

MASTER DIRECTIVES

BO 5810.1E

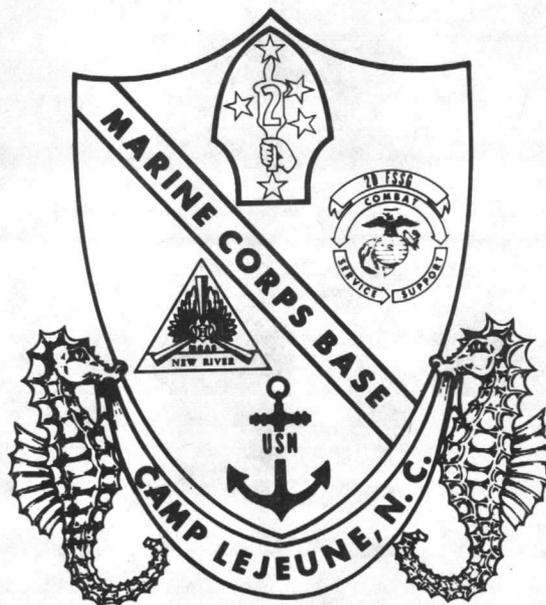


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FOR

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LAW AND LEGAL MATTERS



OFFICE OF STAFF JUDGE ADVOCATE

MARINE CORPS BASE

CAMP LEJEUNE NORTH CAROLINA

RETURN TO S-1

MASTER REPLICATES



REPLICA 1-1



UNITED STATES MARINE CORPS
MARINE CORPS BASE
CAMP LEJEUNE, NORTH CAROLINA 28542

IN REPLY REFER TO
BO 5810.1E
SJA/PNK/dkw
10 Jan 1983

BASE ORDER 5810.1E

From: Commanding General
To: Distribution List

Subj: Standing Operating Procedures for Law and Legal Matters

Encl: (1) Instructions for Nonjudicial Punishment
(2) Instructions for Courts-Martial
(3) Instructions for Investigations
(4) Instructions for Legal Assistance
(5) Instructions for Civil Law/Consumer Protection
(6) Instructions for Special Assistant to the United States Attorney
(7) Instructions for Liaison with Civil Authorities
(8) Instructions for Search and Seizure

Reports Required: I. Quarterly Report of Nonjudicial Punishments (Report Symbol MCB 5810-1) par 12 of enclosure (1).
II. Consular Protection of Foreign Nationals Subject to UCMJ (Report Symbol 5810-2) par 14 of enclosure (2).

1. Purpose. To promulgate standing operating procedures for the guidance of Marine Corps Base organizations in the prompt, uniform, and proper administration of law and legal matters.

2. Cancellation. BO P5810.1D.

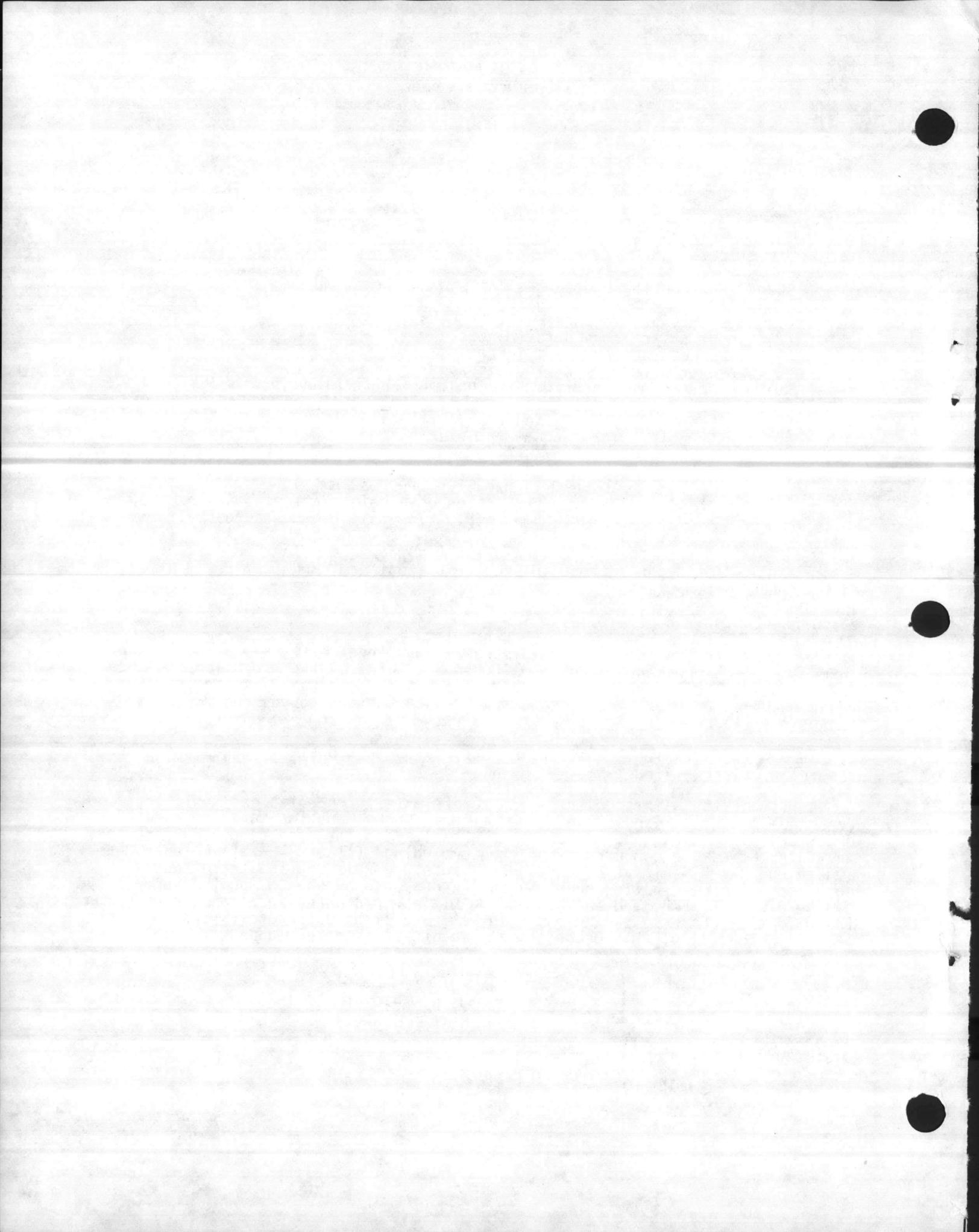
3. All personnel in command, administrative and legal billets shall familiarize themselves with the contents of this Order and abide by its provisions in the performance of their duties. The administration of military justice and other legal matters shall be accomplished pursuant to the procedures set forth in enclosures (1) through (8).

4. Summary of Revision. This revision contains substantial changes throughout and should be completely reviewed.

5. Applicability. This Order is applicable to all organizations, units, and personnel of Marine Corps Base, Camp Lejeune, North Carolina, and includes those organizations, units, and personnel attached or assigned for temporary purposes. Having received the concurrence of the Commanding Officers, Naval Regional Medical Center and Naval Regional Dental Center, this Order is applicable to those commands. Further, having received the concurrence of the Commanding General, 2d Marine Division, FMF, and the Commanding Officer, 2d Force Service Support Group (Rein), FMF, Atlantic, paragraphs 5, 9, 10, and 11 of enclosure (3) and enclosures (4), (6), and (7) of this Order are applicable to those commands.

J. R. Fridell
J. R. FRIDELL
Chief of Staff

DISTRIBUTION: A Cat I & II
plus 7&8 of Cat IV
SJA (100)



INSTRUCTIONS FOR NONJUDICIAL PUNISHMENT

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APPENDIX

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1. Scope. Nonjudicial punishment is one of several measures a commander has to maintain discipline within his/her command. Nonjudicial punishment is an integral part of the scheme of disciplinary measures which include nonpunitive measures, nonjudicial punishment under Article 15, UCMJ, and punishment adjudged by a court-martial. In order to maintain discipline through the use of nonjudicial punishment, commanding officers must have a thorough understanding of their authority under Article 15, the limits of that authority and the procedures for imposing nonjudicial punishment. This enclosure is a guide to the exercise of the commander's authority to impose nonjudicial punishment and sets forth some of the necessary actions from the time an offense first becomes known, through imposition of punishment, to include record keeping, appeals, and reports. Commanders and all persons responsible for discipline should be thoroughly familiar with the following laws and regulations which are applicable to nonjudicial punishment:

UCMJ, Articles 10, 13, 15, 31, 77-134, and 137;

MCM, 1969, (Rev.), paragraphs 29-33, 128-135, 155-213, and Appendix 6;

JAGMAN, sections 0101-0102, 0128, and Appendixes A-1-i(6) and (7) and A-1-t to A-1-v;

MCO P5800.8_, LEGADMINMAN, paragraphs 1003, 2007, and 3001;

MCO P1070.12_, IRAM, paragraphs 4001, 4014, and 4015.

2. Authority to Impose Nonjudicial Punishment (NJP)

a. Citations. The authority to impose punishments and the punishments which can be imposed are set out in Article 15, UCMJ, and MCM, 1969, (Rev.), paragraphs 128-132. Further amplification of this authority is contained in sections 0101 and 0102, JAG Manual.

b. Selected Provisions. Commanders must be thoroughly familiar with the foregoing references. Some of the major provisions are as follows:

(1) Only commanding officers and designated officers-in-charge can impose punishments and only on members of their commands.

(2) Before a commanding officer can impose nonjudicial punishment, a hearing must be held as prescribed by MCM, 1969, (Rev.), paragraph 133b, unless as provided in section 0101d(4) of the JAG Manual, NJP is contemplated on the basis of the record of a court of inquiry or other formal fact-finding body where the accused was accorded the rights of a party with respect to the act or omission charged. If the accused was not accorded such rights as set forth in section 0304 of the JAG Manual, a hearing must be conducted.

(3) Reduction in grade may not be imposed except to the next inferior grade, and only if the officer imposing it has the authority to promote to the grade from which the accused is to be reduced. Subsection 0101b(7), JAG Manual.

(4) As a general policy, nonjudicial punishment will not be imposed on persons who have been tried for the same offense in a domestic or foreign court, whether convicted or acquitted, or whose cases have been adjudicated by juvenile authorities. Punishment will not be administered in such cases without prior permission of the Commanding General. Subsection 0101b(2) and 0107e(3)(b), JAG Manual.

(5) Nonjudicial punishment may be imposed on members of the command for minor offenses only. See MCM, 1969, (Rev.), paragraph 128b for guidelines concerning what constitutes a "minor offense." Nonjudicial punishment for an offense not properly punishable under Article 15 (i.e., a major offense) does not necessarily bar a superior commander from referring the same offense to a court-martial. See Article 15(b), UCMJ, and MCM, 1969, (Rev.), paragraph 128b.

(6) If not embarked on board a vessel, an offender can refuse punishment under Article 15, UCMJ.

(7) Nonjudicial punishment may be imposed for offenses whether they occur on or off base. Subsection 0101a(6), JAG Manual. However, it should be noted that, in most cases, court-martial jurisdiction does not exist for off base offenses.

3. Initial Action on Suspected Offenses

a. Duty to Report Offenses. Article 1139, U.S. Navy Regulations, requires that Marines/Sailors having personal knowledge of any military offense committed by members of the Naval service report it to the proper authority.

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b. Blotter Entry Notification. When the name of a Marine/Sailor appears on the daily military police blotter, the Military Justice Officer will contact the commanding officer of the Marine/Sailor concerned.

c. Preliminary Inquiry

(1) As provided in paragraphs 32 and 33 of the MCM, 1969, (Rev.), the preliminary inquiry is the initial command inquiry into a suspected offense, or report of misconduct, and is designed to furnish the commander with sufficient information upon which to take further appropriate action. It may be conducted by the commanding officer or by a member of his command. This inquiry is usually informal. It may consist only of an examination of the charges and the summary of expected evidence which accompanies them. In other cases, it may involve a more extensive investigation.

