page 78*

Fundraising And Membership Drives • *page 78*

Use Of Government Property And Personnel • *page 78*

Official Liaisons • *page 79*

Private Participation In PO Activities • *page 79*

Chapter 25: Environmental Law • *page 79*

Introduction • *page 79*

Prevention Of Pollution From POL And Other Hazardous Material • *page 79*

Environmental Law In The Field • *page 81*

Endangered And Threatened Species • *page 82*

Protection Of Historical Sites And Objects • *page 83*

References • *page 90*

Part IV: Legal Services For The Soldier • *page 83*

Chapter 26: Trial Defense Service (TDS) • *page 830*

The TDS Mission • *page 830*

Fort Hood Locations • *page 830*

Office Hours • *page 831*

Appointments • *page 831*

Chapter 27: Legal Assistance • *page 84*

The Army Legal Assistance Program • *page 84*

Divorce Proceedings In Texas • *page 84*

Soldiers' Support Obligations • *page 85*

Legal Issues For Soldiers Facing Deployment • *page 85*

Preventative Law • *page 85*

Chapter 28: The Military Claims System

•*page 86*

Personnel Claims Act • *page 86*

Tort Claims • *page 88*

Article 139 Claims • *page 897*

Medical Care Recovery • *page 88*

References • *page 89*

Glossary • *page 147*

Part I: Introduction

Chapter 1

Introduction To Military Criminal Law, Administrative Law, And Legal Services

1-1. Introduction. This pamphlet provides commanders with an overview of the various UNIFORM CODE OF MILITARY JUSTICE (UCMJ) options available to them in resolving discipline problems, as well as a handy reference to administrative law and the legal services available to soldiers. It is not intended to be a detailed text replacing applicable Army regulations. It provides information in a succinct format referencing policies, practices, and procedures in the area of personnel, disciplinary, and administrative actions. *Commanders should always seek legal advice from their trial counsel if they have a question about this guide.*

1-2. References. APPENDIX A lists required and related references.

1-3. Explanation Of Abbreviations And Terms. The GLOSSARY explains special abbreviations and terms.

1-4. Commander's Role In The Military Justice System.

a. Commanders play a major role in the military justice system by setting policies and enforcing discipline within their units. Leadership techniques, reinforced by a strong Noncommissioned Officer (NCO) Corps, provide the best means by which to enforce discipline. Sometimes, however, it is necessary to use punitive measures, such as court-martial, or punishment under Article 15, UCMJ.

b. The quality of soldiers in the Army today is high. A handful of problem soldiers, however, continue to occupy a significant amount of the command's time. Some soldiers cannot, or will not, perform their duties effectively. The first corrective step must be an attempt to motivate the soldier, assist in solving his problems, and ensure the chain of command is responding to his legitimate needs. Leadership is still the best cure. Immediate or hasty separation is often wasteful or unfair to the soldier and the Army. If reasonable, conscientious attempts towards rehabilitation fail, however, various elimination actions are available.

c. There are many administrative options available to assist commanders in handling a nonproductive soldier. This arsenal of options ranges from relatively moderate rehabilitative tools to separation of the soldier from the Army. Unless otherwise indicated, the information provided in this pamphlet is applicable to all soldiers, enlisted and officers alike. Additionally, references to officers include warrant officers. To further aid the commander, a number of matrices outlining some of the most frequent actions are provided in the APPENDICES.

(1) Disciplinary Problems. Commanders have many options available to deal with disciplinary problems. These include informal counseling and extra training through the full range of administrative actions such as withdrawal or limitation of privileges, administrative separation, punishment under Article 15, UCMJ, and court-martial.

(2) Prosecutorial Discretion. In the Army, commanders decide what charges will be brought against a soldier and whether a case will be resolved administratively or by court-martial. The MANUAL FOR COURTS-MARTIAL (MCM) gives little guidance in exercising this discretion, except for mandating that cases be resolved at the lowest possible level consistent with the seriousness of the offense and the need for good order and discipline. Although commanders can seek advice from the SJA and trial counsel, the chain of command must independently decide whether prosecution is warranted. In the case of minor incidents, a commander should first decide none of the available administrative measures are sufficient before resorting to punitive options.

(a) The decision to refer offenses to court-martial is difficult and can be made for the wrong reasons. When an apparently serious offense occurs, there is great pressure on a commander to "do something." Congressional inquiries and expressions of interest from superior commanders tempt some to refer cases to court-martial in an effort to resolve the matter. A case should never be recommended for court-martial unless the commander is personally satisfied by legal and competent evidence that there is probable cause to believe the accused is guilty and the nature of the offense warrants disposition by criminal prosecution. On the other hand, a commander may find occasions when the accused's conduct satisfies the legal elements of a crime, but for reasons of compassion, the interests of justice, or

other considerations, the matter should be disposed

of administratively.

(b) The commander must always independently exercise reasoned judgment when confronted with a military justice problem. Remember, military justice is only one way of promoting discipline. It is a tool of leadership, but not the only tool. While discretion in many of these areas rests with the commander, legal advice can and should be sought from the supporting trial counsel.

1-5. Command Influence. Although discipline in a unit is ultimately the commander's responsibility, the credibility of, and public confidence in, the military justice system requires all participants in the system—commanders, military judges, counsel, witnesses, and court members—be free to independently fulfill their role and exercise their judgment without fear of reprisal, retaliation, or adverse consequences. It is as much a part of a commander's responsibility to ensure this freedom and independence as it is to ensure good order and discipline in his command.

a. Subordinate Commanders. No commander can be effective unless he is able to influence his subordinates to successfully accomplish the mission. On the other hand, the UCMJ requires independence and prohibits "unlawful" command influence. Compliance with a few simple rules helps to avoid unlawful command influence. A commander may not order a subordinate commander to dispose of a case in a certain way. By law, each judicial authority at every level is vested with independent discretion. There is no need to dictate dispositions to a lower level commander.

(1) A commander may:

(a) Personally dispose of a case at the level authorized for that offense and for that commander or at any lower level.

(b) Send a case back to a lower commander for the lower commander's independent action.

(c) Send a case to a higher commander with a recommendation for disposition.

(d) Withdraw a subordinate commander's authority on a particular case or particular types of case. R.C.M. 601(f) states: "Except as otherwise provided in these rules, a superior competent authority may cause charges,

whether or not referred, to be transmitted to that authority for further consideration, including, if appropriate, referral.”

(e) Escalate a lower disposition, unless the matter has already resulted in an executed Article 15 for a minor crime, or unless the matter has already resulted in a court-martial at which evidence *was* presented.

(f) Mentor subordinates. While a commander may not preclude subordinate commanders from exercising their independent judgment, he may mentor his subordinates, express his opinion, and provide guidance to them. The fine line between lawful command guidance and unlawful command influence is determined by whether the subordinate commander, though he may give consideration to the policies and wishes of his superior, fully understands and believes he has a realistic choice to accept or reject them. For example, a commander’s letter characterizing illegal drugs as a “threat to combat readiness,” reminding lower commanders “detection and treatment of drug abusers” should “be a primary goal,” and stating the drug problem would not be eliminated until drug trafficking ceased was held to be proper. The commander directed subordinates to “work closely” with law enforcement officials “to ferret-out drug dealers,” to “consult with” appropriate “trial counsel before initiating any . . . action against” drug dealers to ensure “appropriate legal action,” to educate troops regarding the effects of drugs, and to “personally screen the names of all court member nominees . . . to ensure that only the most mature officers and Noncommissioned Officers (NCOs) . . . [would be] detailed for court-martial duty.”

(2) Watch out for:

(a) “Advice” before the offense (policy letters). A directive or policy which states that soldiers with two prior convictions will be tried by General Court-Martial (GCM) is an unlawful interference with the subordinate commander’s duty to exercise independent discretion. Likewise, guidelines on appropriate levels of disposition and punishment are inappropriate. An accused is entitled to have his immediate commander exercise independent discretion in the disposition of charges.

(b) “Advice” after the offense. For example, in one case a cryptic note on a blotter by the battalion commander, received by the accused’s

company commander, stated, “Need Cmt 1 today. Process CM.” Appellate courts affirmed the case, but only because the company commander testified he had “already decided” to recommend trial by court-martial.

(c) Inflexible policies. Commanders must not have inflexible policies on disposition or punishment. As a judicial authority, the commander must consider each case individually on its own merits. If unable to do so, the power to act may be taken away. A commander may not have an inflexible attitude towards clemency. As a judicial appellate authority, a commander has a duty to impartially review military justice actions. An inflexible attitude toward clemency necessitates a loss of command/judicial authority. In one case a division commander’s letter stated “drug peddling and drug use are the most insidious form of criminal attack on troopers . . . [s]o my answer to . . . appeals is, ‘No, you are going to the Disciplinary Barracks . . . for the full term of your sentence and your punitive discharge will stand.’ Drug peddlers, is that clear?” The appellate courts determined the convening authority was disqualified from performing his review function. In another case, a general who indicated he could not understand how a battalion commander could allow a soldier to be court-martialed and then testify at trial about the soldier’s good character did not possess the requisite impartiality to perform the post-trial review function.

b. Court Members and The Military Judge.

Article 37, UCMJ, and Rules for Court-Martial (R.C.M.) 104, make it unlawful for a convening authority to attempt to influence members of a court-martial on the outcome of a trial. This is an area in which commanders must exercise a great deal of care. There must be no appearance of unlawful command influence in the operation of the military justice system. No outside pressures may be placed on the military judge or court members to arrive at a particular decision.

(1) AR 27-10 (Legal Services: Military Justice), paragraph 5-10c states, “Court members . . . may never be oriented or instructed on their immediate responsibilities in court-martial proceedings except by . . . [t]he military judge . . . or by the president of a special court martial without military judge in an open court...”

(2) Bringing in command policy is improper. In one case, during a recess in a court

martial involving illegal drugs, the Marine Corps Commandant made a speech about drugs at Quantico Marine Base. This speech resulted in a mistrial. In another case, the military judge's instruction during sentencing relating to a command policy of generally not retaining those involved with illegal drugs required reversal of the sentence.

(3) Evaluation Reports. There is an absolute prohibition against evaluating the performance of duty of an individual, preparing his efficiency report, or determining his fitness for promotion, transfer, or retention in service based upon his performance as a court martial member.

c. Witnesses. Witnesses may not be intimidated or discouraged from testifying.

(1) Direct attempts to influence witnesses are prohibited. For example, in one case a commander's advice to a potentially favorable witness for the accused to modify his comments if possible was held to be "inexcusable and highly improper." In another case, a commander counseled all defense witnesses about abuse of drugs two days before trial and approached defense witnesses in the witness waiting room on the day of trial and expressed a desire to them that the accused get the maximum punishment. The appellate court found the commander's actions improper and ordered a rehearing. In a third case, before a trial the chain of command briefed members of the command individually, and as a whole, concerning the "bad character" of the accused. During trial the First Sergeant "ranted and raved" outside the courtroom about NCOs condoning drug use. After trial, the NCOs who testified for the accused were told "they had embarrassed" the unit. The Court of Military Appeals found unlawful command influence necessitated setting aside the findings of guilty and the sentence.

(2) Indirect or unintended influence can be just as bad, despite good intentions. The most difficult and dangerous areas are those of communications, perceptions, and possible effects on the trial.

(a) Before trial. In one case, an SJA briefed the crew of a ship on a pending court-martial. This briefing had potential for unlawfully influencing the outcome of trials. In another case, the Commanding General addressed groups of commanders and senior NCOs over a period of

several months, discussing the inconsistency of recommending a GCM or Bad Conduct Discharge (BCD) Special Court-Martial and then having members of the chain of command testify the accused was a "good soldier" who should be retained. The message received by many was "don't testify for convicted soldiers." These speeches resulted in unlawful command influence and reversal of a number of convictions and sentences.

(b) After trial. In one case, a commander and first sergeant "debriefed" a defense witness after trial. The court found no prejudice in the accused's trial but stated, "The policy of 'lecturing' a defense witness, or any witness after they have testified, cannot help but have a chilling effect on our judicial system." In another case, when two witnesses were relieved of Drill Sergeant duties immediately after testifying favorably for the accused charged with engaging in lesbian activities, the timing of the relief caused potential witnesses to hesitate to testify in a similar case.

(c) Mass apprehension and pretrial punishment. Berating and humiliating suspected soldiers utilizing a mass apprehension in front of a formation was an unlawful command influence and unlawful punishment.

(1) The effect of improper pretrial punishment. In one case, a soldier pending court-martial for larceny was referred to by his company commander as "a thief." The company commander also remarked at formation that other soldiers should ensure their property was secure because the soldier was in the area. The commander asked the soldier several times whether he had received any "five-fingered discounts lately." Additionally, the soldier was required to sign-in with the Charge of Quarters (CQ) after 2200 hours, and every half hour on weekends. The commander's actions were held to be improper because they were contrary to the presumption of innocence, and chilled potential defense witnesses. The action was unnecessarily restrictive. The appellate court ordered the soldier immediately released from confinement.

(2) Pretrial confinement is not pretrial punishment. In appropriate circumstances, a commander may confine those awaiting trial. Chapter 2 of this guide discusses pretrial confinement.

d. Curing Errors. If a mistake is made, raise

the issue immediately. The command or the judge may take remedial actions. For example, in response to the *First Sergeant's* criticism of those who testified on behalf of drug offenders, the command instructed all personnel that it was their duty to testify as defense witnesses if requested and then transferred the First Sergeant to eliminate his access to the rating process.

1-6. Options Available To The Commander. At every level of command, the commander has a number of options available to deal with a disciplinary problem. This section concerns the various measures a commander can take to deal with criminal offenses committed by a soldier.

a. Adverse administrative actions and eliminations. A commander may take, or initiate, administrative action whether or not charges have been or will be preferred or dismissed. Contact the trial counsel to discuss available administrative options. An outline and discussion of the full range of administrative options available to a commander is contained in Chapters 9-18 of this guide.

b. Non-judicial punishment. Punishment may be imposed under Article 15, UCMJ, for minor offenses. Article 15 punishment provides the commander with a prompt and efficient means of maintaining good order and discipline, while promoting positive behavior changes in soldiers without the stigma of a court-martial conviction. Chapter 7 of this guide contains a complete discussion of non-judicial punishment.

c. Pretrial restraint. Pretrial restraint is a moral or physical restraint on a soldier's liberty imposed before and during disposition of offenses. Pretrial restraint may consist of conditions on liberty, restriction in lieu of arrest, arrest, or confinement. Most soldiers are not placed under any form of pretrial restraint while awaiting trial by court-martial. The decision whether to impose pretrial restraint, and if so, what type(s), to make on a case-by-case basis. The restraint should not be more rigorous than the circumstances require to ensure the presence of the accused at trial, or to prevent foreseeable serious criminal misconduct. A complete discussion of pretrial restraint is contained in Chapter 2 of this guide. Commanders should always coordinate with their supporting trial counsel before imposing pretrial restraint.

d. Preferring court-martial charges. Any

person subject to the UCMJ may prefer charges. A person cannot be ordered to prefer charges to which he is truthfully unable to make the required oath. If a superior authority directs charges be preferred, the superior authority becomes the accuser and, as such, is barred from convening a court-martial to try the charges. When a superior authority has only an official interest in a case, he will ordinarily transmit the available information about the case to an officer of his command for preliminary inquiry and report, including, if appropriate in the interest of justice and discipline, the preference of any charges which appear to be substantiated by the available evidence. If there is any doubt concerning whether referral of charges is appropriate, consult the unit's supporting trial counsel.

e. Expeditious disposition of charges.

(1) Expeditious handling. A commander must insist *on* expeditious handling of charges by subordinates within his command. An unexplained delay in the administrative processing of charges by subordinate units may result in the dismissal of charges due to lack of a speedy trial. Charges which progress through the chain of command without properly alleging offenses, must start through the process again when the error is discovered. Avoid such unnecessary delay with a review by the supporting trial before referral.

(2) Determine whether the evidence supports charges. Regardless of how convinced a commander may be of a soldier's guilt, there will be no conviction if there is no evidence warranting trial. In this regard, a witness who is not credible is the same as no witness at all.

(3) Consider the individual soldier *or* accused. Remember, the administration of military justice involves individuals. You are not only dealing with a violation of the UCMJ, you are also dealing with an individual. As a commander, the option you choose must fit the individual as well as the crime. Examine the background of the accused as well as the adjustment he has made in his unit. The court will consider these things, as should the commander.

1-7. Reserve Considerations. Reserve Component (RC) commanders encounter special problems with the administration of military justice. Chapter 8 of this pamphlet covers a number of RC considerations. Additionally, various chapters have specifically

detailed provisions for the RC commander.

Part II: Military Criminal Law

Chapter 2: Pretrial Confinement And Other Pretrial Restraints On Liberty

2-1. Introduction. The commander must decide what type of restraint, if any, to impose upon a soldier accused of a crime. The primary purpose of pretrial restraint is to ensure the presence of the accused at trial. Impose the least possible restraint that will guarantee the presence of the accused. Before imposing any form of restraint on a soldier, consult supporting trial counsel. Document the limits of the restriction and serve on the accused.

2-2. Effect Of Pretrial Restraint. Pretrial restraint may not be imposed as punishment. Because of the effect pretrial restraint can have on the court-martial process, consultation with trial counsel is recommended for any commander considering placing a soldier under any form of pretrial restraint. A soldier must be brought to trial within 120 days after he is given notice of the preferral of charges (usually done the same day the commander prefers charges), or after he is placed under any form of pretrial restraint, whichever is earlier. If the accused is not brought to trial within 120 days the charges must be dismissed. In addition, do not hold an accused in pretrial arrest or confinement for more than 90 days, although the military judge may extend the period for up to 10 days, upon a showing of extraordinary circumstances. The following paragraphs discuss the four general forms of pretrial restraint.

2-3. Conditions On Liberty. Orders directing a person to do, or refrain from doing, specified acts impose conditions on liberty. This is the least restrictive form of restraint on liberty. Conditions on liberty may be imposed separately or in conjunction with other forms of restraint. Conditions on liberty include orders to report periodically to a specified person (the charge of quarters [CQ]); orders not to go to a certain place (such as the scene of the alleged offense); and orders not to associate with specified persons (such as the alleged victim or potential witnesses). Conditions on liberty must be sufficiently flexible to permit and not hinder pretrial preparation by the accused and his counsel. Ordinarily, provide conditions on liberty in writing with a firm ending date.

2-4. Restriction.

a. Restriction (technically called restriction in lieu of arrest) is a more severe form of restraint. It limits a soldier's freedom of movement to a particular area or areas. This is usually expressed in terms of "restriction to Fort Hood," or "restriction to barracks, mess hall, chapel and place of duty." Under normal circumstances, only an officer may restrict a soldier. However, an NCO may properly restrict a soldier for a brief period in the absence of an officer. For example, if a soldier is involved in an incident downtown at night and is returned to his unit by the military police (MPs), an NCO could properly order him to remain in the billets until the following morning.

b. Restriction may be imposed orally, but it is better to document the terms of the restriction in writing. Restriction should not be imposed unless the commander determines conditions on liberty alone are not adequate under the circumstances.

2-5. Arrest. The military defines arrest as a moral restraint causing the person arrested to remain within certain specified limits. Do not confuse this with taking a person into custody, which is referred to as an apprehension in the military. Before placing an individual in the status of arrest, the commander must make a personal inquiry into the facts surrounding the alleged offense. Unlike restriction, a soldier in the status of arrest does not perform full military duties. He may not exercise command, bear arms, exceed the limits of his arrest, visit his commander unless directed to do so, make any requests except in writing. He marches at the rear of his unit. A person in arrest, however, may do ordinary cleaning and policing within the specified limits of his arrest.

2-6. Pretrial Confinement.

a. *When to impose pretrial confinement.* Pretrial confinement is never required by law. It may be imposed only when necessary to ensure the presence of the accused at trial or to prevent foreseeable serious misconduct, including any efforts to obstruct justice, and when lesser forms of restraint are inadequate. The discussion under R.C.M. 305(h)(2)(b) lists factors to consider before imposing pretrial confinement:

(1) The nature and circumstances of the offenses charged or suspected, including extenuating circumstances.

(2) The weight of evidence against the

accused.

(3) The accused's ties to the locale, including family, off-duty employment, financial resources, and length of residence.

(4) The accused's character and mental condition.

(5) The accused's service record, including any record of previous misconduct.

(6) The accused's record of appearance at, or flight from, other pretrial investigations, trials or similar proceedings.

(7) The likelihood that the accused can or will commit further serious misconduct if allowed to remain at liberty. For example, if the offense is very serious (*e.g.*, murder), and lengthy confinement is likely, pretrial confinement is probably appropriate.

b. Basis for confinement. A commander may not put a soldier in pretrial confinement unless the commander believes upon probable cause:

(1) An offense punishable by a court-martial has been committed.

(2) The prisoner committed the offense, or

(3) Lesser forms of restraint are inadequate.

c. Consideration of lesser forms of restraint. Always consider less serious forms of restraint before approving pretrial confinement. The commander should consider whether the soldier could safely remain in the unit at liberty, or under some form of restriction, arrest, or conditions on liberty. There are a number of instances where pretrial confinement is not appropriate. For example, pretrial confinement is not appropriate when disposition of the charge by Article 15, Summary Court Martial (SCM), or Special Court-Martial (SPCM) is contemplated. Pretrial confinement is also not appropriate when an individual is pending an administrative discharge and no charges are pending. Do not use pretrial confinement to prevent a soldier from injuring himself.

d. Procedures. When a committing officer (normally a soldier's unit commander) is determining whether to place a soldier in pretrial confinement, he will consult the servicing trial counsel, the Chief,

Criminal Law Division, or the on-call SJA duty officer.

(1) The committing officer must obtain authorization by the Special Court-Martial Convening Authority (SPCMCA) concerned, or his designated representative before placing a soldier in pretrial confinement. The authority to approve pretrial confinement may be delegated to the staff duty officer. The Bell County Confinement Facility serves as the pretrial detention facility for soldiers stationed at Fort Hood. A soldier will not be delivered to the Bell County Confinement Facility until the SPCMCA, or his designated representative, has approved pretrial confinement. If the soldier is serving in the US Army Reserve (USAR) or the Army National Guard (ANG) in federal service, the soldier must have been involuntarily activated by an order approved by the Secretary of the Army, or his representative, or be serving in a TITLE 10 duty status. TITLE 10 status is determined by examining the soldier's active duty orders.

(2) When delivering a soldier to the Bell County Confinement Facility for pretrial confinement, the committing officer will furnish to the Bell County Confinement Facility a properly completed:

(a) DD Form 497 (*Confinement Order*) in three copies, (Figure 2-1, APPENDIX C).

(b) FH Form 4-25 (*Military Magistrate Checklist for Pretrial Confinement*) in three copies, (Figure 2-2, APPENDIX C).

(3) If the SPCMCA approves pretrial confinement, the committing officer will add a statement on the back of the DD Form 497 stating he has the approval of the SPCMCA, or his designated representative, authorizing pretrial confinement of the accused. If a soldier's commander did not complete the FH Form 4-25 at the time of confinement, the commander must complete it not later than 24 hours after ordering confinement, or not later than 24 hours after receiving a report one of his soldiers has been confined by other competent authority.

(4) It is the committing officer's responsibility at the time of confinement to advise the accused of the nature of the offenses for which he is being held, the right to remain silent, the right to request military counsel at no expense to him, or to

retain civilian counsel at no expense to the United States, and the procedures by which pretrial confinement will be reviewed. This advice is required by R.C.M. 305(e) (Figure 2-3, APPENDIX C). When providing the advice, the commander will avoid any discussion with the accused regarding the offenses of which he is accused.

(5) Within 24 hours after confinement, the unit commander will deliver the following to the Bell County Confinement Facility:

(a) Necessary clothing required by AR 700-84 (*Unit Supply Update*, Table 5-1 or 5-2).

(b) Inventory of the soldier's military clothing, TA 50, and personal possessions secured at the unit (two copies).

(c) Health and dental records.

(d) FH Form 1875 (*Unit Commander's Observation/Evaluation of Prisoner*, Figure 2-4 (APPENDIX C), one copy, if not completed at time of confinement.

(6) A copy of the DD Form 458, *Charge Sheet* (Figure 3-1, APPENDIX C), written statements concerning the offenses, and any other documentation supporting the need for pretrial confinement for use by the military magistrate.

(7) Within 48 hours of the imposition of pretrial confinement, the military magistrate will review the adequacy of probable cause to believe the soldier has committed an offense and of the necessity for continued pretrial confinement. His review will include the commander's memorandum on FH Form 4-25 (Figure 2-2), and any additional written matters, including any submitted by the accused.

(8) The soldier and his defense counsel may appear before the magistrate and make a statement, if practicable. A representative of the command may appear before the magistrate to make a statement, but this is not required. The magistrate decides whether the soldier will remain in confinement or be released. After a convening authority refers charges to trial, the military judge can review the propriety of pretrial confinement if requested by the defense counsel. The military judge can order the release of the soldier and order more than day-for-day credit for any pretrial confinement served as a result of an abuse of discretion or the

failure to comply with the procedural requirements for confinement. A commander should terminate pretrial confinement if he later determines it is no longer necessary.

2-7. Reserve Considerations. There is no UCMJ provision for pretrial confinement or other pretrial restraints on liberty for RC soldiers not serving on active duty. RC soldiers on active duty or RC soldiers involuntarily ordered to active duty, may be placed in pretrial confinement under the same circumstances as active component (AC) soldiers. Chapter 8 describes procedures for ordering an RC soldier to involuntary active duty.

Chapter 3 The Court-Martial System

3-1. Introduction. The goal of the military justice system is to achieve justice *and* maintain good order and discipline in the service. As in all American criminal courts, courts-martial are adversarial proceedings. That is, lawyers representing the government and the accused vigorously present the facts, law, and arguments most favorable to their side following approved rules of procedure and evidence. Based upon these presentations, the military judge decides questions of law. The members of the court-martial, as a jury, or the military judge in a trial by military judge alone, apply that law and decide questions of guilt or innocence. A court-martial conviction above the SCM level constitutes a federal conviction.

3-2. Preferral Of Charges.

a. Complete sections I, II, and III of the DD Form 458 (Figure 3-1, APPENDIX C) to prefer charges for all forms of court-martial. Enlisted unit legal specialists should draft charges. ***The supporting trial counsel must review the charges before preferral to ensure they properly allege an offense and that there is competent evidence to support the charges.*** An RC commander should consult his supporting AC SJA, or trial counsel before preferring court-martial charges. An RC commander must be subject to the UCMJ at the time he prefers charges against a soldier. Also, the officer who swears him to the charges must be subject to the UCMJ at the time the oath is administered. RC commanders do not have to be subject to the UCMJ at the time they endorse charges forward to the next level of command.

b. Before preferral of charges the commander must conduct, or cause the conduct of, a preliminary inquiry into the suspected offenses, even if it consists only of reading statements or reports concerning the offense. He then includes all available evidence, for example, police reports, statements, photographs, etc., as allied papers to the DD Form 458 at the time of preferral. A commander may dispose of offenses within the limits of that officer's authority, or forward a matter concerning an offense, or charges, to a superior or subordinate authority for disposition.

3-3. Summary Courts-Martial (SCM).

a. ***Function.*** A SCM may only try enlisted soldiers and deals promptly with minor offenses. It is composed of one officer in the grade of captain or above, and is normally convened by a battalion commander. It may also be convened by anyone having the authority to convene a SPCM or a GCM. Either an active duty or RC SCMCA (SCM Convening Authority) may refer charges against RC soldiers to trial by SCM.

b. ***Referral of charges.*** The convening authority refers charges to trial by SCM. Complete the DD Form 458, part V (Figure 3-1, APPENDIX C). A SCM may be convened at the time of referral. See AR 27-10 (*Military Justice*), paragraph 12-4, for the method of convening a SCM and detailing a Summary Court Officer by annotating part V of the DD Form 458.

c. ***Consent to trial.*** An accused may not be tried by SCM if he objects to such a trial. If the accused objects to trial by SCM, the Summary Court Officer will note the objection in block 6 of the DD Form 2329 (*Record of Trial by Summary Court-Martial*, Figure 3-2, APPENDIX C) and return the DD Form 458 and DD Form 2329 to the convening authority for disposition. If the accused consents to trial by SCM, the Summary Court Officer will proceed with the court-martial.

d. ***Trial procedure.*** An SCM uses the procedures outlined in APPENDIX 9 of the MCM (*Guide for Summary Court-Martial*), DA Pamphlet 27-7 (*Guide to Summary Court-Martial Trial Procedure*), and AR 27-10, paragraph 5-21 (*Military Justice*). The same rules of evidence apply at SCM as at other courts-martial. RC soldiers may be tried by SCM while serving on active duty for training (ADT), annual training, or inactive duty for training

(IDT). If the trial takes place during IDT, it may not extend past the normal training period. If the Summary Court Officer is a member of the RC, he must be subject to the UCMJ at the time he conducts the trial as must the accused.

e. No entitlement to military counsel. An accused is not entitled to representation by military counsel at a SCM, but may consult with military counsel before trial. He may hire a civilian attorney to represent him at no expense to the government if the civilian counsel's appearance will not unreasonably delay the proceedings. Complete a DA Form 5111-R (*SCM Rights Notification/Waiver Statement*, Figure 3-4, APPENDIX C) and attach to the charge sheet.

f. Punishments. A SCM may only confine soldiers who are serving in the grade of specialist (E4) or below, for a maximum period of 30 days. For RC soldiers, punishments involving restraints on liberty can only be served during regularly scheduled drill periods. All punishments not completely served at the time soldiers are released from training are carried over to subsequent duty periods.

g. Convening authority's action and Judge Advocate review. At the conclusion of a SCM, the Summary Court Officer must serve a copy of the authenticated DD Form 2329 on the accused and get a receipt (Figure 3-2, APPENDIX C). Attach the receipt to the original record of trial. Forward the original and one copy of the DD Form 2329 to the convening authority. Within seven days after trial, the accused may submit any written matters to the convening authority which may reasonably tend to affect the convening authority's decision whether to disapprove any findings of guilty, or to approve the sentence. The convening authority may extend this period for up to ten more days for good cause. The convening authority may not take action within the seven-day period unless the accused submits matters before the period expires, or unless the accused waives his right to submit matters in writing. After the convening authority takes action, the case is sent to the SJA Criminal Law Division for review by a Judge Advocate under R.C.M. 1112, MCM, 1984.

3-4. Special Courts-Martial (SPCM).

a. Function. The SPCM is the intermediate court-martial in the military system. Its punishment powers for enlisted soldiers include reduction to private (E-1), forfeiture of two-thirds pay for six

months, and confinement for six months. A SPCM may not confine an officer. A SPCM may impose a fine in lieu of forfeiture. The membership of a SPCM may take any one of three different forms. It may consist of (1) at least three court members; (2) at least three members and a military judge (normally a military judge will be detailed to all SPCM); or (3) a military judge alone if the accused so elects. If the accused requests the court have enlisted membership, then at least one-third of the membership of the court must be enlisted from a battery, troop, or company sized unit other than his own. The court members must out-rank the accused. The accused has a right to representation at the trial by a military lawyer or a civilian lawyer at his own expense, or both.

b. Referral of charges. The SPCMCA refers charges to trial by SPCM. To refer charges, complete Part V of the DD Form 458 (Figure 3-1, APPENDIX C). Only an active duty GCMCA may refer charges against RC soldiers to a SPCM. Before arraignment, the RC soldier must be active duty.

c. Trial procedure. Ordinarily, a military judge *presides* over a SPCM. In the event a judge is unavailable, the senior officer present presides as president. The procedure for such a court-martial is set out in APPENDIX 8, MCM (*Guide for General and Special Courts-Martial*).

3-5. Bad-Conduct Special Courts-Martial (BCD SPCM).

a. Distinctive features. The BCD SPCM is basically the same as the SPCM outlined above, except this court-martial has the additional power to adjudge a BCD as punishment. There are certain requirements which must be met before imposing such punishment. In order for a SPCM to have the authority to impose a BCD, a qualified defense counsel and a military judge must be detailed, and a verbatim record of the proceedings be kept.

b. Referral of charges. The GCMCA refers charges to a BCD SPCM. The Criminal Law Division, Office of the Staff Judge Advocate will complete Part V of a DD Form 458 (Figure 3-1, APPENDIX C).

c. BCD Special as an option. The BCD SPCM option provides a forum for those cases where a convening authority deems a punitive discharge is warranted, but does not feel the charges are serious enough to deserve confinement in excess of six

months.

3-6. General Courts-Martial (GCM).

a. Function. The GCM is the highest trial court in the military and must be convened by a GCMCA. This court-martial tries military personnel for the most serious crimes. The punishment powers of the court are limited by the maximum punishment for each offense listed in Part IV of the MCM.

b. Article 32 investigation. No charge may be referred to a GCM until a thorough and impartial investigation of the charge has been made under Article 32, UCMJ. If a GCM is appropriate, the SPCMCA will immediately detail a mature commissioned officer as investigating officer. The officer appointed to conduct this investigation should be a field-grade officer or an officer with legal training and experience. A sample letter appointing an Article 32 investigating officer is at Figure 3-5. The purpose of the investigation is to inquire into the truth of the matters set forth in the DD Form 458, the correctness of the form of the charges, and to secure information upon which to determine disposition of the case. DA Pam 27-17 (*Procedural Guide for Article 32 (b) Investigating Officer*) provides a guide for use by the investigating officer. Upon notification of his detail, the investigating officer will report to the Administrative Law Division for an initial briefing on duties and procedures. An Article 32 Investigation is the principal duty of the investigating officer until completed. An Article 32 investigation concerning an RC soldier requires that the investigating officer, the accused, and the legal specialist recording the case are all subject to the UCMJ at the time the Article 32 is conducted.

c. Referral of Charges. The GCMCA refers charges to a GCM. The SJA Criminal Law Division will complete Part V of the DD Form 458 (*Figure 3-1, APPENDIX C*) to refer charges. Only an active duty GCMCA may refer charges against an RC soldier to a GCM. The soldier may be tried only while serving on active duty.

d. Composition. The GCM may take either of two forms. It may consist of a military judge and not less than five court members, or a military judge alone, if the accused so requests. In any case there must be a military judge detailed to the court. The accused may elect trial by judge alone in all cases except cases in which the death penalty could be possible. If requested, the accused is entitled to at

least one-third enlisted membership from battery, troop, or company sized units other than his own.

e. Detail of counsel. Trial and defense counsel are also detailed for each GCM. Both counsel at a GCM must be lawyers certified by the Judge Advocate General (TJAG).

3-7. Reserve Considerations. A SCM is the *only* court-martial that may be referred to trial by an RC convening authority. This court-martial is tried during normal drill periods. Confinement or restriction is served during normal drill periods. Forfeitures are calculated in whole dollar amounts based on the base pay of an AC soldier of the same grade and time in service as the accused. Before initiating any court-martial proceeding, RC commanders should consult with the AC supporting SJA or trial counsel.

Chapter 4 The Commander's Duties Before Trial

4-1. Introduction. Upon receiving a Charge Sheet, DD Form 458, with its allied papers, a commander must examine the file and decide what action is appropriate. A commander may handle the case at his level or recommend to a superior that it be handled at a higher level. Battalion commanders may refer cases to summary courts-martial, brigade commanders to special courts-martial, and division commanders to BCD special courts-martial or general courts-martial. If the convening authority refers the case to trial, he incurs certain additional responsibilities. Always consult with the SJA or trial counsel if there is any question *about the disposition* of a case.

4-2. Considerations For A Commander.

a. Ensure charges allege offenses. Part IV of the MCM (*Punitive Articles*) describes the various offenses under the UCMJ and the elements of each offense. Before an accused can be convicted, each element of an offense must be proved beyond a reasonable doubt. If a charge is not properly alleged, it may be dismissed. Trial counsel should review all charges and specifications before they are preferred. If an offense is not properly alleged, return the DD Form 458 to the accuser for correction.

b. Ensure the evidence supports the allegations. There must be sufficient evidence to

support the allegations in the charges. A commander does not always have to wait for the results of a laboratory analysis before he forwards the DD Form 458. For example, if a soldier admitted he possessed marijuana, the commander may prefer and forward the charges although a lab analysis had not yet been completed.

c. Consider the individual soldier. The commander must inquire into the individual's background to make an informed decision concerning the disposition of a case. Commanders should always consider whether the soldier's background or other factors, such as adjustment to his unit, played a role in causing the individual to commit the charged offense.

d. Consider the victims. Particularly in sexual assault cases, a victim's wishes are important to consider.

e. Good order and discipline. Consider the welfare, morale, discipline, and combat readiness of the unit.

4-3. Disposition Of Charges.

a. Dismissal. A commander may dismiss preferred charges. A decision to dismiss a charge does not bar other disposition of the offense, such as administrative action or Article 15 punishment by the same commander, or referral or referral of a charge by the same or a superior commander. Charges are ordinarily dismissed by lining-out and initialing the deleted specification or by signing a memorandum directing dismissal. When all charges and specifications are dismissed, inform the accused and the accuser. Dismiss a charge when it fails to state an offense, when the available evidence does not support it, or when there are other sound reasons why trial by court-martial is not appropriate on the charge. If an accused refused Article 15 punishment, but later requests the Article 15 be re-offered, charges are usually dismissed after Article 15 punishment is imposed.

b. Returning charges to subordinate authority. A commander may return charges to a subordinate commander for whatever action the subordinate deems appropriate. This might occur if the commander does not find the offense as serious as did the subordinate commander. When returning charges to a subordinate commander, the superior commander may not direct the subordinate to dispose

of the charges in any particular way. Normally, the superior commander should only advise the subordinate commander to dispose of the charges by a means within the subordinate's authority. Otherwise, an issue of unlawful command influence may arise.

c. Referring charges to trial. Where an accused's prior record, the seriousness of the offense, and the needs for justice and discipline warrant a court-martial, the convening authority may refer charges to a court-martial for trial. To refer, complete Part V of the DD Form 458.

(1) The convening authority should apply the following principals when deciding what level court is appropriate for a particular case.

(a) Refer charges to the lowest level court-martial, which can adjudge an appropriate punishment.

(b) Consistent with the needs of discipline and justice, treat military justice matters with relative uniformity. The convening authority should always consider the manner in which similar offenses within the command have been disposed. If one soldier receives an Article 15 for an offense and another is tried by SPCM for the same offense under the same circumstances, soldiers may perceive the system as unfair. Every offense and every offender is unique. Military law requires individualized disposition and punishment of offenses.

(2) Commanders should also consider how the following factors affect each individual case:

(a) When there is a victim involved, the injury, if any, inflicted upon the victim.

(b) Aggravating circumstances such as evidence of premeditation and reflection.

(c) The character, age, and experience of the accused and his previous military and civilian history.

(d) The effects of the offense, if any, on unit morale, discipline, and good order.