(2) A letter report, using the same format as a JAG Manual investigation, should be utilized when a written report is required. See JAG Manual, Appendix A-6-a. The report should include all statements, documents, pictures, sketches, and other evidence the Preliminary Inquiry Officer has gathered. Regarding witnesses, the name, grade, unit (or address of civilian), status, home telephone number, expected date of transfer or discharge, and any other information that may assist in locating or keeping track of witnesses should be included in the report. The emphasis should be on the collection and examination of all evidence that is essential to a determination of the guilt or innocence of the accused. Where it is anticipated an offense might be referred to a court-martial, the court-martial convening authority should not become an investigator of the offense, and thereby, an "accuser." Therefore, when a suspected offense might be referred to a court-martial, an officer should be appointed to conduct the preliminary inquiry and make a report with specific recommendations.

(3) Witness statements and documents are the essential substance of the preliminary inquiry. If a case is referred to a court-martial, accurate and factual witness statements and copies of documents are essential to the trial counsel if he is to successfully prosecute the case without unnecessary delay. When nonjudicial punishment is imposed, accurate and factual witness statements and copies of documents are equally essential. At a nonjudicial punishment hearing, the accused is entitled to examine all documents. See MCM, 1969, (Rev.), paragraph 133b, in this regard. Copies of all signed witness statements and documents considered during a nonjudicial punishment hearing must also be retained by the command. Subsection 0101f(8), JAG Manual, requires that these statements and documents be forwarded with the Unit Punishment Book if there is an appeal. Therefore, in any preliminary inquiry which might result in court-martial or where the witnesses might not be present for the nonjudicial punishment hearing, the witnesses' statements should be obtained in writing and signed by the witness making the statement. Witness statements should be obtained as soon after an incident as possible and must be specific and factual. Statements for a preliminary inquiry are not required to be taken under oath; however, it is recommended that statements be taken under oath. Witnesses may be sworn as follows:

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Do you swear or affirm that the evidence you shall give in the matter now under investigation shall be the truth, the whole truth and nothing but the truth, so help you, (God)?

The statement will include, under the signature of the witness:

Subscribed and sworn to before me this _____ day of _____, 19____.

Signature of Preliminary Inquiry Officer

4. Advice Prior to Hearing

a. JAG Manual Appendix A-1-t will be used to form the basis for advising the accused. See Appendix A to this enclosure. Not only must the advice be given, but the commander must allow the individual reasonable time prior to the hearing to obtain a personal representative, if desired, and to prepare his defense or extenuation and mitigation, if any. How much time the individual should be allowed to prepare his defense will depend on the circumstances of each case, but for most offenses which occur in the unit area and do not involve complex facts or legal issues, a 24-hour notice should be sufficient.

b. Compliance with U.S. v. BOOKER, 5 MJ 238 (CMA 1977), and U.S. v. MCLEMORE, 10 MJ 238 (CMA 1981), requires a written statement showing both that an accused was given the opportunity to consult with independent counsel prior to accepting NJP and that the accused did not exercise the right to refuse NJP before an NJP can be considered in aggravation at a subsequent court-martial. It is noted that failure to comply with BOOKER will not invalidate the nonjudicial punishment. Compliance may be accomplished by recording a signed entry on page 12 of a Marine's service record book, or the equivalent Navy enlisted service record page, prior to the imposition of NJP. The following suggested example is provided: "I certify that I was given the opportunity to consult with a lawyer, provided by the government at no cost to me, in regard to the NJP to be held on (date of NJP). I understand that I have the right to refuse that NJP, but I choose not to exercise that right." This entry, if utilized, will be followed by the signature of the accused and date. The use of a rubber stamp for recording the above statement is authorized. If a hearing results in no punishment imposed, the required entry above described WILL NOT be retained as a matter of record. If the service record book page records no other offenses and punishments, remove the page and replace it with a new one. If other offenses and punishments are recorded on this page, the removal of the entry will be accomplished by drawing a thin inked line through the entry, and then by initialing the lined-out entry.

5. The Hearing. Specific instructions for conducting an office hours/Captain's Mast hearing are contained in MCM, 1969, (Rev.), paragraph 133b, and section 0101d(2) JAG Manual. Additionally, Appendix B of this enclosure is provided as an NJP guide. Use of the guide is discretionary with the commander. The standard of proof by which elements of each offense must be established is by a "preponderance

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of the evidence," rather than "beyond a reasonable doubt" as at a court-martial. The rules of evidence contained in Chapter XXVII, MCM, 1969, (Rev.), do not apply at nonjudicial punishment hearings. Article 31(b), UCMJ, does apply to statements obtained during the hearing when questioning the accused or witnesses suspected of offenses.

6. Advice of Right to Appeal Punishment. When the commanding officer imposes punishment, he must personally advise the individual of his right to appeal the punishment in accordance with section 0101d(5), JAG Manual. JAG Manual Appendix A-1-v, an accused's Acknowledgement of Appeal Rights, may be utilized to ensure that the offender is fully informed of his right to appeal. See Appendix C of this enclosure.

7. Execution of the Punishment

a. Forfeiture and Detention of Pay, and Reduction in Grade. These punishments, if unsuspended, take effect and are executed when imposed. If a forfeiture or detention of pay is imposed while a prior punishment of forfeiture or detention of pay is still in effect, the prior punishment will be completed before the latter begins to run. See Article 15(e), UCMJ; MCM, 1969, (Rev.), paragraph 131e; and subsection 0101e(1), JAG Manual.

b. Punishments involving Restraint and Extra Duties/Request for Stay. These punishments, if unsuspended, take effect and are executed when imposed. However, these punishments may be stayed if the offender files a timely written appeal of his punishment (see paragraph 9 below) and requests the punishment be stayed pending completion of the appeal, and if the officer who will act on the appeal determines that there is a reasonable probability that the appeal will be granted in whole or in part. The officer who will act on the appeal must grant or deny a requested stay within 72 hours of receipt of the appeal or the stay is automatically granted. A stay granted by the officer who imposed the NJP is a legal nullity and any punishment thus "stayed" will be considered to have taken effect when imposed whether or not the punishment is actually served. The execution of any previously imposed punishment involving restraint or extra duties will be interrupted by a subsequent nonjudicial punishment involving restraint unless the officer imposing the subsequent punishment orders that the prior punishment be served first. A sentence imposed by a court-martial will interrupt the service of nonjudicial punishment involving restraint or extra duties. When the judicially imposed punishment has been served, the unexecuted nonjudicial punishment will be completed. See section 0101e(2), JAG Manual.

8. Record of the Proceedings. The proceedings of nonjudicial punishments are recorded on a sheet of bond paper and attached to the Unit Punishment Book (UPB) (NAVMC 10132 (Rev. 8-75)) in accordance with paragraph 2007, LEGADMINMAN. Great care must be exercised in accurately recording the results of the proceedings on the Unit Punishment Book, the Unit Diary and in the individual's service record book.

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9. Appeals From Nonjudicial Punishment

a. Punishment imposed pursuant to Article 15 may be appealed to the next superior commanding officer of the officer who imposed the punishment if the individual believes the punishment was either unjust or disproportionate to the offense. See Article 15(e), UCMJ; MCM, 1969, (Rev.), paragraph 135; and section 0101f, JAG Manual.

b. The appeal must be made within a reasonable time. In the absence of unusual circumstances, an appeal made more than 15 days after the punishment was imposed may be considered as not having been made within a reasonable time. If there are unusual circumstances, the individual should request an appropriate extension of time from the officer who imposed the punishment. In the absence of such a request, an appeal submitted after the 15-day period may be considered as not having been made within a reasonable time.

c. All appeals are made to the next superior commanding officer in the chain of command of the officer who imposed the punishment, regardless of whether or not the individual punished is, at the time of his appeal, still a member of an organization within that chain of command. Article 15(e), UCMJ; MCM, 1969, (Rev.), paragraph 135; and section 0101f(2) and (3), JAG Manual, apply. Appeals must be in writing using the Naval letter format. They are submitted to the offender's present commanding officer or the officer who imposed the punishment. When the offender is no longer in the command where punishment was imposed, his immediate commander will forward the appeal directly to the officer who imposed the punishment bypassing the intermediate commanders in accordance with section 0101f(7), JAG Manual.

d. Appeals may state the reason why the offender believes the punishment to be unjust or disproportionate. MCM, 1969, (Rev.), paragraph 135, and section 0101f(8), JAG Manual apply.

e. The officer who imposed the punishment must comply with the requirements of section 0101f(8), JAG Manual, when forwarding the appeal. A summary of the hearing will already be attached to the Unit Punishment Book. Forwarded with the appeal should be:

- (1) The original Unit Punishment Book (Marines) or a copy of the completed mast report form (Navy);
- (2) Copies of all documents and signed statements considered at the hearing; and
- (3) The service record book of the offender.

The officer who imposed the punishment will endorse the appeal and should comment on any assertions of fact contained in the letter of appeal which the officer who imposed the punishment considers to be inaccurate or erroneous. He should also include in his endorsement a recitation of any facts concerning the offenses which are not otherwise included in the appeal papers. Any other adverse factual information set forth in the endorsement or forwarded with it which was not

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considered at the hearing and which is not already set out in official service record entries should be referred to the appellant for comment, if practicable, in order that he will have an opportunity to submit a statement in regard thereto if he desires. Sections 0101f(8)(a) through (e), JAG Manual apply.

f. Prior to acting on an appeal involving punishment of:

- (1) Arrest in quarters for more than seven days;
- (2) Correctional Custody for more than seven days;
- (3) Forfeitures of more than seven days' pay;
- (4) Reduction from the rank of Corporal/3d Class Petty Officer or a higher rank/rate;
- (5) Extra duties for more than 14 days;
- (6) Restriction for more than 14 days; or
- (7) Detention of more than 14 days' pay,

the authority who is to act on the appeal must forward the case to a judge advocate for consideration and advice. See Article 15(e)(1) through (7), UCMJ, and MCM, 1969, (Rev.), paragraph 135. If the Commanding General is to act on such cases, they will be forwarded to: Commanding General (Attn: Staff Judge Advocate). If the special court-martial convening authority is to act on such cases, they will be forwarded for "consideration and advice" to the Staff Judge Advocate. In the above cases, they will be returned with the "advice" and a recommended action. In cases involving punishments less than those stated above, the commanding officer who has authority to act on the appeal may forward the appeal to this headquarters, as above, for "consideration and advice" of a judge advocate. See MCM, 1969, (Rev.), paragraph 135. The forwarding endorsement in such cases should clearly state the appeal is being forwarded for "consideration and advice."

g. In acting on an appeal, the commanding officer may, under the conditions set out in MCM, 1969, (Rev.), paragraph 134, suspend, mitigate, remit, or set aside in whole or in part the punishment imposed.

h. Pursuant to section 0101f(9), JAG Manual, the authority who acts on the appeal may set aside the nonjudicial punishment for procedural error not amounting to a finding of insufficient evidence and return it to the officer who imposed the original nonjudicial punishment, or his successor in command, for additional proceedings under Article 15, UCMJ. The following limitations apply to such rehearings:

- (1) The punishment imposed at the rehearing may not be more severe than that imposed at the original proceeding, unless other offenses, which occurred after the date of the original nonjudicial punishment proceeding, are included in the offenses charged.

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(2) An individual has no right to demand trial by court-martial for those offenses for which the rehearing was ordered, unless one of the bases for the appeal was the alleged invalidity of the individual's prior waiver of the right to demand trial by court-martial; the individual, however, retains the right to demand trial by court-martial for any added offense occurring after the date of the original nonjudicial punishment.

i. Commanding officers will ensure that any offender who desires to appeal a nonjudicial punishment is given prompt assistance and clerical support.

j. All appeals must be promptly forwarded and decided. Article 15(e), UCMJ, applies.

10. Authority to Suspend, Remit, Mitigate, or Set Aside Punishments. Pursuant to Article 15(d), UCMJ; MCM, 1969, (Rev.), paragraph 134; and subsection 0101j, JAG Manual, either the commanding officer who imposed a punishment, successor in command, a commanding officer with authority to act on an appeal, or an offender's new commanding officer (or officer-in-charge), if the offender has been transferred, has authority to suspend, mitigate, remit, or set aside unexecuted punishments. Reductions in grade and forfeitures or detentions of pay may be suspended or mitigated, whether executed or unexecuted. However, an executed punishment of reduction or forfeiture may be suspended only within a period of four months after the date of its imposition. Any suspension should be for a definite period of time, but the period of suspension shall not exceed six months.

11. Vacation of Suspended Punishment. The authority to vacate suspended punishments is set out in MCM, 1969, (Rev.), paragraph 134, and subsection 0101j(3), JAG Manual. The officer authorized to vacate suspension of the punishment should conduct an informal hearing prior to vacating any suspended punishment. Any derogatory or adverse information upon which the proposed vacation is based should be reflected.

12. Quarterly Report of Nonjudicial Punishments. Statistics on nonjudicial punishments are included in the quarterly Criminal Activity, Disciplinary Infractions and Court-Martial Report which is prepared by this headquarters. Organizations exercising special courts-martial jurisdiction will consolidate the reports of their subordinate commands and submit their reports to reach this headquarters no later than the 12th day following the quarterly period covered. Instructions for completing the report are contained in Appendices A-1-i(6) and (7), JAG Manual.

13. Publication of Nonjudicial Punishment Results. Commanding officers may, if the interests of the rehabilitation of the offender, good order, high morale, and perceptions of fairness so warrant, establish a policy whereby the disposition of nonjudicial punishment cases is announced. Announcement may be by any or all of the following methods: plan of the day publication within one month of the imposition of the nonjudicial punishment; posting on bulletin boards within a month of the imposition of the nonjudicial punishment; and announcement at daily formations/morning quarters. Section 0101k, JAG Manual, applies.

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14. Officer Nonjudicial Punishment

a. Punishment imposed on an officer under Article 15, UCMJ, shall be in the form of a written communication. The UPB shall not be used. In lieu of using the UPB for officer NJP, the officer should be advised of those matters contained in Appendix D or E of this enclosure as appropriate. All correspondence in this regard will be marked "For Official Use Only."

b. The procedure for imposing NJP upon an officer is contained in JAG Manual 0101d and MCM, 1969, (Rev.), paragraph 133b.

(1) When NJP is contemplated on the basis of a formal fact-finding body, and the officer was accorded the rights of a party with respect to the act or omission charged, the officer should be advised of those matters set forth in Appendix D of this enclosure. NJP may then be imposed.

(2) When NJP is contemplated on the basis of information not the subject of a formal fact-finding body or the officer concerned was not afforded the rights of a party with respect to the act or omission charged, the officer should be advised of those matters set forth in Appendix E of this enclosure. A hearing must then be held in accordance with the procedures set forth in JAG Manual 0101d and MCM, 1969, (Rev.), paragraph 133b.

c. Before finalizing a decision to recommend that the Commanding General impose NJP on an officer, it is recommended that the facts and circumstances of the case be thoroughly discussed with the Staff Judge Advocate. If a request for Commanding General's NJP on an officer is then contemplated, afford the officer all of the requisite rights, and forward a report to include the alleged offenses, available evidence and OQR to the Commanding General (Attn: SJA).

d. NJP imposed upon officers shall be reported to CMC in accordance with paragraph 3001 of the LEGADMINMAN. Prior to forwarding such report, the officer concerned should complete the statement contained in Appendix F of this enclosure.

15. Nonpunitive Measures. Commanders can use nonpunitive measures to correct deficiencies in individuals' performance of duty without resorting to judicial action (court-martial) or nonjudicial punishment. Nonpunitive measures generally fall into three categories: extra military instruction, administrative withholding of privileges, and nonpunitive censure. The provisions of MCM, 1969, (Rev.), paragraph 128c, and section 0101c, JAG Manual, apply. It should be noted that the administrative withholding of privileges may be governed by other directives; therefore, commanders contemplating such measures should consult with the Military Justice Officer, Office of the Staff Judge Advocate. See paragraph 15 of enclosure (2) to this Order.

ACCUSED'S ACKNOWLEDGEMENT AND WAIVER OF RIGHTS FOR OFFICE HOURS/CAPTAIN'S MAST
(ACCUSED NOT ATTACHED TO OR EMBARKED IN A VESSEL)

[Record may be used in aggravation in event of later court-martial (See subsection 0101d and section 0117 of JAG Manual)]

I, _____ SSN _____, assigned or attached
(Name and grade of accused)

to _____, have been informed
of the following facts and rights:

1. That I am suspected of having committed the following violation(s) of the Uniform Code of Military Justice:

2. That it is contemplated that my case will be referred to (captain's mast) (office hours);

3. That, at (captain's mast) (office hours), I will receive a hearing at which I will be accorded the following rights:

- a. To be present before the officer conducting the hearing;
- b. To be advised of the offense(s) of which I am suspected;
- c. To not be compelled to make any statement regarding the offense(s) charged, and I realize that if I make any statement it may be used against me;
- d. To be present during the presentation of all information against me, including testimony of witnesses in person or by the receipt of their written statement(s), copies of such statements (to be) (having been) furnished to me;
- e. To have made available to me for my inspection all items of information in the nature of physical or documentary evidence to be considered by the officer conducting the hearing;

f. To have full opportunity to present any matters in defense--that is, evidence tending to show that I did not commit the offense(s) charged against me--as well as matters in extenuation or mitigation--that is, any information tending to explain the circumstances surrounding the commission of the offense(s), or any other information which might justify the imposition of a lighter punishment than might otherwise be imposed;

g. To be accompanied at the hearing by a personal representative to speak on my behalf. I understand that my command has no obligation to provide such a personal representative and that it is my own obligation to obtain and arrange for the presence of such a personal representative if I wish one. The personal representative need not be a lawyer.

4. That, if punishment is imposed at (captain's mast) (office hours), I will have the right to appeal to higher authority, within a reasonable time, which normally is fifteen days after the punishment is imposed, if I consider the punishment unjust or disproportionate to the offense(s) for which it is imposed.

5. That, if not otherwise contemplated, I may request that the (captain's mast) (office hours) be open to the public, to the extent permitted by available space, unless security interests dictate otherwise. I may also request to confer privately with the officer who will hold the hearing, to relate matters which, in my opinion, are of a personal nature.

6. That I have the right to demand trial by court-martial in lieu of (captain's mast) (office hours). That I have the right to obtain advice of rights from a lawyer prior to deciding whether I should demand trial by court-martial in lieu of (captain's mast) (office hours). Should I desire to obtain such advice from a lawyer, I understand that a military lawyer will be made available to advise me, free of charge, or in the alternative, I may obtain such advice from a civilian lawyer at my own expense. I understand that any action to give up these rights must be taken voluntarily by me after careful consideration. Therefore, I desire to: (check one)

Talk to a lawyer prior to deciding what I should do.

Voluntarily, knowingly, and intelligently give up my right to talk to a lawyer.

(Signature of Accused)

(Signature of Witness)

(Date)

3

Note: If the accused states that he or she desires to obtain advice of rights from a lawyer prior to deciding whether to demand trial by court-martial in lieu of (captain's mast) (office hours), the remainder of this form shall not be completed until the accused has been given a reasonable opportunity to consult with a lawyer.

7. Knowing and understanding all of my rights as set forth in paragraphs one through six above, my desires are as follows: (check one or more, as applicable)

I demand trial by court-martial in lieu of (captain's mast) (office hours)

I do not demand trial by court-martial in lieu of (captain's mast) (office hours).

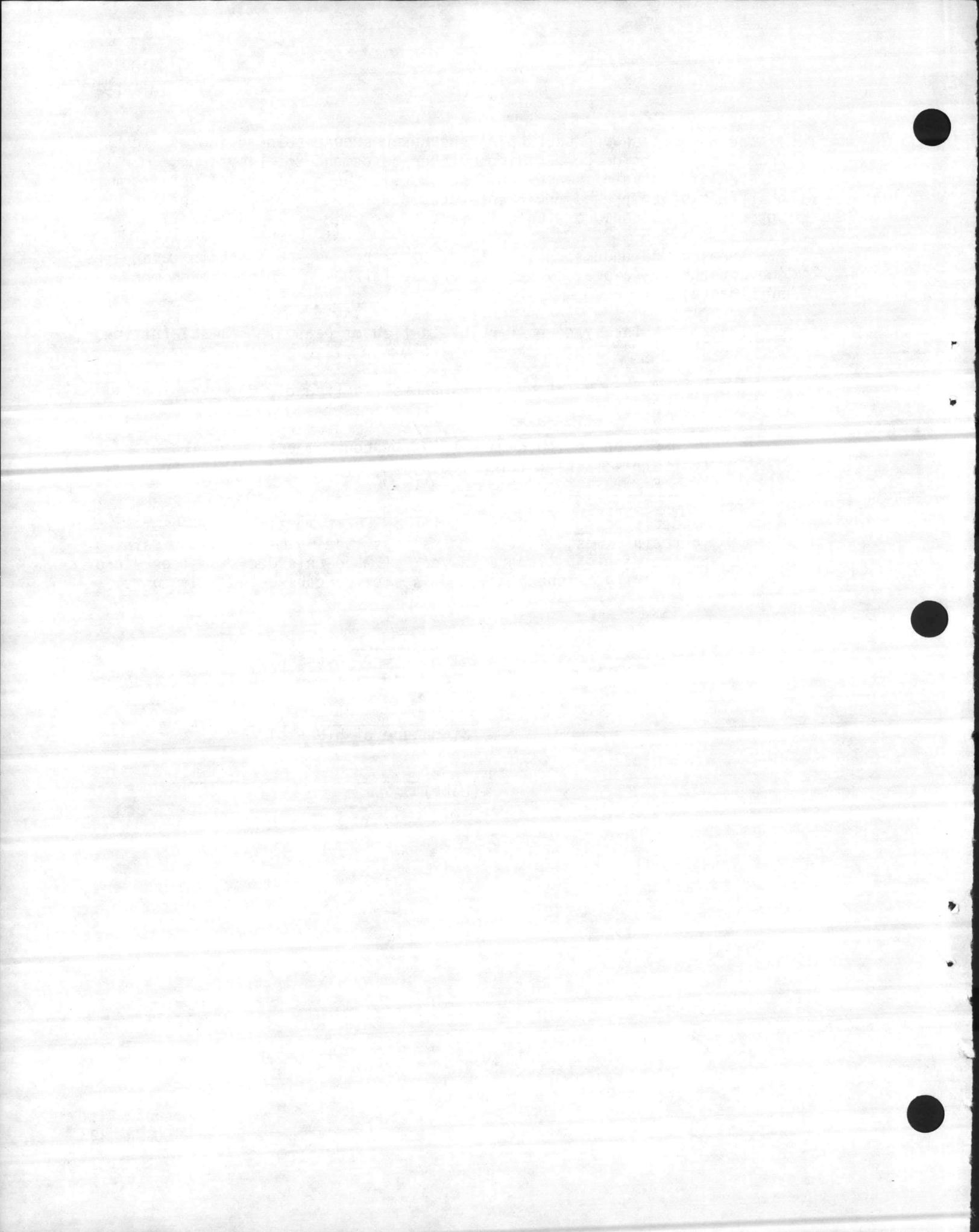
My decision not to demand trial by court-martial in lieu of (captain's mast) (office hours) was made after talking to _____, a lawyer

My decision not to demand trial by court-martial in lieu of (captain's mast) (office hours) was made by me without obtaining advice of rights from a lawyer. I made this decision freely and voluntarily, without any promises or threats being made to me.

(Signature of Accused)

(Signature of Witness)

(Date)



OFFICE HOURS/CAPTAIN'S MAST PROCEDURAL GUIDE

If an accused has not demanded trial by court-martial and the commanding officer, after reviewing all the facts contained in the preliminary inquiry, determines the case should be REFERRED TO A COURT-MARTIAL OR HIGHER AUTHORITY, he should merely inform the accused as follows:

"AFTER REVIEWING ALL THE FACTS OF THIS CASE, I AM [REFERRING YOUR CASE TO A SUMMARY/SPECIAL COURT-MARTIAL] [FORWARDING THE CASE TO THE BATTALION/SCHOOL COMMANDER WITH A RECOMMENDATION THAT HE (CONDUCT AN NJP HEARING) (REFER YOUR CASE TO A SUMMARY/SPECIAL COURT-MARTIAL) (ORDER THAT AN ARTICLE 32 INVESTIGATION BE CONDUCTED)].