(e) The offender's mental state, any mental or emotional problems, and any signs the individual has shown toward rehabilitation, such as good duty performance, since the offense was

committed.

(f) Recommendations of subordinates. Give recommendations from subordinates the weight they deserve because those subordinates are closest to the situation and are likely to be more familiar with the facts. Temper such reliance with caution, however, because the subordinate is also plagued with having the troublemaker in his unit. A court-martial may appear to be an easy way to get rid of an unwanted soldier. Alternatively, the immediate commander may feel pressure from others within the unit not to take adverse action against the accused.

d. Forwarding charges to a superior authority. If a commander feels his power is inadequate to handle a case, he must forward the file to a superior authority whose judicial or non-judicial authority is greater than his own. For example, if a SCM convening authority believes a punitive discharge is warranted, he will have to forward the file through channels to the GCMCA, the only authority who can convene a BCD SPCM or a GCM. Use a FH Form 4-50 (*Court-Martial Charges*, Figure 4-1, APPENDIX C) for this purpose. RC commanders do not have to be subject to the UCMJ to forward charges to the next level of command. When charges are forwarded to a commander who is not a superior of the forwarding AC or RC commander, no recommendation on disposition may be made.

4-4. Psychiatric Evaluations. In some cases it may be desirable to have the accused examined by a psychiatrist to determine if he or she was mentally responsible at the time of the alleged offense. The law does not permit the conviction of a soldier who was not mentally responsible at the time of the act. If there is any question concerning the mental status of the accused at the time of the commission of the offense or at the time of trial, the convening authority should contact the trial counsel and arrange for a psychiatric evaluation of the accused.

4-5. An Accused's Right To A Speedy Trial.

a. 120-day rule. An accused must be tried within 120-days after (1) being placed under pretrial restraint such as conditions on liberty, restriction, arrest, or pretrial confinement; (2) he receives notification that charges have been preferred; or (3) if the accused is in the RC, involuntarily ordered to active duty, and if charges have not yet been preferred (see Chapter 2). The 120-day period consists of "accountable days" for which the

government is responsible. Properly approved defense-requested delays do not count towards the 120 period. For an RC soldier, up to 60 days may be excluded beginning on the date of the initial request for involuntary active duty and ending on the day the member reports for active duty. Denial of the accused's right to a speedy trial may result in dismissal of the charges.

b. Avoiding unnecessary delay. An unreasonable, unexplained delay may result in dismissal for denial of a speedy trial. The best way to avoid unnecessary delay is to do the job correctly the first time. Hand-carry files to higher headquarters. Investigate incidents investigated immediately while the facts are still fresh. Charges should be forwarded quickly, rather than waiting to obtain every possible piece of evidence. If there is any doubt concerning how to proceed, consult the trial counsel. When there is a delay, commanders should keep accurate notes of the reasons for the delay.

c. Pretrial Confinement. When a soldier is held in pretrial confinement for trial by GCM, article 33, UCMJ, requires that the charges, allied papers, and the report of investigation be forwarded to the GCMCA within eight days. If the case cannot be forwarded within eight days, the commander in control of the case file must forward a written explanation for the delay to the GCMCA.

4-6. Discharge In Lieu Of Trial By Court-Martial, AR 635-200 (Enlisted Personnel), Chapter 10.

a. Basis for request. AR 635-200, Chapter 10, provides that a soldier charged with an offense punishable by a BCD or dishonorable discharge may submit a request for discharge in lieu of trial by court-martial. The GCMCA is the approval and disapproval authority for these requests. The SJA must review the request before the GCMCA determines whether to grant the request. Selective use of this discharge authority is encouraged when the commander determines the offense is sufficiently serious to warrant separation and the soldier has no rehabilitation potential.

b. Processing the request. The accused initiates the request. Figure 4-2, APPENDIX C, is an example of a Chapter 10 request. This request must be forwarded through command channels, with intermediate commanders recommending approval or disapproval. If approval is recommended, the type of

discharge is recommended. A discharge under other than honorable conditions normally is issued, but a meritorious case may warrant an honorable or general discharge. A number of items must ordinarily accompany the form, and are usually provided by the accused's defense counsel. For example, the request should include a copy of the DD Form 458, all reports of investigation, a statement concerning the accused's mental responsibility (optional), and the recommendations of subordinate commanders. A medical report is required only if the accused requests a medical examination. If he does, a mental status evaluation must also be completed and included in the packet. The commanders' recommendations are recorded using the format at Figure 4-3, APPENDIX C (optional). When using this form, show the reasons for the commander's recommendations in the appropriate paragraph.

4-7. Reserve Considerations.

a. *Involuntary active duty:*

(1) RC soldiers not serving on active duty, and who are the subject of proceedings under Articles 15 and 30, UCMJ, for offenses allegedly committed while serving on active duty, ADT, AT or IDT may be ordered to active duty involuntarily by an AC GCMCA for:

- (a) Investigation under Article 32, UCMJ.
- (b) Trial by court-martial.
- (c) Article 15, UCMJ, proceedings.

Involuntary active duty is not authorized for the sole purpose of placing soldiers in pretrial confinement. The Secretary of the Army or his representative approves pretrial confinement for an RC soldier. The Secretary of the Army or the Secretary's designated representative must also approve any involuntary active duty order before an RC soldier may be confined or deprived of liberty (including pretrial confinement or restriction) during an other than normal IDT or active duty.

(2) Forward requests for involuntary active duty through command channels to the Major United States Army Reserve Command (MUSARC) commander. Requests should include a copy of the DD Form 458 and a summary of the evidence supporting the charges. Before preferral of charges,

commanders will consult with the supporting RC and active duty component SJA personnel. MUSARC commanders will forward requests for involuntary active duty to the Commander, III Corps and Fort Hood, ATTN: AFZF-JA-MJ. RC soldiers must be on active duty before arraignment at a GCM or SPCM, or before being placed in pretrial confinement.

b. *Extending RC soldiers on active duty.*

The requirements for AC GCMCA activation and Secretarial approval do not apply to RC soldiers on active duty. RC soldiers serving on active duty, ADT or AT may be extended on active duty involuntarily, so long as action with a view toward prosecution is taken before the expiration of the active duty, ADT or AT period. An RC soldier suspected of or accused of an additional offense after being ordered to active duty may be retained on active duty. See AR 635-200, paragraph 1-24, and AR 135-200 (*Active Duty For Training, Annual Training, Active Duty for Special Work of Individuals Soldiers*), Chapter 8 (*Disposition of Individual Soldiers on Active Duty (AT, IADT, ADT, and ADSW) and Full-Time Training Duty of Individual Members, Chapter 8*).

c. *RC military justice actions.* Such actions will follow the RC chain of command. MUSARC SJAs will review cases requesting disposition by an AC GCMCA. The MUSARC SJA will informally coordinate these cases with the AC SJA before a formal request for disposition. The MUSARC commander will sign forwarding endorsements.

Chapter 5: Search And Seizure, Inspections, Inventories, And Apprehensions

IMPORTANT NOTE: *This is an extremely complex area of the law, which is constantly changing. Commanders should call their trial counsel or the SJA Duty Officer whenever possible before making decisions concerning searching and seizing persons or property.*

5-1. Definitions.

a. Officer or apprehending officer. Includes commissioned officers, warrant officers, NCOs and law enforcement personnel. Any of these persons may apprehend a soldier.

b. Jurisdiction. Search and seizure rules apply to areas under the control of commanders and law enforcement personnel. The rules apply to on-post incidents in the United States and overseas. They may also apply to off-post situations overseas, depending upon treaty agreements. They do not apply to off-post searches in the United States. Consult trial counsel about jurisdiction.

c. Search authorization. This is the military term for a search warrant. There are a few technical distinctions.

d. Inspections and inventories. These are not criminal searches. Inspections and inventories are conducted for administrative purposes (*e.g.*, health, morale, welfare, and readiness), not law enforcement purposes.

5-2. Probable Cause Searches Based On Warrant or Authorization.

a. The authorization or warrant.

(1) Commander's authorization. A company commander or higher commander may authorize searches of a person or place under his command or control when there is probable cause to believe items connected with criminal activity are in the place or on the person to be searched. Seek voluntary consent before executing a search. See paragraph 5-4d. A commander may not delegate the authority to authorize a search to anyone, including the staff duty officer or first sergeant. First sergeants can never authorize a search. However, the power to authorize a search may devolve to the next senior person present when the commander is absent or when circumstances are such the commander cannot be contacted. An acting commander may also authorize a search.

(2) Military judge or military magistrate authorization. It is often preferable to have a military magistrate authorize a search. Obtaining authorization from a military judge or magistrate adds to the appearance of fairness. If commanders desire to search an area on-post, but

outside their area of command or control, they should contact a military judge or military magistrate.

(3) Procedures for obtaining an authorization to search. AR 27-10, *paragraphs* 9-7 to 9-13, sets procedures for obtaining an authorization to search. The authorizing official, whether it is a military judge, magistrate, or commander, must get statements containing information supporting the authorization. The statements can be written or oral (even by telephone or radio), and may be sworn or unsworn. See Figure 5-1, APPENDIX C. Based on the statements, the authorizing official will decide whether probable cause to search exists. Probable cause exists if there is reasonable belief items connected with criminal activity are in the place to be searched. An authorizing official who determines probable cause exists will issue either a written authorization, (Figure 5-2), or an oral authorization to search. The authorizing official must specify the place to be searched and the items to be seized.

(4) Scope of an authorized search. Once authorization to search is received, the person conducting the search must carefully comply with the limitations imposed by the authorization. Only those locations described in the authorization may be searched. The search may be conducted only in areas where it is likely the object of the search will be found. For example, in a search for a missing M-16 you could not look in a matchbox.

(5) Detention pending execution of search authorizations. An authorization to search for contraband implicitly carries with it limited authority to detain the occupants of a home or barracks room while conducting a search. The person conducting the search may also detain occupants leaving the premises at the time he or she arrives to execute the search authorization. Occupants may be detained pending completion of the search regardless of whether they are suspected of criminal activity.

(6) Off-post searches, authorization outside of military control. Some situations may arise where the proposed search is to be conducted on property outside of military control. In that situation, get a search warrant from a civilian judge or magistrate and civilian police will carry out the search.

b. Establishing probable cause.

(1) The proper analysis. There is probable cause to search when there are reasonable grounds to believe items connected with criminal activity are located in the place or on the person to be searched. Commanders who are determining whether probable cause exists may receive information from a variety of sources. The information may consist of the commander's personal observations and knowledge, provided the information would not preclude the officer from acting in an impartial manner. The information may also consist of statements from informants. To assist commanders in determining the existence of probable cause, the following is a suggested method for evaluating the factual basis and the believability of the information known to commanders and provided by informants.

(2) Factual basis. The commander should be satisfied the information was obtained in a trustworthy manner. The following ways may satisfy that:

(a) Personal observation. Personal observation is the most trustworthy form of information. Establish trustworthiness of information by showing the commander, or some other individual, personally saw the criminal activity. If possible, seek corroboration or substantiating information. Concerning drug offenses, personal observation should describe the basis for the belief that the observed substance was an illegal drug (for instance, the observer has seen illegal drugs before and can describe their properties).

(b) Statement of person to be searched or of an accomplice. Trustworthy information may be obtained from a statement of the individual to be searched or an accomplice of the individual. Commanders must warn all suspects of their rights under Article 31, UCMJ before questioning.

(c) Self-verifying detail. An anonymous tip may be so detailed that the information must have been obtained as a result of a personal observation by the informant.

(d) Corroboration. Additional information in the informant's tip can reasonably be presumed accurate when several of the facts included in the informant's tip can be verified by other evidence.

(3) Believability. The commander should

also be satisfied that the person furnishing the information is credible. Establish credibility through:

(a) Personal knowledge. The information can be believed when the individual who personally obtained the information is a responsible soldier, for example, the First Sergeant or someone else with well-founded reliability and trustworthiness.

(b) Demeanor. When the witness who got the information personally gives it to the commander (that is, not through a third party, such as MPs or the first sergeant), the commander can personally judge the witness' reliability. The commander should question the individual and determine the consistency of the witness' statement. This face-to-face situation may lend to, or detract from, the witness' credibility.

(c) Past reliable statements. There may be evidence concerning the witness's past reliability, such as whether or not this witness has furnished correct information in the past.

(d) Corroboration. Corroboration and demeanor of the person are particularly important when questioning first-time informants with no established record of past reliability. Previous paragraphs discuss corroboration.

(e) Declaration against interest. The person furnishing information to the authorizing commander may furnish information against that person's interest, that is, he is aware he is admitting an offense and could be prosecuted. This lends a great degree of reliability to the information furnished.

(f) Good citizen informants. Often, the informant's character or background renders him or her credible. For instance, a victim or a bystander with no apparent reason to lie may be considered reliable. In addition, law enforcement officers and "good soldiers" are generally considered reliable sources of information.

5-3. Probable Cause Searches Without Warrants ("Exigencies"). In general, authorization is required to conduct a probable cause search. In the following circumstances, however, authorization is not required to conduct a probable cause search.

a. Insufficient time. If there is reasonable

belief the delay necessary to obtain a search warrant or search authorization would result in the removal, destruction, or concealment of the property or evidence sought. For example, if a First Sergeant smells marijuana coming from a room, he may enter the room and apprehend those responsible.

b. Automobile searches.

(1) Generally a person apprehending a suspect or subjects in a vehicle may search the vehicle at the time and place of apprehension without obtaining a search authorization if there is probable cause to believe the vehicle contains contraband.

(2) When an individual in a vehicle is apprehended by the MPs for an offense on-post and is taken to the MP station, it may be permissible for the MPs to take the individual's vehicle to the MP station and search it without authorization from the commanding officer.

(3) If an MP stops an individual for a traffic offense and the MP sees items in plain view such as drugs or drug paraphernalia or evidence of another crime, the MP has probable cause to believe other evidence is in the vehicle. Thus, without getting authorization, the vehicle can be searched there or at the MP station where a search of the entire vehicle may be made.

(4) When a search for identification is permitted, the scope of the search is limited to those areas where identification of owners of vehicles is normally found, such as glove compartments, consoles, or what appear to be documents lying in open view in the car. The search must end when identification is established.

c. Identification search. The personal effects of any person who appears incapacitated may be examined to learn the cause of the incapacitation, or the identity of the individual. If the identity of the individual seems important—as in a desertion case or a case involving forged identity papers—give Article 31 and Miranda warnings before questioning, including asking for his name or identification card.

5-4. Searches And Seizures Not Requiring Probable Cause. These searches are not probable cause searches, but rather, searches allowed in limited circumstances where neither authorization nor probable cause is required.

a. Emergency searches. An officer or NCO may enter any premises if he has reason to believe entry is necessary to prevent injury to persons, to prevent serious damage to property, or to render aid to someone in danger.

b. Government property. Commanders, officers, and NCOs may freely search government property in which a soldier has no reasonable expectation of privacy without authorization or probable cause. Examples of this type of property include government vehicles or desks, brief cases, or toolboxes issued in connection with a soldier's duties. If government property is, however, set aside for the personal use (as opposed to official use), the soldier may have a reasonable expectation of privacy in the property and probable cause or some other basis is required before searching it. The most common examples of this type of property are footlockers and wall lockers issued to soldiers for use in their billets rooms.

c. Search incident to apprehension. At the time of an apprehension or immediately after the apprehension, the apprehending officer should notify the individual he or she is being apprehended for a specific offense. The apprehending officer may then search the person and the immediate area surrounding the person without authorization or probable cause. The apprehending officer must, however, possess probable cause to apprehend the individual. This search is to detect weapons, destructible evidence, or means that might be used to effect an escape.

(1) The search is limited to the area from which an individual may grab a weapon or destructible evidence. This includes any area from which an individual may grab a weapon with a sudden lunge, leap or dive. If the individual moves, the area within his immediate control can be searched. If the driver or passenger of an automobile is apprehended, a search of the closed and locked trunk cannot be justified as incident to apprehension. However, the passenger compartment and all receptacles contained therein can be searched.

(2) When additional information gathered at the time of apprehension establishes probable cause to believe seizable items are on the premises and in immediate danger of destruction, concealment, or removal, the officer may immediately search for and seize these items without authorization even though they may be outside the individual's

immediate control.

(3) When an officer or NCO makes an apprehension at a location where the apprehended person has no reasonable expectation of privacy, the officer may inspect the entire area. For example, if an officer investigating a break-in of the auto craft shop finds the door jimmied and enters to find an individual in the garage, he may inspect the entire craft shop looking for other evidence of a crime because the suspect cannot have a reasonable expectation of privacy in the craft shop.

d. Consent searches. An officer or NCO may make a search not otherwise authorized if the person or persons in control of the immediate area or object to be searched voluntarily give their consent. To ensure the consent is voluntary, the officer should tell the individual, "I have no authorization to search you, but I would like your consent to search you (or a particular place) for contraband."

(1) A refusal to consent to search, like evasive answers to questions, may arouse suspicion, but it does not amount to probable cause to search. If the individual refuses to consent, an individual may be detained while proper authorization to search is sought based upon probable cause.

(2) One question the individual may ask is "what will happen if I do not consent to search?" The answer should be, "Appropriate action will be taken." There is no need to specify what "appropriate action" is. A person should never be told "I am going to search you anyway."

e. Plain view. An officer who is lawfully in any place may, without getting a warrant or a commander's authorization, seize any item in plain view or smell, which he has reasonable grounds to believe will aid in a criminal prosecution. This is so even if the seizable item is not related in any way to the crime, which the officer may have been investigating.

(1) An officer or NCO may extend his natural senses by using devices such as binoculars, flashlights, or, in some cases, ladders or stools. The same rationale applicable to plain view also applies to plain smell.

(2) Unless justified by some other appropriate exception, that is, the Craft Shop garage sample noted above, an officer or NCO who is

lawfully at a place to make an arrest may not examine the entire premises solely to look for evidence. For example, if an officer goes to on-post quarters to arrest an individual for an offense and, while standing in the entryway of the quarters, the officer sees some item that will aid in a criminal prosecution, he may seize the item. He may not, without consent or invitation, go to the other rooms of the house.

5-5. *Inspections and Inventories.*

a. In general. The distinction between inspections and searches is very important. An inspection is administrative in nature and ensures the health, safety, morale, and readiness of a unit. A search is criminal in nature, and gathers evidence for a criminal prosecution. Similarly, evidence discovered during an inspection is admissible for criminal prosecution.

b. Inspections.

(1) The commander has an inherent right to inspect the barracks housing individual soldiers to ensure the command is properly equipped, functioning properly, maintaining standards of readiness, sanitation, cleanliness, and personnel are present, fit, and ready for duty.

(2) Inspections may include an examination to locate and confiscate unlawful weapons and other contraband *if* the primary purpose of the inspection is to determine whether the unit is functioning properly, maintaining standards of readiness, and is fit for duty. Inspections may also include an order to produce body fluids, such as urine. The inspection may only cover those areas that will enable the commander to achieve the purpose and scope of the inspection.

(3) A commander conducting an inspection may seize items found during an inspection that could aid in a criminal prosecution.

(4) Commanders may conduct periodic security checks to ensure wall lockers and footlockers are locked. If an officer conducts a security inspection and notices an unsecured wall locker or footlocker, the valuables from the locker may be secured until the individual returns to the unit.

(5) If a unit has returned from firing

weapons at the range and a weapon is missing, the commander may conduct an inspection for weapons of all persons who were at the range and others who were in a position to steal the weapon, including barracks' living areas and private automobiles.

(6) Evidence obtained from an inspection or an inventory used as a subterfuge for an illegal search may not be admissible at a court-martial. If the commander is looking for evidence of a specific crime, or suspects an individual or group of individuals are in possession of drugs, an inspection of the unit should not be used as a subterfuge for a search of the individuals.

(7) A commander conducting an inspection may use a narcotics detector dog to extend the natural senses of the individuals conducting the inspection, provided the dog is reliable. The test for reliability consists of certification from an approved training course, the training and utilization alert record, and performance demonstrated to the commander.

c. Inventories.

(1) A commander may direct an inventory of an individual soldier's property when the soldier is absent from the unit without authority, in military or civilian confinement, or when hospitalized in excess of 120 hours. AR 700-84, paragraphs 12-12 and 12-14, authorizes such inventories, and should follow normal unit policies.

(2) If during an inventory the officer discovers items that would aid in a criminal prosecution, the items may be seized and used as evidence.

5-6. Investigative Detention: Stop and Frisk.

a. In general. Any officer, NCO, or MP with a proper basis may stop and frisk another soldier. This practice is not encouraged for officers or NCOs who are not MPs. Whenever possible, rely upon MPs to conduct investigative detentions.

b. Contacts and stops.

(1) **Initiating a contact.** An MP may initiate contact with persons in any place where the MP is lawfully situated. A contact does not authorize the MP to restrict an individual's freedom of movement or to compel answers from the individual.

(2) **Basis for a stop.** An MP who has information or observes unusual conduct leading him to reasonably suspect a person has committed, is committing, or is about to commit a crime, has an obligation to temporarily stop that person. The MP must exercise this obligation in a place where he has a right to be. Pedestrians and vehicle occupants may be stopped; the stop must be based on more than a hunch. The MP making the stop should be able to state specific facts to support the decision to stop the individual.

(3) **Stops must be of a limited duration.** Once a stop is made, an MP is limited to taking prompt action that either confirms or dispels the original suspicion. Lengthy stops may be classified as seizures of the person(s), thus necessitating probable cause. The information gained during a stop may be sufficient to establish probable cause for apprehension.

c. Frisk.

(1) An MP may frisk any person whom he has lawfully stopped when the officer reasonably suspects the person is carrying a concealed weapon or dangerous object, and the frisk is necessary to protect the officer or others. The MP may conduct the frisk immediately after making the stop or at any time during the stop, whenever a reasonable suspicion to frisk arises..

(2) If, while conducting the frisk, an MP feels an object he reasonably believes to be a weapon or dangerous item, or reasonably believes to be contraband that will aid in a criminal prosecution, he may seize the evidence.

5-7. Apprehension.

a. Probable cause to apprehend. Apprehend and apprehension are the military terms for arrest. Probable cause to apprehend exists when there are reasonable grounds to believe an offense has been committed and the individual to be apprehended has committed the offense. Commissioned officers, warrant officers, NCOs, and law enforcement personnel may apprehend individuals when there is probable cause to apprehend. There is a difference between probable cause to search and probable cause to apprehend. For example, suppose a reliable informant has given personally obtained information a suspect committed a specific offense 30 days ago at the NCO Club. The fact the offense was committed

30 days ago and was based on personal observation from a reliable informant gives sufficient probable cause to apprehend the suspect. But, even if a small quantity of drugs was seen in the suspect's possession 30 days ago in the company billets, this would not give probable cause to search the billets, as there would be no basis to believe the drugs were still present. There would still, however, be a basis for an apprehension and a search incident to apprehension.

b. Procedures. Identify yourself. Notify the individual why he is being apprehended. The apprehension can be accomplished in a number of ways. First, the officer or NCO could tell the individual he is being apprehended and then search the individual incident to apprehension. Second, the officer or NCO could ask the individual to come to a particular office and the search could be made at the office. A third possibility is for the officer or NCO to ask individuals in the area to assist in the apprehension. If the suspect is uncooperative, try to subdue the individual or pay particular attention to any means of identifying the individual in case of his escape.

c. Authorization to apprehend soldiers in private dwellings on post..

(1) Apprehension of soldiers in private dwellings on post is discussed in R.C.M. 302(e), MCM, 1984; AR 27-10, paragraphs 9-7 to 9-13; and FORT HOOD SUPPLEMENT1 to AR 27-10 (*Military Justice*), paragraphs 9-14 to 9-18.

(2) A private dwelling includes single and multi-family quarters and temporary quarters such as the Poxon House, Keith Ware Hall (Building 36006) and other bachelor enlisted quarters (BEQs), bachelor officers quarters (BOQs), and visiting officers quarters (VOQs). Private dwellings do not include living areas in military barracks, vehicles, tents, field encampments, and other similar places, whether or not they are subdivided into individual units.

(3) Proper authorization must be obtained before any person may enter a private dwelling on post to apprehend anyone, except with consent or under exigent circumstances. This is not intended to affect the legality of an apprehension, which is incident to otherwise lawful presence in a private dwelling.

(4) Authority to issue authorizations. Only a military judge, military magistrate, or the Commanding General, III Corps and Fort Hood, may authorize the apprehension of a soldier in a private dwelling on Fort Hood. In the event the military judge or the military magistrate are unavailable, military law enforcement officials will coordinate with the Chief, Criminal Law Division, Office of the SJA, III Corps to obtain appropriate authorization from the Commanding General. Authorization may be oral or written. A DA Form 3745-1-R (Apprehension Authorization) (Figure 5-3, APPENDIX C) may be used if the authorization is written.

(5) Procedures. Law enforcement officials may request authorizations to apprehend soldiers in private dwellings on-post orally or in writing. Use a DA Form 3744-R (Affidavit Supporting Request For Authorization To Search And Seize) (Figure 5-1, APPENDIX C) if the request is written.

d. Apprehensions in private dwellings off-post. Military personnel do not have authority to apprehend soldiers in private dwellings off-post. Such apprehensions must be authorized by warrants issued by civilian judges.

5-8. Reserve Considerations. The roles listed in this chapter apply to RC commanders and AC commanders. If the immediate commander, or his superior, cannot authorize the on-post search or apprehension, he must contact the military magistrate or military judge. This can be done through the SJA on-call officer and the search can be authorized telephonically. Occasionally, RC commanders may need to use local police and local judges for search warrants and apprehensions.

Chapter 6 Confessions And The Right Against Self-Incrimination

6-1. Introduction. It is a basic feature of American law, civilian and military, that an individual cannot be forced to incriminate himself. The Fifth Amendment to the United States Constitution and Article 31 of the UCMJ protect a soldier from self-incrimination. Interrogations of criminal suspects are often a critical matter in criminal investigations. While the right against self-incrimination bars the coercion of statements, it does not prevent the use of voluntary admissions and confessions. In the military, the government must prove not only that a

statement was voluntary in the usual sense of the word, but also that it complied with the warning requirements of Article 31(b) of the UCMJ and certain constitutional rights to counsel. Should a statement be made without the necessary rights warnings, both the statement and any evidence derived from it may be inadmissible at trial.

6-2. Article 31, UCMJ. Article 31(b) requires a rights warnings preceding any official questioning of a criminal suspect or accused. Article 31(b) states:

“No person subject to (the UCMJ) may interrogate, or request any statement from an accused or a person suspected of an offense without first informing him of the nature of the accusation, and advising him that he does not have to make any statement regarding the offense of which he is accused or suspected, and that any statement made by him may be used as evidence against him in a trial by court-martial.”

For ease of analysis, the major questions posed by Article 31(b) are best considered in the following sequence: who must give warnings, when must warnings be given, who must be warned, and what warnings are required?

6-3. Who Must Give The Warning?

a. Persons subject to the UCMJ (M.R.E. 305 [b]). A person subject to the UCMJ, including a person acting as a knowing agent of a military unit or of a person subject to the UCMJ, *must* give warnings under Article 31 before requesting a statement or questioning an accused or a person suspected of an offense. This requirement would also be mandatory for PX store detectives as agents of the military.

b. Persons in a private capacity. Although a person subject to the UCMJ may request a statement from or conduct an interrogation of an accused or suspect, he does not come within the operation of Article 31 if he is doing so in a purely private capacity and not as an agent of the military and is not in authority over the subject. For example, the victim of a barracks larceny who is attempting to recover his money has no duty to warn a suspect before questioning him. The victim is acting solely for his own benefit and without official sanction. Under

these circumstances a warning is not required. However, if the victim is a platoon leader questioning someone from his platoon whom he suspects, warnings should be given.

6-4. When Must Warnings Be Given? Generally, when a suspect is required to say or do anything incriminating, the suspect must be warned. The time it takes to give a warning is insignificant compared to the possible consequences if a required warning is not given. *When in doubt, administer the warnings required by Article 31, UCMJ.* Warnings must be given before a suspect or an accused is asked to give a “statement.” The word “statement” can include more than just a verbal utterance.

a. The scope of the word “statement.”

(1) The constitutional protection against compulsory self-incrimination protects a person only from being compelled to testify against himself or herself, or to provide the government with evidence of a testimonial or communicative nature. It does not, for example, protect one from being compelled to provide fingerprints or handwriting samples.

(2) During an investigation a suspect can be required (using reasonable force, if necessary) to put on a coat to determine if it fits, and a witness to the involuntary fitting can testify at the subsequent trial of the suspect. Article 31 does not prohibit examination, without consent, of a suspect’s hands or clothes being worn for the purpose of searching for trace evidence associated with the scene of a crime. Requiring a person to place their feet in tracks or plaster molds of footprints may be compelled without an Article 31 warning. Article 31 does not forbid taking fingerprints of a suspect, blood samples, or handwriting or voice exemplars. *Even though an Article 31 rights warning may not be required, keep in mind a search authorization may be necessary!*

b. Interrogation. In the military, the warning requirements must be stressed at all levels of command. As a practical matter, *any time an accused or suspect is questioned concerning an offense*, the warning *must* be given, even if the question is as simple as, “what were you wearing last night?” Article 31 warnings are required before counseling a soldier suspected of an offense. *This even includes minor offenses*, such as missing formations and disrespect.

(1) **Written statements.** A statement

following a proper warning need not be in writing and signed before it can be used. Oral admissions can be as incriminating as written admissions. Written statements are preferred because there is less dispute later about the content of the statement. If an individual **voluntarily** initiates a conversation amounting to a confession, there is no requirement the military authorities stop the individual and give the warnings. If a commander, who does not suspect an individual of an offense, questions that individual for a legitimate purpose other than to elicit an admission, any incriminating statements made by the individual are admissible. However, once the commander begins to suspect the soldier of an offense, warnings should be given before further interrogation.

(2) **Verbal acts.** Because of the definition of "statement," a problem arises when a suspect is not asked to make a statement, but is asked to provide the investigators with physical evidence, or to assist them in obtaining it. In this situation it may be said if the suspect is being asked to furnish information to the investigator, by conduct or by conduct plus words, the suspect is being interrogated. Thus, if the actions of the suspect in complying with the particular request are capable of being construed as any admission on the suspect's part, such as an acknowledgment of ownership of an item sought, or an awareness of its whereabouts, the suspect has been asked to make a "statement," and should be advised of his rights under Article 31, UCMJ.

c. Interrupted interrogations. The prohibition in Article 31 against interrogating a suspect without first informing him or her does not mean a warning must be given before each and every occasion on which an interrogation takes place. It is necessary only that a warning be given at the outset of the particular investigation and it need not be repeated merely because the interrogation is briefly interrupted and then renewed. Any significant delay between sessions, however, usually requires a new set of warnings.

6-5. Who Must Be Warned?

a. An accused or suspect. Article 31 requires a warning be given to those accused of a crime and those suspected of an offense before asking questions about the offense. A statement by an individual to his commander is admissible evidence without an Article 31 warning if the commander had no reason to suspect the soldier of an

offense. The same rule applies to any other interrogator who would be required to give a warning.

(1) The following are examples of soldiers who were not suspects:

(a) A gate MP examined the accused's pass, later found to be false, during a routine check of personnel leaving the base. The soldier was not a suspect and there was no requirement to warn.

(b) The accused's First Sergeant saw him in a soiled uniform the day following a rape and asked the accused why his uniform was dirty, purely as a part of his routine duties as First Sergeant.

(2) The following are examples of soldiers who were suspects:

(a) An MP, in pursuit of some soldiers who had been firing weapons in a Korean town, lost contact with them, but found the accused nearby holding a carbine which had been recently fired.

(b) An investigator found the accused's billfold at the scene of an arson.

(c) A soldier from whom a watch had been stolen informed a company commander the accused was wearing a similar watch.

b. Accounts and records. There is no need to warn an individual when requesting accounts and records from the custodian of those records who is holding them in an official capacity. For example, in *United States v. Haskins*, an officer asked the accused whether his accounts were in order. The inquiry was made solely for accounting purposes, and the officer was neither conducting an investigation for the purpose of fixing responsibility for an offense which was known to have been committed, nor was he a law enforcement agent or an officer detailed to collect evidence to aid in solving a crime. No Article 31 warning was required.

6-6. The Content Of The Warning (Military Rule Of Evidence 305(C)).

a. Article 31, UCMJ.

(1) **The nature of the offense.** The purpose of the requirement that the suspect be advised "of the nature of the accusation" does not

demand the specific offense(s) be named with technical completeness and accuracy. It is enough the suspect be made aware of the general nature and purpose of the investigation as it is known to the interrogator. The nature of the accusation must be in terms which the suspect can understand.

(2) The right to remain silent. The suspect must be informed he has an unqualified right to remain silent. If the warning, as given, is so worded as to cause the subject to believe he has any obligation whatsoever to answer any question or make any statement, the warning is defective. An adequate warning can be nullified by subsequent incorrect advice so that any ensuing statements will be deemed unwarned. The great danger in this area is the commander who tries to embellish this portion of the warning. *The best course is for the commander to use a DA Form 3881 (Rights Warning Procedure/Waiver Certificate, Figure 6-1) and read it to the accused verbatim.*

(3) Multiple pieces of evidence. Although a suspect must be given an Article 31 warning before being asked to perform any act which he cannot lawfully be required to perform, he need not be separately advised concerning each particular item of evidence requested by his interrogators as long as the requests take place at a single interrogation preceded by proper warnings.

(4) Availability of statements as evidence. The suspect must be warned that any statement he makes may be used against him in a criminal trial. A subsequent promise, expressed or implied, not to utilize them as evidence against the suspect will nullify the warning. For example, where a line-of-duty investigating officer leads a respondent to believe his statement would be used only for the purpose of determining line of duty, there is a failure to comply with Article 31. However, a suspect's self-created, erroneous belief, not communicated to his interrogator, will not make defective an otherwise adequate warning.

b. Right to Counsel.

(1) When required. While the MCM calls for the counsel warning before interrogating a suspect who is in custody, charged, or restrained, it is advisable to give such a counsel warning every time an Article 31 warning is given. Remember this counsel warning is in addition to the Article 31 warning. (See DA Form 3881 at Figure 6-1, or FH

Handout 228 [*Rights Warning Pretrial Confinement*], a pocket card, APPENDIX C).

(2) Content of warning. An effective warning to a military suspect or accused must consist of at least the following:

(a) The suspect has the right to consult with a lawyer and to have the lawyer present with him during questioning; and

(b) This lawyer can be civilian counsel retained at his own expense, military counsel appointed for him free of charge, or both.

(3) Right to counsel. The accused must be made aware the term "counsel" means lawyer. This prevents confusion and clarifies his entitlement to legal counsel, not a chaplain or a social worker, but a lawyer. The accused must be plainly informed that he has a right to a free military lawyer.

(4) Effect of inadequate warning. An inadequate Article 31 warning before obtaining a statement will make the statement inadmissible and may deprive the government of the proof which it needs to convict the accused.

(5) Waiver. An accused can waive his self-incrimination rights if the waiver is made voluntarily, knowingly and intelligently. If the accused makes a statement without an attorney present during the interrogation, the prosecution must show a knowing and intelligent waiver of his right against self-incrimination and his right to appointed or retained counsel. *If the accused indicates in any manner he does not wish to be interrogated, he may not be questioned.* A waiver must be clearly expressed by the accused and must not be presumed. The fact that an accused has answered some questions or volunteered some information does not deprive him of his right to stop answering questions until he has consulted an attorney. It is a good idea to obtain a waiver of rights in writing before interrogation if the accused in fact desires to waive his rights. DA Form 3881 (Figure 6-1, APPENDIX C) should be used to record the waiver.

c. Prior incriminating statements:

(1) When needed. In addition to Article 31 warnings and the advisement of counsel rights, it may be necessary to warn a suspect that a prior incriminating statement cannot be used against him.

If a soldier has made a statement or performed some incriminating act without adequate Article 31 warnings and counsel rights advisement, the evidence may be excluded from use at court-martial. If the suspect is then later properly advised of his rights and makes a statement, the courts have often considered this second statement to have been induced by the first and because of the taint and is equally inadmissible as evidence. When, however, the rights warning is accompanied by a clear, direct warning that prior incriminating statements may not be used against the suspect, the taint from the first interrogation is attenuated, and any later statement or act is admissible as evidence.

(2) Content of warning. The back of the DA Form 3881 (Figure 6-1, APPENDIX C) contains the requisite warnings concerning prior statements. If the form is not used, the suspect should be clearly informed, in front of witnesses, after all other rights have been read:

(a) Any prior incriminating statement made before being properly advised of his rights does not obligate the suspect to answer any further questions.

(b) If any prior statements were made without a proper advisement of Article 31 warnings and counsel rights advisement determine whether the suspect was influenced by his earlier unwarned statements. The suspect must agree, without inducement, to waive his rights before any further statement is taken.

6-7. How To Take A Statement.

a. Voluntariness. To be admissible against the accused, a pretrial statement must be voluntary. A statement is not voluntary if it has been obtained or induced by the use of a threat, promise, duress, or physical or mental abuse amounting to coercion, unlawful influence, or unlawful inducement. A statement is not voluntary unless it has been obtained following proper procedures. When an accused or suspect is deprived of his freedom of action in any significant way during the course of an investigation, all warning and waiver requirements apply to statements made by him in response to any interrogation. A confession will automatically be excluded unless the warnings are given. On the other hand, it will not be automatically admitted merely because the warnings have been given. Generally speaking, a pretrial statement is involuntary, and

hence inadmissible, if it was not the product of the free will of the accused or if it was obtained under such circumstances as to cast serious doubt on whether it was voluntary. The following are examples of the kind of conduct which can cause a confession to be inadmissible: (1) the use of physical violence; (2) prolonged confinement; (3) prolonged interrogation; (4) deprivation of comforts and necessities; (5) unlawful inducement such as a promise not to press charges. The area of confessions is plagued with a number of legal niceties: a commander should hesitate to wrestle with these problems without first consulting a trial counsel.

b. Procedures. The best procedure to follow in taking a statement is to start with the DA Form 3881 (Figure 6-1, APPENDIX C). Where possible, a professionally trained military investigator should take statements. A trained investigator, rather than a commander, AR 15-6 officer, or anyone else should always question suspects of serious offenses. If a commander, officer, or NCO chooses to question a suspect, the questioner should have a witness available when he advises an individual of his rights. The questioner should also take notes to refresh his memory should he later be required to testify about how the statement was obtained. The questioner should carefully comply with the following steps:

(1) Inform the suspect of the nature of the offense and his rights (Article 31(b) and the rights to counsel) using a DA Form 3881 (Figure 6-1, APPENDIX C).

(2) Ask the suspect if he understands his rights. You can proceed only if he affirmatively acknowledges his rights.

(3) Ask the suspect if he wants a lawyer. You can proceed only if the suspect affirmatively states he does not want a lawyer.

(4) Ask the suspect if he is willing to make a statement. You can proceed only if he affirmatively indicates he is willing to talk.

(5) Complete a DA Form 3881 (if available).

(6) Interrogate the suspect.

(7) Stop the interrogation immediately if the suspect changes his mind and decides to stop

talking or says he wants a lawyer. Questioning must cease immediately if this occurs.

6-8. Rights Warnings and Searches Distinguished. There is no requirement that an individual be given Article 31 warnings before a search. However, if he is a suspect and provides incriminating answers during the search, such answers will not be admissible in evidence. If a search is based on consent, the consent must be knowing and voluntary. While there is no requirement to give a warning before conducting a search, there is nothing that forbids such a warning; it is often a good idea. The lack of a warning will not make the results of the search inadmissible, but it may make incriminating statements made by the accused inadmissible.

6-9. Summary.

a. Unless spontaneously made by the accused, confessions *must* be preceded by proper Article 31 warnings and rights advisement.

b. Confessions must be voluntary.

c. Consult a trial counsel if you have any questions.

6-10. Reserve Considerations. Article 31(b) and the guarantees of the Constitution apply to RC soldiers in the same fashion as their AC counterparts. Commanders and leaders must comply with this chapter whenever information is sought from a soldier suspected of an offense, even if the offense is absent without leave.

Chapter 7

Non-Judicial Punishment (Article 15, UCMJ)

7-1. Applicable Policies. If counseling and other administrative measures are not appropriate or adequate to deal with certain misconduct a commander should consider imposing non-judicial punishment under the provisions of Article 15, UCMJ. Impose non-judicial punishment to:

a. Correct, educate, and reform offenders who have shown they cannot benefit by less stringent measures;

b. Preserve, in appropriate cases, an offender's record of service from unnecessary stigmatization by a record of court-martial conviction; and

c. Further military efficiency by disposing of minor offenses in a manner requiring less time and personnel than trial by court-martial.

7-2. Imposition Authority.

a. Who may impose Article 15 punishment?

Only a commander may impose punishment under Article 15. Commands include companies, troops, batteries, numbered units (*i.e.*, battalions, brigades, *etc.*), and detachments. Commands also include other organizations, such as provisional units designated under AR 220-5 (*Designations, Classification, and Change in Status of Units*) the commander of which is the one looked to by superior authority as the individual chiefly responsible for maintaining discipline in that organization. The authority to administer non-judicial punishment may not be delegated except by the GCMCA.

(1) If an officer satisfies the definition of the term "commander" he ordinarily has Article 15 authority. However, a superior officer in the chain of command may completely withdraw or partially limit a subordinate's Article 15 authority. A superior may completely withdraw all Article 15 powers from subordinates. The Commander, III Corps and Fort Hood, is the only authority that may impose Article 15 punishment on commissioned or warrant officers assigned to non-divisional units or organizations. The superior may also partially limit the subordinate's power by preventing him from exercising Article 15 powers in a particular case or over particular categories of personnel or offenses. For example, a battalion or brigade commander might choose to withhold from subordinate commanders the authority to impose Article 15 punishment on soldiers in the grade of Sergeant First Class and above, or on any soldier charged with driving while intoxicated (DWI) or a drug offense. FORT HOOD SUPPLEMENT 1 to AR 27-10 and each division's supplement 1 to AR 27-10 limits the subordinate commander's Article 15 authority.

(2) If a superior does not formally withdraw or limit a subordinate's jurisdiction, the superior must permit the subordinate to exercise unfettered discretion in the use of his Article 15 powers. The superior may not direct or recommend

the subordinate impose an Article 15 punishment in a particular case. Moreover, the superior may not issue regulations, orders, or “guidelines” directing or suggesting the subordinate use Article 15 to dispose of certain types of offenses or that the subordinate impose predetermined types or amounts of punishments for certain types of offenses.

(3) If a commander determines his authority under Article 15 is insufficient to impose appropriate punishment, he may request a superior exercise Article 15 jurisdiction. The same procedure will be followed if the authority of subordinate commanders to impose Article 15 punishment has been withheld or limited. When a case is transmitted for action by a superior, no recommendation concerning the nature or extent of the punishment to be imposed will be made. Transmittal should normally be accomplished by written correspondence using a DA Form 5109-R (*Request to Superior to Exercise Article 15, UCMJ, Jurisdiction*, Figure 7-1, APPENDIX C), including requests to *the Commanding General, III Corps and Fort Hood*, to impose Article 15 punishment on a commissioned or warrant officer. This form should also be used by RC commanders when requesting an Article 15 be administered by a higher level of command.

b. Who may receive an Article 15? A commander may impose non-judicial punishment upon military members of his command. Soldiers are members of a command if they are assigned to the command or affiliated with it by attachment, detail, or otherwise.

(1) If there is any question concerning whether an individual is “of the command,” examine written or oral orders affecting the soldier’s status. If the orders indicate the soldier is (a) attached for rations, quarters, and administration, or (b) attached for administration of military justice, or (c) attached for administration, the individual may normally be considered to be a member of the command for purposes of Article 15.

(2) A soldier can be a member of more than one command for the purpose of Article 15. For example, if a soldier, assigned to a unit at Fort Hood, goes on temporary duty (TDY) to a school at another post, he is, theoretically, a member of both commands for purposes of non-judicial punishment. However, he could not be punished twice (once by each commander) under Article 15 for the same misconduct.

(3) RC soldiers may receive non-judicial punishment under Article 15 while serving on active duty, ADT, AT, or IDT. RC soldiers may be punished while serving on IDT provided the proceedings are conducted and any punishment administered is served during normal IDT periods. Before taking such actions, RC commanders should consult with their supporting RC or AC staff or command judge advocate. Either RC or AC commanders may punish RC, active duty component or active reserve component enlisted soldiers of their commands. Unless further restricted by higher authority, punishment for RC officers is reserved to the AC or RC GCMCA to whose command the RC officer is assigned or attached for disciplinary purposes or by commanding generals in the RC officer’s chain of command.

c. When is Article 15 punishment appropriate? Two criteria must exist for a commander to impose punishment under Article 15. First, the soldier to be punished must have committed an offense in violation of the UCMJ. Second, the crime must be of a minor nature. The term “minor” ordinarily does not include misconduct which, if tried by GCM, could be punished by dishonorable discharge or confinement for more than one year. This is not a hard and fast rule, however, and the circumstances surrounding the offense must be considered. Summarized Article 15s should be imposed for only the most minor of offenses, as discussed in paragraph 7-6.

d. Article 15 normally bars future trial. The imposition of punishment under Article 15 will normally bar a subsequent trial by court-martial for the same offense. If the Article 15 punishment was inappropriate because the offense was not minor, however, the accused may later be tried by court-martial for the same offense.

7-3. Formal Article 15 Procedures. When administering an Article 15, a commander should use the guide provided (Figure 7-2, APPENDIX C). Notify the accused of the nature of the alleged misconduct. The statement must clearly state a violation or violations of one or more of the punitive articles of the UCMJ and must be in terms which the accused can understand. A DA Form 2627 (*Record of Proceedings Under Article 15, UCMJ*) is required when administering a formal Article 15 (Figure 7-3, APPENDIX C).

a. Notice to the soldier. The commander

informs the accused (1) he is considering punishing the accused under Article 15; (2) of the accused's rights under Article 31(b), UCMJ; (3) of his right to examine available evidence; (4) of his right to consult with a lawyer; (5) of his right to demand trial by court-martial; (6) of his right to present witnesses or submit evidence in defense, extenuation, or mitigation; (7) of his right to be accompanied by a personal representative during the Article 15 proceedings; (8) of the maximum punishment possible under Article 15; and (9) of his right to request the Article 15 proceeding be opened to the public. The soldier is not entitled to be informed of the type or amount of punishment he will receive if non-judicial punishment is ultimately imposed. If the soldier requests, the commander will also inform him of the maximum punishment that can be adjudged by court-martial on conviction of the offenses involved.

b. Delegation of notice. A commander does not have to personally advise the soldier of the allegations and rights. He may authorize a commissioned officer, warrant officer, or NCO in the grade of sergeant first class (E7) or above to deliver the DA Form 2627 and inform the soldier of his rights, as long as the person to whom the commander has delegated this task is senior to the soldier receiving the Article 15. In cases where this notice procedure is delegated, the person advising the soldier of his rights should use the *Article 15 Guide* (Figure 7-2, APPENDIX C), with modification of the language where appropriate. If this delegation is used, the commander offering the Article 15 still signs and dates the signature block of the DA Form 2627.

c. Time to consult with counsel and decide. The soldier will be given a reasonable time to consult with counsel, including time off from duty, if necessary, to decide whether or not to demand a court-martial. The decision period should be determined after considering factors such as the complexity of the case and the availability of counsel. Normally, 48 hours is a reasonable decision period. If the member does not request a delay, the commander may continue with the proceedings immediately. If the soldier requests a delay, he may be allowed an additional period to be determined by the imposing commander to decide whether to demand trial.

d. Demand for trial. If the soldier demands trial by court-martial on any offense, no further action will be taken to impose non-judicial

punishment for any offense unless the soldier's demand subsequently is voluntarily withdrawn. Whether court-martial charges will be preferred against the soldier for the offense(s) and the level of court-martial selected will be decided by the appropriate commanders. A soldier's demand for trial by court-martial will not bar disposition of minor offenses by non-punitive, administrative measures by appropriate commanders. However, before any action is taken against a soldier who demands trial by court-martial, consult a trial counsel.

e. No demand for trial. If trial by court-martial is not demanded, the imposing commander may continue the proceedings. The imposing commander also may continue the proceedings if the soldier, even though demanding trial, refuses to complete or sign DA Form 2627, item 3, within the prescribed time. In such instances, the soldier will be informed failure to complete and sign item 3 may be treated as a voluntary withdrawal of any oral demand for trial. If the soldier persists in his refusal and punishment is imposed, in addition to recording the punishment, the following entry will be made in item 4 of the DA Form 26-27 (*Article 15*).

Advised of (his) (her) rights, the member (did not demand trial during the decision period)," or "(refused to [complete] [sign] item 3)."

f. The hearing. The soldier will be allowed to personally present matters in defense, extenuation, or mitigation in the presence of the imposing commander, except when appearance is prevented by the unavailability of the commander or by extraordinary circumstances, for example, the soldier is stationed at a geographic location remote from that of the imposing commander and cannot be readily brought before the commander. When personal appearance is requested, but is not granted, the imposing commander will appoint a commissioned officer to conduct the hearing and make a written summary and recommendations. The soldier is entitled to appear before the officer designated to conduct the hearing.

g. Open Hearing. The soldier may request an open hearing. The imposing commander will, after considering the facts and circumstances, determine whether the hearing will be open or closed. An open hearing is a hearing open to the public, but does not require the commander to conduct the proceeding in a location different from that in which

he conducts normal business, for example, his office. A closed hearing does not prohibit the commander from requiring the NCO chain or other persons to attend the hearing.

h. Spokesperson. The spokesperson who may accompany the member to the Article 15 proceeding and who speaks on his behalf is normally not a lawyer. A soldier has no right to free military legal counsel at the Article 15 hearing. He may retain civilian counsel to act as his spokesperson at no cost to the government. However, the commander does not have to grant a delay for the appearance of any spokesperson, including civilian counsel. Normally, the trial counsel is not present during the Article 15 proceeding. If the trial counsel for the command is present, then the defense counsel advising the accused must be invited to attend the Article 15 proceeding. The spokesperson's presence must be voluntary. Because the proceedings are not adversarial in nature, neither the soldier nor spokesperson (including any attorney present on behalf of the soldier) may examine or cross-examine witnesses, unless permitted by the commander. The soldier or spokesperson may, however, indicate to the commander relevant issues or questions they wish explored or asked.

i. Witnesses. A soldier's request for witnesses in defense, extenuation, or mitigation is restricted to those witnesses reasonably available as determined by the imposing commander. To determine whether a witness is reasonably available, the imposing commander will consider the fact neither witness nor transportation fees are authorized. Reasonably available witnesses will ordinarily include only personnel at the installation concerned and others whose attendance will not unnecessarily delay the proceedings.

j. Evidence and determination of guilt or innocence. The imposing commander is not bound by the formal rules of evidence used in courts-martial and may consider any matter, including unsworn statements, he reasonably believes to be relevant to the offense. If, after evaluation of pertinent matters, the imposing commander determines non-judicial punishment is not warranted, the soldier will be notified the proceedings have been terminated and all copies of DA Form 2627 will be destroyed. If the imposing commander is convinced beyond a reasonable doubt the soldier committed the offense(s) and decides to impose punishment, the soldier should be given the opportunity to present any other

evidence in extenuation or mitigation. Thereafter, the commander will ordinarily immediately announce the punishment to the soldier (see paragraph 7-4, below). The commander may, if he desires, explain to the soldier why a particular punishment was imposed. The appellate rights and procedures, which are available to the soldier, will be explained to the soldier in accordance with the *Article 15 Guide* (Figure 7-2, APPENDIX C). (See also paragraph 7-5, below).

7-4. Article 15 Punishments. Figure 7-6, APPENDIX C, outlines the maximum punishments that may be imposed. Maximum punishments are also listed in Table 3-1 of AR 27-10.

a. Types of punishment. The types of punishment which can be imposed under Article 15 are broken down into three general types. A commander may affect a soldier's pay, rank, and liberty. Correctional custody is not available as a punishment on Fort Hood. Extra duty and restriction punishments must run at the same time. Under the MCM, Part V, paragraph 5d(4), extra duty and restriction punishments can be imposed together, but if imposed together, must run concurrently. For example, a battalion commander cannot impose 20 days of restriction to be followed by 25 days of extra duty, although the combined time period is still no more than that maximum time period for extra duty punishment (45 days). Additionally, the combination of extra duty and restriction punishments cannot be imposed for a period longer than the maximum length of extra duty punishments. For example, a battalion commander cannot impose 60 days restriction and 45 days extra duty, even if those punishments run concurrently; the combination is limited to the maximum time period extra duties are authorized.

b. Forfeitures based upon grade. If a soldier is reduced and given a forfeiture, the forfeiture must be based on the pay grade to which the soldier was reduced, whether or not the reduction is suspended.

c. Deprivation of liberty. A commander may combine restriction and extra duties, but this combination may not run for longer than the maximum period for extra duties.

d. Effective date of punishments. Punishments are effective on the date they are imposed, unless otherwise indicated on the *Article 15*. For

example, if the unit is about ready to go to the field for a week, the commander could indicate a punishment of restriction and extra duty would begin on the date after the unit returns from the field (be specific: e.g., 19 March 1995). Once punishment of extra duty or restriction starts, it continues until completed, except where temporarily interrupted due to the fault of the soldier, the soldier's physical incapacity, or the appeal is not acted on in a timely fashion. See AR 27-10, paragraph 3-19b(8).

e. Interruption of punishment pending appeal.

(1) Once started, extra duty and restriction punishments must run without interruption. AR 27-10, paragraph 3-19b(8) says that once the extra duty and/or restriction punishment commences, the punishments "will run continuously, except where temporarily interrupted due to the fault of the soldier, or the soldier is physically incapacitated, or an appeal is not acted on as prescribed in paragraph 3-21b." Practically speaking, once a commander starts extra duty or restriction punishments running, he cannot interrupt them for a field exercise or deployment and have them start running again after the soldier's return.

(2) Punishments of restriction and extra duty will be interrupted (i.e. stopped), however, if a soldier appeals an Article 15, the appeal is not acted on within five days by the next superior authority (three days for a summarized Article 15), and the soldier requests the punishments be stopped. Once interrupted, punishment must remain stopped until the appeal is decided by the appellate authority.

f. Suspension of punishments. A commander may suspend the unexecuted portion of any punishment which he imposes under Article 15, at the time he imposes the punishment or at a later time. A suspension is a probationary period permitting the soldier to exhibit signs of rehabilitation without actually going through the punishment. A punishment may be suspended for up to six months. Army regulations permit a forfeiture or reduction in grade, which is executed when imposed, to be suspended at any time within four months after it has been imposed.

g. Supplementary actions. A commander imposing punishments under Article 15 has power to subsequently suspend, vacate, remit, mitigate or set aside punishment previously imposed. This is

accomplished by completing DA Form 2627-2 (*Record of Supplementary Action Under Article 15, UCMJ*, Figure 7-4, APPENDIX C), unless the suspension is noted directly on the Article 15 form itself at the time the punishment was originally imposed (Figure 7-3, APPENDIX C).

h. IDT punishments. The execution of punishment for USAR soldiers and ARNG soldiers in federal service during IDT is limited to normal training periods. Forfeitures for such soldiers will be calculated in whole dollar amounts based upon the base pay for an AC soldier of the same grade and time in service and not on the amount of drill pay the soldier may have earned during the period of the forfeiture.

7-5. Appeals.

a. Procedure. A soldier has the right to appeal both the imposition of the Article 15 and the punishment. He can appeal either on the grounds he is not guilty of the offense(s), the commander who imposed the punishment did not comply with the prescribed procedures, or the punishment is too severe. This appeal goes through the imposing commander to the next superior authority (normally the next higher commander in the chain of command). The accused is entitled to submit written statements dealing with the question of guilt, as well as the appropriateness of the punishment. These written statements accompany the appeal when it is forwarded. Where the soldier indicates a desire to appeal, but submits no matters, the appeal should be forwarded in the same manner as an appeal based on written grounds.

b. Time to submit appeals. Appeals must be submitted by the accused within a reasonable time after the imposition of punishment. Absent any unusual circumstances, five days is considered a reasonable time. However, appeals should not be dismissed solely because they are filed after the five day period expires. As a result of the appeal, the commander who imposed the punishment may take additional action such as suspension, mitigation, remission or setting aside. If such additional action is taken, the commander should then ask the accused if he wishes voluntarily to withdraw his appeal. If the soldier does not agree to do so or if the officer takes none of the actions mentioned above, the appeal should be forwarded to the next superior authority.

c. **Stopping punishment pending appeal.** A soldier who appeals in a timely fashion may be required to undergo any punishment imposed while the appeal is pending, except if action is not taken on the appeal within five days (three days for summarized Articles 15) after the appeal is submitted and if the soldier so requests, any unexecuted punishment involving restraint or extra duty is stopped until action on the appeal is taken.

d. **Review by Judge Advocate.** An appeal from the punishments shown below must be referred to a judge advocate for advice before acting on the appeal. The trial counsel servicing the jurisdiction is usually the one who reviews such cases. The specified punishments are:

- (1) Extra duty or restriction for more than 14 days;
- (2) Reduction of one or more pay grades from the fourth or a higher pay grade;
- (3) Forfeiture of more than seven days pay;
- (4) Arrest in quarters for more than seven days.

7-6. Summarized Article 15.

a. A summarized Article 15 may be imposed by any commander who may impose a formal Article 15. It should be used only for very minor offenses and when the commander has determined any punishment imposed should not exceed 14 days extra duty, 14 days restriction, an oral admonition or reprimand, or any combination of these punishments.

b. A soldier has the same rights under the summarized procedure that he does under the formal procedure, except *that* he does not have a right to consult with legal counsel provided by the government before deciding whether to accept the Article 15, and he normally must decide whether to accept the Article 15 or demand a court-martial within 24 hours. Summarized Articles 15 are administered using DA Form 2627-1 (*Summarized Record of Proceedings Under Article 15, UCMJ*) and are usually handwritten (Figure 7-5, APPENDIX C).

c. A soldier may appeal a summarized Article 15 in the same manner as a formal Article 15 (*see* paragraph 7-5 above). The appeal should be

submitted within five days of the imposition of punishment. Punishments of extra duty and restriction must be stopped, if the soldier appeals and requests they be stopped if the appeal is not acted on within three days by the next superior authority.

d. A copy of the summarized Article 15 must be provided to the unit legal specialist to ensure proper documentation on the monthly *JAG-2 Report*.

7-7. Filing The Article 15.

a. **Formal Articles 15.** The imposing commander decides whether a formal Article 15 will be filed in the restricted fiche or the performance fiche of a soldier's official military personnel file (OMPF) by initialing the appropriate block in paragraph 5 on the Article 15 form. This decision may not be reversed by a local appellate authority without vacating the entire Article 15.

(1) The OMPF performance fiche is routinely used by military occupational specialty (MOS) career managers and DA selection boards for the purpose of assignment, promotion, and schooling selection. The restricted fiche is not given to those managers or DA selection boards without the approval of the Personnel Command (PERSCOM) Commander or selection board proponent. Consequently, the filing decision can have a significant effect on a soldier's future in the armed forces.

(2) When the commander directs filing in the performance fiche, a copy will also be filed in the soldier's *Military Personnel Records Jacket* (MPRJ). If filed in the restricted fiche, a copy will be filed in unit personnel files for up to two years or until the soldier is transferred from the unit, whichever occurs first.

(3) For soldiers specialist or corporal (E4) and below (before punishment) the original will be filed in the unit non-judicial punishment files. Such locally filed originals will be destroyed at the end of two years from the date of imposition of punishment or on the soldier's transfer to another GCMCA, whichever occurs first. For these soldiers, the imposing commander should annotate item 5 of DA Form 2627 as "Not Applicable" (N/A).

b. **Summarized Article 15.** These are filed in unit personnel files for up to two years or until the soldier is transferred from the unit, whichever occurs

first.

7-8. Reserve Considerations. There are some special limitations on the administration of Article 15 punishment in the RCs. Active Guard and Reserve (AGR) soldiers, staff sergeant (SSG) through Sergeant Major (SGM) may not be reduced in grade under this provision. Additionally, troop program unit (TPU), Individual Mobilization Augmentee (IMA), Individual Ready Reserve (IRR) and Standby Reserve Soldiers, Sergeant First Class (SFC) through SGM, may not be reduced in grade under provisions of AR 140-158 (*Enlisted Personnel Classification, Promotion and Reduction*), paragraph 7-9.

Chapter 8 Reserve Component (RC) Jurisdiction

8-1. Introduction. This chapter prescribes policies and procedures for implementing RC jurisdiction as required by the MILITARY JUSTICE AMENDMENTS OF 1986, Articles 2(a)(3), 2(d), 3(d), 136, and 137, UCMJ. This legislation significantly enlarges the powers of RC commanders and the responsibilities of RC judge advocates.

8-2. Policy.

a. Reserve Component (RC) soldiers will be subject to the UCMJ whenever they are in a TITLE 10 UNITED STATES CODE (U.S.C.) duty status: Active Duty (AD), Active Duty Training (ADT); Annual Training (AT); Active Guard/Reserve (AGR) duty; or Inactive Duty Training (IDT). A determination of duty status is accomplished by reviewing a soldier's orders to active duty.

b. IDT normally consists of weekend drills by troop program units, but may also include any training authorized by appropriate authority. For examples of IDT, see AR 140-1 (*Army Reserve Mission, Organization and Training*). Jurisdiction continues during periods such as "lunch breaks" between unit training assemblies or drills on the same day and may continue overnight in situations such as an overnight bivouac. See AR 27-10, paragraph 21-2(a).

c. RC commanders must be in a TITLE 10 duty status (*see above*) whenever they take UCMJ action including imposition of Article 15 or referral of court-martial charges. However, RC commanders may forward charges (see 401(c)(2)) or act on Article

15 appeals any time, even when not in a TITLE 10 status.

d. Costs associated with disciplining RC soldiers will be paid out of RC funds.

8-3. Involuntary Active Duty and Pretrial Confinement (Article 2 (d), UCMJ).

a. RC soldiers who are not serving on active duty, and who are the subject of proceedings under Articles 15 and 30, UCMJ, for offenses committed while in a TITLE 10 duty status may be ordered to active duty involuntarily by the active component GCMCA (i.e., Commander, III Corps and Fort Hood) for:

- (1) Investigation under Article 32, UCMJ.
- (2) Trial by court-martial.
- (3) Article 15, UCMJ, proceedings.

b. Only AC GCMCAs are authorized to order involuntary active duty of RC soldiers for the purposes in paragraph 8-3a. The Secretary of the Army, or the Secretary's designated representative, must approve any involuntary active duty order before a RC soldier may be confined or deprived of liberty (including pretrial confinement and restriction) during an other than normal IDT or AD period. See discussion, R.C.M. 204(b)(2). Involuntary AD is not authorized for the sole purpose of placing an RC soldier in pretrial confinement.

(1) Requests to place a RC soldier on involuntary active duty will be forwarded through command channels to the appropriate Major US Army Reserve Command (MUSARC) commander. Requests should include a copy of the charge sheet and a summary of the evidence supporting the charges. Before charges are preferred in such cases, commanders will consult with supporting RC and AC SJA personnel.

(2) MUSARC commanders will forward requests for involuntary active duty to the Commander, III Corps and Fort Hood, ATTN: AFZF-JA-MJ.

(3) The commanding general, III Corps and Fort Hood, will forward requests for Secretary of the Army approval of involuntary active duty to HQDA (DAJA-CL) for processing to obtain

Secretary of the Army or Secretary designee approval. The Commander, III Corps and Fort Hood will also immediately inform the MUSARC and Continental US Army (CONUSA) commanders and the US Forces Command (FORSCOM) commander, of the initiation of UCMJ actions against RC soldiers. HQDA (DAJA-CL) will notify the Commander, III Corps and Fort Hood of Secretary or Secretary designee action on the request.

c. RC soldiers must be on active duty before arraignment at a GCM or SPCM (R.C.M. 204(b)(1)) or before being placed in pretrial confinement (R.C.M. 305).

8-4. Extending RC Soldiers On Active Duty.

a. The requirements for AC GCMCA activation and/or secretarial approval in paragraph 8-3 do not apply to RC soldiers on active duty. RC soldiers serving on active duty, ADT, or AT in a TITLE 10 duty status may be extended on active duty involuntarily, so long as action with a view toward prosecution is taken before the expiration of the active duty, ADT, or AT period. See AR 635-200, paragraph 1-24. Any such extensions must be completed under the provisions of AR 135-200, Chapter 8.

b. An RC soldier who is suspected or accused of an additional offense after being ordered to active duty for any of the purposes in paragraph 8-3a above may be also retained on active duty under R.C.M. 202(c)(1).

8-5. Preservation Of Jurisdiction And Punishment (Article 3(d), UCMJ).

a. RC soldiers remain subject to UCMJ jurisdiction for offenses committed while serving in a TITLE 10 duty status notwithstanding termination of a period of such duty, provided they have not been discharged from all further military service (R.C.M. 204(d)).

b. All lawful punishments not yet served when RC soldiers are released from active duty, ADT, AT, or IDT, including any uncollected forfeitures of pay, are carried over to subsequent periods of active duty, ADT, AT, or IDT. However, a RC soldier may not be held beyond the end of a normal period of IDT for trial, or service of any punishment, nor scheduled for IDT solely for the purpose of UCMJ action (R.C.M. 204(b)(2)).

8-6. Non-Judicial Punishment (Article 15).

a. The provisions of Chapter 7 are applicable to the administration of non-judicial punishment in the RC. In particular, commanders are reminded of the policy in paragraph 3-2 that non-punitive and administrative remedies should be exhausted before resorting to non-judicial punishment.

b. RC soldiers may receive non-judicial punishment under Article 15, UCMJ, while serving in a TITLE 10 status on active duty, ADT, AT, or IDT. RC soldiers may be punished under Article 15 while serving on IDT provided the proceedings are conducted and any punishment administered is served during normal IDT periods (see Discussion, R.C.M. 204(b)(2)). Before taking such actions RC commanders should consult with their supporting RC or AC SJA.

c. Either RC or active duty commanders may impose Article 15 punishment on reserve enlisted soldiers of their command.

d. Unless further restricted by higher authority, punishment for RC officers is reserved to the AC or RC GCMCA to whose command the RC officer is assigned or attached for disciplinary purposes or to commanding generals in the RC officer's chain of command.

8-7. Summary Court-Martial (SCM).

a. RC soldiers may be tried by SCM while serving in a TITLE 10 status on active duty, ADT, AT, or IDT. RC soldiers may be tried by SCM while serving on IDT provided the trial is conducted and punishment is served during normal IDT periods (see Discussion, R.C.M. 204(b)(2)). Confinement is not an available punishment during IDT. Recall to AD must have secretarial approval before confinement can be adjudged.

b. Either a RC or AC SCMCA may refer charges against RC soldiers to trial by SCM. A RC SCMCA may refer charges to SCM while on IDT. However, Article 25, UCMJ, requires the summary court officer must be on active duty at the time of trial.

c. MUSARC commanders may attach all soldiers without an intermediate commander authorized Article 15 authority or SCM authority under Articles 15 and 24, UCMJ, to an appropriate

subordinate commander for such purposes.

8-8. Special And General Courts-Martial.

a. RC soldiers may be tried by SPCM or GCM only while serving on active duty. The Commander, III Corps and Fort Hood, must order an RC soldier to active duty before he or she can be tried. Orders to involuntary active duty must be approved by the Secretary of the Army, or the Secretary's designee, before a RC soldier may be sentenced to confinement or otherwise deprived of liberty.

b. Only the Commander, III Corps and Fort Hood, may refer charges against an RC soldier to a SPCM or GCM. The court-martial will normally be conducted at Fort Hood; however, a RC soldier may be attached to an active duty installation nearest to his unit (*i.e.*, Fort Bliss, Fort Sam Houston, Fort Sill) for trial.

8-9. Forfeitures. Forfeitures imposed upon RC soldiers under Article 15 or court-martial action will be calculated in whole dollar amounts based on the base pay for an AC soldier of the same grade and time in service rather than on the basis of how much drill pay the RC soldier may earn during the period of forfeiture. See AR 27-10, paragraph 21-9.

Part III: Administrative And Personnel Law

Chapter 9

Counseling And Rehabilitative Transfer

9-1. Introduction. Soldiers who engage in minor acts of misconduct often do so as a result of simple neglect, ignorance, sloppy habits, or other similar reasons. The administrative measures described in this section provide excellent tools for commanders to use in teaching and training potentially good soldiers who fail to comply with prescribed standards. Use of these options may teach soldiers the error of their ways without inflicting a penalty they may never be able to overcome. These measures should be used as a rehabilitative tool to facilitate the soldier's readjustment and improvement in order to become a productive member of the unit.

9-2. Counseling.

a. Counseling should be done at the lowest possible level in the chain of command. It consists of

advising the soldier of specific strengths and weaknesses, paying particular attention to how to exploit strengths and correct weaknesses. Leaders should frequently counsel soldiers on their performance. Leaders are obligated to keep in close touch with their soldiers, take an interest in their organizational life, hear their complaints, and work at all times to remove causes for dissatisfaction. When counseling becomes necessary because of unsatisfactory performance or conduct, leaders must make an effort to learn what provoked the undesirable conduct, why the soldier failed to maintain the required standards, or the reasons behind a deficient or unresponsive attitude.

b. Counseling may be written or oral. Oral counseling is usually the most effective teaching tool. The goal of oral counseling should be to arouse in the soldier the desire to be a better soldier and to demonstrate the advantages of proper conduct. A good rule of thumb is the chain of command should be initiating at least half of their counseling or coaching sessions based on high performance, thereby reinforcing desired behavior.

9-3. Mandatory Counseling Before Initiation Of Separation.

a. When a soldier's conduct or performance reaches a point where a continuation of such conduct would warrant initiating involuntary separation action due to parenthood, personality disorder, entry level performance and conduct, unsatisfactory performance, minor disciplinary infractions, or a pattern of misconduct, AR 635-200, paragraph 1-18, requires the soldier receive formal written counseling at least once before separation action is initiated. The soldier's (SMIF) or personnel records must show the soldier was afforded a reasonable opportunity to overcome the deficiencies. The counseling must be comprehensive, and at a minimum, contain:

- (1) The reason(s) for counseling.
- (2) A warning that separation action may be initiated if the behavior continues.
- (3) The type of discharge that could result from the possible separation action, and the effect of each type of discharge on the soldier's veterans benefits and future civilian employment.

b. Formal counseling should be recorded on

a DA Form 4856 (*General Counseling Form*). On Fort Hood, use FH OP 586 (Figure 9-1, APPENDIX C), or a similar form containing a statement covering the minimum counseling requirements of AR 635-200, paragraph 1-18.

c. Commanders should ensure a soldier receives formal written counseling under AR 635-200, paragraph 1-18, using FH OP 586, any time the soldier receives Article 15 non-judicial punishment, or other punishment under the UCMJ for misconduct, because UCMJ punishment alone does not satisfy the minimum counseling requirements required for many elimination actions.

9-4. Optional Counseling Before Initiation of Separation. Even in elimination actions where counseling may be waived, elimination boards often consider the command's failure to counsel a problem soldier as a factor in recommending retention or a more favorable discharge than the soldier would otherwise merit.

9-5. Rehabilitative Transfer.

a. When a soldier is experiencing problems in a unit and does not respond to counseling, the commander should consider a rehabilitative transfer to another unit. A change in commanders, associates, or living and work areas may resolve a soldier's problems. Rehabilitative transfer is a *prerequisite* to initiating administrative elimination proceedings under AR 635-200, Chapter 11 (*Entry Level Performance and Conduct*), and Chapter 13 (*Unsatisfactory Performance*). ***This requirement can no longer be waived by the separation authority.***

b. To constitute a rehabilitative transfer, the soldier must be reassigned at least once, with at least two months of duty in both the old and new units. Reassignment should be between at least battalion-size units. A permanent change of station transfer may be recommended by the commander, but only as a last resort and must be approved by the GCMCA.

c. Soldiers should be transferred as a corrective measure, not as a method to rid the unit of a problem soldier. Soldiers undergoing special counseling or medical treatment should not be transferred if they are not expected to benefit from the change in environment.

9-6. References.

a. AR 350-2 (Opposing Force Program), paragraph 5.

b. AR 600-20 (The Army Command Policy), paragraph 4-6.

c. AR 635-200, paragraphs 1-18 and 1-19.

d. FM 22-100 (Military Leadership), APPENDIX B.

e. FM 27-1 (Legal Guide For Commanders), pages 6-0, 6-2, 6-4, 7-1, and 7-2.

**Chapter 10
Corrective Training**

10-1. Introduction.

a. Corrective training or instruction is one of the most effective non-punitive disciplinary measures available to a commander. It is used when the soldier's duty performance has been deficient and the soldier would benefit from extra training. The training may be outside of normal duty hours. Corrective training may be authorized or directed by the soldier's commander or by any NCO in the soldier's chain of command.

b. Corrective training must be directly related to an observed deficiency and must be oriented toward improving the soldier's performance in the problem area (*e.g.*, an order to dig and fill in holes is improper). Training is not punishment. Training may not be used in an oppressive manner to evade the procedural safeguards applicable to non-judicial punishment under Article 15, UCMJ.

c. At the discretion of the commander, immediate supervisors of soldiers performing extra training may be required to perform supervisory or instructional tasks at the training sessions.

d. Deficiencies satisfactorily corrected by training and instruction should be treated as closed incidents and should not be noted in the soldier's official records.

10-2. Examples. The following examples illustrate proper uses of corrective training:

a. A soldier wearing an improper or dirty uniform may be required to attend special instruction

on the proper wear of the uniform.

b. A soldier in poor physical condition may be required to take additional conditioning drills and participate in extra field and road march exercises.

c. A soldier who executes a drill poorly may be given additional drill practice.

d. A soldier who fails to properly maintain housing or work areas or abuses property may be required to perform additional maintenance.

e. A soldier who has unclean personal or work equipment may be required to devote additional time and effort to the cleaning of equipment and be given special instruction in maintenance.

f. A soldier who fails to perform properly in his assigned duties may be given special formal instruction or additional on-the-job training in those duties or related skills to correct his performance.

g. A soldier who is deficient in responding to orders may be required to participate in additional drills and exercises to develop his responsiveness to orders.

h. A NCO who does not exhibit the character and leadership expected of an NCO may be required to attend NCO development training.

10-3. References.

- a. AR 600-20, paragraph 4-6b.
- b. AR 27-10, paragraph 3-3c.
- c. FM 27-1, pages 7-2, and 7-3.

Chapter 11 Admonitions And Reprimands

11-1. Introduction.

a. Admonitions and reprimands may be used by the command as a corrective tool. An admonition is a warning that repetition of the act could evoke a further, more severe response from the command. A reprimand is a censure or "chewing-out," given to the soldier for failing to comply with established standards. Reprimands are more serious than admonitions and should be used for more serious or

repeated offenses.

b. Admonitions or reprimands may be oral or written. Oral action may be taken at the place and in the manner deemed most appropriate by the issuer. Written admonitions and reprimands are also permitted as a corrective measure, but must contain a statement that the action was imposed as an administrative remedy and not as punishment under Article 15, UCMJ.

c. Any supervisor, commander, or higher ranking soldier may orally admonish or reprimand a soldier, regardless of the soldier's rank. Commanding officers and immediate supervisors may issue written admonitions or reprimands to enlisted soldiers, but only commanders, general officers, or officers exercising general court-martial jurisdiction over the recipient may direct filing of these documents in the soldier's unit file. For officers, only more senior commanding officers, officers in the rating scheme, officers exercising general court-martial jurisdiction over the recipient, or general officers have the authority to issue admonitions or reprimands and file them in the unit file. Only a general officer can direct an admonition or reprimand be filed in a soldier's OMPF.

d. "Desk drawer" admonitions and reprimands are those written, but not intended to be filed in a soldier's unit file or OMPF. Written admonitions or reprimands may be filed in a soldier's unit file following the procedures found in AR 600-37. Memoranda filed in the unit file remain in the file for three years, or until reassignment to another general court-martial jurisdiction, whichever occurs sooner.

e. Written admonitions and reprimands concerning misconduct of a more serious nature may be filed permanently in the soldier's OMPF if a general officer so directs.

f. Soldiers must be provided an opportunity to review any supporting evidence or statements made the basis for the admonition or reprimand. Soldiers must also have an opportunity to include rebuttal statements, before the unfavorable action is filed in either the unit file or OMPF.

11-2. Departure From Command Before Completion Of Action. Often a soldier, or the commander *or* supervisor, departs the command between the dates of misconduct and conclusion of

the filing of a reprimand or an admonition. The following procedures must be followed:

a. When a soldier departs after his commander or supervisor has announced the intent to impose a reprimand, but before the reprimand has been imposed, the action may be processed to completion by the losing command. If the intent of the imposing commander/supervisor is to file the reprimand or admonition in the soldier's unit file, the reprimand should be forwarded to the gaining commander, with a recommendation for filing. The final filing determination will be made by the individual's gaining commander. If the intent of the imposing commander/supervisor is to have the reprimand or admonition filed in the soldier's OMPF, forward the reprimand or admonition through the losing command to the first general officer for a filing determination.

b. When the reprimanding official departs after stating in writing the intent to impose a reprimand, his successor may complete appropriate action on the reprimand.

c. When misconduct is discovered after the soldier has departed, the reprimanding official may forward the information to the gaining command, or personally initiate and process the memorandum as if the former command or supervisory relationship continued. Any required review must be accomplished in the recipient's new chain of command.