If nonjudicial proceedings are contemplated, the following procedures are suggested:

OPENING STATEMENT OF THE COMMANDING OFFICER

CO: THIS IS A PROCEEDING UNDER ARTICLE 15, UNIFORM CODE OF MILITARY JUSTICE, AND IS NONJUDICIAL IN NATURE. THIS HEARING IS NOT A TRIAL AND A DETERMINATION OF MISCONDUCT ON YOUR PART IS NOT A CONVICTION. YOU ARE ALSO ADVISED THAT ALTHOUGH THE FORMAL RULES OF EVIDENCE USED IN TRIAL BY COURTS-MARTIAL DO NOT APPLY AT THIS HEARING, EVIDENCE WILL BE PRESENTED IN AN INFORMAL MANNER TO DETERMINE YOUR ALLEGED MISCONDUCT. THIS HEARING WILL BE CONDUCTED IN THE FOLLOWING MANNER. FIRST, I WILL ADVISE YOU OF THE SPECIFIC NATURE OF THE OFFENSE(S) FOR WHICH YOU HAVE BEEN PLACED ON REPORT. THEN I WILL QUESTION WITNESSES AND EXAMINE PERTINENT EVIDENCE TO DETERMINE ALL THE FACTS RELATING TO THE REPORTED OFFENSE(S). YOU HAVE THE OPPORTUNITY TO ASK QUESTIONS OF THE WITNESSES CALLED IN THIS CASE. YOU ALSO HAVE THE RIGHT TO ASK THAT OTHER WITNESSES BE CALLED AND QUESTIONED REGARDING YOUR CASE. AFTER I HAVE HEARD FROM ALL THE WITNESSES, AND CONSIDERED ALL OTHER EVIDENCE, I WILL THEN GIVE YOU AN OPPORTUNITY TO MAKE ANY STATEMENT YOU WISH TO MAKE AND TO PRESENT EVIDENCE IN YOUR BEHALF (INCLUDING WITNESSES AND/OR DOCUMENTS). YOU ARE NOT REQUIRED TO MAKE ANY STATEMENT. YOU HAVE THE ABSOLUTE RIGHT TO REMAIN SILENT, AND YOUR SILENCE WILL IN NO WAY BE HELD AGAINST YOU. HOWEVER, IF YOU CHOOSE TO MAKE A STATEMENT, ANYTHING YOU SAY CAN BE USED AGAINST YOU IN DETERMINING WHETHER OR NOT TO DISMISS THE CHARGE(S), TO AWARD NONJUDICIAL PUNISHMENT, OR TO REFER THE CHARGE(S) FOR TRIAL BY COURT-MARTIAL.

AFTER I HAVE HEARD FROM ALL THE WITNESSES, HEARD ANY STATEMENT THAT YOU MAY WISH TO MAKE, AND CONSIDERED ALL AVAILABLE EVIDENCE, I WILL THEN DECIDE WHETHER TO DISMISS THE CHARGES, AWARD NONJUDICIAL PUNISHMENT, OR REFER THE CHARGE(S) FOR TRIAL BY COURT-MARTIAL.

I WANT TO IMPRESS UPON YOU THAT THIS HEARING WILL BE A FULL AND FAIR HEARING INTO ALL THE FACTS AND CIRCUMSTANCES. I ENCOURAGE YOU TO SUMMON WITNESSES IN YOUR OWN BEHALF, IF YOU HAVE NOT ALREADY DONE SO, AND ASK QUESTIONS OF ANY WITNESSES IN ORDER TO ENSURE THAT ALL RELEVANT FACTS ARE BROUGHT OUT.

DO YOU HAVE ANY QUESTIONS?

Appendix B to
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ACCUSED: YES, SIR/NO, SIR.

CO: I SEE FROM THE RECORD THAT YOU HAVE BEEN ADVISED OF ALL YOUR RIGHTS BY _____, AS REQUIRED BY CURRENT REGULATIONS, INCLUDING YOUR RIGHTS UNDER ARTICLE 31 OF THE UNIFORM CODE OF MILITARY JUSTICE AND YOUR RIGHT TO CONFER WITH AN INDEPENDENT COUNSEL BEFORE YOU ACCEPT OR REJECT NONJUDICIAL PUNISHMENT FOR THESE OFFENSES. ARE YOU SATISFIED THAT ALL OF YOUR RIGHTS HAVE BEEN ADEQUATELY ADMINISTERED UP TO THIS POINT?

ACCUSED: YES, SIR/NO, SIR.

CO: DO YOU FULLY UNDERSTAND ALL OF THESE RIGHTS?

ACCUSED: YES, SIR/NO, SIR.

CO: DO YOU WISH TO HAVE A PERSONAL REPRESENTATIVE PRESENT?

ACCUSED: YES, SIR/NO, SIR.

RIGHT TO REFUSE NONJUDICIAL PUNISHMENT

Omit this paragraph if the accused is attached to or embarked in a vessel.

CO: BEFORE PROCEEDING, I WANT TO INFORM YOU THAT SINCE YOU ARE NOT ATTACHED TO A VESSEL YOU HAVE THE RIGHT TO REFUSE NONJUDICIAL PUNISHMENT, AND IN THE EVENT YOU DO NOT CONSENT TO THIS OFFICE HOURS PROCEEDING, I WILL THEN DECIDE WHETHER OR NOT TO REFER THIS MATTER FOR TRIAL BY COURT-MARTIAL. DO YOU CONSENT TO MY PROCEEDING WITH THIS ARTICLE 15 HEARING?

ACCUSED: YES, SIR/NO, SIR.

a. If the accused does consent to the office hours proceeding, he will so indicate by signing item 6 of the Unit Punishment Book. (If not already done).

b. If the accused does not consent, the office hours must be terminated and a determination must then be made whether or not to refer the offense for trial by court-martial.

INFORMING THE ACCUSED OF THE REPORTED OFFENSE

CO: _____, I HAVE HERE A REPORT SHEET WHICH CHARGES YOU WITH COMMITTING THE FOLLOWING OFFENSE(S): _____

YOU WERE PLACED ON REPORT BY _____

THE FOLLOWING PERSONS ARE LISTED AS POSSIBLE WITNESSES:

THE MATTER WAS INVESTIGATED BY _____
WHO STATES THAT _____.

DO YOU HAVE ANY QUESTIONS AS TO EXACTLY WHAT OFFENSE(S) YOU ARE ACCUSED OF COMMITTING?

ACCUSED: YES, SIR/NO, SIR.

EXAMINATION OF WITNESSES BY THE COMMANDING OFFICER

The commanding officer should bring each witness before him, one at a time, and elicit all the details surrounding the reported offense(s), asking questions where necessary.

EXAMINATION OF WITNESSES BY THE ACCUSED OR HIS REPRESENTATIVE

Following the questioning of each witness, the commanding officer should ask the accused:

CO: DO YOU HAVE ANY QUESTIONS THAT YOU OR YOUR REPRESENTATIVE WOULD LIKE TO ASK THE WITNESS, OR, DO YOU HAVE ANY QUESTIONS THAT YOU WOULD LIKE FOR ME TO ASK THIS WITNESS?

ACCUSED: YES, SIR/NO, SIR.

EXAMINATION OF STATEMENT, DOCUMENTS, ETC.

CO: I HAVE THE FOLLOWING WRITTEN (STATEMENTS) (DOCUMENTS) (OBJECTS) WHICH I HAVE CONSIDERED, AND NOW GIVE YOU THE OPPORTUNITY TO INSPECT THEM. (NOTE: If written statements of witnesses are considered, copies shall be given to the accused.)

When all of the witnesses have been heard and other evidence considered, the commanding officer should ask:

CO: _____, ARE THERE ANY OTHER WITNESSES THAT YOU WOULD LIKE CALLED OR EVIDENCE YOU WOULD LIKE ME TO CONSIDER?

ACCUSED: YES, SIR/NO, SIR.

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STATEMENT BY THE ACCUSED

After the commanding officer has heard from all the witnesses, he/she must give the accused a chance to tell his/her side of the story. He should make a statement substantially as follows:

CO: _____, YOU HAVE HEARD THE WITNESSES AND THEIR TESTIMONY. YOU NOW HAVE THE OPPORTUNITY TO TELL ME YOUR SIDE OF THE STORY AND TO PRESENT ANY RELEVANT MATTERS, INCLUDING TESTIMONY OF WITNESSES, STATEMENTS, AND PHYSICAL AND DOCUMENTARY EVIDENCE. YOU CAN PRESENT MATTERS IN DEFENSE, MITIGATION, AND EXTENUATION. MATTERS IN DEFENSE ARE THOSE THINGS THAT SHOW YOU DID NOT DO OR FAIL TO DO THE THING ALLEGED OR THAT YOU ARE NOT CRIMINALLY RESPONSIBLE FOR DOING OR FAILING TO DO THEM. MATTERS IN EXTENUATION ARE THINGS WHICH SERVE TO EXPLAIN WHY YOU DID WHAT YOU DID BUT THAT DO NOT AMOUNT TO A DEFENSE. MATTERS IN MITIGATION ARE ANY MATTERS ABOUT YOU AND YOUR RECORD WHICH WOULD SHOW THAT YOUR ALLEGED MISCONDUCT SHOULD BE VIEWED WITH LENIENCY. BEFORE YOU SAY ANYTHING, I WANT TO REMIND YOU THAT YOU HAVE THE RIGHT TO REMAIN SILENT, AND YOUR SILENCE WILL IN NO WAY BE HELD AGAINST YOU. HOWEVER, ANYTHING YOU DO SAY CAN BE USED AGAINST YOU IN DETERMINING WHETHER OR NOT TO IMPOSE PUNISHMENT. IF YOU DO HAVE SOMETHING THAT YOU WANT TO SAY, NOW IS THE TIME TO SAY IT.

RESOLVING DISCREPANCIES

The commanding officer then listens to any statement the accused wishes to make and if necessary recalls the witnesses to clear up any discrepancies.

DISMISSAL BY THE COMMANDING OFFICER

After hearing the witnesses and the accused, the commanding officer can decide whether he is convinced that the accused has committed an offense.

Since the office hours is not a trial, it is neither necessary nor proper to announce a "guilty" finding.

If the commanding officer believes that no offense has been committed, he can end the proceeding at this time with a statement similar to the following:

CO: _____, I DON'T BELIEVE THAT YOU HAVE COMMITTED ANY OFFENSE FOR WHICH YOU SHOULD BE PUNISHED. THEREFORE, I AM DISMISSING THE OFFENSE(S). YOU ARE DISMISSED.

ACCUSED NOT DISMISSED BY THE COMMANDING OFFICER

If the commanding officer believes that an offense has been committed, he may ask the accused's supervisor for a report on the accused and then ask the executive officer if he/she has any recommendations to make in the case.

REMARKS BY THE ACCUSED'S SUPERVISOR

CO: _____, AS _____'S SUPERVISOR, DO YOU HAVE ANY REMARKS CONCERNING HIM OR THE INCIDENT WHICH IS THE SUBJECT MATTER OF THIS PROCEEDING?

Replies.

RECOMMENDATIONS OF THE EXECUTIVE OFFICER, ETC.

CO: _____, AS EXECUTIVE OFFICER DO YOU HAVE ANY COMMENTS OR RECOMMENDATIONS TO MAKE CONCERNING THIS OFFICE HOURS?

Replies.

CONSIDERATION OF PRIOR OFFENSES

The commanding officer should at this time note whether the accused has committed any previous offenses. He is not restricted to previous court-martial convictions, but may also consider previous appearances at office hours.

COMMANDING OFFICER'S DISPOSITION

The commanding officer should then announce his disposition of the case, and indicate the same in the appropriate section of the Unit Punishment Book Form.