11-3. References.

- a. AR 27-10, paragraphs 3-3a and 3-3b.
- b. AR 600-20, paragraph 4-7b.
- c. AR 600-37, Chapter 3.
- d. MCM, 1984, Part V.
- e. FM 27-1, page 7-1.

Chapter 12 Drug And Alcohol Abuse Identification And Rehabilitation

12-1. Recommended Actions By Commander.

- a. Soldiers may be identified as possible drug

or alcohol abusers in a number of ways, including voluntary self-referral to the Fort Hood Alcohol and Drug Abuse Prevention and Control Program (ADAPCP), command identification, urinalysis, breathalyzer testing, medical treatment, investigation, or apprehension.

b. When a soldier is identified as an abuser, either voluntarily or involuntarily, the CID, MPI, soldier's unit commander or the commander's designated representative must, at a minimum:

- (1) Advise the soldier of his rights under Article 31, UCMJ.

- (2) Explain the provisions of the limited use policy.

- (3) Interview the soldier and inform him of the evidence indicating alcohol or drug abuse.

- (4) Provide the soldier with an opportunity to submit additional evidence on his own behalf.

c. The strong preference is for CID and MPI investigators to conduct the interrogation of alleged drug abusers because this avoids any allegation by the suspect of command pressure to make a statement. Further, a trained interrogator may be able to obtain sufficient information to identify other drug abusers or distributors. If the investigation is confidential, the police may also be able to use the suspect as an informant and the suspect may be willing to introduce CID undercover drug suppression personnel to the source of the abuser's drugs.

d. At the conclusion of the investigation by CID, MPI, or the commander, the soldier must be referred to ADAPCP if the commander believes a possibility of alcohol or drug abuse still exists. In all cases of positive urinalysis results or drunk driving arrests, the soldier must be referred to ADAPCP for evaluation. Referral to ADAPCP does not necessarily preclude other appropriate administrative or UCMJ actions. If the commander plans to initiate administrative action or UCMJ action, the commander should notify the drug testing laboratory to preserve the urine specimen until the action is completed.

- e. After ADAPCP confirmation of abuse, and as a part of the soldier's rehabilitative program, the soldier's commander may use a number of

administrative tools, including, but not limited to:

- (1) Denial of pass or leave privileges.
- (2) Prohibiting the consumption of alcohol.
- (3) Ordering abusers, married or not, to move into the barracks.

12-2. Prohibited Actions By Commander.
Commanders may **not**:

- a. Remove the door from a soldier's room, or impose a requirement that the door be left unlocked when the room is unoccupied;
- b. Search off-post quarters or on-post family quarters without informed consent of the soldier or possession of a valid search warrant based on probable cause.
- c. Confiscate all of a soldier's personal property from his room, or requiring a soldier to store his personal belongings; (If, however, an item is contraband, a safety hazard, or violates applicable rules, directives, or regulations, the commander may order its removal.)
- d. Establish an inflexible policy that all drug or alcohol cases be handled in a certain way, such as requiring reduction in grade for alcohol or drug abusers, or issuing a directive that **all** alcohol or drug abusers will be tried by court-martial or punished under Article 15, UCMJ.
- e. Promulgate an order prohibiting alcohol or drug abusers from accepting, buying, or taking an item of personal property from other members of the unit.
- f. Restrict or confine to quarters an alcohol or drug abuser, except in connection with action under the UCMJ, or when necessary, to assure the soldier's presence within the command.

12-3. Discharge Of The Alcohol Or Drug Abuser.

- a. A soldier enrolled in ADAPCP may be discharged for alcohol or drug abuse when the commander determines:
 - (1) The soldier lacks potential for future service and further rehabilitation efforts are not

practicable.

- (2) Long term rehabilitation is necessary and the soldier is transferred to a civilian medical facility for rehabilitation.

b. The command must initiate separation proceedings when an enlisted soldier is declared a drug or alcohol failure under the provisions of AR 635-200, Chapter 9. An officer may also be eliminated for failure to respond to rehabilitation efforts regarding an alcohol or other drug problem in a reasonable length of time, under the provisions of AR 600-8-24, Chapter 4 (*Eliminations*).

12-4. References.

- a. 600-8-24 (Officer Transfers and Discharges), Chapter 4 (*Eliminations*).
- b. AR 600-85 (Alcohol And Drug Abuse Prevention And Control Program), Chapter 3, and Table 6-1.
- c. AR 635-200, Chapter 9.
- d. FORT HOOD REGULATION 210-65.

Chapter 13
Bar To Re-Enlistment

13-1. Introduction.

a. Army policy dictates that only soldiers of high moral character, professional competence, and demonstrated adaptability will be extended the privilege of re-enlisting in the Army. Soldiers who cannot, or who do not, measure up to and maintain such standards will be barred from further service. Soldiers who are otherwise eligible, however, may not be arbitrarily denied reenlistment.

b. Examples of deficiencies for which soldiers can be barred include, but are not limited to:

- (1) Being repeatedly late to formations, details, or assigned duties.
- (2) AWOL.
- (3) Losing clothing and equipment.
- (4) Substandard personal appearance

(overweight) and hygiene.

- (5) Financial irresponsibility.
 - (6) One or more Articles 15.
 - (7) Frequent traffic violations.
 - (8) "Riding" sick call without medical justification.
 - (9) Repeatedly being late returning from pass or leave.
 - (10) Inability to follow orders, shirking duty, or recalcitrance.
 - (11) Inability to satisfactorily complete training for a job, apathy, or disinterest.
 - (12) Lack of cooperation, inability to adapt to military life, or involvement in frequent difficulties with fellow soldiers.
 - (13) Failure to maintain a valid family care plan.
 - (14) Failure to adequately manage personal, marital, or family affairs.
 - (15) Causing trouble in the civilian community.
 - (16) Involvement in immoral acts.
 - (17) Failure to pass the Army Physical Readiness Test.
 - (18) Failure to qualify with weapons.
 - (19) Failure to achieve satisfactory progress in attaining weight and physical fitness standards.
 - (20) Testing positive on a urinalysis.
 - (21) Driving while intoxicated.
- c. The fact previous disciplinary or administrative proceedings did not result in separation does not preclude initiating appropriate bar to re-enlistment procedures.
 - d. Any commander in the soldier's chain of command may recommend a bar to re-enlistment

(DA Form 4126-R). If appropriate, this recommendation will include the number and dates of all courts-martial, Articles 15, and all other factual and relevant information supporting the recommendation. There is no minimum number of offenses, counseling statements, or other material required to support a bar. Each case should be judged on its own merit, with the chain of command's comments over time being the main criterion. The soldier will be allowed seven days to review the recommendation, collect documents or other evidence, and prepare a rebuttal statement. The entire file, including the soldier's rebuttal, is forwarded through the soldier's chain of command to the appropriate approval authority. If the bar is approved, the soldier has seven days to appeal the decision.

13-2. Mandatory Bar To Re-Enlistment. Commanders *must* initiate a bar to re-enlistment or initiate separation action under AR 635-200 against soldiers who:

- a. Fail to make satisfactory progress in the weight control program.
- b. Fail two consecutive APFT.
- c. Are removed for cause from NCOES courses.
- d. Fail to maintain a valid family care plan.

13-3. Approval Authority For Bar To Re-Enlistment. The approving authority for a bar to re-enlistment cannot be the same commander who initiates the bar. For soldiers with less than 10 years of service, the approval authority is the first commander in the soldier's chain of command who holds the rank of lieutenant colonel or above or the special court martial convening authority, whoever is the most direct line superior to the soldier. For soldiers with 10 or more years of service, the approval authority is the first general officer in the soldier's chain of command or the general court-martial convening authority, whoever is the most direct line superior to the soldier.

13-4. Review And Removal Of Bar To Re-Enlistment. A bar to re-enlistment may serve as an effective rehabilitative tool. A recommendation to void a bar may be submitted any time the commander feels the soldier has demonstrated his worthiness to be retained in the Army. The commander must

review a bar to re-enlistment at 3-month intervals after the date of approval, or 30 days before the soldier's transfer or expiration of term of service (ETS), whichever occurs first. If the commander feels the bar should be lifted, the recommendation to void the bar is sent through appropriate channels to the authority who originally approved the bar. If a bar to re-enlistment is reviewed twice, and the commander determines the bar to re-enlistment should not be lifted, the imposing commander **must** initiate separation action under AR 601-280, paragraph 8-6a.

13-5. References.

- a. AR 600-9 (The Army Weight Control Program (Update 15 – All Ranks Update), *paragraph 22*).
- b. AR 601-280, Chapter 8.
- c. AR 635-200, Chapter 16.
- d. FORSCOM SUPPLEMENT 1 to AR 601-280 (Total Army Retention Program).
- e. FM 27-1, pages 7-4 and 7-5.

Chapter 14 Deferment Or Withdrawal Of Discretionary Benefits

14-1. Introduction.

a. Many privileges soldiers enjoy are discretionary and may be withheld to maintain good order and discipline. When a soldier has demonstrated a lack of readiness, fitness, or responsibility for the benefit or privilege, that privilege may be withheld. This can be a useful, corrective incentive to improve behavior. To be effective, however, the withdrawal or deferment of the privilege must have a significant relationship to the deficiency or offense committed. For example, on-post driving privileges should not be revoked for abuse of commissary privileges.

b. When the soldier's commander has direct control over the abused privilege, he may simply inform the soldier it has been summarily revoked (notification should be in writing). Examples of these privileges include pass privileges, authority to engage in off-duty employment, and the privilege of

using the company day room. When a higher authority controls the activity, the unit commander should submit a memorandum through channels requesting the privilege be revoked and stating the grounds for such action.

- c. Reference. FM 27-1, pages 7-0 and 7-1.

14-2. Withdrawal Of Pass Privileges.

a. A pass is an authorized absence from post or place of duty. Passes are for a relatively short period to provide respite from the working environment or for other specific reasons, at the end of which the soldier is actually on-post, at his place of duty, or in the location from which the soldier regularly commutes to work. Passes are not a right but a privilege to be awarded deserving soldiers by their commanders. Soldiers may be denied the privilege as a result of their conduct, to meet operational requirements, or for temporary administrative control. Denial of pass privileges merely withdraws the soldier's privilege to be absent from post or place of duty. Since the soldier has full access to facilities on the installation, denial of pass privileges is not a form of restriction or an adverse administrative action.

b. A soldier should be given written notification that his pass privileges have been withdrawn. Notice should include the period of revocation. During this time, the soldier may be required to sign in and out of the unit and to provide his destination and estimated time of return.

c. A soldier whose pass privileges have been withdrawn may not leave the installation, even during off-duty hours. Denial of pass privileges does not, however, terminate the soldier's right to receive the basic allowance for quarters (BAQ). Additional action, described below, is required to terminate BAQ.

- d. References.

- (1) AR 600-8-10, Chapter 5.
- (2) AR 27-10, paragraph 3-3a.
- (3) MCM, 1984, R.C.M. 304.

14-3. Withdrawal Of Allowance For Quarters.

- a. Soldiers without family members who are

in the grade of sergeant first class (E7) and above, and all officers, receive BAQ instead of government quarters. This right can be denied only if the Installation Commander determines exercise of the election will have a significant adverse effect on:

- (1) Operational requirements.
- (2) Maintenance of unit discipline.
- (3) Maintenance of law and order on the installation.
- (4) The ability to respond to health and safety requirements.
- (5) Protection of government property.
- (6) Any other aspect of military discipline or readiness of the command.

b. Soldiers without family members who are in the grade of staff sergeant (E6) and below may receive BAQ when billet space is unavailable. The soldier must request authorization to live off-post, and the request must be approved by an officer in the grade of colonel or higher in the soldier's chain of command. The officer who approved the request may withdraw authority to receive BAQ upon the recommendation of the soldier's unit commander. Approved requests must be processed through the Billeting Office (Bldg. 36006; phone number 288-2818), where documents required to initiate BAQ payments are prepared.

c. Soldiers with family members who reside off-post due to unavailability of family housing may receive BAQ. Should a soldier with family members be required to live on-post due to disciplinary reasons or operational requirements, BAQ may not be terminated unless the soldier's family is provided government quarters.

d. Reference. 37 U.S.C., section 403.

14-4. Withdrawal Of Separate Rations.

a. Generally, government dining facilities must be used to the fullest extent compatible with economy and efficiency. Some soldiers, however, are allowed to mess separately and receive the basic allowance for subsistence (BAS). BAS is usually withdrawn in conjunction with withdrawal of BAQ.

b. The basic rules for withdrawal of BAS are as follows:

(1) Enlisted soldiers with family members and all officers are authorized to mess separately and receive BAS. These soldiers do not need individual authorization to receive BAS and it may not be withdrawn locally.

(2) At Fort Hood, senior NCOs (E7 through E9) without family members have been authorized to receive BAS without individual approval. The Installation Commander may withdraw BAS upon the request of the soldier's unit commander.

(3) The Installation Commander has delegated authority to approve requests to mess separately by enlisted soldiers in the grades of private (E1) through staff sergeant (E6) who are without family members to the major subordinate commands (MSCs). Commanders of those units may further delegate this authority to unit commanders. Commanders with authority to allow BAS may withdraw BAS as well.

c. When authority to receive BAS has been withdrawn, the unit commander must notify the finance and accounting office servicing the soldier. Make notification on a DA Form 4187 (*Personnel Action*), according to *DA Pamphlet 600-8 (Management and Administrative Procedures)*, Chapters 8 (*Military Pay Administration*) and 9 (*Battalion/Unit Administration*).

d. References.

- (1) 37 U.S.C. , section 402.
- (2) AR 210-10, Chapter 7.
- (3) FORT HOOD SUPPLEMENT. 1 to AR 210-10.
- (4) DA Pamphlet 600-8.

14-5. Suspension And Revocation Of On-Post Driving Privileges (Non-DWI).

a. No one has the right to operate a privately owned vehicle (POV) on a military installation. It is a privilege subject to either administrative suspension *or* revocation for cause.

b. At Fort Hood, the SJA or his designee, restricts, suspends, or revokes installation driving privileges, for personnel not assigned to the 1st Cavalry Division (1CD) or the 4th Infantry Division (4ID). The SJAs for 1CD and 4ID, or their designees also take action pertaining to the driving privileges of soldiers assigned to those commands under FORT HOOD REGULATION 190-2 ((Motor Vehicle Traffic Supervision) and AR 190-5 (Motor Vehicle Traffic Supervision).

c. In most cases, the appropriate suspension authority initiates suspension or revocation actions. Commanders may, however, initiate suspension upon receipt of credible evidence a soldier has committed an act constituting abuse of driving privileges as defined in FORT HOOD REGULATION 190-2. Commanders may also request suspension or revocation through the chain of command to the SJA.

d. Upon receipt of credible evidence that a soldier has abused his driving privileges, company, battalion and brigade commanders are authorized to suspend the soldier's installation driving privileges for up to 3, 14, and 30 calendar days respectively. In those circumstances the commander should:

(1) Notify the soldier, verbally and in writing, of his intent to suspend the soldiers' installation driving privileges.

(2) Give the soldier the opportunity to present information on his behalf before making any suspension determination.

(3) The order suspending driving privileges will be in writing. The suspension will automatically terminate at the end of the designated suspension period if no further action is taken.

(4) A soldier may request reconsideration of a suspension to the next higher commander in the chain of command.

e. All soldiers should be aware Texas law, applicable to soldiers on Fort Hood, requires all drivers to maintain automobile liability insurance. Failure to do so may lead to revocation of driving privileges on Fort Hood.

f. Revocation of installation driving privileges is a severe administrative measure to be exercised for serious moving offenses or when other available corrective actions fail to produce the

desired driver improvement. All revocations are for a specific period, but not less than six months.

g. When suspension or revocation is initiated by the SJA, they will provide the soldier with written notice of the proposed action. The soldier may, within ten days of receipt of such notice, request an administrative hearing. If the soldier requests a hearing, the SJA, or his designee, hears the case and recommends:

(1) Reinstatement of driving privileges.

(2) The driving privileges suspension or revocation should continue.

h. Soldiers desiring to obtain restricted driving privileges may submit a memorandum to their immediate commander under FORT HOOD REGULATION 190-2 (APPENDIX C). The commander will in turn endorse the memorandum through their chain of command to the appropriate approving authority commanding general. Each endorsement will contain a recommendation for approval or disapproval.

i. The command cannot impound a soldier's car, or confiscate a soldier's car keys, operator's permit, or proof of financial responsibility during the period of suspension.

j. Any person whose installation driving privileges are suspended or revoked will be required to attend and successfully complete a remedial driver training program which will include a minimum of 6 hours of instruction.

k. References.

(1) AR 190-5, Chapter 2.

(2) FORT HOOD REGULATION 190-2.

(3) Texas Vernon's Civil Statutes, Annotated, Article 6701h.

14-6. Revocation Or Suspension Of On-Post Driving Privileges (Driving While Intoxicated [DWI]).

a. Drunk driving is a serious offense, which detracts from high standards of performance, military discipline, and readiness. Such offenses also threaten the health and welfare of the military community.

b. Soldiers, family members, DOD affiliated civilians, and retirees will have installation driving privileges suspended, and possibly revoked, for:

- (1) Lawful apprehension either on or off-post for a drunk-driving offense.
- (2) Refusal to take a lawfully requested chemical test for blood alcohol content.
- (3) Operating a motor vehicle, either on or off-post, with a blood alcohol content of .10 percent by volume or higher, which violates Texas law and which has been assimilated on the military installation.

c. Non-DOD affiliated civilians will have their installation driving privileges suspended, and possibly revoked, for:

- (1) Lawful apprehension for any on-post drunk-driving offense.
- (2) Refusal to take a lawfully requested chemical test for blood alcohol content on-post.
- (3) Operating a motor vehicle with a blood alcohol content of .10 percent by volume or higher on the installation.

d. The Fort Hood PMO collects information relating to drunk driving and provides such information to the appropriate SJA office for processing. The following procedures describe how this information may lead to suspension and revocation of installation driving privileges.

- (1) Evidence surrounding a drunk-driving offense is collected and examined by a reviewing officer to determine if there is enough evidence to support immediate suspension of the driver's installation driving privileges. Such evidence may include MP reports, civilian police reports, witness statements, breathalyzer results, and videotapes of the driver. The SJA, III Corps and Fort Hood, Civil and Administrative Law Division, reviews evidence pertaining to civilians and for all Fort Hood soldiers, except those assigned to the 1CD and 4ID. The 1CD and 4ID SJA offices will review evidence pertaining to soldiers assigned to those commands. If the reviewer finds probable cause to believe an offense occurred, the driver will be given a memorandum suspending driving privileges.

- (2) Units will be contacted to deliver soldiers to the appropriate SJA Office to receive suspension/revocation memorandums. Letters to civilians will be sent by certified mail. These memorandums and letters will describe in detail the reasons for suspension and the procedures involved to request a hearing to challenge the suspension.

- (3) If a hearing is desired, the driver must complete a form attached to the letter of suspension and hand-carry it or have it delivered to the appropriate SJA Office's Civil and Administrative Law Division. Hearings must be requested within ten days of the date the suspension letter is received by the driver.

- (4) The driver will not operate a vehicle on Fort Hood after he receives his suspension letter. If the charges are subsequently dismissed or the individual is acquitted, he or she may request to have his or her driving privileges restored.

e. If a hearing is requested, it will be conducted at the appropriate SJA Office within ten working days of the date it was requested. At the hearing, the driver will be accompanied by a more senior member of his chain of command who will observe the proceedings. The driver may present any evidence on the circumstances of the arrest or apprehension in order to convince the hearing officer the suspension should be lifted pending final resolution of the charges. The hearing officer, however, will limit his investigation to several narrow issues (*e.g.* including the lawfulness of the arrest or apprehension, and whether a blood alcohol test was offered and completed and its results). Based on the evidence presented, the hearing officer may:

- (1) Reinstate the individual's driving privilege.
- (2) Maintain the suspension or revocation.
- (3) Revoke suspended installation driving privileges if appropriate under AR 190-5.

f. Copies of the hearing officer's decision will be provided to the soldier, the Fort Hood PMO, Administrative Branch, and the soldier's commander.

g. At some point in time, legal proceedings against a driver for the drunk-driving offense will be completed. A soldier may receive an Article 15,

court-martial, trial in a civilian court, or a military or civilian administrative hearing. A civilian who commits a drunk-driving offense on-post may be tried in the Federal Magistrate's Court on Fort Hood. Instead of, or in addition to, any of those procedures mentioned above, an offender's driver's license may be suspended or revoked by the state authorities. Completion of any of these actions results in resolution of the charges against a drunk driver. Resolution of the charges may result in:

(1) **Acquittal.** If a military or civilian driver is acquitted in court or found not guilty at Article 15 proceedings, he or she may apply in writing to the appropriate commanding general (ATTN: SJA) for restoration of driving privileges. A hearing will be conducted to consider restoration of driving privileges. Restoration will not be granted if the driver refused to take a lawfully requested blood alcohol test, if his license is suspended or revoked by the state, or despite the acquittal the hearing officer determines, by the preponderance of the evidence, the individual was driving while intoxicated.

(2) **Dismissal of charges, pleading to a lesser offense, and unadjudicated probation or deferral.** Installation driving privileges will be reinstated in these cases only if the individual can establish at the administrative hearing the he or she was not driving while intoxicated. The burden of proof in these cases lies with the individual requesting reinstatement of his or her driving privileges.

(3) **Conviction finding of guilty, loss of license. Information a driver has been convicted in court, found guilty at Article 15 proceedings, or lost his license will be cause for revocation of installation driving privileges.**

h. A soldier or civilian may apply for restricted driving privileges any time after suspension or revocation. Restricted privileges will normally be granted only to avoid extreme duty or authority based on family hardship. Soldiers may request restricted privileges by submitting a memorandum through each level of his chain of command to the appropriate approving authority. Each level of the chain of command will include a recommendation for approval or disapproval. Civilians will address their request to the installation commander (ATTN: AFZF-JA-CAL).

i. All soldiers, sergeant (E5) and above,

convicted of a drunk-driving offense, or who refuse to take a lawfully requested blood alcohol test, or who operate a vehicle with a blood alcohol content of .10 percent by volume or higher, or are in violation of Texas law which has been assimilated on the installation, **must** receive a general officer memorandum of reprimand (MOR). All soldiers, specialist (E4) and below, convicted of a drunk-driving offense, or who refuse to take a lawfully requested blood alcohol test, or operate a vehicle with a blood alcohol content of .10 percent by volume or higher or are in violation of the law of the jurisdiction being assimilated on the military installation, **may** receive a general officer MOR.

j. The procedure for processing MORs is as follows:

(1) Legal specialists in the MSC of non-divisional units will obtain the military or civilian police report, prepare the MOR for signature by the appropriate general officer, and forward the packet to the Administrative Law Division, SJA, III Corps. Division SJAs will establish their own procedures for preparing the MOR and endorsements.

(2) The SJA obtains the signature of the appropriate general officer on the MOR. The Deputy Commanding General (DCG) or the Chief of Staff (CofS), III Corps and Fort Hood (CofS for Headquarters Command personnel, and DCG for all other non-divisional units not commanded by a general officer), or the commanders for TEXCOM and 13th COSCOM, as appropriate, signs the non-divisional MORs. The Brigade Legal Specialist ensures the unit commander serves the MOR on the individual with a suspense date given for the return of the acknowledgment of receipt and rebuttal to the reprimand, if any. The MOR, supporting documentation, any response, and each commander's filing recommendations sent through the chain of command to the Administrative Law Division, SJA, for final review, before decision by the appropriate general officer.

k. At the end of the designated suspension, restriction or revocation period, driving privileges will be reinstated upon proof of rehabilitation through completion of a remedial driving course and the installation ADAPCP or equivalent course. Such proof must be presented to the PMO before driving privileges are reinstated.

l. References.

- (1) AR 190-5.
- (2) FORT HOOD REGULATION 190-2.

14-7. Termination Of Family Quarters For Misconduct.

A. Family housing assignments may be terminated at the discretion of the eviction authority because of misconduct by the occupants contrary to health, safety, or moral standards. The eviction authorities listed below in subparagraphs 14-7b, c, and d have been delegated this authority by the Commander, III Corps and Fort Hood.

b. Commanding Generals of the following commands have the authority within their sponsored areas to evict residents of family housing:

- (1) 1CD: Comanche I, Comanche II, and Comanche III.
- (2) 4ID: Chafee Village, McNair Village, Patton Park, Wainwright Village.
- (3) 13th COSCOM: Pershing Park.

c. The DCG, III Corps and Fort Hood, has the authority to evict residents living in Liberty Village, Walker Village, Venable Village, and Montague Village.

d. The DCG, III Corps and Fort Hood, has *the authority* to evict residents from areas in paragraph 14-7b when the sponsoring unit is deployed.

e. A soldier's commander often acquires information appearing to justify termination of quarters for misconduct. The commander may forward the information along with a recommendation to Housing Division, DPW, for submission to the SJA. The eviction authority may issue a warning memorandum. If the quarters are to be terminated, the soldier is given notice and allowed 30 days to vacate. The soldier may submit a request for reconsideration to the eviction authority any time during this 30-day period. The soldier may appeal the eviction within seven days of receipt of the notice of eviction.

f. Termination of quarters is a drastic action and disruptive to the soldier and his family. Some misconduct, such as an occasional neighborhood

dispute or single MP call to the quarters, may not justify termination. Other administrative action, such as counseling, admonition, or reprimand, should be considered before initiating this action.

g. References:

- (1) AR 210-50, paragraphs 3-19b and c.
- (2) FH REGULATION 210-48, block 3.

14-8. Off-Duty Employment.

a. Generally, soldiers may accept off-duty employment compatible with their performance of military duties, provided it is not discreditable to the Army and does not create a conflict of interest, either real or apparent. There are also restrictions on soldiers engaging in commercial solicitation. Commanders may order soldiers to terminate improper off-duty employment.

b. Improper off-duty employment includes:

(1) A soldier who works nights in a civilian job and reports for duty so tired he cannot perform military duties efficiently. This constitutes employment incompatible with performance of military duties.

(2) A soldier working with a firm doing business with the Army in an area for which the soldier is responsible or makes decisions. This constitutes a real or apparent conflict of interest.

c. References:

- (1) 10 U.S.C., section 974.
- (2) JOINT ETHICS REGULATION (JER) DOD 5500.7-R
- (3) FM 27-1, page 10-8.

14-9. Withdrawal Of Privileges Regarding Appropriated And Nonappropriated Fund Facilities.

a. On Fort Hood, the Garrison Commander has the authority to withdraw privileges open to individuals who hold valid ID cards indicating military or family member status. This also includes authority to withdraw privileges of family members based upon their abuse of privileges. Privileges that

may be withheld by the Garrison Commander include the use of:

- (1) Exchange services.
 - (2) Commissary.
 - (3) Check cashing.
 - (4) Morale Support Activities.
 - (5) Officer and NCO Clubs.
 - (6) Common membership non-appropriated fund instrumentalities.
 - (7) Package beverage stores.
 - (8) Theaters.
- b. The privilege withdrawn must have a significant relationship to the offense committed. Suspension of medical privileges is not authorized.

c. References:

- (1) AR 640-3 (Identification Cards, Tags and Badges), Chapter 4.
- (2) FM 27-1, pages 7-0 and 7-1.

14-10. Off-Limits Firms, Establishments, And Areas.

a. The Central Texas Armed Forces Disciplinary Control Board assists commanders in eliminating off-post conditions detrimental to the health, morale, welfare, and discipline of soldiers. This board receives complaints about off-post conditions and investigates allegations. Upon recommendation of this board, the installation commander may place establishments or areas "off-limits" to soldiers.

b. Commanders may report off-post conditions to the Disciplinary Control Board relating to illegal or immoral acts, discriminatory practices, unfair commercial or consumer practices, and other undesirable conditions adversely affecting soldiers or their families. If the installation commander orders an establishment "off-limits," soldiers subsequently found in restricted areas may be subject to disciplinary action under the UCMJ for disobedience of a lawful general order. A list of firms,

establishments, and areas currently "off-limits" in Central Texas may be found in FORT HOOD REGULATION 600-40 (*List of Off-Limits Areas and Establishments*), which should be posted on unit bulletin boards.

c. References:

- (1) AR 190-24, paragraphs 2-1, 2-4, and 2-6.
- (2) UCMJ, Article 32.

14-11. Bar To Entry On Installation.

a. The Garrison Commander has the authority to bar civilians, including military family members, from entry to Fort Hood for misconduct. Once a civilian has been barred, subsequent entry onto the installation may be prosecuted in the Fort Hood Magistrate's Court for unlawful entry. The penalty for unlawful entry is a fine of not more than \$5,000, imprisonment for not more than 6 months, or both. As a general rule, a family member barred from the installation will be allowed access to Darnall Army Community Hospital (DACH) and the US Magistrate's Court only.

b. Bars are usually initiated by the Civil and Administrative Law Division, SJA, III Corps and Fort Hood, based on MP reports. Bars are often initiated based upon a characterization of service of Other Than Honorable resulting from administrative discharges. Commanders who are experiencing difficulties caused by civilians may also recommend bars for those civilians.

c. References:

- (1) 18 U.S.C., Section 1382.
- (2) Fort Hood SUPPLEMENT. 1 to AR 210-10.

14-12. Possession And Consumption Of Alcohol In Enlisted Barracks

a. Alcoholic beverages consumed on Fort Hood will be consumed in moderation. Commanders will not glamorize the use of alcoholic beverages. Non-alcoholic beverages are to be made available any place alcoholic beverages are being served. The minimum legal drinking age for soldiers is 21 years of age except as authorized by a general officer under

FORT HOOD REGULATION 210-65, block 5a, for unit functions.

b. Commanders at battalion separate company, and detachment level will determine the amount of alcoholic beverages that may be possessed and consumed in enlisted barracks. This determination is to be in the form of a written order and disseminated as part of the in-processing procedure for all newly assigned soldiers.

c. Reference. FORT HOOD REGULATION 210-65.

Chapter 15 Adverse Administrative Actions Short Of Elimination

15-1. General.

a. APPENDICES A and B provide information about selected actions described in this section.

b. The actions outlined here are serious and are likely to have a permanent detrimental effect on a soldier's career. They are the most adverse administrative actions available to a commander short of elimination.

15-2. Relief For Cause.

a. A soldier may be relieved for cause if the chain-of-command determines the soldier's personal or professional characteristics, conduct, behavior, or performance of duty warrant removal. A relief for cause will be preceded by formal counseling by the commander unless immediate action is needed to ensure the integrity of the organization. The ultimate factor in a decision to relieve for cause is the determination by the superior officer that he has lost trust and confidence in the soldier to be relieved.

b. An evaluation report is required when a soldier is relieved for cause. The rating official directing the relief must clearly explain the reason for relief and state the soldier has been notified of the reason for relief.

c. All relief for cause officer evaluation reports will be reviewed by the Army officer in the chain-of-command senior to the individual directing the relief.

d. Action to relieve officers from command will be taken only *after getting written approval* of the first general officer in the chain-of-command of the officer being relieved. Oral or written approval prepared after the relief is not adequate.

e. If relief for cause is contemplated on the basis of an informal investigation under AR 15-6, the referral and comment procedures of that regulation must be followed before initiating or directing the relief. Temporary suspension from assigned duties is permitted pending completion of AR 15-6 procedural safeguards.

f. References:

- (1) AR 600-20, paragraph 2-15.
- (2) AR 623-105, paragraph 5-18.
- (3) AR 623-205.
- (4) AR 15-6.

15-3. Removal Of Enlisted Soldiers From Local Promotion Lists.

a. Certain enlisted soldiers must be removed from local recommended promotion lists. These include:

- (1) Those who, through their own fault, fail to take a scheduled skill development test (SDT).
- (2) Those who fail an SDT in their PMOS unless granted a waiver by the promotion authority.
- (3) Those who fail to qualify, for cause, for any security clearance required for the military occupational specialty (MOS) in which recommended.
- (4) Those who fail to re-enlist or extend to meet the remaining service obligation required for the MOS in which recommended for promotion.
- (5) When a bar to re-enlistment is approved after a soldier is put on the recommended list. (If the bar is appealed, the individual will not be removed from the list until the appeal process is completed and denied).
- (6) Those who have been ordered reclassified for loss of current qualification MOS

because of inefficiency or misconduct.

(7) Those who did not meet promotion criteria and were erroneously placed on the recommended list in error.

(8) Those who fail to make satisfactory progress in a weight control program within 6 months, and those who make satisfactory progress in a weight control program but fail to attain screening weight after 12 months in an approved program.

(9) Those reduced in grade.

(10) Those released from active duty or dropped from the rolls.

(11) Those who fail to maintain a minimum score of 550 promotion points for promotion to staff sergeant, or 450 promotion points for promotion to sergeant.

(12) Those who have been denied a waiver to re-enlist.

(13) Those soldiers with more than 4 years of service who sign a *Declination of Continued Service Statement*.

b. The appropriate promotion authority may also remove a soldier's name from an approved recommended list based upon:

(1) Recommendation of a removal board under AR 600-8-19, paragraph 3-28c(1).

(2) Adverse action, such as a court-martial sentence (including suspended sentence), initiating proceedings which may result in an *Other than Honorable Discharge*, punishment under Article 15, UCMJ, or ineligibility for re-enlistment.

(3) Written request of the soldier.

c. A soldier removed from a list for cause who is later exonerated will be reinstated to the current local recommended list.

d. Reference: AR 600-8-19, *paragraph 3-28*.

15-4. Removal Of Enlisted Soldiers From Centralized Promotion Lists.

a. HQDA selects and recommends enlisted

soldiers for promotion to the rank of Sergeant First Class, Master Sergeant, and Sergeant Major. Commanders may recommend a soldier's name be removed from a DA recommended list at any time. The recommendation for removal must be fully documented. The soldier must be provided with a copy of the recommendation with all supporting documents and given 15 days to submit a rebuttal. HQDA will make the final decision on the removal based on results and recommendations of the DA Standby Advisory Board.

b. Removal from a DA recommended promotion list has long-lasting effects on the soldier. The probability for subsequent selection for promotion is extremely limited. Removal, therefore, should be considered only when the circumstances clearly warrant such significant action.

c. Removal from a centralized promotion list must be initiated for those who fail to make satisfactory progress in a weight control program within 6 months, and those who make satisfactory progress in a weight control program but fail to attain screening weight after 12 months in an approved program.

d. Reference: AR 600-8-19, paragraphs 4-18 and 4-19.

15-5. Reduction In Enlisted Grade For Inefficiency Or Civil Conviction.

a. An enlisted soldier in the grade of private (E2) and above may be reduced one grade for inefficiency after serving in a unit for at least 90 days. Inefficiency is a demonstration of characteristics which clearly shows a lack of abilities and qualities required and expected of a soldier of that grade, MOS, and experience. Acts of misconduct may be considered when determining whether a soldier should be reduced for inefficiency. This includes actions taken under the UCMJ or civil court convictions. Reduction for inefficiency may not be used in lieu of Article 15 punishment, for a single act of misconduct, or to reduce soldiers for actions for which they were acquitted at court-martial.

b. An enlisted soldier may be reduced in grade based upon conviction by civil court. A soldier sentenced by civil court:

(1) To death or confinement for one year

or more which is not suspended must be reduced to the lowest enlisted grade.

(2) To more than 30 days but less than one year (not suspended), or more than one year and sentence is suspended, must be considered for reduction of one or more grades. (If the soldier is a sergeant (E-5) or above, the matter must be referred to a board.)

(3) To actual confinement of 30 days or less, or suspended sentence of less than one year.

(a) Soldiers in the rank of private (E1) through specialist (E4) *may* be considered for reduction of one or more grades.

(b) Soldiers in the rank of sergeant (E5) or above must be considered for reduction of one or more grades.

c. Reduction boards are required in all cases unless reduction is mandatory, the soldier is in the grade of E4 or below, or the soldier waives the board in writing. This board is convened by the soldier's reduction authority within 30 duty days after the soldier is notified of the pending reduction action in writing. The reduction authority may extend the 30-duty-day limitation for good cause. A written justification must be included in the file if an extension is granted. The soldier may:

- (1) Appear in person before the board.
- (2) Have a military or civilian counsel at his own expense.
- (3) Challenge any board member for cause.
- (4) Submit evidence on his own behalf, either documentary or through witnesses.
- (5) Question or have his counsel question any witness appearing before the board.

d. Soldiers may submit written appeals to reductions for misconduct or inefficiency. Appeals must be submitted in writing within 30 duty days of the date of reduction to the:

- (1) Next higher authority above the officer who reduced the soldier of grade staff sergeant and below.

(2) First general officer in the chain of command above the reduction authority for grades sergeant first class through command sergeant major.

e. Reference: AR 600-8-19, Chapter 6 and Table 6-1.

15-6. Removal Of Officers From Promotion Lists.

a. Commanders may recommend an officer's name be removed from a promotion list if there is cause to believe the officer is mentally, physically, morally, or professionally unqualified to perform the duties of a higher grade. The officer will be referred to a Promotion Review Board (PRB). The PRB makes a recommendation to the Secretary of the Army, who has been delegated approval authority by the President.

b. An officer may be referred to a PRB for reasons including, but not limited to:

- (1) Referred evaluation or academic report.
- (2) Punishment under UCMJ, Article 15, whether filed in the restricted or performance fiche of the OMPF.
- (3) Court-martial conviction.
- (4) Reprimand placed in the OMPF.
- (5) Any adverse documentation filed in the OMPF.
- (6) Initiation of elimination action under the provisions of AR 635-100, Chapter 5.
- (7) Failure to make progress in a weight control program.

c. An officer referred to a PRB is notified of the referral in writing by HQDA and provided a copy of any information that will be considered by the board. The officer is given 14 days to submit information for the board's consideration.

d. Reference: AR 600-8-29, Chapter 8.

15-7. Adverse Comments In Evaluation Reports.

- a. The following restrictions apply to all

evaluation reports:

(1) No reference will be made to a soldier's performance as a member of a court-martial.

(2) A soldier serving as an Equal Opportunity (EO) NCO or Officer will not be given an unfavorable evaluation solely because of the enthusiasm and zeal with which he implements the Army's Equal Opportunity Program.

(3) No reference will be made to any investigation or punitive or administrative action planned or taken against a soldier unless such investigation or action has been processed to completion, and adjudication and final action have been taken before submitting the report to HQDA. If the soldier is absolved, no comments pertaining to the incident will be included.

(4) A soldier's voluntary participation in the ADAPCP will not be mentioned.

(5) A soldier's communications to Congress or the Inspector General (IG) will not be the basis for any adverse comments.