ACCUSED'S RIGHT TO APPEAL THE PUNISHMENT

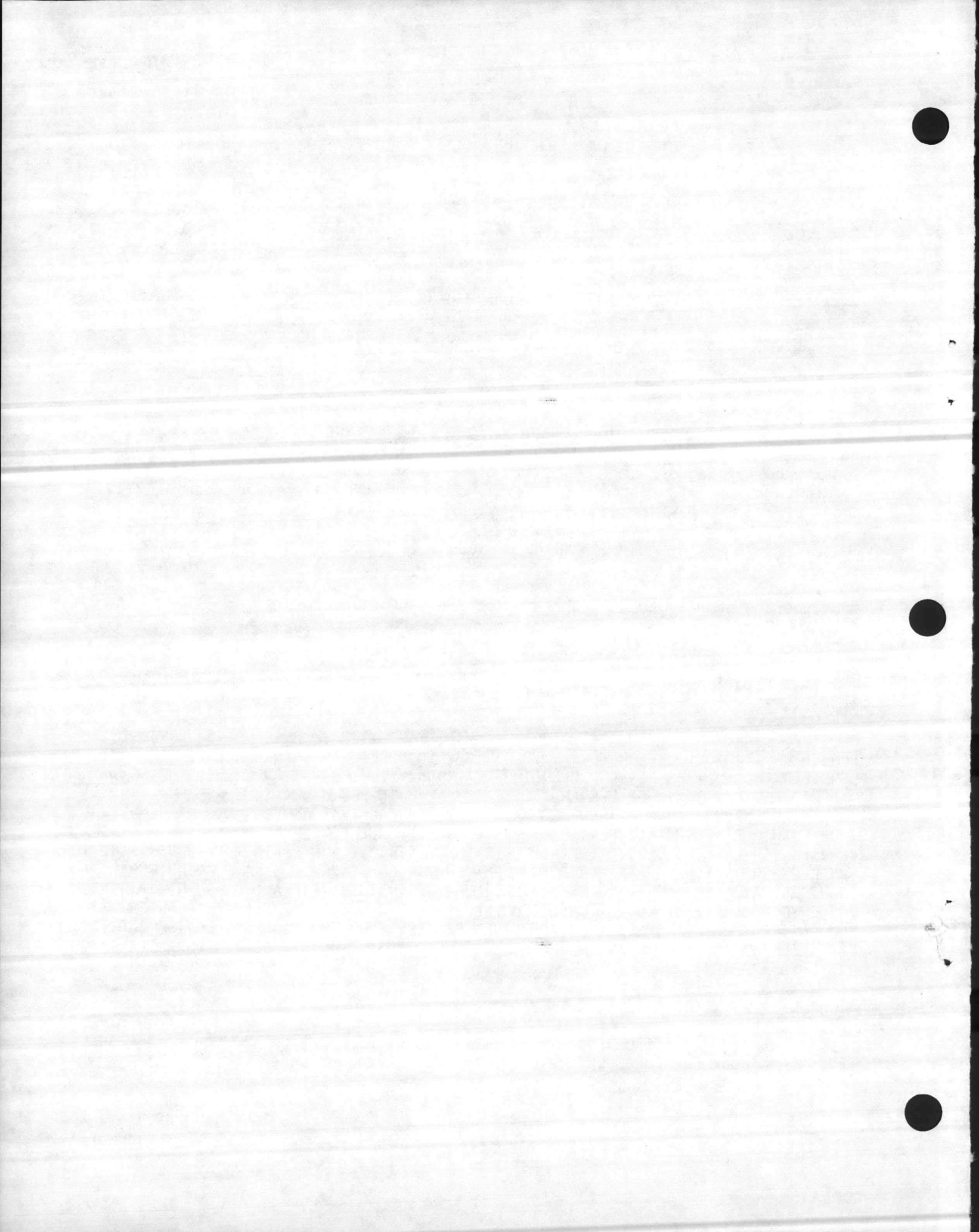
If the punishment is imposed, the member must be advised of the right to appeal.

CO: _____, SINCE I HAVE AWARDED YOU NONJUDICIAL PUNISHMENT, I MUST INFORM YOU OF YOUR RIGHT TO APPEAL THIS PUNISHMENT. IF YOU CONSIDER THE PUNISHMENT DISPROPORTIONATE OR UNJUST, YOU MAY APPEAL TO THE NEXT SUPERIOR IN THE CHAIN OF COMMAND. THE APPEAL MUST BE IN WRITING, AND MUST BE FORWARDED THROUGH THE CHAIN OF COMMAND. ANY APPEAL THAT YOU WISH TO MAKE MUST BE MADE WITHIN A REASONABLE PERIOD OF TIME, USUALLY NOT LONGER THAN 15 DAYS. SINCE YOUR PUNISHMENT INCLUDES (RESTRAINT) (EXTRA DUTIES) I MUST ALSO ADVISE YOU THAT YOU MAY REQUEST IN YOUR APPEAL THAT THIS PUNISHMENT BE STAYED. I HAVE NO AUTHORITY TO GRANT A STAY. YOU MUST BEGIN SERVING YOUR (RESTRAINT) (EXTRA DUTIES) NOW AND WILL CONTINUE TO SERVE IT UNTIL COMPLETED UNLESS YOUR REQUEST FOR STAY IS GRANTED. IF YOU DESIRE TO APPEAL, SEE THE EXECUTIVE OFFICER, YOUR IMMEDIATE SUPERVISOR, OR BATTALION/SCHOOLS LEGAL CHIEF AND HE WILL HELP YOU WITH IT. DO YOU UNDERSTAND YOUR RIGHT TO APPEAL?

ACCUSED: YES, SIR/NO, SIR.

The commanding officer should indicate in the appropriate section on the Unit Punishment Book Form that this explanation was given and understood.

Appendix B to
ENCLOSURE (1)



ACCUSED'S ACKNOWLEDGEMENT OF APPEAL RIGHTS FOR OFFICE HOURS/CAPTAIN'S MAST

I, _____ SSN _____, assigned or attached
(Name and grade of accused)

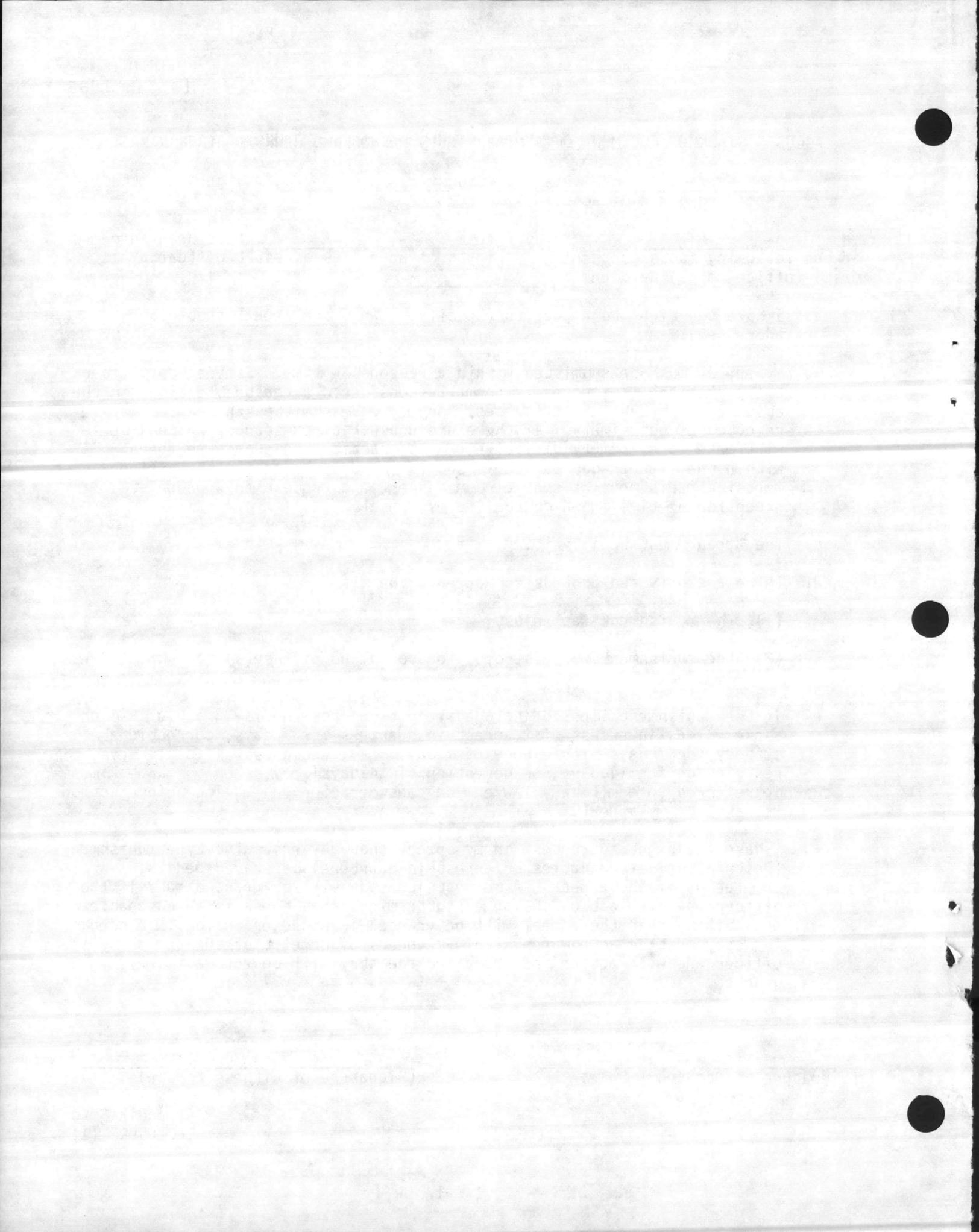
to _____, have been informed
of the following facts concerning my rights of appeal as a result of (captain's
mast) (office hours) held on _____:

- a. I have the right to appeal to (specify to whom the appeal should be addressed).
- b. My appeal must be submitted within a reasonable time. Fifteen days after the punishment is imposed is normally considered a reasonable time, in the absence of unusual circumstances. Any appeal submitted thereafter may be rejected as not timely. If there are unusual circumstances which I believe will make it extremely difficult or not practical to submit an appeal within the fifteen-day period, I should immediately advise the officer imposing punishment of such circumstances, and request an appropriate extension of time in which to file my appeal.
- c. The appeal must be in writing.
- d. There are only two grounds for appeal; that is:
 - (1) The punishment was unjust;
 - (2) The punishment was disproportionate to the offense(s) for which it was imposed.
- e. If the punishment imposed included reduction from the pay grade of E-4 or above or was in excess of: arrest in quarters for 7 days, correctional custody for 7 days, forfeiture of 7 days' pay, extra duties for 14 days, restriction for 14 days, or detention of 14 days' pay, then the appeal must be referred to a military lawyer for consideration and advice before action is taken on my appeal.
- f. I have the right to request in my appeal that any restraint-type punishment (restriction, extra duties or arrest in quarters) be stayed pending completion of the appeal. A request for stay will be granted only if the officer who will act on the appeal determines that there is a reasonable probability that the appeal will be granted in whole or in part. A request for stay must be acted upon within 72 hours of receipt of the appeal by the officer who will act on the appeal or the stay will be automatically granted.

(Signature of Accused & Date)

(Signature of Witness & Date)

Appendix C to
ENCLOSURE (1)



NOTIFICATION OF INTENT TO IMPOSE NJP UPON OFFICER WITHOUT HEARING

F-O-R-M-A-T

HEADING

FILE NUMBER
DATE

FOR OFFICIAL USE ONLY

From: Commanding General/Officer
To: (Officer Concerned)

Subj: Notification of Intent to Impose NJP

Ref: (a) MCM, 1969, (Rev.), par 133b
(b) JAGMAN, section 0101d(4)

Encl: (1) Copy of formal fact-finding investigation

1. You are advised that it is my intent to impose punishment upon you under the Uniform Code of Military Justice, Article 15.
2. This punishment is being imposed pursuant to reference (b). A hearing in accordance with reference (a) will not be conducted. Enclosure (1) is a formal fact-finding investigation, in which you were accorded the rights of a party respecting the charge against you.
3. You are advised that the offense(s) for which you will receive nonjudicial punishment is/are:
4. You are advised that you have the following rights in regard to the imposition of nonjudicial punishment.
 - a. You have a right to demand trial by court-martial in lieu of nonjudicial punishment. You have the right to obtain advice of rights from a lawyer prior to deciding whether you should demand trial by court-martial in lieu of nonjudicial punishment. Should you desire to obtain such advice from a lawyer, a military lawyer will be made available to advise you, free of charge, or in the alternative, you may obtain such advice from a civilian lawyer at your own expense. Any action to give up these rights must be taken voluntarily by you after careful consideration.