(6) The volunteer activities of the soldier's spouse will not be mentioned in the OER.

b. References:

(1) AR 623-105 (Officer Evaluation Reporting System (Update 14 – Officer Rank Personnel), Chapters 3 and 4.

(2) AR 623-205, Chapter 2.

Chapter 16 Administrative Actions Affecting Military Qualifications

16-1. General. While the actions outlined in this section may have an adverse impact on a soldier, they are not inherently adverse in nature. In most of these actions, the soldier's commander is required to act when confronted with a given set of facts. The purpose of these actions is to ensure a soldier possesses the requisite qualifications associated with his current duty position.

16-2. Suspension Or Revocation Of Security Clearance.

a. Commanders must take immediate action to suspend a soldier's access to classified information whenever credible derogatory information regarding the soldier's loyalty, credibility, or trustworthiness is received. Examples of conduct which affect security clearances are:

(1) Criminal and immoral activities.

(2) Abuse of drugs.

(3) Excessive use of alcohol.

(4) Excessive indebtedness.

(5) Repeated AWOLs.

(6) Any facts indicating the soldier is subject to coercion or undue influence.

b. Immediate action by the commander must include notification of the derogatory information to the clearance authority by the most expeditious means available. Concurrent with suspension action, an investigation will be initiated to permit expeditious restoration of access or to provide a sound basis for revocation. The soldier must be notified of the suspension, apprised of the basis for the action, and offered a reasonable opportunity to rebut or explain the derogatory information. Upon completion of this investigation and review of all pertinent facts, both favorable and unfavorable, the clearance authority will make a determination whether to allow the clearance to remain in effect or to revoke the clearance.

c. When a clearance is suspended under circumstances where follow-up by the reporting unit may dispel the adverse information, status reports will be submitted to the G3 Counter Intelligence and Security Division, III Corps and Fort Hood, every 30 days from the date access is suspended until the clearance authority resolves the investigation. Status reports will include any additional adverse information developed during the reporting period, and information concerning whether the suspension was based on similar information. Final status reports will contain the recommendation of the commander or chief of the section or activity regarding reinstatement or revocation of clearance.

d. When a soldier is incarcerated by military or civil authorities because of a conviction for a criminal offense, or when a soldier is dropped from

the rolls as a deserter, the soldier's commander must:

(1) Withdraw the security clearance, DA Form 873 (*Certificate of Clearance and/or Security Determination*), from the soldier's MPRJ and stamp or print across the face "Revoked by authority of Commander, Central Clearance Facility (CCF), Deserter (Date)" or "Revoked by authority of Commander, CCF, Incarcerated (Date)."

(2) Forward the security clearance to the Commander, CCF.

e. References:

- (1) AR 380-67, Chapter 8.
- (2) AR 604-10.
- (3) FM 27-1, page 7-4.

16-3. Reclassification Of Enlisted Soldiers' MOS.

a. Unit commanders may recommend reclassification of an awarded MOS if the soldier does not efficiently perform the technical, supervisory, or other requirements of the MOS. Reclassification is prohibited, however, if during the current enlistment, the MOS involved travel funds, selection for training or use of a school quota granted by the Commanding General, PERSCOM, compliance with reclassification instructions from the Commanding General, PERSCOM first term soldier, or enlistment or selective re-enlistment bonuses.

b. Unit commanders must recommend MOS reclassification of a soldier under the following circumstances:

- (1) Erroneously awarded MOS.
- (2) Physical disability precluding performance of required duties.
- (3) Disciplinary actions under the UCMJ which adversely affect the soldier's performance in the MOS.
- (4) Loss of MOS qualification, determined and documented by a field grade officer.
- (5) Lack of security clearance required for the MOS.

(6) Change to rank not authorized for the MOS.

(7) At the direction of the *commanding general*, PERSCOM.

(8) Successful completion of schooling or on-the-job training in a new specialty as permitted by DA policy.

(9) Promotion in a MOS other than primary.

c. The soldier may be reclassified by the appropriate authority without the right to a reclassification board. However, reclassification authorities, at their discretion and upon request of a soldier, may allow appearance before a classification board.

d. References:

- (1) AR 600-200, paragraph 2-31.
- (2) FM 27-1, pages 7-5 and 7-6.

Chapter 17

Administrative Separation Of Enlisted Soldiers

17-1. General. The governing regulation for the administrative separation of enlisted soldiers is AR 635-200. This regulation includes Changes 1-14, and is printed in the *Enlisted Ranks Personnel Update*, Issue 16, dated 17 October 1990. This regulation is also amended by Change 15, dated 26 June 1996, and two Department of the Army messages, dated December 1996 and January 1997. Separation before completion of an obligated period of service can be wasteful because it results in a loss of investment in the soldier and generates a requirement for increased accessions. Reasonable efforts should be made to identify soldiers who exhibit a likelihood for early separation, and to improve their chances for retention through counseling, retraining, and rehabilitation before initiating separation proceedings other than for homosexuality or fraudulent entry. Soldiers who do not demonstrate potential for further military service should, however, be separated to avoid the high costs in terms of pay, administrative efforts, degradation of morale, and substandard mission performance. APPENDIX A of this pamphlet is a quick reference guide which describes the spectrum of enlisted elimination actions along with the

essential information necessary to determine applicability to a given situation.

17-2. Procedures For Administrative Separations.

a. Administrative boards. Soldiers can be administratively separated from the service by notification from a brigade commander, or by decision of an administrative board. All soldiers with more than six years active duty are entitled to be heard by a board. In addition, all soldiers subject to a chapter recommending an other than honorable discharge, regardless of the soldier's time in service, are entitled to a board.

b. Characterization of service. Depending on the reason for separation, soldiers who are administratively discharged may receive a characterization of service as honorable, general under honorable conditions, or other than honorable. Remember, these discharges are administrative in nature and differ from the punitive discharges available when a soldier is charged with criminal offenses at a court-martial.

c. Processing through medical channels. Except in separation actions under Chapter 10, disposition through medical channels (typically, soldiers undergoing an MEB or PEB) takes precedence over administrative separation processing.

d. Counseling before initiating separation. Many elimination actions require soldiers to receive adequate counseling under AR 635-200, paragraph 1-18, before separation may be initiated. This counseling must be recorded on a DA Form 4856 (*General Counseling Form*), and must include the reason for counseling (duty performance or misconduct), a warning that a separation action may be initiated if the behavior continues, and an explanation of the types of discharge that could result from the possible separation action and the effects of each type. Very often, a commander would like to initiate elimination action against a soldier but has no record of this counseling. It is always a good practice to have this counseling language pre-printed on counseling forms in the unit so members of the chain of command provide consistent information to soldiers.

e. Rehabilitative transfer before initiating separation. Many elimination actions require

soldiers be provided an opportunity to overcome their deficiency. Typically, this requires a rehabilitative transfer to another battalion sized unit.

17-3. Involuntary Separation Due To Parenthood (Chapter 5-8). Soldiers may be separated because of inability to perform prescribed duties, repeated absences, or non-availability for worldwide assignment because of parenthood. Unless waived, before initiating separation, the soldier's commander must ensure the soldier receives adequate counseling under AR 635-200, paragraph 1-18, and is given an opportunity to overcome the deficiency. A soldier discharged under this provision may be awarded an honorable discharge, general discharge, or an uncharacterized description of service if in entry-level status.

17-4. Personality Disorder (Chapter 5-13). Soldiers may be separated for personality disorder, not amounting to a disability, interfering with assignment to or performance of duty, when properly diagnosed. This condition must be a deeply-ingrained maladaptive pattern of behavior of long duration which interferes with the soldier's performance of duty. It must be diagnosed as such by a physician trained in psychiatry and psychiatric diagnosis. Unless waived, the soldier must be formally counseled under AR 635-200, paragraph 1-18, concerning deficiencies and be afforded ample opportunity to overcome those deficiencies. Separation under this provision is not appropriate when separation is warranted under other chapters. Soldiers discharged for personality disorders may receive an honorable, general, or entry level discharge.

17-5. ADAPCP Failure (Chapter 9). After enrollment in ADAPCP (see Chapter 12, this pamphlet), a soldier may be separated if he continues to abuse drugs or alcohol. Determination of ADAPCP failure is made by the soldier's commander after consultation with the soldier's ADAPCP counselor. The soldier discharged under this procedure may receive an honorable discharge, general discharge, or entry level separation. See also AR 600-85.

17-6. Unsatisfactory Performance (Chapter 13).

a. A soldier may be separated for unsatisfactory performance when it is clearly established:

(1) In the commander's judgment, the soldier will not develop sufficiently to participate satisfactorily in further training, or become a satisfactory soldier (including failure to make satisfactory progress in achieving Army weight standards), or

(2) The seriousness of the circumstances is such the soldier's retention would have an adverse impact on military discipline, good order, and morale, and

(3) It is likely the soldier will be a disruptive influence in present or future duty assignments; the circumstances forming the basis for initiating separation will continue or recur, and the soldier is unlikely to perform duties effectively in the future.

b. Before separation is initiated, the command must ensure the soldier has received adequate counseling and rehabilitation under AR 635-200, paragraph 1-18. Rehabilitation cannot be waived except when this chapter is used to separate a soldier who has failed two APFTs. Soldiers discharged under this provision may receive an honorable or general discharge.

17-7. Civil Convictions (Chapter 14, Section II).

a. A soldier may be eliminated when he is convicted by civilian authorities, or action is taken which is tantamount to a finding of guilty.

(1) A punitive discharge is authorized for the same or a closely related offense under the UCMJ.

(2) The sentence by civil authorities includes confinement for 6 months or more. This includes confinement, which is suspended, or any form of probation.

b. Before initiating separation action, reduction action under AR 600-8-19, Chapter 6, should be accomplished when required.

c. The commander may initiate separation proceedings against any enlisted soldier who receives a civil conviction meeting the criteria stated above (a commander may, however, determine retention is appropriate and close the matter). An order deferring adjudication is considered tantamount to a finding of guilty for the purpose of this elimination action.

Discharge under other than honorable conditions is normally appropriate for a soldier separated on these grounds. A general or honorable discharge may be given when merited by the soldier's overall record.

17-8. Patterns Of Misconduct. (Chapter 14-12b).

a. Soldiers may be separated for:

(1) Minor disciplinary infractions.

(2) A pattern of misconduct consisting of discreditable involvement with civil or military authorities.

(3) Conduct prejudicial to good order and discipline, including conduct in violation of accepted standards of personal conduct found in the UCMJ, Army regulations, civil laws, or customs of the Army.

b. Unless waived by the approving authority, soldiers must be formally counseled in writing and rehabilitatively transferred under AR 635-200, paragraph 1-18. Rehabilitation may be waived by the command.

c. Commanders will not take action under this provision instead of disciplinary action solely to spare a soldier who may have committed serious acts of misconduct the harsher penalties which may be imposed under the UCMJ. An other than honorable discharge is normally appropriate for a soldier separated on these grounds. A general or honorable discharge may be given when merited by the soldier's overall record.

17-9. Serious Misconduct (Chapter 14-12c).

a. Soldiers may be separated for commission of a serious offense, military or civil, if the specific circumstances of the offense warrant separation and a punitive discharge is authorized under the UCMJ.

b. Abuse of illegal drugs is a serious offense.

(1) Soldiers in grades private (E1) through specialist (E4) *may* be processed for separation for one positive urinalysis test, and *must* be processed for separation for two positive tests.

(2) Soldiers in grades sergeant (E5) and above must be processed for separation for one positive urinalysis test.

(3) All second-time drug offenders and all soldiers medically diagnosed as drug dependent must be processed for separation. "Processed for separation" means separation action must be initiated and processed through the chain of command to the appropriate separation authority for a determination concerning separation or retention. Although a commander may be required to initiate a separation action, he may recommend the soldier be retained in the Army.

(4) Officers will be processed for elimination for acts of personal misconduct involving drugs.

c. Commanders will not take action under this provision instead of disciplinary action solely to spare a soldier who may have committed serious acts of misconduct the harsher penalties which may be imposed under the UCMJ. An other than honorable discharge is normally appropriate for a soldier separated on these grounds. A general or honorable discharge may be given when merited by the soldier's overall record.

17-10. Homosexuality (Chapter 15).

a. *Policy.* DOD directives effective February 1994, implement the *DOD Homosexual Conduct Policy* in five specific areas:

b. *Accession.* No applicant will be asked about his or her sexual orientation as part of the accession process. However, homosexual conduct will continue to be a basis for barring entry into the Armed Forces.

c. *Separations.* Conduct, not sexual orientation, will determine suitability for service in the Armed Forces. The DOD directives set forth three bases for separation: homosexual acts, homosexual statements, and homosexual marriages. Discharges will normally be characterized as "Honorable." However, a less favorable characterization is authorized in appropriate circumstances.

d. *Personnel security.* No investigations or inquiries will be conducted solely to determine a subject's sexual orientation, and questions pertaining to an individual's sexual orientation will not be asked on personnel security questionnaires.

e. *Investigations.* No DOD criminal

investigation organization or law enforcement organization will conduct an investigation solely to determine a service member's sexual orientation. Investigations will be conducted only to determine whether homosexual conduct has occurred. When investigation is appropriate, investigations into sexual misconduct will be conducted in an evenhanded manner. Investigations will only be initiated where credible information reveals homosexual conduct has occurred. There must be a determination based upon articulated facts, not just a belief or suspicion.

f. *Military training.* Service members will be informed of the DOD policy on sexual conduct. The revised directive on military training includes a training plan designed for commanders and personnel involved in recruiting, accession processing, criminal investigations, and administrative separations.

g. *Commander's action upon discovery of homosexual allegation.* The commander's first action upon discovery of an allegation of homosexual conduct should be to consult supporting trial counsel for legal advice. If it is necessary to question a suspect regarding an allegation of homosexual conduct, the suspect must be informed of the DOD Homosexual Policy and their rights under Article 31 (a DA Form 3881 should be used). The DOD Homosexual Policy is "to judge the suitability of persons to serve in the Armed Forces on the basis of their conduct. Sexual orientation is considered a personal and private matter. Homosexual orientation is not a bar to service entry or continued service. Homosexual conduct, however, is grounds for separation from the military service. Homosexual conduct is a homosexual act, a statement by the soldier demonstrating a propensity or intent to engage in homosexual acts, or a homosexual marriage or attempted marriage."

h. References:

- (1) DODI 1304.26
- (2) 10 U.S.C. , section 654(b).

17-11. Voluntary Separation Of Soldiers Denied Re-Enlistment (Chapter 16).

a. Soldiers who feel they will not be able to overcome either a DA imposed or a locally imposed bar to re-enlistment may be voluntarily separated before ETS.

b. First-term soldiers with a locally imposed bar to re-enlistment are not eligible for this early separation.

c. The service of soldier's separated under this chapter will be characterized as honorable.

17-12. Failure To Meet Body Fat Standards (Chapter 18).

a. Soldiers who fail to meet body fat standards set forth in AR 600-9 are subject to separation.

b. Separation action may not be initiated under this chapter until the soldier has been given a reasonable opportunity to comply with and meet body fat standards.

c. Soldiers who have been diagnosed by health care personnel as having a medical condition precluding them from participating in the Army body fat reduction program will not be separated under this chapter.

d. Initiating separation proceedings is required for soldiers who do not make satisfactory progress in the program after 6 months; and for soldiers who fail to meet screening table weight and body fat standards in the 12 months following removal from the weight control program.

e. Separation under this chapter will not be initiated against a soldier who meets the criteria for separation under other provisions of this regulation, such as unsatisfactory performance.

f. Characterization of service for separations under this chapter will be honorable.

17-13. Other Separation Actions. Soldiers may also be administratively separated based on the following grounds:

a. *AR 635-200, paragraph 5-4 (Surviving Sons or Daughters).*

b. *AR 635-200, paragraph 5-9 (Lack of Jurisdiction).* Upon the final determination of a military judge, a president of a SCM or military appellate agency an individual is not currently a member of the Army, the soldier may be released from military service by the GCMCA.

c. *AR 635-200, paragraph 5-14 (Concealment of Arrest Record).* This chapter can be used for concealment not amounting to fraudulent enlistment under Chapter 7, Section V.

d. *AR 635-200, Chapter 6 (Separation Because of Dependency or Hardship).* Dependency exists when death or disability of a member of a soldier's or spouse's immediate family causes the member to rely on the soldier for principal care or support. Hardship exists when separation from the service will materially affect the care or support of the family by alleviating undue or genuine hardship.

e. *AR 635-200, Chapter 7, Section II (Minority).* If a soldier enlisted while under 17 years of age and has not yet reached that age, the soldier will be released from custody and control of the Army. Soldiers who are under 18 years of age, and enlisted without parental consent, will be discharged upon application of the parent or guardian.

f. *AR 635-200, Chapter 7, Section III (Erroneous Enlistment, Re-enlistment, or Extension).* An enlistment, re-enlistment, or extension of enlistment is erroneous if it would not have occurred had the relevant facts been known by the Army or had appropriate directives been followed, and it was not the result of fraudulent conduct on the part of the soldier, and the defect is unchanged in material respects.

g. *AR 635-200, Chapter 7, Section IV (Defective or Unfulfilled Enlistment or Re-enlistment Agreements).* A defective enlistment agreement exists when the soldier was eligible for enlistment, but did not meet the prerequisites for the option for which enlisted. This may happen when recruiting personnel make a material misrepresentation which the soldier reasonably relied upon and thereby enlisted for that option.

h. *AR 635-200, Chapter 7, Section V (Fraudulent Entry).* Fraudulent entry is the procurement of an enlistment, re-enlistment, or extension through any deliberate material misrepresentation, omission, or concealment of information that if had been known and considered by the Army, might have resulted in rejection. An example of fraudulent entry include concealment of a felony conviction by a civilian court. First, commanders must determine if the previously concealed information is in fact disqualifying. Concealing disqualifying or waivable information

constitutes fraudulent enlistment. If the information is not disqualifying, then a fraudulent enlistment has not occurred. Second, commanders must verify the information which was concealed is true. Soldiers separated under this chapter may be furnished an honorable discharge, general discharge, or other than honorable discharge. A soldier who fraudulently enlists is subject to prosecution under Article 83, UCMJ.

i. AR 635-200, Chapter 8 (Separation of Enlisted Women—Pregnancy).

j. AR 635-200, Chapter 10 (Discharge in Lieu of Trial by Court-Martial). A soldier who has committed an offense punishable by a bad conduct discharge or a dishonorable discharge under the UCMJ may submit a request for discharge in lieu of trial by court-martial. It may be submitted any time until final action on the case is taken by the GCMCA. An other than honorable discharge is normally appropriate for soldiers discharged in lieu of court-martial. Paragraph 4-6 of this pamphlet provides further details on the processing of this discharge.

k. AR 635-200, Chapter 11 (Entry Level Status Performance and Conduct). Soldiers who have completed less than 180 days of their first enlistment at the time the separation action is initiated may be separated if they cannot or will not adapt to military life, cannot meet minimum required standards, or have demonstrated characteristics not compatible with satisfactory continued service. Before initiating separation action, the soldier's commander must ensure the soldier receives adequate counseling under AR 635-200, paragraph 1-18, and a rehabilitative transfer. This rehabilitation cannot be waived. The soldier's consent is not required to use this type of separation. Entry level separation, an uncharacterized form of discharge (*i.e.*, neither honorable nor other than honorable), is issued when this action is used. While few soldiers at Fort Hood are eligible for this type of elimination action because most have served more than 180 days, commanders should be aware it may be available in some cases.

Chapter 18

Administrative Separation Of Officers

18-1. General.

a. No person has an inherent right to continue military service as an officer. The privilege

to serve as an officer exists only as long as the soldier performs in a satisfactory manner. Responsibility for leadership requires an officer accomplish his duties effectively and conduct himself in an exemplary manner at all times.

b. The responsibility for dealing with a deficient officer originates with the commander. In discharging this responsibility, the commander must document performance and conduct to ensure the OMPF accurately portrays an officer's character of service. It is also the commander's responsibility to take the appropriate action to separate those officers who do not meet the ethical and professional standards expected of an Army officer.

c. The Army has a variety of categories of officers serving on active duty. These include:

- (1) Regular Army (RA).
- (2) United States Army Reserve (USAR) officers.
- (3) Army National Guard of the United States (ARNGUS) officers.
- (4) Army National Guard officers in the service of the United States.

d. The distinction between categories is important in determining which separation actions are available to the command and the rights of the officer involved.

18-2. Administrative Elimination Actions.

a. Army policy is to retain only those officers who demonstrate an acceptable level of proficiency and conduct. This standard of evaluation and conduct is applicable to all officers, commissioned and warrant, regardless of component. Existence of one of the following conditions, or similar conditions, authorizes elimination:

- (1) Downward trend in overall performance resulting in an unacceptable level of performance.
- (2) Failure to keep pace or to progress with contemporaries.
- (3) Failure to exercise appropriate leadership.

(4) Failure to assimilate required technical proficiency.

(5) Failure to properly discharge assignments commensurate with grade and experience.

(6) Apathy, defective attitude, or other character disorders.

(7) Failure to respond to drug or alcohol rehabilitation.

(8) Failure to conform to prescribed standards of dress, personal appearance, and military deportment.

(9) Failure to achieve satisfactory progress after participation in a medically established weight control program, or failure to comply with the weight/body fat standards established by AR 600-9 (*The Army Weight Control Program*) after removal from an established weight control program.

(10) Discreditable or intentional failure to meet personal financial obligations.

(11) Mismanagement of personal affairs detrimentally affecting the duty performance of the officer or to the discredit of the service.

(12) Intentional omission or misstatement of fact in official statements or records for the purpose of misrepresentation.

(13) Acts of personal misconduct.

(14) Homosexual conduct.

(15) Intentional neglect of, or failure to perform duties.

(16) Conduct unbecoming an officer.

(17) Loss of professional status or accreditation necessary for the performance of one's military duties.

(18) Acts or behavior inconsistent with national security interests.

(19) Failure to respond to rehabilitation efforts regarding acts of child or spouse maltreatment or abuse or other acts of family violence.

b. The procedures required for elimination of officers are time-consuming, but are designed to provide full due process to the officer concerned. "Probationary" officers may be eliminated using an expedited procedure described in paragraph 3 of this section.

(1) Elimination proceedings may be initiated by either a general officer in command or the Commanding General, PERSCOM. The officer is notified in writing of the action, the reasons for the action, and the factual allegations supporting a recommendation of elimination. The officer may, with the assistance of a judge advocate, or civilian attorney at no expense to the government, prepare a written statement indicating pertinent facts or rebutting the recommendations. The officer is advised he has the following options:

(a) Resign in lieu of elimination.

(b) Retire in lieu of elimination (if eligible).

(c) Appear before board of inquiry.

(2) The action is then forwarded to the General Officer Show Cause Authority (GOSCA).

(3) The commanding general, PERSCOM or General Officer Show Cause Authority may return the case to the officer's unit with instructions for other appropriate disposition of the case. He may disapprove the recommendation and close the case. Finally, he may elect to have the officer appear before a board of inquiry. The commanding general, PERSCOM may direct the appropriate General Officer Show Cause Authority to appoint a board of inquiry for commanding general, PERSCOM cases.

(4) After the board of inquiry, the officer may still elect one of the following options at any time before final elimination action:

(a) Tender his resignation.

(b) Request discharge if an RA officer.

(c) Apply for retirement in lieu of elimination, if otherwise eligible for voluntary retirement.

(5) After the board of inquiry, the proceedings will be referred to an appropriate board

of review. The Secretary of the Army will appoint the boards of review. Action by the Secretary of the Army on a board of review recommendation is final and conclusive.

c. Officers eliminated from the Army may receive an *Honorable, General, or Other Than Honorable Discharge*. Officers discharged solely for substandard duty performance, however, will receive an Honorable discharge.

d. Reference: AR 600-8-24, Chapter 4.

18-3. Elimination Of Probationary Officers.

a. The officer elimination procedures outlined in paragraph 18-2 of this chapter are detailed and time consuming. Those procedures ensure officers who have dedicated much time and effort in a military career will not be eliminated without full review of their cases. Before an officer is entitled to this extensive protection, however, he must serve a probationary period. During this time, the officer may be eliminated for more reasons than the non-probationary officer.

b. Probationary officers include:

(1) RA commissioned officers with less than five years of active commissioned service.

(2) USAR officers who have less than three years commissioned service.

(3) Warrant Officers who have less than three years service since appointment in their present component.

c. Probationary officers may be eliminated for the same reasons as other officers. The following additional grounds, however, may also justify a probationary officer's elimination:

(1) Failure of a service school.

(2) Failure of an officer to resign for medical reasons existing at the time of appointment when his commander determines the best interest of the government and the individual can be served by discharge.

(3) The discovery of other conditions which, if they had been known at the time of appointment, would have precluded appointment.

(4) The discovery of any other condition which evidences the officer's retention in the Army is not in the best interest of the United States.

d. The following procedures are to be followed:

(1) The General Officer Show Cause Authority, or Commanding General, PERSCOM, notifies the officer in writing of the reasons for the action, the character of the discharge, and if an honorable discharge is recommended, there will be no selection board or board of inquiry held before the officer's case is forwarded to the ASA (M&RA).

(2) The officer is provided the opportunity to prepare a written statement. The officer is entitled to a military lawyer, or civilian counsel at no expense to the government, in preparing this statement.

(3) Upon receiving the recommendation and officer's statement, if any, the General Officer Show Cause Authority, or Commanding General, PERSCOM may disapprove the action or return the case to the originator with recommendations concerning appropriate action (*e.g.*, reprimand, further investigation, etc).

(4) If the General Officer Show Cause Authority, or Commanding General, PERSCOM approves the elimination recommendation, the officer is given the option to tender a resignation, request retirement, if otherwise eligible, or submit a rebuttal or declination statement.

(5) If the officer neither tenders a resignation nor requests retirement, and an Honorable or General discharge is recommended, the action is forwarded directly to Commander, PERSCOM, who will send the case to the ASA (M&RA) for final decision.

e. Reference: AR 600-8-24, Chapter 4, Section III.

18-4. Involuntary Release From Active Duty.

a. OTRA Officers may be relieved from active duty for qualitative or quantitative reasons. Officers relieved from active duty may revert to inactive reserve status unless concurrent action is taken to also separate the officer from those components as well.

b. Officers may be involuntarily separated from active duty based on:

- (1) Misconduct.
- (2) Moral or professional dereliction.
- (3) Inefficiency and poor performance.
- (4) Civil convictions, or equivalent court actions, when the offense is punishable by death or confinement for one year or more under the UCMJ, or the offense involves moral turpitude.

(5) Reduction of officer strength as a result of budgetary or authorization limitations.

c. Commanders at all levels are required to recommend elimination action for those officers whose performance indicates a lack of justification for retention on active duty. This recommendation is forwarded through channels to Commander, PERSCOM, for consideration by the DA Active Duty Board. Officers recommended to the Active Duty Board for release from active duty will be afforded an opportunity to review the action, along with supporting evidence, and provide comments or rebuttal. Board results are final.

d. References:

- (1) AR 600-8-24, Chapter 4.
- (2) AR 600-8-24, Chapter 5.

18-5. Resignations.

a. *AR 600-8-24, Chapter 3, Section II (Unqualified Resignations)*. Any officer of the active Army may tender an unqualified resignation. Normally, such resignations will not be accepted unless, on the requested date of separation, the officer has fulfilled all applicable service obligations. If the officer's resignation is accepted, an *Honorable* or *General* discharge will be issued, depending on the soldier's military record.

b. *AR 600-8-24, Chapter 4 (Resignation in Lieu of Elimination)*. An officer who has been formally recommended for elimination from the service may tender a resignation in lieu of elimination. A tender of resignation or request for discharge in lieu of elimination automatically suspends the elimination action until HQDA makes a

final determination on the tender. Officers who tender resignation under this chapter may receive an *Honorable, General, or Other Than Honorable* discharge.

c. *AR 600-8-24, Chapter 3, Section VI (Resignation for the Good of the Service)*. Resignations for the good of the service will be forwarded by the GCMCA directly to Commander, PERSCOM. The tender of a resignation for the good of the service does not preclude preferral of charges and trial by court-martial. An officer may submit a resignation for the good of the service when:

(1) Court-martial charges have been preferred against the officer with a view toward trial by GCM.

(2) The officer is under a suspended sentence of dismissal.

(3) The officer elects to tender his resignation because of homosexuality before GCM charges are preferred under the UCMJ and before a recommendation for elimination under AR 635-100.

18-6. Failure To Be Selected For Promotion.

a. Active Duty List (ADL) reserve component commissioned officers who are twice passed over for active duty list promotion to captain, major, or lieutenant colonel will be processed for release from active duty under AR 600-8-24, paragraph 5-9a, except as provided under AR 600-8-24, paragraphs 5-9d-g. RA first lieutenants, captains, or majors who are twice passed over for promotion to the next higher grade shall be discharged from RA with an honorable discharge.

b. Reference: AR 600-8-24, Chapter 5-9, Section V.

18-7. Dropping Officers From The Rolls Of The Army.

a. An officer may be dropped from the rolls of the Army when the officer:

- (1) Is not entitled to receive retired pay, has been found guilty by civil authorities of any offense and sentenced to confinement in a federal or state penitentiary or correctional institution, and the sentence is final.

(2) Has been AWOL for at least three months.

(3) Is deprived of retired pay under the authority of U.S.C. TITLE 10, Chapter 83, Subchapter II.

b. All commissioned and warrant officers of the Army, including members of the RA (active or retired list), RCs, active duty or active duty for training or in a retired status may be dropped from the rolls. An RA warrant officer may not, however, be dropped from the rolls as a result of civil confinement or AWOL.

c. Commanders who receive information which appears to support dropping an officer from the rolls will transmit the information through channels to Commander, PERSCOM under AR 600-8-24, paragraph 15-6. All available documentary evidence will be included in the action.

d. References:

(1) AR 600-8-24, Chapter 15-5.

(2) TITLE 5, U.S.C., Chapter 83, Subchapter II.

Chapter 19 Liaison With Local Civilian Prosecution And Investigative Authorities

19-1. Introduction. The United States Supreme Court in *Solorio v. United States*, 107 S.Ct. 2924 (1987), approved prosecution by the military under the UCMJ for all off-post violations of the UCMJ. Additionally, the courts of the State of Texas and the U.S. District Court in Waco, Texas, also have jurisdiction over many offenses involving soldiers.

19-2. Prosecutions By Special Assistant United States Attorneys (SAUSA). The Department of Justice and the Judge Advocate General have approved appointment of several III Corps SJA lawyers as SAUSAs under AR 27-40, Chapter 6, AR 27-10, Chapter 23, and 28 U.S.C., section 543. SAUSAs act as liaisons with the Department of Justice, including the Federal Bureau of Investigation (FBI), on behalf of Fort Hood. The SAUSAs prosecute military and civilian offenders in Magistrate and District Court for offenses occurring on Fort Hood. Currently, the III Corps SJA has one

SAUSA responsible for felony criminal cases, and one SAUSA responsible for misdemeanor and petty offense cases.

a. Felony cases are tried in the United States District Court for the Western District of Texas, Waco Division, located at the United States Courthouse in Waco, Texas. Misdemeanors and petty offenses, including traffic violations, are tried in the United States Magistrate's Court which is located at both the United States Courthouse in Waco, Texas, and at Building 209, Fort Hood.

b. The decision to decline or initiate prosecutions cannot be directed by anyone outside the Department of Justice. The SAUSAs are primarily supervised by the U.S. Attorney. The SAUSAs have the authority to decline or initiate actions to prosecute on behalf of the Department of Justice, including cases where the GCMCA decides to grant immunity under AR 27-10, paragraph 2-4.

c. Because soldiers' offenses are normally adjudicated under the UCMJ, commanders usually have little direct interaction with cases handled by SAUSAs. Soldiers are, however, routinely handled through the United States Magistrate's Court for traffic violations committed on the installation.

(1) When a soldier is issued a traffic citation (DD Form 1805), the citation will state the time, date, and location of the alleged offense. The soldier has two options: pay the fine or contest the citation.

(2) Fines for traffic citations must be paid with a money order at the address indicated on the citation, or at Building 209, Fort Hood.

(3) If a soldier decides to dispute the traffic citation, the soldier *must* appear at the United States Magistrate's Court at the date and time indicated on the notice to appear mailed to the soldier by the court. Failure to do so will likely result in the Court's issuing a federal warrant for the soldier's arrest.

(4) A soldier's absence because of field exercise, previously scheduled deployment, soldier's time, or regular leave will not excuse a soldier from having to appear at the United States Magistrate's Court. If a soldier cannot appear at Court, the soldier must make arrangements with the Court well in advance to reschedule his court date.

d. Soldiers involved in federal criminal cases. Sometimes, a soldier may be involved as a witness in a federal criminal case. For example, a soldier may be a victim of a crime committed by a civilian or may be a witness to a crime. Normally, the United States District Court or United States Magistrate's Court will issue a subpoena to the soldier directing the soldier to appear at court at a certain date and time to testify. Failure to comply with a subpoena may result in the soldier's arrest. Alternatively, the SAUSA handling the case may personally arrange with the soldier and the chain of command to have the soldier appear at court on the pertinent date. Commanders should cooperate in every possible way in ensuring soldiers who need to be at federal court appear there at the appropriate time.

e. Communication with the Department of Justice must be coordinated with the III Corps SJA, under AR 27-40, paragraph 1-5.

19-3. Federal Law Enforcement Agencies.

Although the MPs and/or CID are normally the lead investigative agencies for crimes occurring on the installation, other federal law enforcement agencies may become involved in investigations of serious federal crimes. Such agencies include, but are not limited to, the FBI, United States Secret Service, Drug Enforcement Administration, Bureau of Alcohol, Tobacco, and Firearms, Defense Criminal Investigative Service (DCIS), and the United States Customs Service. Commanders should cooperate to the fullest extent with these agencies, as their investigative jurisdiction is commensurate or exceeds that of military law enforcement agencies.

19-4. Concurrent Investigative Jurisdiction.

DOD Directive 5525.7, printed at APPENDIX 3, MCM, 1984, and AR 27-10, Chapter 2 provide specific instructions concerning primary and concurrent jurisdiction between the Departments of Justice and Defense. The CID will coordinate with the FBI or other federal investigative agency in cases of concurrent investigative jurisdiction. As necessary, the SAUSA will ensure problems are resolved.

19-5. Liaison With Civil Prosecution And Investigative Authorities From Bell And Coryell Counties.

Since 1988, Fort Hood and the District Attorneys in Bell and Coryell Counties have had agreements regarding coordination of prosecutions of soldiers who commit offenses off Fort Hood.

a. The Chief, Criminal Law, OSJA, III Corps (military liaison), acts as the single liaison between Fort Hood units through their supporting military legal offices, and the District Attorney Offices in Bell, and Coryell Counties. Whenever the command seeks jurisdiction from the District or County Attorney of Bell or Coryell Counties, subject to the approval of the SJA, III Corps, the military liaison will make a written request to the District Attorney for military jurisdiction. The request for jurisdiction will indicate whether pretrial confinement will be sought by the command, the anticipated level of UCMJ disposition, *e.g.*, under Article 15 or court-martial, and provide documentation to transfer evidence from the civilian police evidence custodian to the military evidence custodian. If the command later decides on a lower level of disposition, the reason for the change will be provided to the military liaison and then to the District Attorney. The command will not dispose of the case at the lower level without advance agreement from the District Attorney. For example, charges may be dismissed because the command intends to dispose of the allegations under Article 15 or by a discharge in lieu of trial by court-martial. Before disposition at this lower level, approval by the District Attorney should be obtained. Otherwise, the District Attorney may choose to prosecute the soldier, resulting in a perception of double punishment. If the District Attorney offers jurisdiction to the military, the command will accept military jurisdiction over every case where guilt can be proven beyond reasonable doubt. Generally, the District Attorney offers jurisdiction to the military over all felony cases involving soldiers accused of crimes. Recent practice is for the District Attorney to retain jurisdiction for murder cases. The military may request jurisdiction for misdemeanor cases from the Bell County Attorney's Office. Normally, the Bell County Attorney will retain jurisdiction for DWI and bad check offenses, unless the command prefers charges.

b. The military liaison will provide a written report of the final disposition of the off-post allegations to the District Attorney.

c. The military liaison will ensure necessary military witnesses and records are provided to the District Attorney. The District Attorney will ensure necessary evidence, police witnesses and records are provided to the Army.

19-6. Disciplinary Proceedings After Exercise Of

Jurisdiction By Civilian Authorities. After exercise of jurisdiction by civilian authorities in Bell or Coryell County, and before a court-martial or an Article 15 hearing, the military liaison must coordinate with the relevant District Attorney and then such UCMJ action must be approved in advance by the Commander, III Corps and Fort Hood. *See* AR 27-10, Chapter 4.

19-7. Execution Of Civil Arrest Warrants On Fort Hood. AR 600-40 requires military members be delivered to civil officers upon reasonable request for civil prosecution. In Texas, a warrant of arrest is a written order from a magistrate directed to a peace officer or other person specifically named, commanding the officer to take the person accused of an offense to be “dealt with according to law.” A summons is the same as a warrant except a summons directs the defendant to appear at a particular time and place before a magistrate. If the defendant fails to comply with the summons then an arrest warrant is issued. *See* TEXAS CODE OF CRIMINAL PROCEDURE, sections 15.01 to 15.03. The peace officer delivers the arrest warrant to the MP. The military police bring the arrest warrant to a legal office for legal review. If legally sufficient, the arrest warrant is executed by the MPs who ensure the soldier is brought to the MP station for transfer to civilian authorities.

19-8. Requisites Of Warrant. Arrest warrants issued in the name of “The State of Texas,” must state the name of the person to be arrested (or provide a reasonably definite description of the person to be arrested), must name the alleged offense, and it must be signed by a magistrate. The office of the magistrate must be named on the warrant. *See* TEXAS CODE OF CRIMINAL PROCEDURE section 15.02.

Chapter 20 Informal Investigations Under AR 15-6

20-1. Introduction. AR 15-6 establishes procedures for investigations and boards of officers not specifically governed by some other directive. This chapter is intended to briefly explain the procedures required by AR 15-6 for informal investigations. It is recommended, however, any person appointed as an investigating officer should not rely solely on this chapter, but on the actual provisions of AR 15-6.

20-2. Types Of Investigations And Boards. An administrative fact-finding procedure under AR 15-6 may be designated an investigation or a board of officers. The proceedings may be formal or informal. Proceedings involving a single officer using *informal* procedures are designated investigations. Proceedings involving more than one investigating officer using formal or informal procedures or a single investigating officer using *formal* procedures are designated boards of officers.

20-3. Function Of Investigations And Boards. The primary purpose of an investigation or board of officers is to look into and report on matters the appointing authority has designated for inquiry. The report will include findings of fact and recommendations. When criminal misconduct is suspected, it may be more appropriate to conduct a commander’s inquiry under R.C.M. 303, MANUAL FOR COURTS-MARTIAL, or have the military police or CID conduct the investigation.

20-4. Use Of Results.

a. AR 15-6 does not require an investigation be conducted before taking adverse administrative action. If an investigation is conducted under AR 15-6, however, the findings and recommendations may be used in any administrative action against an individual, whether or not the individual was designated a respondent, subject to the limitations of *b* and *c* below.

b. The Federal Personnel Manual controls adverse actions against civilian personnel and establishes the required procedural safeguards. In every case involving contemplated formal disciplinary action against civilian employees, the servicing civilian personnel office and labor counselor will be consulted before the employee is notified of the contemplated adverse action.

c. When adverse administrative action is contemplated against an individual (other than a civilian employee, paragraph *b* above), including an individual designated as a respondent, based upon information obtained as a result of an investigation or board conducted under AR 15-6, the appropriate military authority must observe the following minimum safeguards before taking final action against the individual:

(1) Notify the person in writing of the proposed adverse action and provide a copy of the

findings and recommendations and the supporting evidence on which the proposed adverse action is based.

(2) Give the person a reasonable opportunity to reply in writing and submit relevant rebuttal material.

(3) Review and evaluate the person's response.

d. When the investigation or board is conducted under AR 15-6, but the contemplated administrative action is prescribed by a different regulation or directive with more stringent procedural safeguards than those in paragraph *c* above, then the more stringent safeguards must be observed.

20-5. Appointment.

a. The authority to appoint investigations or boards of officers is set out in paragraph 2-1, AR 15-6. In summary, the rules allow any commander to appoint an officer or group of officers to investigate any matter within that commander's area of responsibility. For example, a company commander could appoint his executive officer to investigate shortages of blankets in the company's supply room. Additionally, a principal staff officer of a general court-martial convening authority may appoint an investigative body to inquire into matters within that staff officer's area of responsibility.

b. The appointing authority must determine, based on the seriousness and complexity of the issues and the purpose of the inquiry, whether to designate an *investigation* or a *board of officers* to conduct the inquiry. In the case of an informal investigation, the appointing authority must appoint an investigating officer (IO) who is senior in grade to anyone whose conduct may have to be investigated.

20-6. Legal Advice. Once appointed, the IO should contact the Office of the Staff Judge Advocate to make an appointment for a legal briefing. Although the unit appointing the IO is responsible for all logistical and clerical support, the SJA office provides legal advice throughout the investigation and conducts the legal review of the final report.

20-7. General Guidance For Informal Procedures.

a. Procedures. An informal investigation may use whatever method it finds most efficient and effective for acquiring information. For example, evidence may be taken telephonically, by mail, or in whatever way the board deems appropriate. A respondent shall not be designated when informal procedures are used and no one is entitled to the rights of a respondent.

b. Oaths.

(1) Unless required by the specific directive under which appointed, investigating officers need not be sworn. Witnesses in an informal investigation may be sworn at the discretion of the investigating officer, unless the memorandum of appointment requires the swearing of witnesses.

(2) An investigating officer is authorized to administer oaths in the performance of such duties (UCMJ, *article* 136).

c. Challenges. An investigating officer is not subject to challenge, except in a formal board. However, any person who is aware of facts indicating a lack of impartiality or other disqualification on the part of an investigating officer should present those facts to the appointing authority.

d. Rules of Evidence.

(1) General. Proceedings under AR 15-6 are administrative, not judicial. Therefore, an investigating officer is not bound by the rules of evidence for trials by courts-martial or for court proceedings generally. Accordingly, subject only to the provisions of 3 below, anything that in the minds of reasonable persons is relevant and material to an issue may be accepted as evidence. For example, medical records, counseling statements, police reports, and other records may be considered regardless of whether the person who prepared the record is available to testify in person.

(2) Official notice. Some facts are of such common knowledge they need no specific evidence to prove them (*e.g.*, general facts and laws of nature, general facts of history, locations of major elements of the Army). The investigating officer may find these facts without the requirement of any formal evidence.

(3) Limitations. While most rules of evidence or exclusionary rules do not apply to

informal investigations, some limitations do apply. For example, communications between lawyer and client, clergy and penitent, and husband-wife are privileged. In addition, evidence of polygraph tests or refusal to take a polygraph test may not be considered without the consent of the person involved. There are other limitations as well and an investigating officer should be familiar with paragraph 3-6, AR 15-6, before beginning an informal investigation.

20-8. Findings And Recommendations.

a. General. A finding is a clear and concise statement of a fact readily deduced from evidence in the record. It is directly established by evidence in the record or is a conclusion of fact by the investigating officer. Negative findings (*e.g.*, the evidence does not establish a fact) are often appropriate. The number and nature of the findings required depend on the purpose of the investigation and on the instructions of the appointing authority.

b. Standard of Proof. Unless another directive or an instruction of the appointing authority establishes a different standard, the findings of investigations governed by AR 15-6 must be supported by a greater weight of evidence than supports a contrary conclusion. The weight of the evidence is not determined by the number of witnesses or volume of exhibits, but by considering all the evidence and evaluating such factors as the witness's demeanor, opportunity for knowledge, information possessed, ability to recall and relate events, and other indications of veracity.

c. Scope. The nature and extent of recommendations required also depend on the purpose of the investigation and on the instructions of the appointing authority. Each recommendation, even a negative one (*e.g.*, no further action be taken) must be consistent with the findings. Investigating officers should make their recommendations according to their understanding of the rules, regulations, policies, and customs of the service, guided by their concept of fairness both to the Government and to individuals.

20-9. Report Of Proceedings.

a. In an informal investigation, the report will be written unless the appointing authority has authorized an oral report. Written reports of informal investigations should use DA Form 1574.

b. In written reports, all significant letters and other papers relating to administrative aspects of the investigation but which are not evidence should be numbered consecutively with roman numerals and made enclosures. For example, the memorandum of appointment, copies of the notice to any respondent, and copies of other correspondence with any respondent or counsel would be marked as enclosures.

c. Every item of evidence offered to or received by the investigation should be marked as a separate exhibit. Exhibits should be numbered consecutively using Arabic numerals. If there is a respondent, any exhibits offered by the respondent should be lettered consecutively.

20-10. Submission Of Report. A written report of proceedings should be submitted in two complete copies directly to the appointing authority or designee. If there are respondents, an additional copy for each respondent should be submitted.

20-11. Legal Review. Investigations conducted under AR 15-6 are referred to the servicing Staff Judge Advocate office for legal review. The JA's review will determine:

- a. Whether the proceedings comply with legal requirements.
- b. What effects any errors would have.
- c. Whether sufficient evidence supports the findings of the investigation or those substituted or added by the appointing authority.
- d. Whether the recommendations are consistent with the findings.

Chapter 21 Reports Of Survey

21-1. Introduction.

a. All DA military and civilian personnel, at one time or another, use government property in carrying out their assigned duties or missions. These individuals may also be called to account for their use or misuse of such property and they may be held financially liable for the loss or damage of such property.

b. Congress has authorized the Secretary of the Army to establish regulations for the accounting of Army property and the fixing of responsibility for that property. Relying on this broad grant of authority, the Secretary of the Army has promulgated regulations establishing property accountability policies and procedures. One such procedure is the report of survey. The procedures for processing reports of survey are prescribed in AR 735-5 (Policies And Procedures For Property Accountability).

c. By statute, the amount of any damage or the cost of repairs to arms or equipment caused by the abuse or negligence of a member of the Army who had the care of, or was using, such property when it was damaged shall be deducted from his/her pay. Furthermore, if, upon final settlement of an Army officer's account, there is a deficiency of an article of military supply issued to him or the article is damaged, the value of the lost article or of repairs for the article shall be charged to the officer and deducted from his/her pay, unless he/she can show he/she was not at fault.

21-2. Accountability And Responsibility. "Accountability" and "responsibility" are two different concepts you must understand to understand the report of survey system.

a. Accountability. All property acquired by the Army must be accounted for as prescribed by Army regulations. Accountability is the obligation of a person to keep records of property, documents, or funds. It is an obligation officially assigned to a specific person and cannot be delegated. Accountable officers maintain formal records containing item identification data, quantities, values, balances, and property transactions.

b. Responsibility. Responsibility is the obligation of an individual to ensure government property and funds entrusted to his or her possession, command, or supervision are properly used and cared for and proper custody and safekeeping are provided. There are four types of responsibility:

(1) Command responsibility. It is the obligation of a commander to ensure all government property within his or her command is properly used and cared for and proper custody and safekeeping are provided. Command responsibility is inherent in command and cannot be delegated. It is evidenced by assignment to a command position at any level

and includes:

(a) Ensuring the security of all property of the command whether in use or in storage.

(b) Observing subordinates to ensure their activities contribute to the proper custody, care, use, and safekeeping of all property within the command.

(c) Enforcing all security, safety, and accounting requirements.

(d) Taking administrative or disciplinary measures when necessary.

(2) Supervisory responsibility. It is the obligation of a supervisor to ensure all government property issued to or used by his or her subordinates is properly used and cared for, and proper custody and safekeeping are provided. It is inherent in all supervisory positions and is not contingent upon signed receipts or responsibility statements. It arises because of assignment to a specific position and includes:

(a) Providing proper guidance and direction.

(b) Enforcing all security, safety, and accounting requirements.

(c) Maintaining a supervisory climate facilitating and ensuring the proper care and use of Government property.

(3) Direct responsibility. It is the obligation of a person to ensure all government property for which he or she has signed a receipt is properly used and cared for, and proper custody and safekeeping are provided. Direct responsibility results from assignment as an accountable officer, receipt of formal written delegation, or acceptance of the property on a hand receipt from an accountable officer. Commanders and supervisors should determine and assign in writing the individuals who will have direct responsibility for property.

(4) Personal responsibility. It is the obligation of a person to properly use, care for, and safeguard all Government property in his or her physical possession, whether or not the person signed a receipt. It applies to all Government property

issued to, acquired for, or converted to a person's exclusive use.

c. Relationship between accountability and responsibility. Accountability and the four types of responsibility are separate obligations and each carries specific duties. An individual may have both accountability and responsibility, or may have one without the other. For example, an accountable officer who has issued property on a hand receipt has accountability without responsibility. The individual so receiving the property or charged with its care and custody has responsibility without accountability. Financial liability can be assessed against any accountable or responsible person who fails, through negligence or misconduct, to perform his or her required duties if such failure is the proximate cause of a loss to the government.

21-3. Accountable Officers.

a. An accountable officer will be appointed in writing. The appointing authority will be the commander or head of the activity for whom the property records are being maintained.

b. An accountable officer may be any DOD commissioned or warrant officer, a DOD civilian employee, or when no officer or civilian employee are available, a DOD enlisted person, in the rank of sergeant or above, when the appointment is approved by the MACOM commander, the major subordinate command commander, or the head of a HQDA agency.

c. The accountable officer will maintain a formal set of property accounting records showing, on a continuing basis, an item's identification, gains and losses, on-hand balances, conditions and location of all property assigned to the property account. Documentation required by the appropriate regulations will be maintained to support the recorded entries.

21-4. The Report Of Survey System.

a. General. Members and employees of the Army are not absolute insurers of the condition of Army property entrusted to their care. Their liability for loss or damage to Army property is derived from negligent or otherwise wrongful conduct with respect to its use or custody. The principal means for making administrative determinations concerning whether such conduct has proximately resulted in the

loss of or damage to Army property is the "report of survey" system. The report of survey also documents a charge of financial liability assessed against an individual or entity, or provides relief from financial liability.

b. Report of survey procedures.

(1) Initiation. The report of survey will be initiated and processed under the procedures outlined in Chapter 13, AR 735-5. While there are a number of circumstances justifying initiating a report of survey, the most common circumstances are:

(a) Negligence or willful misconduct suspected as the cause, and the individual does not admit liability and refuses to make voluntary reimbursement.

(b) Property loss, damage, or destruction involving a change of accountable officer's inventory and the outgoing accountable officer made no voluntary reimbursement for the full amount of the loss to the government.

(c) When the value of an admitted loss, damage, or destruction exceeds the individual's monthly basic pay.

(d) When the value of the damages or shortages in occupied government quarters (real property and furnishings combined) or government furnishings in non-government quarters exceeds the individual's monthly basic pay; or

(e) Another circumstance described in paragraph 13-2, AR 735-5 exists.

(2) Report of survey initiator. The initiator of a report of survey (DD Form 200) will normally be the hand receipt holder or the accountable officer who maintains the property records for the item in question. The report of survey should be initiated as promptly as possible so the investigation can be conducted while the individuals concerned are still available. Any delay must be explained in writing and appended to the report. The accountable officer will state the facts as known to him/her on the front page of the report (Item 13, DD Form 200) so the appointing authority can determine whether to appoint a surveying officer to determine the existence of pecuniary liability. Where it can be determined from the facts that no person should be held liable, and no other reason exists for appointing

a surveying officer, the appointing authority will make his recommendations and forward the report to the approval authority. Where liability cannot be determined from the facts, the appointing authority will appoint a surveying officer.

(3) Surveying officer. The surveying officer normally is an Army commissioned officer. An individual who is accountable, responsible, or otherwise interested in the property being surveyed may not be appointed as the surveying officer. The surveying officer will be senior to all people who will possibly be subject to financial liability, except when impractical due to military exigencies. The appointing authority may appoint himself or herself as the surveying officer.

(a) Investigation is essential in the report of survey system. Once appointed, the surveying officer's primary duty is the investigation of the report of survey until the approving authority has accepted the investigation as complete.

(b) Statements taken by surveying officers without first giving rights warnings under Article 31, UCMJ, may be considered in determining financial liability in the report of survey system. Nevertheless, because incriminating admissions given to surveying officers without adequate rights warnings are generally inadmissible in trials by courts-martial, surveying officers should advise a soldier of his or her rights under Article 31 any time the surveying officer suspects the soldier of having committed an offense punishable by court-martial. The safest approach for a surveying officer who is in doubt is to provide such warnings.

(c) The surveying officer must determine the actual facts of the loss by a preponderance of the evidence and make concise findings concerning how the loss occurred and whether fault or neglect was involved. Based upon his or her findings, the surveying officer will make recommendations concerning financial liability, relief from property responsibility and accountability, and disposition of any unserviceable property. If the surveying officer recommends financial liability, he or she must include a computation of the charge, including depreciation as calculated in APPENDIX B of AR 735-5, if appropriate. The report of survey must also state the amount of one month's base pay for any individual for whom financial liability is recommended.

(d) If the surveying officer recommends an individual be held financially liable, the surveying officer must notify the individual and give him or her an opportunity to examine the report of investigation after the findings and recommendations have been recorded. The notification must include an advisement of the individual's rights to legal advice, to request reconsideration, to request an extension of the collection period if the recommendations are approved, and if the individual is an enlisted soldier, to request remission of indebtedness. The individual must also be given the opportunity to respond and submit a statement or other evidence to rebut the surveying officer's findings. The time limits for notification and reply are set forth in AR 735-5, paragraph 3-33. The surveying officer must fully consider any evidence submitted by the individual and attach it to the report of investigation. If the surveying officer adheres to his or her original recommendations, he or she will note this on the report; if he or she finds grounds to change the original recommendations, he or she will make amended recommendations on the report of survey.

(4) Approving authority. The surveying officer forwards the report of survey to the approving authority, who personally reviews all reports of survey to ensure each one is accurate and complete. This authority will not be delegated. He or she takes final action "by authority of the Secretary of the Army."

(a) When a surveying officer forwards a report of survey showing there is no positive evidence of negligence, the approving authority may approve the report or reject the report and request additional information. Also, the approving authority may approve a financial charge even if the surveying officer recommended against assessing financial liability. Of course, the approving authority's action must be based upon the available evidence.

(b) When the report of survey shows there is positive evidence of negligence, the approving authority will review such reports and determine whether:

(1) The surveying officer made an adequate, thorough, and unbiased investigation.

(2) The recommendations clearly indicate a decision of responsibility is based on the findings.

(3) The financial charge was correctly calculated.

(4) Procedures for protecting the rights of the individual, contained in AR 735-5, were followed.

(5) The individual has been informed of his or her rights to request reconsideration, to request remission of indebtedness (enlisted soldiers only), and to seek legal advice.

(c) Based on his or her review, the approving authority will either:

(1) Approve the recommendations in the report.

(2) Make a new decision to relieve individuals from responsibility and accountability or to approve a different financial charge.

(5) Staff Judge Advocate. When financial liability is recommended, an attorney from the Office of the Staff Judge Advocate must review the findings and recommendations and give an opinion concerning the adequacy of the evidence and the propriety of the findings and recommendations. This review cannot be completed until the individual recommended for financial liability has had an opportunity to respond, and it must be completed before the approving authority's action on the case. A copy of the legal review will be included as part of the report of survey.

c. Determination of financial liability. The term "financial liability" refers to a personal, joint, or corporate statutory obligation to reimburse the US government for government property lost, damaged, or destroyed because of negligence or misconduct. Financial liability will result when a person's negligence or willful misconduct toward government property is the "proximate cause of the loss, damage, or destruction of that property." In determining whether financial liability should be assessed, the surveying officer and approving authority must look at three separate aspects: negligence or misconduct, proximate cause, and loss. Financial liability cannot be assessed unless all three of these elements exist.

(1) In order for financial liability to be assessed against an individual, the loss, damage, or destruction of government property must have

resulted from simple or gross negligence or willful misconduct. Simple negligence is defined as the failure to act as a reasonably prudent person would have acted under similar circumstances. Gross negligence is an extreme departure from the course of action to be expected of a reasonably prudent person, accompanied by a reckless, deliberate, or wanton disregard for the foreseeable consequences of an act. Not every violation of law or regulation necessarily amounts to negligence. Willful misconduct is any intentionally, unlawful or wrongful act dealing with the property concerned.

(2) The second step in determining whether financial liability should be assessed requires the surveying officer and the approving authority to examine the "proximate cause" of the loss, damage, or destruction. "Proximate cause" is a legal term for fault and is defined as the cause which, in a natural and continuous sequence, unbroken by a new cause, produces the loss or damage, and without which the loss or damage would not have occurred. An individual can be negligent without his or her negligence being the proximate cause of the loss or damage. For example, a soldier's failure to have a subordinate sign a sub-hand receipt for property is not the proximate cause of damage when the subordinate willfully destroys the property. The soldier may be negligent in failing to sub-hand receipt, but the subordinate's action is the cause of the damage, not the act of failing to obtain a receipt.

(3) The third requirement for financial liability is the existence of a loss. Loss is defined as "loss of, damage to, or destruction of property of the United States government under the control of the Army." The loss referred to includes the loss from Government accountability. Thus, before making a recommendation that financial liability be assessed against an individual, the surveying officer should ensure ordinary efforts to locate the property have been made.

(4) Once an individual is found to be financially liable for a loss, the next question is what amount the individual owes to the government. Accountable officers will be held financially liable to the government for the full amount of loss (less depreciation) discovered upon a change of accountable officers. Soldiers will be liable to the government for the full amount of loss (less depreciation) in cases of lost personal arms and equipment. Any person found financially liable for loss of public funds will be charged for the full value

of the loss. Individuals found financially liable for loss, damage, or destruction of government quarters, furnishings, and equipment therein, resulting from gross negligence (or willful misconduct) will be charged the full value of the loss. The financial liability of soldiers is limited to one month's basic pay or the full amount of the loss (less depreciation), whichever is the lesser amount, for all other types of property. The method for computing financial charges against an individual is located in Table 12-3 of AR 735-5.

(5) When two or more individuals are involved and liability is determined to be joint and several, the charges should be computed under Table 12-4 of AR 735-5.

d. *Reference:* AR 735-5, paragraph 13.

Chapter 22 Line Of Duty Investigations

22-1. General. Every soldier who incurs an injury or disease in the line of duty as a member of the Army is entitled to certain benefits, including: pay and allowances, accrual of service, leave, and, if applicable, disability retirement. The governing regulation for line of duty investigations (LD) is AR 600-8-1, dated 18 September 1986. This regulation has expired, however a new regulation covering line of duty investigations has not yet been released.

22-2. Requirement For Line Of Duty Investigation.

a. A line of duty investigation is required whenever a soldier incurs an injury or disease which incapacitates the soldier from the performance of duty.

b. A line of duty investigation must determine two issues:

(1) The duty status of the soldier.

(2) Characterization of the soldier's conduct based on tort principles.

c. There are only three possible line of duty determinations:

(1) In Line of Duty—not due to own

misconduct (LD);

(2) Not in Line of Duty—not due to own misconduct (NLD-NDOM); or

(3) Not in Line of Duty—due to own misconduct (NLD-DOM).

d. A finding of DOM will automatically result in a finding of NLD.

22-3. Effect Of Adverse Determination.

Although a loss of benefits may result from an adverse Line of Duty (LD) determination, these are entirely administrative, and not punitive, in nature. And while a soldier may be subject to punishment under the UCMJ for the same act of misconduct, final action taken in a LD proceeding has no bearing on any issue in a court-martial or other disciplinary proceeding. Conversely, such a judicial or disciplinary proceeding is not determinative of the LD determination.

22-4. Rebuttable Presumptions.

a. Every LD investigation starts with the basic presumption that any injury or disease is presumed to have been incurred in the line of duty and is not due to the soldier's own misconduct. This presumption applies both to the soldier's *status* and the soldier's *conduct*.

b. The basic presumption stated above may be rebutted by substantial evidence. Examples of facts that may rebut the presumption are listed below.

(1) The injury or disease was incurred or contracted while the individual was neither on active duty nor engaged in authorized training in an active or reserve duty status (*status*).

(2) The injury or disease was incurred or contracted during a period of unauthorized absence (*status*).

(3) The injury or disease was proximately caused by the intentional misconduct or willful negligence of the soldier (*conduct*).

c. There are other presumptions in line of duty investigations that may be rebutted by substantial evidence.

(1) There is a presumption the soldier was

in sound physical and mental condition upon entering military service. However, this presumption may be rebutted by substantial evidence.

(2) There is a presumption any disability or death resulting from a pre-existing injury or disease was caused by service aggravation. Only specific findings of natural progress of the pre-existing injury or disease, based upon well established medical principles, as distinguished from medical opinion alone, are enough to overcome the presumption of service aggravation.

(3) The law presumes a sane person will not commit suicide. Accordingly, death (not caused by another) is presumed to be caused by accidental self-destruction. Evidence which establishes merely the possibility of suicide will not overcome the presumption of accidental self-destruction. To overcome this presumption, there must be substantial evidence of a greater weight than supports any other conclusion that the death was caused by intentional misconduct or willful negligence of the soldier.

22-5. Definitions.

a. Standard of Proof. LD findings must be supported by a preponderance of the evidence. This means substantial evidence must support the findings by a greater weight than supports a different conclusion.

b. Intentional Misconduct. Any wrongful or improper conduct which is intended or deliberate.

c. Willful Negligence. Conscious and intentional omission of the proper degree of care under the circumstances.

(1) Reckless disregard is willful.

(2) Simple negligence does not constitute misconduct under the line of duty system.

d. Proximate Cause. The connecting relationship between an act of the service member and a resulting injury or disease. It is an actual cause as opposed to a contributing cause. In general, this requires evidence the soldier could have reasonably expected the injury or disease might be caused by his/her conduct.

22-6. Investigation Procedures.

a. There are three types of procedures used to make a line of duty determination:

(1) Presumptive determination.

(2) Informal investigation.

(3) Formal investigation.

b. A formal investigation is required for a finding of NLD-NDOM or NLD-DOM. AR 600-8-1, 18 September 1986, Chapter 40, should be consulted to determine whether a formal investigation is required.

c. Generally, a LD determination originates with section I of DA Form 2173, *Statement of Medical Exam and Duty Status*, which is prepared by a medical officer at a medical treatment facility. The DA Form 2173 is then forwarded to the unit commander of the injured, diseased, or deceased soldier.

d. The unit commander will complete section II, DA Form 2173, to show the injured soldier's duty status at the time of the incident. In this section, the unit commander will also provide any known factual details regarding the incident. DA Form 2173 is then forwarded to the soldier's SPCMCA.

e. The SPCMCA takes one of the actions below:

(1) In cases of a presumptive determination or an informal investigation, the SPCMCA either approves the findings or directs a formal investigation be conducted.

(2) In cases of a formal investigation, the SPCMCA appoints an investigating officer who will utilize DD Form 261, *Report of Investigation, Line of Duty and Misconduct Status*, to complete the investigation.

22-7. Soldier's Rights.

a. Certain protections are available to the soldier being investigated.

(1) The soldier, or his representative, must be informed in writing of the impending investigation and its purpose.

(2) The soldier is allowed to submit

evidence including sworn or unsworn statements.

(3) Before questioning, the soldier must be advised he does not have to make any statement against interest relating to the origin, cause, or aggravation of the injury or disease. A statement made without such a warning will not be used as evidence for an unfavorable line of duty determination.

(4) In injury or disease cases, the final approving authority advises the soldier being investigated of the results. In death cases, no notification is required.

(5) The soldier has 30 days from receipt of notice of an adverse determination to appeal. Untimely appeals must include "full explanation" of the reason(s) for the delay. Additionally, the Secretary of the Army may, at any time, change a line of duty determination.

22-8. Role Of The Military Attorney. Military attorneys become involved in a line of duty investigation in the following circumstances:

a. Providing advice to the subject soldier regarding his/her rights during the course of the investigation and of the benefits at stake in the event of an adverse determination.

b. Advising unit commanders and investigating officers concerning the utilization of a particular procedure and the conduct of the investigation.

c. Reviewing completed LD for legal sufficiency.

Chapter 23 Gifts And Travel

23-1. Gifts From Outside Sources.

a. Employees of the government (including military personnel) should use caution when offered a gift from a non-federal source. Acceptance of certain types of gifts is prohibited in order to avoid actual or perceived conflicts between the employee's performance of his or her duties and the interests of the non-federal source. In order to determine whether the acceptance of a gift is appropriate, the employee must go through a four-step analysis.

(1) First, is what has been offered a "gift?" The *Joint Ethics Regulation* does not classify certain types of things as gifts. Modest items of food and refreshments, such as coffee and donuts at a meeting with a government contractor; items with little intrinsic value intended solely for presentation, such as plaques, certificates, and cards; and benefits or discounts which are available to all military personnel or to the public at large are some examples of "non-gifts" and may be accepted without going through the remaining three steps in the analysis.

(2) If it is a "gift," who is offering it? Government employees cannot ordinarily accept gifts given by a "prohibited source" or given because of the employee's position.

(a) A prohibited source is someone who does business with, seeks to do business with, or seeks other official action from the government. Anyone who has interests that might be affected by the employee's performance of his or her duties is also a prohibited source. A defense contractor is a good example of a prohibited source. The Boy Scouts or the Red Cross could also be a prohibited source if the organization fits within the definition.

(b) A gift given because of the recipient's official position cannot be accepted even if it is offered by someone other than a prohibited source.

(3) If a gift has been given by a prohibited source or because of the employee's official position, it may, nevertheless, fall within one of the exceptions listed in the *Joint Ethics Regulation*.

(a) Several examples of the exceptions are:

(1) An employee can accept a gift with a market value of \$20 or less per occasion. If the same non-federal source offers multiple gifts within the calendar year, the total value of all gifts from that one source cannot exceed \$50.

(2) Awards for meritorious public service or achievement can be accepted if given under an established program of recognition.

(3) Social invitations from other than prohibited sources, but based on the employee's official position, can be accepted if no fee is charged to anyone attending.

(4) Gifts based on a personal relationship can be accepted. However, the gift must be clearly motivated by family or close personal relationship.

(5) Gifts based on outside business or employment relationships can be accepted. For example, gifts arising from the spouse's business activities are not prohibited.

(6) Free attendance at widely attended gatherings is permissible when the employee's supervisor determines the employee's attendance at the gathering would be in the government's interest.

(b) Even if it falls within one of the exceptions, the employee still may not accept the gift if:

(1) The gift was given in exchange for influence;

(2) The gift was solicited or coerced; or

(3) The frequency of the gift from this and other sources gives the appearance the employee is using public office for private gain.

(4) Finally, if a prohibited gift has been given and none of the exceptions apply, the gift must be disposed of. The employee can pay for it or return it. If the gift is perishable, the employee may give it to charity, destroy it, or share it for consumption.

b. If a competing contractor offers a gift to a procurement official, the analysis is different. In such a situation, the procurement official should consult with an Ethics Counselor.

23-2. Gifts Between Employees.

a. The general rule is employees may not:

(1) Give, or solicit contributions for, gifts to someone in their supervisory chains.

(2) Accept gifts from employees who receive less pay, unless there is no supervisory relationship and there is a personal relationship (*i.e.*, family or close personal friend) which justifies a gift.

b. There are several exceptions to the general

rule:

(1) Occasionally:

(a) On occasions such as holidays, birthdays, or upon return from a vacation, an employee may give a gift to someone in his or her supervisory chain. The gift cannot exceed \$10 in value and cannot be cash.

(b) Refreshments shared in the office are not prohibited.

(c) Personal hospitality at an employee's home and gifts customarily given in connection with the receipt of hospitality, are not prohibited.

(2) On "Special, Infrequent Occasions," a gift which is appropriate for the occasion may be given.

(a) This exceptions does not include birthdays, holidays, or other annual or regularly occurring events. There are two general categories:

(1) Infrequently occurring occasions of personal significance such as marriage, illness, or the birth or adoption of a child (does *not* include a promotion).

(2) Occasions terminating subordinate-official superior relationship, such as retirement, resignation or transfer.

(b) The market value of the gift may not exceed \$300 from a "donating group." The \$300 limit includes all charges, such as tax, shipping, wrapping, *etc.* There can be multiple donating groups, so long as no employee contributes as part of more than one group.

(1) For example, for a battalion commander's retirement ceremony, each company within the battalion could be a donating group. Each company could give the battalion commander a gift valued at \$300 or less.

(2) Donating groups cannot give gifts which are components of a larger gift. Each donating group's gift must be a completely separate gift. For example, officers cannot pay for a \$300 print and have the NCOs pay \$300 for framing the print.

(c) If a gift is given for a special, infrequent occasion, voluntary contributions of a nominal amount (\$10 or less) may be solicited. While more than \$10 may not be solicited, an individual may offer to contribute more.

c. Gifts from an employee's spouse to another employee's spouse will be considered a gift between employees subject to the above rules unless there is an independent basis for the gift to the spouse.

23-3. Use Of First-Class Airline Accommodations On Official Travel. Federal employees who are traveling on official business using commercial air carriers for domestic and international travel shall use coach-class accommodations except as follow:

a. First-class accommodations may only be used in the following circumstances, and must be approved by the Secretary of the Army:

(1) **When no other reasonably available accommodations exist.** If coach-class or premium-class (other than first-class) seats are not available within 24 hours of proposed departure or arrival time, the employee may fly first class. However, accommodations are not "reasonably available" if the employee will arrive at the duty site after the required reporting time, or depart from the duty site earlier than the scheduled duty completion time.

(2) **Travel by a disabled employee whose condition necessitates first-class travel.** If the condition of a disabled employee requires the employee to fly first-class, the employee may fly first-class. The necessity of such accommodations must be substantiated in writing by competent medical authority. An attendant, whose services are required en route, may also fly first-class.

(3) **Exceptional security circumstances.** These include, but are not limited to, travel by agents-in-charge of protective details, couriers accompanying controlled pouches, and employees whose use of less than first-class would endanger their lives or government property.

b. Premium-class accommodations (other than first-class), such as business-class, may be used when:

(1) Regularly scheduled flights along the

required route only provide premium-class seats.

(2) No space is available in coach and travel is urgent and cannot be postponed.

(3) The employee has a disability which requires premium-class travel and the need for such accommodations is substantiated in writing by competent medical authority (an attendant may accompany the employee in premium-class, if necessary).

(4) Security purposes or exceptional circumstances exist and require the use of premium-class.

(5) Travel on a foreign flag carrier has been approved and the sanitation or health standards in coach are inadequate.

(6) Overall savings to the government would result, such as avoidance of additional subsistence costs, overtime, or lost productive time incurred while waiting for available coach seats (this does not mean premium-class can be used just because the ticket itself would be less expensive than a ticket for coach).

(7) Travel costs are paid by a non-federal source (*payments from a non-federal source may not be used for first-class travel*, only coach or premium-class).

(8) Using frequent flyer benefits earned on official travel to upgrade accommodations to premium-class (cannot use frequent flyer benefits to upgrade to first-class).

(9) When the employee is a three or four star general officer who is traveling overseas on official business. This authorization extends to the general officer only and not to his accompanying party.

23-4. Frequent Flyer Benefits

a. Since the government pays for official travel, any benefit obtained during travel, such as frequent flyer miles, ordinarily belongs to the government. Frequent flyer miles earned on official travel cannot be used for personal use and should be kept in a frequent flyer account separate from the employee's frequent flyer miles earned through personal travel.

b. Employees may use frequent flyer miles earned on official travel to upgrade accommodations to premium-class (less than first-class) on future travel, to upgrade hotel accommodations, or to upgrade a car rental. If there is no premium-class on a flight, frequent flyer miles cannot be used for seat upgrades at all.

c. The preferred use of bonus miles earned on official travel continues to be the reduction of future travel costs, *i.e.*, obtaining free tickets for future official travel.

d. An employee who is traveling on TDY may use his or her own *personal* travel benefits or money to upgrade to first-class provided he or she is not traveling in uniform.

23-5. Incidental Travel Benefits.

a. Employees may accept on-the-spot upgrades to first-class if the upgrade is generally available to the public, all federal employees, or all military members. They may not accept such upgrades if offered because of a traveler's rank or official position. Military members should not accept on-the-spot upgrades to first-class while traveling in uniform because of the potential for adverse public perceptions of extravagance.

b. An employee may voluntarily give up his or her seat on a flight so long as it does not interfere with mission accomplishment. Any incentive given by the airline, such as free round-trip tickets or a cash payment, can be kept by the employee for personal use.

c. If an employee is involuntarily "bumped" from a flight, the incentive from the airline (*e.g.*, free ticket or cash) belongs to the Government.

Chapter 24 Private Organizations

24-1. Introduction. Private Organizations (POs) are non-federal entities. The Joint Ethics, DA, and Fort Hood Regulations control the support of Fort Hood POs by federal employees.

24-2. Definition.

a. A PO is a self-sustaining, non-federal entity constituted or established and operated on a

DA installation by individuals acting outside any official capacity. AR 210-1, GLOSSARY.

b. POs are not part of the military organization. No official relationship exists between PO activities and the official duties and responsibilities of DOD personnel who are PO members or participants.

24-3. Policy Overview.

a. POs are not *Non-Appropriated Fund Instrumentalities (NAFIs)*, so they are not entitled to the special immunities and privileges given NAFIs.

b. POs are not entitled to, and will not receive, DA endorsement by virtue of their contributions to the military installation, their support of the military community, or for any other purpose.

c. There is no official relationship between PO activities and official duties and responsibilities of DOD personnel who are PO members or participants.

d. POs are not part of the military organization so they receive only limited Government supervision.

24-4. Restrictions. POs will not:

a. Use or include in their name, logo, or letterhead any reference to DOD or any military department or service.

b. Duplicate or compete with a NAFI or appropriated fund governmental function on a DA installation.

c. Be created, operated, or administered by DOD personnel acting in an official capacity or on behalf of an official purpose to evade restrictions on expenditures of appropriated funds or NAFs.

d. Engage in the sale of alcoholic beverages at any time.

24-5. Types Of Private Organizations (POs).

a. *Formal POs.* The Army recognizes three types of private organizations.

(1) **Type 1: Federally Sanctioned POs.** These are private organizations providing a

recognized service to DOD and its employees. They are sanctioned by specific DOD authority. Examples of type 1 POs are Credit Unions, the American National Red Cross, USOs, and Army Emergency Relief.

(2) **Type 2: Affiliated POs.** These are private organizations having a national or state headquarters with local chapters, affiliations, or lodges. They conduct activities of common interest to a voluntary membership. AUSA, the Noncommissioned Officer's Association, and the Boy Scouts are examples of type 2 POs.

(3) **Type 3: Independent POs.** Pos established, organized, operated, and controlled by local common interest groups. They do not have a formal association with an outside or parent organization. Family Support Groups, Wives' Clubs, and Youth Groups are examples of type 3 POs.

b. Informal funds. A PO operating on a DA installation without being authorized as a type 3 PO. These funds may not exceed a net worth of \$1,000. Examples include office coffee funds, cup and flower funds, and family support groups.

24-6. Requirements. POs operating on a DA installation must comply with the following:

a. POs operate with the consent of the installation commander which may be revoked at any time.

b. The commander's consent is evidenced by an operating permit. POs must revalidate their operating permit every 2 years.

c. POs must file their Constitution and Bylaws with the installation Directorate of Community Activities.

24-7. Fundraising And Membership Drives.

a. On-post fundraising must benefit MWR activities, charities, or other community or family support activities. Installation facilities may be used for events benefiting or enhancing installation morale. POs may use soldiers only to prepare facilities for the event. Examples of appropriate events include fairs, picnics, and bazaars.

b. DOD does not permit official endorsement of PO fundraising or membership drives, except for

the Combined Federal Campaign, Army Emergency Relief, and Office of Personnel Management-approved emergency and disaster appeals.

c. The command may officially endorse fundraising done by organizations of soldiers and family members if it is done among the Army community and for the benefit of welfare funds, such as family support groups. Family support groups may conduct fundraising activities off-post, but commanders may not endorse or participate in such activities in their official capacities.

d. The following are examples of proper command activities with private organizations:

(1) A commander or First Sergeant may announce AUSA events and refer soldiers to the AUSA representative for tickets.

(2) POs may post flyers or announcements for membership drives in unit areas where the unit posts unofficial announcements. They may also send flyers through e-mail and publish advertisements in the Sentinel.

e. The following are examples of improper command activities with private organizations:

(1) The commander may not send an official letter to subordinates encouraging them to join **AUSA**.

(2) A commander may not allow an insurance company representative to brief soldiers at a mandatory class on financial planning.

24-8. Use Of Government Property And Personnel.

a. Commanders may authorize Army personnel to act as speakers and panel members for POs. They may use DOD equipment in support of PO activities. The activities, however, must not be fundraising or membership drives. The use of the facilities must not interfere with readiness and mission accomplishment.

b. The support must serve a legitimate Army interest such as community relations. Army association with the event must be appropriate and of interest and benefit to the local civilian or military community. The command must be willing and able to provide similar support to similar events sponsored

by other POs.

c. The support must not be prohibited by other statutes or regulations. It is also impermissible to request an admission fee beyond reasonable cost.

d. It is permissible for Army personnel to make a speech at an event, but the speaker must not endorse the PO sponsoring the event.

e. The following is a list of events that may be appropriate for official support:

(1) Local Independence Day celebrations, health fairs, and blood drives.