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Appendix D to
ENCLOSURE (1)

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b. A person punished under the authority of Article 15, UCMJ, who considers his punishment unjust or disproportionate to the offense, may, through the proper channels, appeal to the next superior authority. Such an appeal must be made within a reasonable time following the imposition of punishment. Such an appeal must be in writing and may include your reasons for regarding the punishment as unjust or disproportionate.

5. You will indicate by return endorsement hereon, your understanding of the foregoing and return it by _____.

Signature

(Date)

From: (Officer Concerned)
To: Commanding General/Officer
Subj: Acknowledgement of Advice of Rights

1. I hereby acknowledge my understanding of the advice stated above and my right to demand trial by court-martial in lieu of nonjudicial punishment; I do not desire to demand trial by court-martial and am willing to accept punishment under the UCMJ, Article 15.

Signature of Accused

Date

Witness

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Appendix D to
ENCLOSURE (1)

NOTIFICATION OF INTENT TO CONDUCT NJP HEARING UPON AN OFFICER

F-O-R-M-A-T

HEADING

FILE NUMBER
DATE

FOR OFFICIAL USE ONLY

From: Commanding General/Officer
To: (Officer Concerned)

Subj: Notification of Intent to Conduct NJP Hearing

Ref: (a) MCM, 1969, (Rev.), par 133b

1. You are hereby notified that it is my intent to conduct a nonjudicial punishment hearing in your case in accordance with reference (a), and that prior to the imposition of nonjudicial punishment you are advised of the following:

a. The provisions of Article 31(b), Uniform Code of Military Justice, are as follows:

- (1) You are accused of: (set forth summary of offense(s)).
- (2) You have the right not to make any statement concerning this/these offense(s).
- (3) Any statement you do make may be used against you during these proceedings or in trial by court-martial.

b. You have the right to demand trial by court-martial in lieu of nonjudicial punishment. You have the right to obtain advice of rights from a lawyer prior to deciding whether you should demand trial by court-martial in lieu of nonjudicial punishment. Should you desire to obtain such advice from a lawyer, a military lawyer will be made available to advise you, free of charge, or in the alternative, you may obtain such advice from a civilian lawyer at your own expense. Any action to give up these rights must be taken voluntarily by you after careful consideration.

c. That you will receive a hearing at which you will be accorded the following rights:

- (1) To be present before the officer conducting the hearing;

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Appendix E to
ENCLOSURE (1)

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- (2) To be advised of the offense(s) of which you are suspected;
 - (3) That you will not be compelled to make any statement regarding the offense(s) charged and that any statement you do make can be used against you;
 - (4) To be present during the presentation of all information against you, including testimony of witnesses in person or by receipt of their written statements. Copies of any statements will be furnished to you;
 - (5) To have made available to you for inspection, all items of information in the nature of physical or documentary evidence to be considered by the officer conducting the hearing;
 - (6) To present to the officer conducting the proceedings appropriate matters in mitigation, extenuation, or defense of the alleged charges. Matters in mitigation do not constitute a defense but do reduce the degree of moral culpability. Such a matter might be a fine military record, either previous to or subsequent to the alleged offenses. Matters in extenuation are matters which render a crime less aggravated or reprehensible than it would otherwise be but, again, such matters do not constitute a defense. A matter offered in defense is offered as a reason in law or fact why you should not be found guilty of the charges alleged; and
 - (7) To be accompanied at the hearing by a personal representative to speak on your behalf. The command has no obligation to provide such a personal representative and it is your obligation to obtain and arrange for the presence of such a personal representative if you wish one. The personal representative need not be a lawyer.
2. You are advised that if punishment is imposed under the UCMJ, Article 15, you have the right to appeal to higher authority, within a reasonable time, which normally is 15 days after the punishment is imposed, if you consider the punishment unjust or disproportionate to the offense for which it is imposed.
3. You have the right to demand trial by court-martial in lieu of nonjudicial punishment.
4. You will indicate by return endorsement your understanding of the foregoing and return it by _____.

Signature

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BO 5810.1E
10 Jan 1983

Date

From: (Officer Concerned)
To: Commanding General/Officer

Subj: Acknowledgement of Advice of Rights

1. I hereby acknowledge my understanding of the advice stated above and my right to demand trial by court-martial in lieu of nonjudicial punishment; I (do not) desire to demand trial by court-martial and am (not) willing to accept punishment under the UCMJ, Article 15.

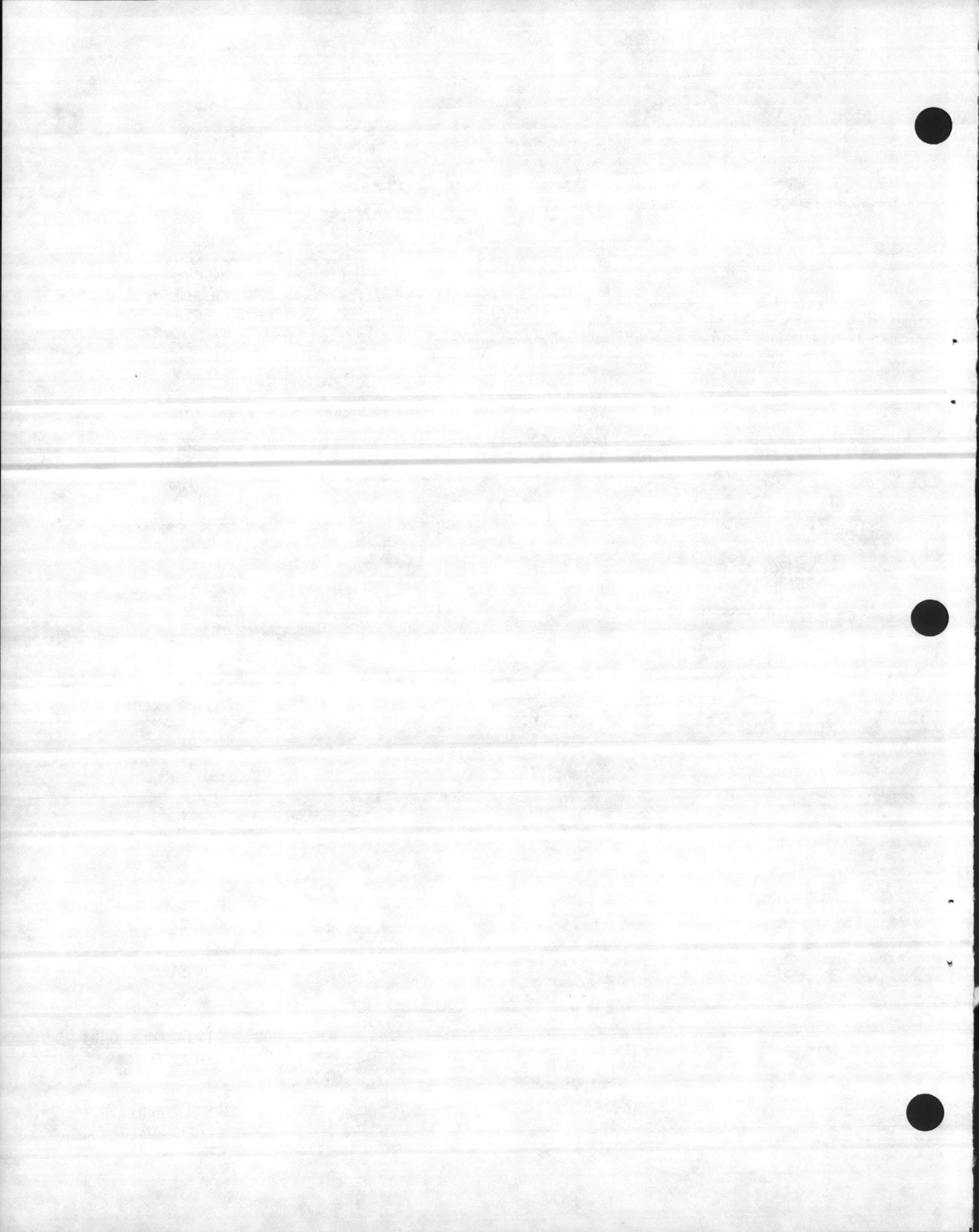
Signature of Accused

Date

Witness

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Appendix E to
ENCLOSURE (1)



OFFICER'S STATEMENT OF UNDERSTANDING FOR REPORT OF NJP

F-O-R-M-A-T

ORGANIZATIONAL HEADING

FILE NUMBER
DATE

FOR OFFICIAL USE ONLY

From: (Officer Concerned)
To: Commanding Officer

Subj: Report of Nonjudicial Punishment

Ref: (a) U.S. Navy Regulations, 1973, Article 1110
(b) LEGADMINMAN

1. I have been afforded the opportunity to read the report of nonjudicial punishment imposed upon me on (DATE OF NJP) and all documents related thereto.

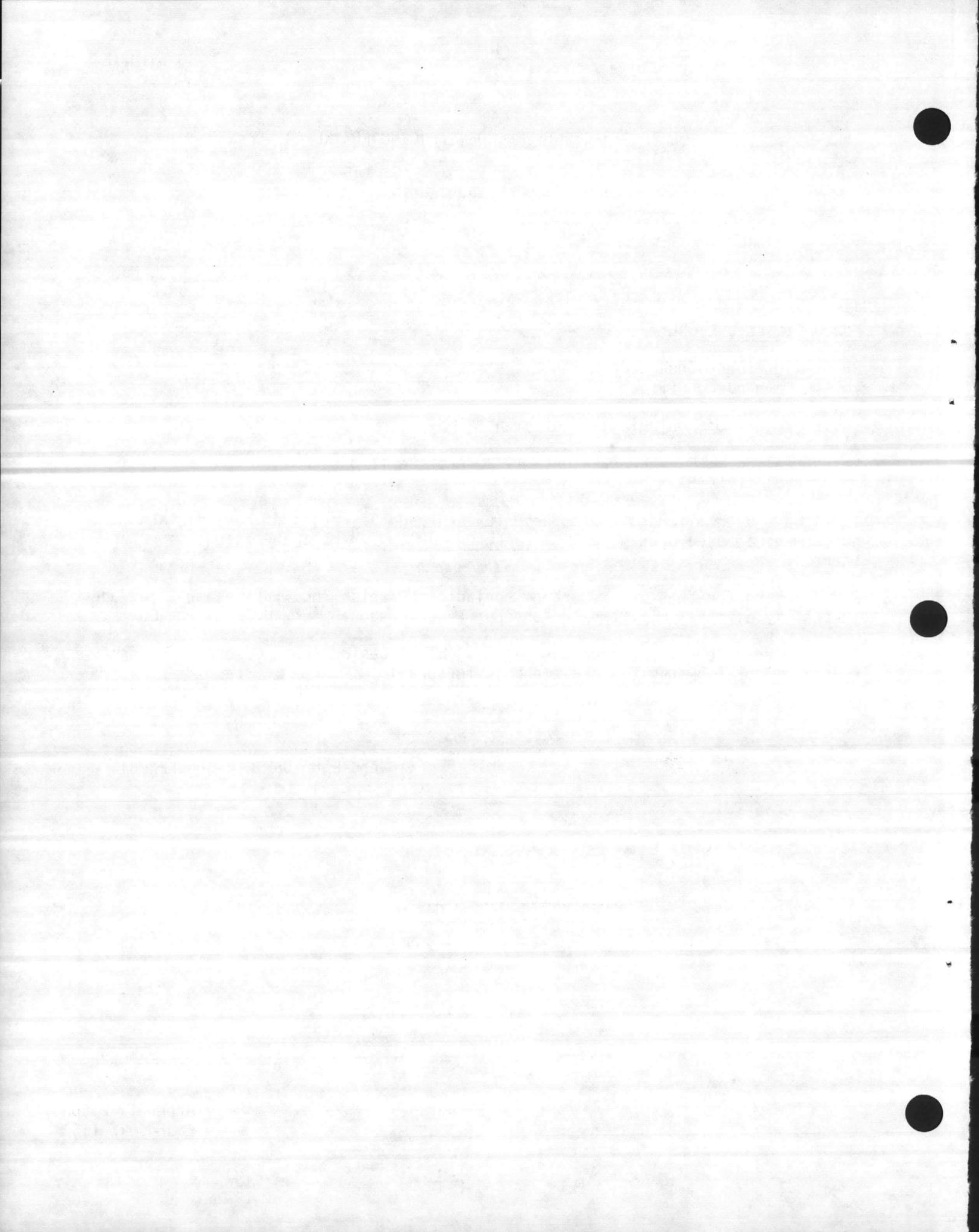
2. I understand that the report of nonjudicial punishment will become a permanent part of my official military personnel file at Headquarters, U.S. Marine Corps.