(2) A symposium sponsored by an association like AUSA.

(3) An Army-sponsored conference with AUSA providing administrative support. No Army endorsement of AUSA or other organization is allowed. It must be clear the Army is sponsoring the event.

24-9. Official Liaisons.

a. Army personnel may serve as official liaisons to POs as part of their official duties. They may represent Army interests to the PO in an advisory capacity. The participation of the Army personnel must serve a significant Army interest. The PO liaison may represent the Army in discussions of mutual interest if it is made clear opinions expressed by the PO liaison do not bind the Army.

b. Army personnel, acting within their official capacity, may only participate in the management or control of POs with authorization from the General Counsel of the Army.

24-10. Private Participation In PO Activities.

a. Army personnel may be active in POs in their personal capacities acting outside the scope of their official duties. In fundraising with POs, Army personnel may use their rank, but not their duty title. It is permissible for Army personnel to make reasonable use of government communications systems (fax, *telephone*, E-mail) during off duty hours. The cost to the government must be minimal. Long distance telephone calls are not authorized.

b. Army personnel may not personally solicit or participate in any solicitation targeting subordinate or prohibited sources, such as Army contractors. They may not use government time, manpower, and equipment in support of personal participation in PO business.

c. Army personnel may not take official action affecting the financial interests of POs in which they are active. They must pass these actions to their superiors, or other independent authorities, without recommendation. An Army employee may not accept an office, directorship, or similar position in a PO if it is offered because of his official duty position.

Chapter 25 Environmental Law

25-1. Introduction. Concerns for our environment have mounted steadily since the 1960s. Federal and state legislatures have implemented laws aimed at protecting our environment. The U.S. Army followed suit with its own environmental protection regulations. Since these laws are often complex and difficult to find, most soldiers are unfamiliar with their requirements. Consequently this guide is intended to highlight the requirements of these laws and regulations and to assist commanders in understanding their obligation towards our environment. Failure to adhere to these environmental statutes and regulations may not only cause environmental damage, but may also subject the soldier and command to both civil and criminal liability. From an institutional standpoint, since the Army is frequently subject to rigid public scrutiny, environmental damage may also damage the Army's image in the eyes of the public. Additionally, individual and criminal penalties can be severe. In fact, a DOD employee at Fort Meade was convicted of violating the CLEAN WATER ACT and sentenced to eight months in a federal prison.

25-2. Prevention Of Pollution From *Petroleum Oils And Lubricants (POL)* And Other Hazardous Material.

a. General. Many substances used by the Army pose a threat to the environment. Most of these potentially hazardous substances (such as POL, paint, and solvents) are in such common use most soldiers do not even consider them to be potentially harmful. However, it is the responsibility of every

commander and each individual soldier to ensure these substances are properly handled and the environment is not damaged through spills or wrongful disposal. As a general rule, any substance, except water or other natural material, must be collected and stored for turn-in. They may not be dumped down drains or sinks, or placed in the trash.

b. Spill Prevention, Storage, Spill Containment and Cleanup. POL should be stored and transported in serviceable containers. If there is a spill, all feasible measures must be taken to contain it and to keep it from entering storm drains or bodies of water. Possible containment measures include use of sandbags or other field expedient dikes. **All spills must be reported to the Fire Department.** They will notify the Directorate of Public Works (DPW)—Environmental Division. DPW Environmental Division personnel will supervise the cleanup. Units may ask the Fire Department or DPW *Environmental* for assistance in cleaning up larger spills.

c. Disposal of Used POL and of Other Hazardous Substances. Since even common substances, like paint, solvents, or used motor oil, can damage the environment, it is especially important they be disposed of properly. Soldiers must ensure used POL is placed in appropriately marked containers at unit collection points. From unit collection points, it will be turned into DPW *Environmental* for final disposal.

(1) DPW-*Environmental* has designated collection points and storage facilities within unit maintenance areas. Used POL must be protected from contamination from other sources and must be labeled in accordance with existing fire and safety regulations. Storage areas must be either paved or covered with loose gravel and must be at least 50 feet from any other building. Approval for construction of new storage areas must be coordinated with DPW *Environmental*. When turning in used POL, it is important to understand some used POL may be mixed with other used POL and some used POL must be kept separate and apart from other POL. In this regard, the following guidance is provided:

(a) *Used POL that May be Mixed with Other Used POL.* Category II type-used POL (this includes nonvolatile such as engine oils, hydraulic and purging fluids, lubricating fluids, and synthetic oils) may be mixed with other Class II used POL for storage before turn in for final disposition.

(b) *Used POL not to be Mixed With Other Used POL.* Category I type used POL (this includes volatiles such as gasoline, diesel fuel, MOGAS, JP4, and white gas) and Category III type POL (miscellaneous, including: Category IIIA paint, paint thinners; Category IIIB—Methyl Ethyl Ketone; and Category IIIC—bulk issue solvents) may not be mixed with any other substance for storage before final disposition.

(2) As mentioned above, soldiers who have used POL must turn it in to their unit's collection point. Make sure your soldiers know where it is located and if they have doubts, to ask the chain of command. If this simple rule is followed our environment will be protected and the soldiers can be certain they have complied with all environmental laws. Unfortunately, in the past used POL has been improperly disposed of causing Fort Hood to be fined for large sums of money. Prohibited disposal practices also pose the threat of harm to the environment and subject the soldier to both civil and criminal liability. Specifically, the following methods of disposing used POL are prohibited:

(a) Mixing any Category I or Category III type used POL with any other substance for storage before turn in (discussed more fully in paragraph c(1)(b), above).

(b) Dumping into any floor drain, sink, sanitary sewer, storm drain, ditch, stream, river or any other waterway.

(c) Placing into any refuse container, garbage can or refuse receptacle.

(d) Spraying into the atmosphere as an aerosol or fine mist.

(e) Spreading/pouring on the ground, paved area, wooded areas, lawns or other areas of the post except as specifically authorized and directed by personnel of the DPW-*Environmental*.

(3) Additionally, solvents will not be introduced into the storm or sanitary sewer system for any reason. Solvents, soaps or detergents will not be used on wash racks or in conjunction with high pressure hot water washers or steam cleaners except at locations previously and expressly authorized for their use. Lastly, use of solvents will be limited to only those vehicle parts absolutely requiring their

use.

d. Reporting Spills. Because there are so many substances that can affect our environment, the number of applicable laws and regulations, and the number of agencies involved in environmental regulation, knowing what and to whom spills must be reported would be impossible for the average soldier.

As but one example, the CLEAN WATER ACT provides that the Environmental Protection Agency must be notified whenever 1 pound or more of DDT is spilled into any U.S. water, whenever more than 5000 pounds of hydrochloric acid is spilled, or whenever any observable quantity of POL is spilled. To avoid problems with the regulators, ***all fuel, used POL and hazardous material spills must be reported to the Fire Department.*** Normally, reporting the spill to the Fire Department will be the responsibility of the chain of command. However, if the soldier's superiors are not immediately available, the soldier who knows about the spill must make the report. Your soldiers should be instructed accordingly.

25-3. Environmental Law In The Field. In addition to possible pollution from POL and other substances, field operations provide other significant threats to our environment. Pollution is possible from improperly constructed field latrines, devastation could occur from fires, damage can occur from construction of obstacles and from the use of natural materials for camouflage. Improperly run field exercises can also pose a threat to the endangered plants and species living in the areas in which we train and to the various historical sites found on our training areas. However, by being attuned to environmental concerns and the rules governing our training in the field, we can conduct training in the field that both protects our environment and preserves the training areas for future operations.

a. Field Latrines. Obviously, when units train in the field, human waste poses a threat to our environment. If not properly contained, human waste can directly contaminate our water supply and can indirectly contaminate our water supply by leaching into underground water sources. It also poses a threat of disease both directly and by providing a breeding ground for insects and other pests. The construction of field latrines can also damage our environment and in some cases (discussed below) approval is required before they are constructed.

- (1) Field latrines are authorized whenever

a permanent or temporary facility is not present. Upon bivouac, a pit or straddle trench latrine should be constructed. Large excavations must be coordinated with DPW-Environmental. Cat holes can only be used when the unit is on the move. All latrines must be filled in and marked before leaving the area.

- (2) The guidance found in FM 21-10 (Field Hygiene And Sanitation) must be followed when creating or closing down a field latrine.

b. Vehicle Use in the Field. Operating wheeled or tracked vehicles can damage our environment. Damage can arise from operating in unauthorized locations or in an unauthorized manner or from spillage of POL. Soldiers must consider these possible threats to our environment when operating vehicles in the field.

- (1) **Field Maintenance.** Field maintenance of vehicles is to be limited. When required, care must be exercised to ensure no POL products are either dumped or spilled on the ground. All used POL must be placed in drums and returned to garrison for recycling.

- (2) **Field Cleaning.** Vehicles will not be washed in or near any lake or stream.

- (3) **POL and Other Spills.** All spillage must be contained and every effort must be taken to prevent the spill from reaching lakes, streams or storm sewers. Spills over 25 gallons contained to land areas must be reported to the DPW-Environmental. POL spills of any amount threatening to enter lakes, streams or storm sewers, any hazardous substance spill, spills covering a 100 square-foot area, any spill causing any visible sheen on water, and any spill judged to be harmful or potentially threatens the public health and welfare will also be reported to DPW-Environmental

- (4) **Operations Near Lakes and Streams.** Vehicular traffic is prohibited within 50 meters of lakes or streams, except along established roads or at authorized crossing points. When a soldier anticipates he will be required to cross a body of water, he should seek clarification from his chain of command on the location of authorized crossing points.

- (5) **Off Road Operations of Wheeled and Tracked Vehicles.** Cross-country and off-road

travel is to be avoided by both wheeled and tracked vehicles unless required for tactical and operational reasons. Abrupt, pivot turns, should always be avoided. Off-road operations must be minimized to avoid damage to grasses, shrubs, other vegetation and tree plantings. Once the ground cover is disrupted, the underlying soil is exposed to wind and rain and will begin to erode.

(6) Tracked Vehicle Operations.

Tracked vehicles may operate freely on all dirt roads and tank trails. However, to minimize damage to roadways, abrupt pivot turns should be avoided. Tracked vehicles are prohibited from routinely operating on hard surfaced roads and the maintained shoulders adjacent to them. When it is necessary to cross a hard surfaced road, tank crossings will be used.

(7) Refueling. Given the inherent hazard presented by vehicle fuel, great care must be exercised when conducting refueling operations in the field. Semi-permanent refueling points will be located no closer than 500 feet to any lake or stream. To contain potential fuel spills, ground storage POL bladders must be protected with an earthen berm constructed under TM 5-848-2 (*Handling Of Aircraft And Automotive Fuels*). Paragraph b(3) above discusses the requirement for reporting spills.

c. Fire Prevention. Fire presents a significant threat to our environment. Common sense and compliance with applicable regulations should significantly reduce the risk of fire. If you smoke, use care to ensure your cigarette is out.

(1) Vehicle Exhaust Systems. Soldiers must be careful in selecting the spot they choose to stop their vehicles. Since vehicle exhaust systems are hot, they can, during dry periods, cause adjacent vegetation, ground cover, and camouflage to ignite.

(2) Open Fires. Troops may only build fires after obtaining the permission of their unit commander. Commanders should consult with Range Control before allowing any fires.

(3) Reporting Fires. Report all forest and range fires immediately to Range Control. Additionally, on site personnel must take all feasible actions to extinguish or contain the fire.

d. Mess Operations. In addition to fire prevention (discussed above) maintaining a clean

field kitchen presents additional environmental risks. Sump holes may be dug to dispose of kitchen water. However, draining soapy or chlorinated water into lake or rivers is prohibited. See AR 40-5 (*Preventive Medicine*) and FM 21-10 (*Field Hygiene And Sanitation*). Additionally, a thorough inspection and police of the area must be accomplished before departure.

e. Concealment and Fighting Positions.

Use of camouflage and creation of fighting positions are often important and necessary parts of training exercises. Again, however, you must be aware of the possible adverse effects these activities can have on our environment. Whenever possible, you should have your soldiers use natural, unaltered cover and concealment and strive to avoid needless damage to natural resources.

f. Digging. Digging is not permitted upon the bank or bottom of a stream, river, or lake without the approval of DPW-Environmental. Coordinate with DPW-Environmental, using a FHT Form 420-X10, training or other actions associated with earth moving or excavations demanding use of machinery. The most common actions requiring coordination are berms, bunkers, crossing sites, defilade positions, fighting positions, fire breaks, general construction, land clearing, new trails or roads, ponds, tank traps, and trenches. Hand digging of foxholes and other small excavations may be accomplished without coordination, except in designated endangered species habitat, according to paragraph 25-4 below.

g. Cleaning Up. A unit in the field generates waste. This waste can damage our environment. To protect our environment, the simple rule is, if you brought it to the field, bring it back. All areas must be policed before the unit leaves the area. All refuse and garbage must be returned to garrison or to a DPW-Environmental approved dump. None will be buried or burned in the field. Additionally, all *communications*, concertina and barbed wire must be collected and removed when training is completed. If refuse or concertina wire was left from previous exercises, pick it up too. Used POL must be disposed as discussed above.

25-4. Endangered And Threatened Species.

There are several animals and plants considered to be endangered on Fort Hood. Specifically, there are five animals listed as endangered species on Fort Hood (black-capped vireo, golden-cheeked warbler, whooping crane, bald eagle, and peregrine falcons).

The black-capped vireo and the golden-cheeked warbler arrive at different areas of Fort Hood in mid-March for their breeding season. The bald eagle winters in Texas. The whooping crane and peregrine falcons occur as migrants throughout Central Texas. Remember, it is a federal offense to kill or harm any of these species. Many areas where endangered animals live are marked off-limits. Naturally, unless you have been given permission to do so, it is unlawful to enter an off-limits area for any purpose. For those areas not marked off-limits, following this guide's rules on digging, use of trees and foliage, latrines, spill prevention, vehicle operation and clean up will ensure you don't harm an endangered plant or animal.

25-5. Protection Of Historical Sites And Objects.

There are a number of protected historic sites and objects at Fort Hood. Like areas containing endangered species and plants, many of these sites are marked off-limits, or they are fenced and entry is restricted. Others, though unmarked, are known and exercises are planned around them. It is illegal to disturb these historical sites in any way. If you should uncover what you believe to be an unknown historical site or grave, let your chain of command know. You or your chain of command must then inform DPW-Environmental. Tell them the coordinates and what can be seen. Military operations at the site must stop and it is forbidden to dig, disturb, or remove anything from the site.

25-6. References.

- a. AR 200-1.
- b. AR 200-2.
- c. AR 200-3.
- d. AR 400-74.
- e. *FORT HOOD REGULATION* 420-2.

Part IV: Legal Services For The Soldier

Chapter 26

Trial Defense Service (TDS).

26-1. The TDS Mission. TDS attorneys provide your soldiers with advice and representation (as appropriate) for Articles 15, administrative separations, and courts-martial. They also provide

counseling to soldiers facing possible UCMJ or adverse administrative actions. TDS provides a valuable service to soldiers and to you as commanders. TDS attorneys are an integral part of our military criminal justice system. TDS attorneys are here to help your soldiers. They have an important mission to accomplish and our military justice system could not function without them. If you have questions about TDS, please contact the Senior Defense Counsel.

26-2. Fort Hood Locations. Fort Hood has one TDS Field Office, with three locations on post; one office each in the Division and Corps headquarters buildings. TDS is a separate organization from the Staff Judge Advocate Offices at III Corps and the two Divisions. While the TDS attorneys are all Judge Advocates, TDS is separate to maintain independence in representing clients. The TDS attorneys in each office are under the control of the Senior Defense Counsel, whose office is in the III Corps headquarters building. Your servicing TDS attorneys are:

a. **Fort Hood Field Office, III Corps and Non-divisional units:** Building 1001, Room W207, telephone 287-4360 for appointments.

b. **Fort Hood Field Office, 1CD Branch Office:** Building 28000, Room 1158, telephone 287-9415 for appointments.

c. **Fort Hood Field Office, 4ID Branch Office:** Building 410, Room 174, telephone 287-1849 for appointments.

26-3. Office Hours. TDS offices are open from 0900—1700 Monday, Wednesday and Friday and from 0730—1700 Tuesday. The offices are open from 1300—1500 on Thursdays to accommodate Sergeant's Time and Family Time. Article 15 and administrative separation (chapter) clients are seen by appointment; suspect counseling is available on a walk-in basis.

26-4. Appointments. When your unit has a soldier facing either an Article 15 or a chapter, you should call your servicing TDS office for an appointment. Appointment times are:

a. **Articles 15:**

1CD and 4ID: 0900 Tuesday and Friday

III Corps: 0800 Tuesday and 0900
Friday

b. Administrative Boards and Separations:

1CD and 4ID: 1030 Tuesday and
Friday

III Corps: 1000 Tuesday and
Friday

The number of available appointments is limited. If you make an appointment and later a soldier decides he or she does not want to see counsel, please call to cancel the appointment. No-shows take up appointment times other soldiers could fill. Whether the soldier is escorted to the appointment is a command decision. However, because TDS briefs the soldiers as a group before any individual counseling, any soldier not present at the time the briefing begins will be rescheduled to another day. To facilitate check-in and a review of their paperwork, soldiers should arrive 30 minutes before their scheduled appointment times. As an additional service, Article 15 and separation counseling appointments are available one Saturday (generally the first Saturday) of every month. To take advantage of this opportunity, call your servicing TDS office for an appointment.

**Chapter 27:
Legal Assistance**

27-1. The Army Legal Assistance Program.

- a. Reference: AR 27-3.
- b. There are three Legal Assistance Offices (LAO) on Fort Hood: the III Corps LAO, the 1CD LAO, and the 4ID(M) LAO. These offices provide legal assistance to individual active-duty soldiers, their dependents, and retirees.
- c. Although all three Fort Hood LAOs can provide services to all eligible clients, active-duty soldiers should seek legal assistance services from their respective Division or Corps LAO.
- d. Legal assistance services are provided to eligible clients on a variety of civil legal matters including, but not limited to: landlord/tenant issues, contracts, debt collection, bankruptcy, divorce, separation, paternity, adoption, child custody, child

support, name changes, and civilian lawsuits. The LAOs also prepare wills, powers of attorney, bills of sale, and other legal documents for soldiers and eligible clients. Notary Public services are available as well.

- e. Legal Assistance Attorneys assist soldiers with military administrative matters, to include: report of survey rebuttals and appeals, OER/NCOER appeals, (QMP) appeals, bar to re-enlistment appeals, memoranda of reprimand appeals, Article 138 complaints, voluntary separation applications, and other matters. Soldiers facing UCMJ actions or involuntary separations are assisted by attorneys assigned to the TDS.

- f. Commanders should remember while Trial Counsel and Administrative Law Attorneys advise the command, Legal Assistance Attorneys represent individual soldiers.

27-2. Divorce Proceedings In Texas.

- a. The issues of separation and divorce are among the most frequent legal assistance issues encountered by soldiers and their dependents assigned to Fort Hood. Separation and divorce are not only difficult for the parties involved, but also their commanders and first sergeants. This section provides some general guidance on divorce law in Texas.

- b. Legal Assistance Attorneys can provide legal advice to clients regarding divorce. In most cases, soldiers or their spouses must retain civilian legal counsel in order to obtain a divorce. An exception to this general rule is the Pro Se Divorce Program. This program enables Legal Assistance Attorneys to draft divorce papers in uncontested cases where there are no minor children of the marriage and the soldier is an E4 or below.

- c. In order to file for divorce in Texas, one party must have been physically present in Texas for six months and a resident of the county in which the petition is filed for ninety days preceding filing. Soldiers need not be legal residents of Texas to meet the jurisdictional requirement. They merely need to be stationed here for at least six months.

- d. If there are minor children of the marriage, the divorce suit must decide the issue of child custody. This determination is made by the court after considering the best interests of the child or

children. Normally, the parent who does not receive physical custody of the child or children will be granted visitation rights and ordered to pay child support.

e. Child support is decided according to guidelines established by the state legislature. The guidelines are not hard and fast since the court may consider different factors in determining the amount of support. These factors include the expenses of other children not of the marriage, the ages and needs of the children, and the financial status of the parties.

f. In a routine uncontested divorce action, it will take a minimum of sixty days from the date the petition is filed to obtain a divorce decree. Once the decree is entered, it is effective immediately. Divorced parties may not re-marry in Texas within thirty days after the decree is entered (unless re-marriage is to the former spouse).

g. Commanders should not attempt to advise soldiers or others regarding the legal ramifications or process for obtaining a divorce. The most prudent course of action is to recommend soldiers seek legal advice and guidance from the attorneys at the LAO.

27-3. Soldiers' Support Obligations.

a. Commanders and first sergeants are frequently confronted with non-support complaints from families separated from their soldier or sponsor.

b. An information paper concerning AR 608-99 (*Family Support, Child Custody, and Paternity*) issues is attached at Appendix D. This information paper should answer the most frequently asked questions.

c. Legal Assistance attorneys advise soldiers and spouses on the soldier's responsibilities under the Army regulation. Legal Assistance Attorneys may write letters or otherwise contact commanders in order to ensure support obligations are appropriately enforced.

d. Commanders seeking advice on their responsibilities under the regulation should contact their Trial Counsel or an Administrative Law Attorney.

27-4. Legal Issues For Soldiers Facing Deployment. LAOs play a vital role in ensuring soldiers' legal affairs are in order before any

deployment.

a. ***LAOs support unit Soldier Readiness Programs (SRPs).*** Soldiers needing wills or powers of attorney should be strongly encouraged to obtain these important legal documents at their unit's SRP.

b. ***Wills.*** A will is a legal document by which a person declares a desire regarding the disposition of his or her estate upon death. Although a soldier cannot be ordered to obtain a will, it is generally advisable for every person to have one. It is vital for soldiers who have children to also have a will since the will can appoint guardians and/or trustees for children in addition to disposing of one's property.

c. ***Powers of Attorney.*** This legal document authorizes a person to take care of a soldier's personal, legal, and financial affairs while the soldier is deployed. There are various types of powers of attorney. For example, a soldier may obtain a special power of attorney to have someone file his or her taxes, take care of minor children, or manage personal financial affairs (to name a few). Many soldiers grant general powers of attorney in order to allow the authorized person to have broad and virtually unlimited authority over almost all personal and financial affairs of the soldier. A general power of attorney is a very dangerous legal document. Therefore, commanders must help to ensure soldiers exercise extreme caution in granting such a power and only give the power to a person whom can be completely trusted with the soldier's personal, legal, and financial affairs.

d. ***SOLDIERS' AND SAILORS' CIVIL RELIEF ACT (SSCRA).*** Under the SSCRA, soldiers may be able to delay or postpone certain civil lawsuits before deployment. If a soldier's deployment or military duties materially affects the soldier's ability to prosecute or defend a lawsuit, the soldier may request a continuance under the SSCRA. The SSCRA may also provide relief on certain pre-service debts when military service materially affects a soldier's ability to comply with pre-service financial obligations. Assistance with invoking SSCRA protections may be obtained at any LAO.

27-5. Preventive Law.

a. LAOs can assist commanders in educating soldiers regarding their personal affairs. Soldiers, particularly junior enlisted, are often unwary targets

of unscrupulous businesses and con artists. While Legal Assistance Attorneys can certainly assist individual soldiers in dealing with specific cases, many of these issues confronting our soldiers could likely be avoided with an aggressive and effective preventive law program.

b. Legal Assistance Attorneys are available to teach classes on a variety of consumer and commercial law issues. These classes can be presented to soldiers, commanders, family support groups, and other authorized audiences. Commanders are encouraged to utilize this valuable resource and can contact the respective chiefs of the Fort Hood LAOs for assistance.

Chapter 28 The Military Claims System

28-1. Personnel Claims Act. The PERSONNEL CLAIMS ACT is a gratuitous payment statute. However, it is not intended as a substitute for insurance coverage. It was designed to lessen the hardships of military life by providing prompt and fair reimbursement for certain types of property losses, especially those caused by frequent moves and transient assignments to areas with limited police and fire protection.

a. Household Goods Claims:

(1) Claimants have seventy days from the date of delivery to inspect their goods for missing or damaged items. Any items found damaged or missing must be reported to the claims office on DD Form 1840 or 1840R, the pink form. Presenting these forms to the SJA office satisfies a requirement of providing notice to the carrier there is a potential claim. Failure to provide the 1840 or 1840R within seventy days may result in a reduction in the total amount received. ***Presenting the 1840 and/or 1840R does not constitute a filed claim.***

(2) ***Claims must be received by the claims office within two years from the date the household goods were delivered to the claimant.*** This period is based on statute and cannot be waived or extended. The following documents are necessary to expediently process a claim:

(a) DD Form 1842—*Claim for Loss or Damage to Personal Property Incident to Service.* Blocks 1 through 18 must be completed.

(b) Copy of any powers of attorney. Because the soldier possesses the right to file a claim, if a spouse is going to file the claim, the spouse needs a power of attorney from the soldier.

(c) DD Form 1844—*Schedule of Property and Claims Analysis Chart.* This form should be filled out carefully and completely. Any damage should be accurately described on this form. The purchase date of the item must also be filled out or the claims office is required to take the maximum depreciation.

(d) DD Form 1840/1840R—*Joint Statement of Loss or Damage at Delivery/Notice of Loss or Damage.* These are the pink forms given to you by the delivery company. These forms are also available from the claims office.

(e) Government bill of lading, if available.

(f) Copy of the inventory at pick-up or at delivery.

(g) Paperwork for damaged electrical items. This consists of a personal statement by the claimant stating the item was working before shipment and the basis for the claimant's knowledge, as well as an electronic repair report filled out by a qualified repairman which includes the technician's personal opinion concerning whether the damage is due to shipment or storage.

(h) Estimates of repair and/or substantiation of replacement cost(s). An estimate is required if the cost of repair or the cost of replacement is \$100 or more. Estimates on all economically repairable items must be from a reputable firm which will actually do the repairs. Fees paid for estimates will normally be reimbursed. An estimate stating an item is not economically repairable is repairable is required before a replacement cost over \$100 can be paid.

(i) Any additional supporting evidence which may be necessary to substantiate a claim such as photographs or videos.

(j) A copy of the soldier's orders with any amendments which authorizes shipment and/or storage of household goods.

(k) A copy of the insurance policy if

private insurance was used.

(1) Any correspondence with the carrier and/or contractor.

(3) Filing a claim for damage to a vehicle shipped under orders requires similar documentation as noted above. DD Form 788 (Private Vehicle Shipping Document For Automobile) must be included and all damage to the vehicle caused during shipment **MUST** be reported on this form. Also needed to be included in the claim is an estimate of repair and a copy of the soldier's orders which authorize the shipment or storage of the vehicle.

b. Extraordinary Hazards:

(1) Claims for loss or damage to quarters, clothes and most vehicle losses are compensable only if they are caused by extraordinary hazards. An extraordinary hazard includes fire, flood, hurricane or other unusual occurrence.

(2) An unusual occurrence is defined as a hazard outside the normal risks of day-to-day living. Occurrences which are considered unusual and thus compensable include:

(a) Damage resulting from lightning strikes.

(b) Spoiled food if the power outage which caused the spoilage was for a significant duration.

(c) Damage caused by the sudden collapse of walls and/or fixtures.

(d) Ice and snow damage if snow and ice are not a usual occurrence in that area.

(e) Damage caused by a severe hailstorm.

(f) Damage caused by paint over sprays.

(3) Other occurrences which result in damage not considered unusual and are thus not compensable include:

(a) Damage caused by power surges.

(b) Damage through gradual

deterioration.

(c) Termite and other insect or rodent infestation if common to that area.

(d) Damage caused by airborne emissions.

(e) Damage caused by baseballs, golf balls or rocks thrown up by a lawnmower.

(f) Damage caused by potholes and other road hazards.

(g) Hit and run collisions.

(h) Tears and rips in clothing; and clothing cut away to administer first aid.

(4) In cases concerning the loss or damage of clothing, Commanders should be aware of the gratuitous issue of clothing. The gratuitous issue of clothing is governed by AR 700-84, *paragraph 5-4*. AR 700-84 allows for the replacement of military clothing which was damaged or destroyed because it was either cut off to administer first aid, destroyed by medical personnel to prevent the spread of disease, damaged in a government operated laundry, or damaged in a field bath or laundry during an exercise. Commanders should follow the procedures listed in AR 700-84 (Unit Supply Update), *paragraph 5-4* when helping a soldier replace military clothing damaged in the above circumstances.

c. POV Theft, Vandalism and Damage Claims:

(1) AR 27-20 (*Claims*) was amended 1 September 1995. Effective from this date, the owner of the vehicle must prove their vehicles were parked at government assigned quarters (including barracks) before the Army can pay for a theft or vandalism claim. This change was made due to a declining claims budget, and a concern some soldiers were not maintaining insurance on their vehicles. ***In all cases of POV theft or vandalism, claimants must first file with their insurance company before filing a claim.***

(2) The Claims Office cannot pay a claim unless the vehicle is properly registered and insured according to local law. While the POV may be registered in the soldier's home state, the vehicle ***must*** be properly insured under Texas state law,

which requires legal minimums for operation of a vehicle: \$15,000 property damage per accident, \$20,000 bodily injury per person and \$40,000 bodily injury for accident.

(3) Even if the above conditions are met, the Army will not pay for radar detectors or for unreasonable quantities of property. For instance, the maximum payment for *compact disks* is \$120 and \$60 for *cassette tapes*. This means about ten of each will be paid if a claim is filed.

(4) Soldiers must also take reasonable steps to protect their property. Vehicles should be locked and secured. Removable property such as detachable stereo faceplates must be used as intended. Soldiers should also avoid using their POVs as a storage area. If items not normally found in a vehicle are stolen from the vehicle, the soldier's claim may be denied.

(5) Claims for damaged or stolen POVs will be paid when the command allows soldiers to park their POVs in a designated area such as the motor pool. This is appropriate during deployments or extended TDYs. If a commander decides to make his or her soldiers park in a designated area, the command must provide reasonable security. Commanders should take an inventory of the POVs, and keep records of any external damage to the vehicle at the time of drop off. Providing a secure area to park POVs is a tremendous morale booster as it reassures soldiers their property will be protected during their absence.

(6) If a secure parking area is provided, an issue arises concerning whether the soldier should cancel his or her insurance. If the POV will not be operated, then there is no requirement to maintain property damage or bodily injury (liability) insurance. Thus, soldiers may drop their insurance if they deploy and the car will not be operated during this time. Soldiers must ensure they have liability insurance driving on and off post as required per Fort Hood Regulation 190-20.

(7) While Texas law does not require a driver to maintain coverage for theft or vandalism (referred to as comprehensive coverage), it may be in the soldier's best interest to maintain this coverage because the maximum amount the Army can pay for stolen or damaged vehicles is \$3,000.

(8) Before canceling any insurance,

soldiers must contact the vehicle's lien holder. The lien holder may require the soldier to maintain comprehensive insurance even if the vehicle will not be driven.

(9) Claims resulting from either damage or loss of a POV while the vehicle is being used for the convenience of the government are compensable unless the loss is due to mechanical reasons. When filing a claim, soldiers must ensure a copy of their orders authorizing the use of their POV is included in their claim. Collisions, to include hit and run accidents, are also compensable *if* the claimant is free from negligence and the POV is being operated under orders for the convenience of the government.

d. Thefts:

(1) A theft which occurs incident to service is compensable under the MILITARY PERSONNEL CLAIMS ACT. To prevent theft, claimants are required to exercise reasonable care over their property. Failure to take these reasonable precautions may result in the denial of their claim.

(2) Commanders should publish SOPs concerning what precautions soldiers living in the barracks must undertake to protect their property. Cameras and similar items should be stored in a wall locker or unit supply area. When a soldier is TDY or absent for an extended period, they should secure high valued items such as stereos and VCRs in the wall locker or unit supply area. Soldiers should take extra safety measures to protect cash, valuable jewelry, and easily stolen items. A barracks room is not considered a proper place to store these items.

(3) When a soldier files a claim which resulted from a barracks theft, the claim must include the MP report, a copy of the soldier's high-value inventory list, and a copy of the barracks' SOP. Commanders must also fill out DD Form 1950, which soldier can obtain from this office, stating the soldier stored his or her property in accordance with the SOP.

28-2. Tort Claims.

a. MILITARY CLAIMS ACT (MCA):

(1) *The MCA* is found in AR 27-20, Chapter 3. It allows an individual to file a claim for personal injury, death, or damage or loss of real or personal property caused by either an act or omission

determined to be negligent, wrongful, or otherwise involving fault of military personnel or civilian officers acting within the scope of their government employment; or loss or damage incident to the non-combat DA activities.

(2) The MCA also allows an individual to file a claim for personal injury, death or loss or damage to real or personal property damage which is incident to non-combat DA. For example, some non-combat activities which resulted in claims include damage caused by troop maneuvers, blasting, and helicopter fly-overs.

b. FEDERAL TORT CLAIMS ACT (FTCA):

(1) The FTCA is similar to the MCA in allowing individuals to file a claim against the United States for the negligent acts of its employees acting within the scope of their employment. The FTCA is found in AR 27-20, Chapter 4.

(2) Under *United States v. Feres*, soldiers cannot file claims under the FTCA for personal injuries. Claims filed by soldiers for injuries which arose from or in the course of their activity incident to service are not payable under the FTCA. An injury to a soldier's spouse or child, however, is payable and the soldier may file a claim on their behalf.

c. Under both the MCA and the FTCA, the United States substitutes itself as defendant for the soldier or employee who caused the loss if that person was acting within the scope of his or her employment. Commanders should ensure scope statements are provided to this office as quickly as possible. This allows the Claims office to process the claim expediently thus limiting the disturbance to the command and the amount of damages.

d. Since the United States substitutes itself for the soldier if a claim is filed, soldiers who receive requests from insurance companies to pay for damages caused while performing their military duties should be sent to the Claims Office immediately. Also, immediate contact should be made with the claims office if a soldier is involved in an accident while performing his or her military duties. This again will prevent undue burden on the soldier, the command, and will help limit the amount of damages the United States has to pay.

28-3. Article 139 Claims.

a. The basis of this claim is found in Article 139, UCMJ, and AR 27-20, Chapter 9. This claim allows an individual to file a claim against a soldier who has willfully taken or destroyed another's personal property. The ability to file a complaint under Article 139 is not limited to soldiers. Anyone who had property taken or destroyed by a soldier is a proper claimant under Article 139.

b. An Article 139 claim is not a proper remedy for loss or destruction of property caused by a breach of contract, property damaged through negligence or for personal injury or death.

c. Claimants have 90 days from the date of the incident to file a claim under Article 139. The claim can be filed at the III Corps Claims Office located in the III Corps Headquarters Building. If the claim is against a soldier assigned to *ICD* or the *4ID*, then the claim may be filed in the appropriate Division SJA Offices.

d. Once the claim is filed, it is forwarded to the suspected soldier's SPCMCA, who, if he or she believes the claim is cognizable, will assign an investigating officer. If the claim is meritorious, the money to pay the claim will be taken directly from the suspected soldier's pay and awarded to the claimant.

28-4. Medical Care Recovery.

a. AR 27-20, Chapter 14 allows the Army to recover expenses resulting from third parties' negligence. Under this chapter, the Army can recover medical care expenses, the pay a soldier receives while he or she was unable to perform their duties because of the *third parties'* negligence, and costs to repair property damage. ***These claims are not against the injured soldiers, but rather against the negligent parties' insurance.***

b. When a soldier is injured by a third party, the costs of his or her medical care is recoverable. If the above situation happens, the injured soldier will receive a letter and a form from the Claims office asking them to provide certain information. ***This form is vital to the recovery of the medical care costs. If soldiers have any questions, they should contact the Claims Office.***

c. If Commanders have Military Vehicles which are damaged by POVs and the POV is at fault, the costs to repair the military vehicle are recoverable

1 JUNE 1998

III CORPS & FH PAM 27-6

from the third parties insurance. If the above situation does occur, on or off the installation, please call the claims office immediately. The Claims Office will need the estimated cost of damage to the vehicle in order to assert the claim. *Please provide this information as soon possible.*

28-5. References. AR 27-20 and DA PAMPHLET 27-162 (Legal Service Claims) .