3. In accordance with references (a) and (b), I desire (not to make a further statement) or (to submit a statement as follows:)

(SIGNATURE OF OFFICER CONCERNED)

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Appendix F to
ENCLOSURE (1)



INSTRUCTIONS FOR COURTS-MARTIAL

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1. Scope. This enclosure sets forth the necessary action for the disposition of offenses by court-martial. Further, it establishes procedures to provide legal services, technical assistance and personnel support to special court-martial convening authorities in the conduct of courts-martial.

2. Convening Summary and Special Courts-Martial

a. Request for Legal Services. When an alleged offense has been brought to the command's attention, it is essential that a complete preliminary inquiry be conducted into the allegations of wrongdoing. See paragraph 3b of enclosure (1) for detailed guidance to the officer conducting the preliminary inquiry. The complete preliminary inquiry and Service Record Book of the suspected wrongdoer will be delivered to the Office of the Staff Judge Advocate (Attn: Military Justice Officer) with a request for legal services. See Appendix A to this enclosure. If a completed CID/NIS report is available, it should be made an enclosure to the request for legal services. However, it is usually not necessary to delay the forwarding of the request until the completed report is received by the command.

b. Preferral of Charges and Referral to Trial

(1) The Military Justice Officer will have charges drafted and will return the sworn charge sheet and proposed convening order to the accused's command. See Appendix B to this enclosure. The command will then inform the accused of the charges against him (MCM, 1969, (Rev.), paragraph 32f(1)) and receipt for the sworn charges.

(2) Upon receipt of the sworn charges, the convening authority may take whatever action he deems appropriate, irrespective of any prior decision. He may dismiss the charges, handle the matter at NJP, refer the case for trial by summary or special court-martial, or order a formal pretrial investigation (Article 32, UCMJ).

(3) Should the convening authority choose to refer the charges to a summary or special court-martial, the appropriate convening order must be signed first to create the court; only then can the convening authority refer the case to trial by completion of the first endorsement on page 3 of the charge sheet (the referral block).

c. Convening Orders

(1) Summary Courts-Martial. Summary court-martial convening orders will be prepared by the Office of the Staff Judge Advocate upon request. Commands are encouraged to appoint standing summary court-martial convening orders to which individual cases may be assigned. The only information that need be furnished is the name of the summary court-martial officer. This officer should be a Marine Corps captain, a Navy lieutenant, or above.

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(2) Special Courts-Martial. Special court-martial convening orders will be prepared by the Office of the Staff Judge Advocate upon request for legal services. The members' names will be furnished by each command following a personal selection of such prospective members by the convening authority. Enlisted members, if required, will be similarly selected for that command's courts.

3. Special Instructions for Summary Courts-Martial

a. An accused may refuse trial by summary court-martial regardless of whether or not he has previously refused Article 15, UCMJ, nonjudicial punishment. Before a summary court-martial can be considered in aggravation at a subsequent court-martial, a written statement is required showing both that an accused was given the opportunity to consult with a lawyer prior to accepting trial by summary court-martial, and that the accused did not exercise the right to refuse trial by summary court-martial. Compliance may be accomplished by recording a signed entry on the reverse side of NAVMC 118(13) prior to commencement of the trial. The following nonmandatory example is provided: "I certify that I was given the opportunity to consult with a lawyer, provided by the government at no cost to me, in regard to the summary court-martial held on (date of SCM). I understand that I have the right to refuse trial by summary court-martial, but I choose not to exercise that right," followed by the signature of the accused and date. The use of a rubber stamp for recording the above statement is authorized. If a summary court-martial does not result in any finding of guilty, do not file the NAVMC 118(13) in the member's service record book.

b. Normally, a judge advocate will not be made available to represent an accused at a summary court-martial. The evidence considered by the summary court-martial as to any charge to which the accused pleads not guilty, and is subsequently found guilty, will be summarized and attached to the record of trial for use by reviewing authorities. Similarly, all evidence considered in extenuation and mitigation, subsequent to findings of guilty, will be summarized and attached to the record of trial. (JAG Manual, Section 0120, applies.) The Office of the Staff Judge Advocate will furnish a summary court-martial trial guide which may be utilized by summary court-martial officers.

c. A certified true copy of all records of prior convictions received in evidence will be attached to the record of trial.

d. Only the original record of trial need be forwarded to the Staff Judge Advocate for review.

4. Special Instructions for Special Courts-Martial

a. Action between Referral for Trial and Date of Trial. In cases where the accused is not in pretrial confinement, the commanding officer will ensure the presence of the accused in the appropriate uniform of the day for trial at the Office of the Staff Judge Advocate, Building 66. In those cases where the accused is in pretrial confinement, the chaser section of the Office of the Staff Judge Advocate will ensure the accused's presence at trial; however, the commanding

ENCLOSURE (2)

officer still must ensure that the accused has an appropriate and proper uniform for trial. A command representative senior to the accused and possessing a valid chaser's card, will be present for all special and general courts-martial. Staff noncommissioned officers and officers do not need chaser's cards. A command representative is similarly encouraged to be present at Article 32 investigations.

b. Confinement and Deferment

(1) When an accused is sentenced to confinement, the convening authority must make an independent decision as to whether the individual should be placed into confinement after trial. See MCM, 1969, (Rev.), paragraphs 21d and 88f. If the convening authority orders the individual into confinement, immediate steps must be taken to confine the person. It must be borne in mind that a sentence to confinement begins to run on the date sentence is announced, unless the sentence is deferred. The accused must request deferment in writing. Note also that in denying a deferment request, the convening authority must set forth the reasons for the denial. The Military Justice Officer may be contacted for assistance.

(2) When an accused who was in pretrial confinement up to the date of trial is tried and sentenced to confinement at hard labor, a chaser from the Office of the Staff Judge Advocate will escort the prisoner to the Correctional Facility.

(3) When an accused who was not in pretrial confinement up to the date of trial receives a sentence which includes confinement at hard labor, the unit will be notified by the trial counsel. The unit's prisoner escort will take custody of the prisoner from the Office of the Staff Judge Advocate. If he deems it appropriate, the officer exercising special court-martial jurisdiction will effect the confinement.

c. Convening Authority's Action on Special Courts-Martial. After authentication of the record of trial and service of a copy upon the accused has been completed, the Review Section of the Office of the Staff Judge Advocate will send the record to the convening authority for his review and action. Upon return of the record, together with a statement of the convening authority's proposed action, the Review Section will type the action for the signature of the convening authority. Appendix C to this enclosure may be utilized for this purpose. The service record book of the accused will be forwarded to the convening authority with the record of trial.

5. Article 32 Investigations

a. Following the completion of the investigation, and if trial by general court-martial is considered warranted, the appointing authority (special court-martial convening authority) shall forward the report of investigation to the Commanding General (Attn: SJA) with specific recommendations concerning each charge. If the investigating officer has recommended that certain charges be dismissed or modified, the charge sheet itself should not be altered. The appointing authority should simply concur in or disagree with that recommendation and make appropriate comments in his forwarding letter. The fact that a formal pretrial investigation has been completed does not require forwarding in every

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case. The charges may be dismissed, disposed of at Article 15, UCMJ proceedings, summary court-martial or by special court-martial within the discretion of the appointing authority.

b. If an accused who is pending an Article 32 investigation or general court-martial has been ordered into arrest or confinement, compliance with the requirements of Article 33, UCMJ, is required. See paragraph 8c of this enclosure.

6. Right to Counsel. The following delineate the circumstances under which a judge advocate from the defense section will be made available for consultation or representation:

a. Interrogations and other Investigations. Judge advocates from the defense section will be made available to confer with suspects who have elected to seek legal advice before deciding whether to make any statements to law enforcement or other investigating officials.

b. Whether to Accept Nonjudicial Punishment or a Summary Court-Martial. Judge advocates will be made available to advise service members who have been informed that their commanding officer intends to dispose of charges preferred against them at nonjudicial punishment or summary court-martial. However, the accused's consultation with a judge advocate prior to deciding whether to accept or decline nonjudicial punishment or a summary court-martial shall be restricted so as not to create an attorney-client relationship.

c. Accused in Pretrial Confinement. An accused who has been placed in pretrial confinement will be assigned a defense counsel within 72 hours of being placed in pretrial confinement.

d. Administrative Discharge Proceedings. Judge Advocates shall be made available only to those persons facing administrative separation of a type for which current directives mandate the right to confer with, or to be represented by, a judge advocate.

e. Article 32 Investigations and Special and General Courts-Martial. Defense counsel will be made available to advise and to represent an accused whose case has been referred to an Article 32 investigation and/or special and general courts-martial.

f. Proceedings to Vacate Suspended Sentence. Defense counsel will be provided to represent an accused at proceedings to vacate a suspended sentence imposed by a special or general court-martial if the accused so requests. As a general rule, defense counsel will not be made available for proceedings to revoke a suspended sentence imposed by a summary court-martial.

g. Other Cases. Defense counsel will be made available in other cases as the Staff Judge Advocate deems appropriate.

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7. Legal Hold

a. Initial Determination. Unit legal officers are responsible for placing on legal hold witnesses whose identities are determined in the course of a preliminary inquiry or NIS/CID investigation. The names of all witnesses placed on legal hold will be included with the request for legal services when delivered to the Office of the Staff Judge Advocate.

b. Subsequent Determination. The trial counsel and defense counsel assigned to a case will review the file as soon as practicable to determine if any other witnesses need to be placed on legal hold. The Military Justice Officer or trial counsel will contact the unit legal officer who will ensure that the requested witnesses are placed on legal hold.

c. Witnesses not assigned to Marine Corps Base. It is the responsibility of the Military Justice Officer to coordinate legal holds involving persons not assigned to Marine Corps Base.

d. Reservists. There is no authority for extending the active duty of Marine Corps Reserve or Naval Reserve personnel for purposes of testifying as a witness in a court-martial or Article 32 pretrial investigation. The names and homes of record of Reserve personnel who are determined to be witnesses should be included in the request for legal services.

e. Retention Beyond EAS. An accused may be retained on active duty beyond the termination of enlistment or extension if charges are preferred prior to the termination date. Unit legal officers are responsible for ensuring that appropriate unit diary and service record book entries are made. There is no authority for retaining a witness (or respondent in an administrative discharge case) beyond the individual's EAS. The name and home of record of any witness whose active duty has or is about to terminate should be included in the request for legal services.