**Appendix A
References**

AR 15-6

Procedures For Investigating Officers and Boards of Officers

AR 27-10

Legal Services: Military Justice

AR 40-5

Preventive Medicine

AR 135-200

Active Duty for Training, Annual Training, Active Duty for Special Work of Individuals Soldiers

AR 140-1

Army Reserve Mission, Organization and Training

AR 190-5

Motor Vehicle Traffic Supervision

AR 190-24

Armed Forces Disciplinary Control Boards and Off-Installation Liaison and Operations

AR 210-10

Administration

AR 210-50

Housing Management

AR 220-5

Designations, Classification, and Change In Status of Units

AR 350-2

Opposing Force Program

AR 380-67

Department of the Army Personnel Security Program

AR 600-8-19

Enlisted Promotions and Reductions

AR 600-9

The Army Weight Control Program (Update 15–All Ranks Update)

AR 600-8-24

Officer Transfers and Discharges

AR 600-20

The Army Command Policy

AR 600-29

Fund-Raising Within The Department of the Army

AR 600-37

Unfavorable Information

AR 600-85

Alcohol and Drug Abuse Prevention and Control Program

AR 600-200

Enlisted Personnel Management System (Update 16 – Enlisted Ranks Personnel)

AR 601-280

Army Retention Program

AR 608-99

Family Support, Child Custody, and Paternity

AR 623-10

Military Personnel Security Program

AR 623-105

Officer Evaluation Reporting System (Update 14 – Officer Rank Personnel)

AR 623-205

Enlisted Evaluation Reporting System

AR 624-100

Promotions of Officers on Active Duty (Update 14 – Officer Rank Personnel)

AR 635-200

Enlisted Personnel

AR 640-3

Identification Cards, Tags and Badges

AR 700-84

Unit Supply Update

AR 735-5

Policies And Procedures For Property Accountability

DA Pamphlet 27-7

Military Justice Handbook: Guide To Summary Court-Martial Trial Procedure

DA Pamphlet 27-17

Procedural Guide For Article 32(b) Investigating Officer

DA Pamphlet 27-162

Legal Service Claims

DA Pamphlet 600-8

Management And Administrative Procedure

FM 21-10

Field Hygiene And Sanitation

FM 22-100

Military Leadership

FM 27-1

Legal Guide For Commanders

TM 5-848-2

Handling Of Aircraft And Automotive Fuels

FORSCOM Supplement 1 to AR 601-280

Total Army Retention Program

Joint Ethics Regulation 5500.7

DODI 1304.26

Manual for Court-Martial, Part 4

Fort Hood Regulation 27-10

Military Justice

Fort Hood Regulation 190-2

Motor Vehicle Traffic Supervision

Fort Hood Regulation 210-48

Installation Housing Community Standards

Fort Hood Regulation 210-65

Alcoholic Beverages

Fort Hood Regulation 210-65

Fort Hood Regulation 600-40

List Of Off-Limits Establishments And Areas

Fort Hood Supplement 1 to AR 27-10

Military Justice

FH Supplement 1 to AR 210-10

Administration

Texas Vernon's Civil Statutes 83, Annotated, Article 6701h

Title 5, USC, Chapter 83, Subchapter II

Title 10, USC, Section 654

Title 10, USC, Section 974

Title 18, USC, Section 1382

Title 37, Section 402

DA Form 2627

Record Of Proceedings Under Article 15, UCMJ

DA Form 2627-1

Summarized Record Of Proceedings Under Article 15, UCMJ

DA Form 2627-2

Record Of Supplementary Action Under Article 15, UCMJ

DA Form 3745-1-R

Apprehension Authorization

DA Form 3744-R

Affidavit Supporting Request For Authorization To Search And Seize

DA Form 3881-R

Rights Warning Procedure/Waiver Certificate

DA Form 4856

General Counseling Form

DA Form 5109-R

Request To Superior To Exercise Article 15, UCMJ Jurisdiction

DA Form 5111-R

SCM Rights Notification/Waiver Statement

DD Form 458

Charge Sheet

DD Form 497

Confinement Order

DD Form 261

Report Of Investigation—Line of Duty And Misconduct Status

DD Form 788

Private Vehicle Shipping Document For Automobile

DD Form 1840

Notice Of Loss Or Damage

DD Form 1840-R

Notice Of Loss Or Damage

DD Form 1842

Claim For Loss Or Damage To Personal Property
Incident To Service

DD Form 1844

List Of Property And Claims Analysis Chart

DD Form 2329

Record of Trial By Summary Court-Martial

Fort Hood Form 4-25

Military Magistrate Checklist For Pretrial
Confinement

Fort Hood Form 4-50

Court-Martial Charges

Fort Hood Handout 228

Rights Warning Pretrial Confinement

Fort Hood Form 420-X10

Coordination for Land Excavation

**Appendix B
Separation Actions**

	Secretarial Authority	Parenthood	Personality Disorder	Failure to Meet Body Fat Standards
Grounds for Action	Best interests of the Army	Parental obligations interfere with military responsibilities, e.g, repeated absenteeism, late for work, unavailable for field exercises, CQ, SDO, world-wide assignment for deployment.	Personality disorder, as diagnosed by a psychiatrist (lic., clin., psyche), that interferes with duty performance. Long term, deeply-ingrained, maladaptive pattern of behavior. Listed in DSM-III.	Failure to meet body fat standards set forth in AR 600-9. Overweight condition must be the sole basis for separation.
Counseling Required	No	Yes	Yes	Give soldier time to meet body fat standards
Who Initiates?	Soldier or a commander, including separation authority on action when board recommends retention.	Immediate commander or higher.	Immediate commander or higher.	Immediate commander or higher.
Board Hearing?	No. If command initiated, use notification procedure. Kick-up provision is inapplicable.	Use notification procedure. Entitled to Board if soldier has 6 or more years of active and reserve service.	Use notification procedure. Entitled to Board if soldier has 6 or more years of active and reserve service.	Use notification procedure. Entitled to Board if soldier has 6 or more years of active and reserve service.
Regulation	AR 635-200, para 5-3	AR 635-200, para 5-8	AR 635-200, para 5-13	AR 635-200, chap 18
Entitled to Counsel?	Counsel for consultation (JAG)	Counsel for consultation (JAG). Counsel for representation before a Board.	Counsel for consultation (JAG). Counsel for representation before a Board.	Counsel for consultation (JAG). Counsel for representation before a Board.
SJA Review?	Yes. See para 2-6e, AR 635-200.	Yes. See para 2-6e, AR 635-200.	Yes. See para 2-6e, AR 635-200.	Yes. See para 2-6e, AR 635-200.
Separation Authority	Secretary of the Army	SPCMCA	SPCMCA	LTC Cdr (or MAJ(P)) in LTC Cmd; no Board: SPCMCA: Board.
Possible Characterizations of Service	Honorable, General, or Entry Level Separation	Honorable, General, or Entry Level Separation	Honorable or Entry Level Separation: See para 5-13h for General.	Honorable or Entry Level Separation

Separation Actions (continued)

	Release for Minority (16 Years Old)	Release for Minority (17 Years Old)	Erroneous Enlistment	Defective or Unfulfilled Enlistment	Fraudulent Entry
Grounds for Action	Enlisted under age 17 and still under age 17	Enlisted under age 18 w/o parental consent; still under age 18; and not under court-martial charges, serving court martial sentence, or in military confinement	Enlistment would not have occurred had the relevant facts been known by government or had appropriate direc- tives been followed.	Eligible for enlist- ment but not for option for which enlisted; or received promised that cannot be fulfilled by Army. Must identify defect within 30 days of discovery.	Material misrepresentation, omission, or con- cealment of infor- mation that, if known by the Army, might have resulted in rejection.
Counseling Required?	No	No	No	No	No
Who Initiates?	Immediate commander or higher	Immediate commander or higher , if parents request release within 90 days of enlistment	Immediate commander or higher	Immediate commander or higher	Immediate commander or higher
Board Hearing?	No	No	Use Notification Procedure. Entitled to Board if soldier has 6 or more years of active and reserve service.	No	Yes, but may be waived. No board if OTH is not warranted and soldier has less than 6 years active and reserve service.
Regulation	AR 635-200, Chapter 7, Section II	AR 635-200, Chapter 7, Section II	AR 635-200, Chapter 7, Section III	AR 635-200, Chapter 7, Section IV	AR 635-200, Chapter 7, Section V
Entitled to Counsel	Counsel for consultation (JAG)	Counsel for consultation (JAG)	Counsel for consultation (JAG) Counsel for representation before a board	N/A	Counsel for consultation (JAG). Counsel for representation before a board.
SJA Review	No	No	Yes. See para 2- 6e(3), AR 635-200	No	Yes. See para 2- 6e(3), AR 635-200
Separation Authority	SPCMCA	SPCMCA	SPCMCA	SPCMCA	GCMCA: OTH; SPCMCA: No OTH and Notification Procedure used.
Possible Characteri- zations of Service	Release from Custody and Control of the Army.	Entry Level Separation	Honorable, Entry Level Separation, or Release from Custody and Control of the Army	Honorable or Entry level Separation	Honorable, General, Other Than Honorable, or Entry Level Separation.

Separation Actions (continued)

	Personal Abuse of Alcohol or Other Drugs	In Lieu of Trial By Court-Martial	Entry Level Status Performance And Conduct	Unsatisfactory Duty Performance
Grounds for Action	Soldier is enrolled in ADAPCP and (1) lacks potential for service and rehab efforts are not practical or (2) long-term rehab required and soldier is transferred to civilian facility.	Preferral of charges for which a punitive discharge is authorized; or referral to C-M authorized to adjudge a punitive discharge if RCM 1003(d) provisions are used.	Unsat performance or minor disciplinary infractions evidenced by: inability; lack of effort; failure to adapt; or pregnancy hinders MOS training. Must be in Entry level status.	Unsatisfactory duty performance.
Counseling Required?	No	No	Yes	Yes
Who Initiates?	Immediate commander or higher	Soldier	Immediate commander or higher	Immediate commander or higher
Board Hearing?	Use Notification Procedure. Entitled to Board if soldier has 6 or more years of active and reserve service.	No	Use Notification Procedure. Entitled to Board if soldier has 6 or more years of active and reserve service.	Use Notification Procedure. Entitled to Board if soldier has 6 or more years of active and reserve service.
Regulation	AR 635-200, Chapter 2	AR 635-200, Chapter 10	AR 635-200, Chapter 11	AR 635-200, Chapter 12
Entitled to Counsel?	Counsel for consultation (JAG). Counsel for representation before a Board.	Counsel for consultation (JAG)	Counsel for consultation (JAG). Counsel for representation before a Board.	Counsel for consultation (JAG). Counsel for representation before a Board.
SJA Review?	Yes. See para 2-6e(3), AR 635-200.	Yes. See para 2-6e(3), AR 635-200.	Yes. See para 2-6e(3), AR 635-200.	Yes. See para 2-6e(3), AR 635-200.
Separation Authority?	LTC Cdr (or MAJ (P) in LTC Cmd): no Board. SPCMCA: Board.	GCMCA	LTC Cdr (or MAJ(P) in LTC Cmd): no Board. SPCMCA: Board	LTC Cdr (or MAJ(P) in LTC Cmd): no Board. SPCMCA: Board
Possible Characterizations of Service	Honorable, General, or Entry Level Separation. Honorable required if Limited Use evidence used.	Normally, Other Than Honorable. Honorable, General, or Entry Level Separation also possible.	Entry Level Separation.	Honorable or General.

Separation Actions (continued)

	Conviction By A Civilian Court	Minor (Military) Disciplinary Infractions	Pattern of Misconduct	Commission of a Serious Offense	Homosexuality Interim Policy (3 Feb 93)
Grounds for Action	Civilian court conviction for an offense that authorizes a punitive discharge under MCM: or sentenced to confinement for 6 months or more by civilian court.	Pattern of misconduct consisting solely of minor military disciplinary infractions.	Discreditable involvement with civil or military authorities, or conduct prejudicial to good order and discipline.	Commission of a serious military or civil offense for which a punitive discharge would be authorized under the MCM.	Homosexual conduct (acts or marriages) or homosexual status (admissions).
Counseling Required?	No	Yes	Yes	No	No
Who Initiates?	Immediate commander or higher.	Immediate commander or higher.	Immediate commander or higher.	Immediate commander or higher.	Immediate commander or higher.
Board Hearing?	Yes, but may be waived. No personal appearance if in confinement. No board if OTH is not warranted and soldier has less than 6 years active and reserve service.	Yes, buy may be waived. No board if OTH is not warranted and soldier has less than 6 years active and reserve service.	Yes, buy may be waived. No board if OTH is not warranted and soldier has less than 6 years active and reserve service	Yes, buy may be waived. No board if OTH is not warranted and soldier has less than 6 years active and reserve service	Yes, but may be waived.
Regulation	AR 635-200, Chapter 14, para, 14-5	AR 635-200, Chapter 14, para 14-12a	AR 635-200, Chapter 14, para 14-12b	AR 635-200, Chapter 14-12c	AR 635-200, Chapter 14, various msgs.
Entitled to Counsel?	Counsel for consultation (JAG). Counsel for representation before a Board.	Counsel for consultation (JAG). Counsel for representation before a Board.	Counsel for consultation (JAG). Counsel for representation before a Board.	Counsel for consultation (JAG). Counsel for representation before a Board.	Counsel for consultation (JAG). Counsel for representation before a Board.
SJA Review?	Yes. See para 2-6e(3), AR 635-200	Yes. See para 2-6e(3), AR 635-200	Yes. See para 2-6e(3), AR 635-200	Yes. See para 2-6e(3), AR 635-200	Yes. See para 2-6e(3), AR 635-200
Separation Authority	GCMCA: OTH; SPCMCA: No OTH and Notification Procedure used.	GCMCA: OTH; SPCMCA: No OTH and Notification Procedure used	GCMCA: OTH; SPCMCA: No OTH and Notification Procedure used	GCMCA: OTH; SPCMCA: No OTH and Notification Procedure used	SECARMY (invol seps): GCMCA or SPCMCA (soldier requests dischg)
Possible Characterization of Service	Honorable, General, Other Than Honorable, or Entry Level Separation	Honorable, General, Other Than Honorable, or Entry Level Separation	Honorable, General, Other Than Honorable, or Entry Level Separation	Honorable, General, Other Than Honorable, or Entry Level Separation	Honorable, General, Other Than Honorable, or Entry Level Separation

Appendix B
Summary Of Procedures For Other Administrative Actions

	Bar to Reenlistment	Written Reprimand	Reduction For Civil Conviction	Reduction For Inefficiency	Drunk Driving Sanctions
Grounds for Action	Unsuitable, untrainable or inad family care plan. 2xPT fail, NOCES removal, overweight fail.	Misconduct or unsatisfactory performance.	Any civil conviction. Mandatory if confined for 1 year or more (unsuspended)	Inability to perform duties and responsibilities required of grade and MOS	Refusal of BAT: driving with BAC of .10%; driving with BAC between .05% and .10%; official report of DWI.
Who Initiates?	Immediate commander or higher.	Immediate commander or higher: School Cmdt: GO: GCMCA: Supervisors (Enlisted); or rating chain (Officer).	Immediate commander or higher.	Immediate commander or higher.	Installation commander or designee, who is not assigned primarily to law enforcement duties.
Board Hearing?	No	No	Only for SGT and above. No board if reduction is mandatory	Only for SGT and above.	Hearing before Installation Cdr or designee within 10 days of suspension, upon request.
Regulation	AR 601-280, Chapter 6	AR 600-37	AR 600-8-19, Chapter 6	AR 600-8-19, Chapter 6	AR 190-5, Chapter 2
Entitled to Counsel?	No	No, but see AR 27-3 (must see if come to LAO).	Lawyer or lay counsel before a board.	Lawyer or lay counsel before a board.	Entitled to a lawyer at own expense at hearing.
SJA Review?	No	No	No	No	No
Approval Authority?	LTC Cdr: 1-10 yrs AFS (including MAJ(P) in LTC Cmd): GCMCA or 1st GO: 10-18 and >20 years AFS: DA: 18-20 yrs AFS.	MPRJ: Initiator (supervisor may not file). OMPF: GO or GCMCA	Unit Cdr: PV2 to CPL: LTC Cdr: SGT & SSG; COL Cdr: SFC to CSM.	Unit Cdr: PV2 to CPL: LTC Cdr: SGT & SSG; COL Cdr: SFC to CSM.	Installation Commander
To Whom Appealed?	GCMCA or 1st GO: 1-10 yrs AFS: DA: >10 yrs AFS	MPRJ: Chain of command up to GCMCA. OMPF: DASEB	LTC Cdr: PV2 to CPL: COL Cdr; SGT & SSG; 1st GO: SFC to CSM.	LTC Cdr: PV2 to CPL: COL Cdr; SGT & SSG; 1st GO: SFC to CSM.	GCMCA may grant restricted privileges.
Ultimate Result?	Soldier barred from reenlisting	May be filed in Unit Pers File, MPRJ, or OMPF.	Reduction of one or more grades.	Reduction of one or more grades.	Privelege to drive suspended or revoked.

Summary of Procedures for Other Administrative Actions (continued)

	MOS Reclassification	Revocation Of Security Clearance	Extra Training or Instruction	Relief from Duties	Revocation of Pass
Grounds for Action	Erroneous award; misconduct; loss of qualifications; lack of security clearance; directed by PERSOCM; retraining; voluntary.	Misconduct; Improper activities or conduct	Deficiencies in training, appearance, performance, etc.	Substandard personal or professional characteristics; conduct; behavior or duty performance.	Misconduct, operational requirements, temporary administrative control.
Who Initiates?	Immediate commander or higher	Personnel specified in AR 380-67, paras 8-101 and 8-102	Supervisor	Supervisor or any member of the chain of command.	Supervisor or any member of chain of command.
Board Hearing?	Not required, but reclas authorities may grant soldier's request to appear before board	No	No	No	No
Regulation	AR 600-200, Chapter 2, Section VII	AR 380-67	AR 600-20, para 4-6	AR 600-20, para 2-15	AR 600-35, para 11-1
Entitled to counsel?	No, but if board is held, soldier may be represented by officer, WO, or NCO, with that person's consent.	No	No	No. But See AR 27-3 (must see if come to LAO).	No
SJA Review?	No.	No.	No.	No.	No.
Approval Authority?	Cdrs of FORSCOM and TRADOC installations and activities having personnel requisitioning authority. See also para 2 2-29b	Personnel specified in AR 380-67, para 8-201 and App F	Supervisor. Extra training must be directly related to deficiency. Not to be used as a subterfuge for NJP.	Supervisor or commander. Commanders may be relieved only after referral of any AR 15-6 investigation and written approval by 1st GO in chain. No formal appeal.	Commander.
To Whom Appealed?	No formal appeal	No formal appeal once approved by Cdr, CCF	No formal appeal	No formal appeal	No formal appeal
Ultimate Result?	Reclassified in new MOS	Security clearance revoked	Soldier performs extra training until deficiency is corrected	Soldier is relieved. Relief for cause OER or NCOER is initiated	Soldier may not leave installation

Summary of Procedures for Other Administrative Actions (continued)

	Adverse NCOER	Adverse OER
Grounds for Action	Misconduct; misbehavior; substandard performance.	Any negative OER: "attributes" 4 or 5: "often" or "usually" failed; "do not promote;" bottom 3 blocks: failed APFT; or overweight.
Who Initiates?	Rater or indorser	Rater or senior rater
Board Hearing?	No	No
Regulation	AR 623-205, DA Cir 623-88-1	AR 623-105, para 2-10 and 2-11
Entitled to Counsel?	No, but see AR 27-3 and TJAG Policy Letter 84-2 (LAOs will assist in preparation of appeals).	No, but see AR 27-3 and TJAG Policy Letter 84-2 (LAOs will assist in the preparation of appeals).
SJA Review?	No	No
Approval Authority?	N/A	N/A
To Whom Appealed?	Admin errors; USAEREC; Subst. Errors: Enlisted Special Review Board.	Admin errors; USAEREC; Subst. Errors: Enlisted Special Review Board.
Ultimate Result?	Filed in OMPF	Filed in OMPF

**Appendix C
Figures**

Figure 2-1. Sample DD Form 497, Confinement Order

CONFINEMENT ORDER			DATE	
Prepare in duplicate. Original is retained by Confinement Officer; duplicate is returned to officer directing the confinement. The normal period for preferring court-martial charges following restraint of accused is 24 hours. <i>(As to who may direct confinement, see paragraph 21a, MCM 1951.)</i>				
TO: Confinement Officer		INSTALLATION		
THE PERSON NAMED BELOW WILL BE CONFINED				
LAST NAME - FIRST NAME - MIDDLE INITIAL		GRADE	SERVICE NUMBER/SSN	DEPARTMENT OF MILITARY SERVICE U.S. Army
ORGANIZATION				
TYPE OF CONFINEMENT <input type="checkbox"/> PRETRIAL <input type="checkbox"/> RESULT OF COURT-MARTIAL		OFFENSE(S) AND UCMJ ARTICLE(S) VIOLATED		
TYPED OR PRINTED NAME, GRADE AND TITLE OF OFFICER ORDERING CONFINEMENT <i>(Or authorized representative)</i>			SIGNATURE OF OFFICER ORDERING CONFINEMENT <i>(Or authorized representative)</i>	
RECEIPT FOR PRISONER				
THE PRISONER NAMED ABOVE WAS RECEIVED FOR CONFINEMENT AT:		HR	DATE	
TYPED OR PRINTED NAME AND GRADE OF CONFINEMENT OFFICER <i>(Or authorized representative)</i>			SIGNATURE OF CONFINEMENT OFFICER <i>(Or authorized representative)</i>	
			ORGANIZATION	

DD FORM 497, MAY 66

USAPPC V1.00

Figure 2-2, DA Form 5112-R (Checklist for Pretrial Confinement)

Figure 2-2, DA Form 5112-R (Checklist for Pretrial Confinement) (continued)

Figure 2-3. Format, Pretrial Confinement Advice to the Accused.

ACCUSED’S NAME AND UNIT: _____

This advice is required by R.C.M 305(e). You are provided the following information:

1. If charges have been preferred, you have received a copy of the charge sheet. If charges have not been preferred, they will be preferred within 48 hours. You will receive a copy of the charges within 48 hours.
2. The nature of the offenses for which you are being held are documented in the charge sheet.
3. You have the right to remain silent and anything you say or do can be used as evidence against you in a criminal trial.
4. You have the right to retain a civilian lawyer of your choice at no expense to the government and the right to request assignment of a military lawyer at no expense to you. If you request, your military lawyer will be provided before your case is reviewed by the Military magistrate, or 48 hours, whichever is sooner.
5. Within 48 hours of confinement, a Military Magistrate will review your case to ensure that probable cause exists that you have committed an offense, and pretrial confinement is necessary. Factors considered will be:
 - a. Your commander’s pretrial confinement memorandum.
 - b. Any additional written matters, including those submitted by you.
 - c. Any statement made by you to the Military Magistrate or on your behalf by your lawyer.
 - d. Any statement made by representatives of your command.
 - e. If preferred, the charges that have been preferred.
6. Based on his review, the Military Magistrate will either approve continued pretrial confinement or order immediate release. This decision will be in writing and available to you and the government upon request.
7. Upon request, the Military Magistrate will reconsider his decision to continue your confinement. Such a request must be based upon significant information not previously considered.
8. If charges against you are referred to trial, the military judge will review your pretrial confinement upon motion by your attorney.
9. Your signature below means that you have received a copy of this document.

FORMAT

Signature of accused

Figure 2-3. Sample Format, Pretrial Confinement Advice to the Accused (continue)

10. If accused refuses to sign, the unit commander or first sergeant should sign below.

FORMAT

SIGNATURE OF COMMANDER
OR FIRST SERGEANT AND
LEGIBLE SIGNATURE BLOCK

Figure 2-4. Sample FH Form 1875, Unit Commander's Observation/Evaluation of Prisoner

Figure 2-4. Sample FH Form 1875, Unit Commander's Observation/Evaluation of Prisoner (continued)

1 JUNE 1998

III CORPS & FH PM 27-6

Figure 2-5. FHT 190-X4 Part A. Sample Male Prisoner Clothing Record.

Figure 2-5. FHT 190-X4 Part A. Sample Male Prisoner Clothing Record (continued).

1 JUNE 1998

III CORPS & FH PM 27-6

Figure 2-5. Sample FHT 190-X4 Part B, Female Prisoner Clothing Record.

Figure 2-5. Sample FHT 190-X4 Part B, Female Prisoner Clothing Record (continued).

Figure 3-1. Sample DD Form 458, Charge Sheet

Figure 3-1. Sample DD Form 458, Charge Sheet (continued)

1 JUNE 1998

III CORPS & FH PM 27-6

Figure 3-1A. Sample Completed DD Form 458, Charge Sheet.

1 JUNE 1998

III CORPS & FH PAM 27-6

Figure 3-1A. Sample Completed DD Form 458, Charge Sheet (continued).

Figure 3-2. Sample DD Form 2329, Record of Trial by Summary Court-Martial.

Figure 3-2. Sample DD Form 2329, Record of Trial by Summary Court-Martial (continued)

Figure 3-3. Sample DD Form 5111-R, Summary Court-Martial Rights Notification/Waiver Statement

Figure 3-4. Sample Format Letter of Appointment for Article 32 Investigating Officer .

LETTERHEAD

AFZF-GC (27-10e)

MEMORANDUM FOR

SUBJECT: Article 32 Investigation of Charges Against

1. You are designated to investigate the enclosed charges. Your investigation will be conducted and completed in conformity with Article 32, Uniform Code of Military Justice, and the Manual for Courts-Martial (1995 Edition) (especially Rule for Courts-Martial 405, Part IV and Appendix 5).
2. Your report of investigation will be submitted on DD Form 457. It should contain a brief summary of the facts established by witnesses testimony at the Article 32 hearing. Unsworn written statements cannot be considered as a basis for your conclusions and recommendations over the objection of the accused or his counsel. Notes of the proceedings will be taken by you and the unit legal representative. You will not tape record the hearing, although you must allow the defense counsel or government representative to do so at their request.
3. The Article 32 hearing should be held within 72 hours and your report completed and submitted through the chain of command within seven days unless the accused or his counsel requests a delay in writing. Any delay beyond 72 hours in commencing the hearing or seven days in submitting your report (except because of a written defense request for delay) must be fully explained in your report. You are authorized to approve a delay of not more than 14 days.
4. Government trial counsel from the Office of the Staff Judge Advocate, III Corps and Fort Hood, is authorized to participate in the proceedings.
5. Upon receipt of the correspondence, you will contact the Office of the Staff Judge Advocate (telephone 287-7404) for consultation as to procedure and applicable law.

FORMAT

TONY J. BUCKLES
COL, AR
Commanding

Figure 4-1. Sample FH Form 4-50, Court-Martial Charges.

Figure 4-2. Sample Format, Request for Discharge In Lieu of Trial by Court-Martial.

DEPARTMENT OF THE ARMY
Medical Company, USA MEDDAC
Fort Hood, Texas 76544

(Office Symbol)

MEMORANDUM THRU

Commander, Medical Company, USA MEDDAC, Fort Hood, TX 76544

Troop Commander, USA MEDDAC, Fort Hood, TX 76544

Commander, USA MEDDAC, Fort Hood, TX 76544

FOR Commander, III Corps & Fort Hood, TX 76544

SUBJECT: Request for Discharge in Lieu of Court-Martial, SGT xxxxxxxx x. xxxxxx, xxx-xx-xxxx

1. I, SGT xxxxxxxx x. xxxxxxxx, xxx-xx-xxxx, hereby voluntarily request discharge in lieu of court-martial under AR 635-200, Chapter 10. I understand that I may request discharge in lieu of court-martial because of the charges which were preferred against me under the Uniform Code of Military Justice, one or more of which authorize the imposition of Bad Conduct or Dishonorable discharge.

2. I am making this request of my own free will and have not been subjected to any coercion whatsoever by any person. I have been advised of the implications that are attached to it. By submitting this request for discharge, I acknowledge that I understand the elements of the offenses charged and that I am guilty of one or more of the charges against me, or of lesser included offenses therein contained which authorize the imposition of a bad conduct or dishonorable discharge. Moreover, I hereby state that under no circumstances do I desire further rehabilitation, for I have no desire to perform further military service.

3. Prior to completing this form, I have been afforded the opportunity to consult with appointed counsel for consultation. I have consulted with counsel for consultation who has fully advised me of the nature of my rights under the uniform Code of Military Justice, the elements of the offenses with which I am charge, any relevant lesser included offenses thereto, and the facts which must be established by competent evidence beyond a reasonable doubt to sustain a finding of guilty; the possible defenses which appear to be available at this time; and the maximum permissible punishment if found guilty. Although he has furnished me legal advice, this decision is my own.

4. I understand that if my request for discharge is accepted, I may be discharged under conditions other than honorable. I have been advised and understand the possible effects of an Under Other Than Honorable Discharge, and that as a result of the issuance of such a discharge, I will be deprived of many or all Army benefits, that I may be ineligible for many or all benefits administered by the Veteran's Administration, and that I may be deprived of my rights and benefits as a veteran under both federal and state law. I also understand that I may expect to encounter substantial prejudice in civilian life because of the issuance of an Under Other Than Honorable Discharge. I further understand that there is no automatic upgrading nor review by any government agency of a less than honorable discharge and that I must apply to the Army Discharge Review Board or the Army Board for Correction of Military Records if I wish review of my discharge. I realize that the act of consideration by either board does not imply that my discharge will be upgraded.

1 JUNE 1998

III CORPS & FH PM 27-6

Figure 4-2. Sample Format, Request for Discharge In Lieu of Trial by Court-Martial (continued)

(Office Symbol)

SUBJECT: Request for Discharge in Lieu of Court-Martial, SGT xxxxxxxxxxxxxx x. xxxxxxxx, xxx-xx-xxxx

5. I understand that once my request for discharge is submitted, it may be withdrawn only with consent of the commander exercising general court-martial authority, or without that commander's consent, in the event trial results in an acquittal or the sentence does not include a punitive discharge even though one could have been adjudged by the court. Further, I understand that if I depart absent without leave, this request may be processed and I may be discharged even though I am absent.

6. Matters in support of this request (are) (are not) enclosed.

7. I hereby acknowledge receipt of a copy of this request for discharge.

FORMAT

xxxxxxxxxxxxx x. xxxxxxxx
SGT, USA

Figure 4-2. Sample Format, Request for Discharge in Lieu of Trial by Court-Martial (continued)

(Office Symbol)

SUBJECT: SUBJECT: Request for Discharge in Lieu of Court-Martial, SGT xxxxxxxxxxxxxx x. xxxxxxxx, xxx-xx-xxxx

Having been advised by me of the basis for his contemplated trial by court-martial and the maximum permissible punishment authorized under the Uniform Code of Military Justice; of the possible effects of an Under Other Than Honorable Discharge if this request is approved; and of the procedures and rights available to him, SGT xxxxxxxxxxxxxx x. xxxxxxxx, xxx-xx-xxxx, personally made the choices indicated in the foregoing request for discharge in lieu of court-martial.

FORMAT

MICHAEL J. O'FARRELL, JR
MAJ,JA
Senior Defense Counsel

Data Required by the Privacy Act of 1974 (5 USC 552a)

AUTHORITY: Section 301, title 5 USC and section 3012, title 10, USC.

PURPOSE: To be used by the commander exercising general court-martial jurisdiction over you to determine approval or disapproval of your request.

ROUTINE USES: Request, with appropriate documentation including the decision of the discharge authority, will be filed in the MPRJ as permanent material and disposed of in accordance with AR 640-10-10, and may be used by other appropriate federal agencies and state and local governmental activities where use of the information is compatible with the purpose for which the information was collected.

Submission in your request for discharge is voluntary. Failure to provide all or a portion of the requested information may result in your request being disapproved.

Figure 4-3. Sample Format, Endorsement of Request for Discharge in Lieu of Trial by Court-Martial

SUBJECT: Request for Discharge in Lieu of Court-Martial, UP AR 635-200, Chapter 10, _____
____-____-____, UNIT: _____, Fort Hood, TX 76544

TO: FROM: DATE:

- 1. Recommend approval of SUBJECT request for discharge with a characterization of service of (Honorable) (General) (Other Than Honorable). OR
- 1. Recommend disapproval of SUBJECT request for discharge.
- 2. Comments (optional):

NAME, RANK, UNIT (UNIT COMMANDER) SIGNATURE

TO: FROM: DATE:

- 2. Recommend approval of SUBJECT request for discharge with a characterization of service of (Honorable) (General) (Other Than Honorable). OR
- 3. Recommend disapproval of SUBJECT request for discharge.
- 4. Comments (optional):

NAME, RANK, UNIT (BN COMMANDER) SIGNATURE

TO: FROM: DATE:

- 3. Recommend approval of SUBJECT request for discharge with a characterization of service of (Honorable) (General) (Other Than Honorable). OR
- 5. Recommend disapproval of SUBJECT request for discharge.
- 6. Comments (optional):

NAME, RANK, UNIT (BDE COMMANDER) SIGNATURE

TO: FROM: DATE:

- 4. Recommend approval of SUBJECT request for discharge with a characterization of service of (Honorable) (General) (Other Than Honorable). OR
- 7. Recommend disapproval of SUBJECT request for discharge.
- 8. Comments (optional):

NAME, RANK, UNIT (BDE COMMANDER) SIGNATURE

Figure 5-1. Sample DA Form 3744-R, Affidavit Supporting Request for Authorization to Search and Seize or Apprehend.

Figure 5-1A. Sample DA Form 3744-R, Affidavit Supporting Request for Authorization to Search and Sieze or Apprehend (continued)

Figure 5-1A. Sample DA Form 3744-R, Affidavit Supporting Request for Authorization to Search and Sieze or Apprehend (continued)

Figure 5-2. Sample DA Form 3745-R, Search and Seizure Authorization

Figure 5-3. Sample DA Form 3745-1-R, Apprehension Authorization.

Figure 6-1. Sample DA Form 3881, Rights Warning Procedure/Waiver Certificate

Figure 6-1. Sample DA Form 3881, Rights Warning Procedure/Waiver Certificate (continued)

Figure 6-2. Sample DA Form 2823. Sworn Statement

Figure 6-2. Sample DA Form 2823. Sworn Statement (continued)

Figure 7-1. Sample DA Form 5109-R. Request to Superior to Exercise Article 15, UCMJ Jurisdiction

Figure 7-2. Suggested Guide for Conduct of Article 15 Proceedings (Excerpts from AR 27-10, pages 82-83)

**Figure 7-2. Suggested Guide for Conduct of Article 15 Proceedings (Excerpts from AR 27-10, pages 82-83)
(continued)**

Figure 7-3. Sample DA Form 2627. Record of Proceedings Under Article 15, UCMJ.

Figure 7-4. Sample Completed DA Form 2627-2. Record of Supplementary Action Under Article 15, UCMJ.

Figure 7-5. Sample Completed DA Form 2627-1, Summarized Record of Proceedings (Under Article 15, UCMJ)

Figure 7-5A. Sample DA Form 2627-1, Summarized Record of Proceedings

Figure 7-5A. Sample DA Form 2627-1, Summarized Record of Proceedings (continued)

Figure 7-6. Maximum Punishments Under Article 15, UCMJ (Extracted from AR 27-10, page 17)

1 JUNE 1998

III CORPS & FH PM 27-6

Figure 7-7. Sample DA Form 5110-R (Article 15 Reconciliation Log)

Figure 9-1. Sample DA Form 4856, General Counseling Form

Figure 9-1. Sample DA Form 4856, General Counseling Form (continued)

Figure 14-1. Sample Driving While Intoxicated Memorandum of Reprimand, Acknowledgement and Endorsements.

DEPARTMENT OF THE ARMY
Headquarters, Fort Hood
Fort Hood, Texas 76544

AFZF-DCG (27-10)

MEMORANDUM FOR Sergeant First Class Dennis D. Johnson, 000-00-0000, 303d Military Intelligence Battalion, 504th Military Intelligence Brigade, Fort Hood, Texas 76544

SUBJECT: Reprimand

1. You are reprimanded because, on 14 May 1995, you operated your privately owned vehicle while intoxicated by alcohol. Your actions demonstrate extremely poor judgment. You have shown a lack of concern for your own safety and the safety of others.
2. It is your responsibility as a noncommissioned officer to set and enforce high standards and to lead by example. You have failed miserably. Your actions fall far below standards expected by noncommissioned officers in this command, and cause me to question your ability to function as a noncommissioned officer in the U.S. Army.
3. This reprimand is administrative in nature and is not imposed as punishment under the provisions of Article 15, Uniform Code of Military Justice.
4. A copy of the report of investigation, including statements, is provided (enclosed). You may submit a rebuttal or other matters which you would like me to consider. You are not required to submit any matters. I presently intend to direct that this reprimand be filed permanently in your Official Military Personnel File. However, before I make the final filing determination, I will consider all the facts in your case, including any information you may elect to submit in rebuttal. You will acknowledge receipt of this reprimand by completing the attached first endorsement. You have fourteen calendar days from the date of the first endorsement in which to submit any matters. If you indicate on the first endorsement that you intend to submit matters, but fail to do so within fourteen days, I will proceed with a filing decision at that time.

FORMAT

Encl

FRANK L. MILLER
Major General, USA
Deputy Commanding General

Figure 14-1. Sample Driving While Intoxicated Memorandum of Reprimand, Acknowledgement and Endorsements.

AFVQ-OP (AFZF-DCG/) 1st End
SUBJECT: Reprimand

SFC Dennis D. Johnson, 000-00-0000, A Company, 303d Military Intelligence Battalion, 504th Military Intelligence Brigade, Fort Hood, Texas 76544

THRU

Commander, A Company, 303d Military Intelligence Battalion, 504th Military Intelligence Brigade, Fort Hood, Texas 76544

Commander, 303d Military Intelligence Battalion, 504th Military Intelligence Brigade, Fort Hood, Texas 76544

Commander, 504th Military Intelligence Brigade, Fort Hood, Texas 76544

FOR Deputy Commander, Headquarters Fort Hood, Fort Hood, Texas 76544

1. _____ I have read and understand the unfavorable information presented against me, and I intend to submit matters in my behalf within ten days of the date of this endorsement.
2. _____ I have read and understand the unfavorable information presented against me, and do not desire to make a statement or rebuttal, or to submit any other matters.

FORMAT

DENNIS D. JOHNSON
SFC, US Army
000-00-0000

Date

GLOSSARY

AC

Active Component

ADAPCP

Alcohol and Drug Abuse Prevention and Control Program

ADT

active duty for training

AGR

Active Guard Reserve

ANG

Army National Guard

AR

Army Regulation

ARNGUS

Army National Guard of the United States

AT

Annual Training

AUSA

AWOL

absent without leave

BCD

Bad Conduct Discharge

BEQ

Bachelor Enlisted Quarters

BOQ

Bachelor Officer's Quarters

CCF

Central Clearance Facility

CID

U.S. Army Criminal Investigation Command

CofS

Chief of Staff

CONUSA

Continental United States

CQ

Charge of Quarters

DA

Department of the Army

DACH

Darnall Army Community Hospital

DCG

Deputy Commanding General

DCIS

Defense Criminal Investigative Service

DOD

Department of Defense

DPW

Directorate of Public Works

DWI

Driving While Intoxicated

FORSCOM

Forces Command

FTCA

Federal Tort Claims Act

GCM

General Court-Martial

GCMCA

General Court-Martial Convening Authority

IBTC

Installation Biochemical Testing Center

IDT

Inactive Duty for Training

IMA

Individual Mobilization Augmentee

LAO

Legal Assistance Office

IRR

Individual Ready Reserve

LD

Line of Duty

MCA

Military Claims Act

MCM

manual for court-martial

MOR

Memorandum of Reprimand

MOS

military occupational specialty

MP(s)

military police

MPI

Military Police Investigations

MPRJ

Military Personnel Records Jacket

MSG

Master Sergeant

MUSARC

Major United States Army Reserve Command

NAF

Non Appropriated Fund

NAFI

Non-Appropriated Fund Instrumentality

NCO

Noncommissioned Officer

NCOIC

noncommissioned officer in charge

NLD-DOM

Not in Line of Duty—Due to Own Misconduct

NLD-NDOM

Not in Line of Duty—Not Due to Own Misconduct

OMPF

Official Military Personnel File

PERSCOM

Personnel Command

PMO

Provost Marshal Office

PMOS

Primary Military Occupation Specialty

PO(s)

private organizations

POL

petroleum, oils, and lubricants

POV

privately owned vehicle

QMP

RC

Reserve Component

SAUSA

Special Assistant United States Attorney

SCM

Summary Court-Martial

SDT

Skill Development Test

SRP

Soldier Readiness Programs

SJA

Staff Judge Advocate

SPCM

Special Court-Martial

SPCMCA

Special Court-Martial Convening Authority

SSCRA

Soldiers and Sailors' Civil Relief Act

TDS

Trial Defense Service

TDY

Temporary Duty

TEXCOM

Test and Experimentation Command

TPU

Troop Program Unit

UCMJ

Uniform Code of Military Justice

USAR

United States Army Reserve

U.S.C.

United States Code

VOQ

Visiting Officer Quarters

1CD

1st Cavalry Division

4ID(M)

4th Infantry Division (Mechanized)

13th COSCOM

13th Corps Support Command