8. Pretrial Confinement

a. 72-Hour Letter. The commanding officer of a Marine/Sailor who is placed in pretrial confinement must forward to the Military Magistrate at the Correctional Facility a Pretrial Confinement Data Sheet (72-hour letter) setting forth the commanding officer's rationale for placing the Marine/Sailor in pretrial confinement. This letter must be as detailed as possible as it will provide the information on which the Military Magistrate will determine whether or not continued pretrial confinement is necessary. Commanding officers should bear in mind that the only reason a Marine/Sailor can be placed in pretrial confinement is if the confinee is either a flight risk or poses a danger to the community (i.e., future serious misconduct, including obstructing justice or destruction of evidence, is reasonably foreseeable). The letter should thus provide the facts upon which the commanding officer bases his/her conclusion that continued pretrial confinement is necessary. Detailed instructions are contained in B0 1640.10 and in paragraphs 106 and 107 of B0 1640.9.

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b. 30-Day Letter. When pretrial confinement beyond 30 days appears likely, on or about the 20th day of pretrial confinement, the Military Justice Officer will telephonically contact the special court-martial convening authority to ascertain whether the command intends to continue the pretrial confinement beyond 30 days. If the command so desires, a written request will be submitted to the Commanding General by the Staff Judge Advocate. Upon action by the Commanding General, copies of the Commanding General's endorsement will be delivered to the Commanding Officer, Correctional Facility, and to the special court-martial convening authority by the Military Justice Section of the Office of the Staff Judge Advocate.

c. 8-Day Letter. Article 33 requires that charges against an accused in pretrial confinement pending trial by general court-martial be forwarded by the accused's commanding officer to the Commanding General (Attn: SJA) within eight days after the accused is placed in pretrial confinement. If that is not practicable, the commanding officer must report in writing the reason for the delay.

9. Proceedings to Vacate Suspended Sentence

a. Military appellate court case decisions have established due process requirements with respect to hearings/proceedings for vacation of any suspended sentence of a court-martial. The hearing for vacation of a suspended sentence imposed by a summary or special court-martial will be conducted by the special court-martial convening authority. The following is required:

(1) Written notice to the probationer/parolee of the violation upon which vacation is being considered.

(2) Advice to the subject of the proceedings of his right to qualified legal counsel and his acknowledgement of this right. If he elects to be represented by counsel, forward his written request to the Commanding General (Attn: SJA). If he waives counsel, obtain his waiver in writing and include the waiver with the results of the proceedings. Normally, defense counsel will not be made available for proceedings to vacate a suspended sentence imposed by a summary court-martial. See paragraph 6f of this enclosure.

(3) Disclosure to the probationer/parolee of any evidence against him.

(4) Opportunity for the probationer/parolee to be heard in person, present evidence and witnesses in his own behalf and to confront and cross-examine adverse witnesses (unless the hearing officer specifically finds good cause for denial of this last requirement).

(5) The hearing to be conducted personally by the officer exercising special court-martial authority over the probationer/parolee.

(6) Proceedings conducted in accordance with MCM, 1969, (Rev.) paragraph 97b, as further implemented in section 0131, JAG Manual.

(7) DD Form 445 (Report of proceedings to vacate suspension) utilized as a record of the proceeding and as a procedural guide.

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(8) Submission of written results of the proceedings by the hearing officer as to the evidence presented and relied upon and the reason for the vacation.

b. Such supplementary orders as are necessary to promulgate the action of the convening authority will be published by this Headquarters.

c. In any non-BCD special court-martial or summary court-martial in item 21 of the report of proceedings to vacate suspension, delete the words "recommendations" and "recommended" and substitute therefor the words "action" and "ordered."

d. Upon completion of the vacation proceedings, an order promulgating the vacation will be prepared. If the proceedings vacated a suspended sentence of either a summary court-martial, or a special court-martial in which the sentence as vacated does not include a bad conduct discharge, suspended or unsuspended, the convening authority will promulgate an order vacating and executing the suspended sentence. If the proceedings vacated a suspended sentence of a court-martial in which the sentence as vacated does include a bad conduct discharge, suspended or unsuspended, the order will be promulgated by the supervisory authority, upon the recommendation of the convening authority, in the form of a supplementary supervisory authority's action. If, however, the sentence as vacated includes an unsuspended bad conduct discharge, and appellate review has not been completed, the supplementary supervisory authority's action will indicate that the sentence will be executed without further order upon completion of appellate review. MCM, 1969, (Rev.), paragraph 97b, and Section 0131, JAG Manual, apply. All actions will be prepared and attached to the proceedings by the Office of the Staff Judge Advocate upon request by the convening authority. When the proceedings are returned to the Office of the Staff Judge Advocate with the signed action, a supplementary special court-martial order will be promulgated.

10. Costs of Travel and Fees of Civilian Witnesses. The Staff Judge Advocate will budget for and fund legal requirements for all Marine Corps Base convening authorities.

11. Grants of Immunity. Grants of immunity to testify can only be given by the Commanding General.

12. Clemency

a. Clemency before the Naval Clemency and Parole Board. Current SECNAVINST 5815.3 series sets forth the policy and procedures to be followed in submitting requests for clemency from persons undergoing courts-martial sentences to unsuspended punitive discharges/dismissals, with or without confinement, and to sentences which include confinement for eight months or more. Commanders shall use DD Forms 1476, 1477, 1478, and 1479 in submitting progress reports and NAVSO Forms 5815/2 and 5815/3 for clemency requests and waivers of restoration, respectively. Earlier NAVPERS forms utilized for progress reports, requests for restoration/waiver of restoration will not be accepted. Timely submission of appropriate clemency forms is essential. A psychiatric evaluation is an integral part of the

ENCLOSURE (2)

court-martial progress report and the evaluation must include particular reference to background behavior patterns, tendencies to act out characterological patterns during active duty status, motivation, and potential for honorable service. The original and six copies of the required clemency forms must be submitted to the Secretary of the Navy via (1) this Command (Attn: Staff Judge Advocate), and (2) Commandant of the Marine Corps (Code JA).

b. Clemency Granted/Requested by Convening Authority

(1) Any commander who desires clemency action to be taken on a general court-martial, or a special court-martial sentence involving a punitive discharge, shall submit to the Commanding General (Attn: Staff Judge Advocate) a request setting forth specifically those actions he desires to be taken and justification therefor. Special court-martial convening authorities are not authorized to take clemency action in such cases.

(2) Clemency action relative to special court-martial sentences not involving a punitive discharge and summary court-martial may be taken by the commander authorized to convene the type of court that adjudged the sentence. Such supplementary actions and orders as are necessary to promulgate the action of the commanding officer will be published by the unit or, upon request, prepared for the unit by the Office of the Staff Judge Advocate.

13. Leave to Await Dismissal/Punitive Discharge (Appellate Leave)

a. General Procedures. MCO P1050.3 sets forth the applicable regulations regarding the eligibility of Marines awaiting a dismissal/punitive discharge to be assigned to appellate leave. There are two distinct classes of appellate leave, voluntary and involuntary, and regardless of which class a service member is assigned the following general procedures apply:

(1) Personnel being considered for assignment to either appellate leave status must be awaiting an unsuspended dismissal/punitive discharge;

(2) The sentence does not include adjudged confinement, or the adjudged confinement has been served, remitted, or deferred prior to the commencement of the leave (suspended confinement does not qualify);

(3) Prior to the execution of the dismissal/punitive discharge, appellate leave granted in accordance with the provisions of paragraph 3025, MCO P1050.3 may be terminated at any time by written notification to the service member concerned from the authority granting the leave.

(4) Prior to being granted appellate leave, the following action should be taken in addition to compliance with all applicable portions of Chapter 1, MCO P1900.16, MARCORSEPMAN:

(a) Marines should be required to complete all possible administrative processing for separation; and,

(b) Administrative actions will be initiated to stop allotments;

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(5) Marines on leave to await dismissal/punitive discharge are instructed that they remain subject to the orders of competent authority until their discharge is effected, and until then, are required to keep their commanding officers notified of their current address;

(6) Appellate leave authorizations issued in accordance with paragraph 3025, MCO P1050.3 should contain all pertinent instructions and conditions of the leave; should make it clear that when appropriate authority approves and orders into execution the dismissal/punitive discharge, separation processing may be completed without the Marine's presence; and,

(7) The appellate leave authorization will be endorsed by the Marine acknowledging receipt and complete understanding of all terms and provisions. A copy of the authorization bearing the Marine's endorsement and signature shall be retained in the Officer's Qualification Record/Service Record Book, and a copy bearing the Marine's endorsement and signature shall be provided the officer exercising general court-martial jurisdiction over the Marine.

b. Voluntary appellate leave

(1) Voluntary appellate leave applies to Marines sentenced by a court-martial to a dismissal or punitive discharge, whose sentences have not yet been approved by the general court-martial convening authority. Appendix D to this enclosure is provided as a format for a voluntary appellate leave request including the formats for enclosures (1) and (2), thereto.

(2) In addition to the general procedures, the following procedures are unique to the voluntary appellate leave authorization:

(a) The Marine submits a written request to the general court-martial convening authority requesting voluntary appellate leave;

(b) Marines volunteering to take appellate leave who have accrued leave to their credit shall be charged with ordinary leave until accrued leave is exhausted, at which time, leave beyond that which was accrued will be charged as excess leave;

(c) Prior to approval of the court-martial sentence by the officer exercising general court-martial jurisdiction over the Marine, voluntary appellate leave will be terminated upon the written request of the Marine; and,

(d) Marines allowed to go on voluntary appellate leave are not authorized travel in kind, travel pay or per diem in conjunction with their leave authorization or the termination of that authorization.

(3) Upon approval of the court-martial sentence by the officer exercising general court-martial jurisdiction, the Marine's appellate leave status automatically changes from voluntary to involuntary and the command exercising special court-martial jurisdiction shall send written notification to the Marine of the change of status.

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c. Involuntary Appellate Leave

(1) Involuntary appellate leave applies to Marines sentenced by a court-martial to a dismissal or punitive discharge, whose continued presence in their command is not in the best interest of the Marine Corps. Commanders exercising general court-martial jurisdiction over a Marine may direct involuntary leave pending completion of appellate review. The sentence adjudged by the court-martial must have been approved without suspension of the dismissal/punitive discharge by the officer exercising general court-martial jurisdiction over the Marine. Appendix E to this enclosure is provided as a format for an involuntary leave request.

(2) In addition to the general procedures, the following procedures are unique to the involuntary leave authorization:

(a) The Marine may not be required to begin involuntary appellate leave before the date on which the sentence is approved by the officer exercising general court-martial jurisdiction over the Marine;

(b) Marines placed on involuntary appellate leave are authorized transportation in kind from their duty station to their leave address, and, in cases in which the Marine's leave is terminated for any reason other than dismissal or discharge, from their leave address back to their duty station; travel pay and per diem are not authorized;

(c) Marines having accrued leave must elect one of the following options when ordered to appellate leave:

1 Receipt of pay and allowances for the period of accrued leave with leave beyond that charged as excess leave; or,

2 Payment for accrued leave on the day before leave begins and the total period of appellate leave charged as excess leave;

(d) If a Marine's court-martial sentence is set aside, the Marine will receive pay and allowances for the period of excess involuntary appellate leave, except in cases in which a rehearing or new trial again results in a dismissal or a punitive discharge. Payments for periods of excess leave will be less any wages earned by or public assistance to the Marine.

(e) If the Marine's court-martial sentence is set aside, and no rehearing is ordered or authorized, and his/her expiration of current enlistment contract or other obligated active duty has not passed, the Marine's leave must be terminated unless the Marine consents to administrative separation prior to the commencement of appellate leave, in which case the Marine will be administratively separated in accordance with paragraph 3025, MCO P1050.3, and Chapter 6, MCO P1900.16. Under these circumstances, officers may be permitted to submit resignations while remaining on appellate leave. When a rehearing is authorized and ordered, the officer exercising general court-martial jurisdiction over the Marine will issue orders to the Marine recalling him/her from involuntary appellate leave.

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(f) If the Marine's court-martial is set aside, and no rehearing is ordered or authorized, and his/her expiration of current enlistment contract or other obligated active duty has passed, the Marine must be discharged in accordance with MCO P1900.16. When a rehearing is authorized and ordered, the officer exercising general court-martial jurisdiction over the Marine will issue orders to the Marine recalling him/her from involuntary appellate leave.

(g) Marines in an involuntary appellate leave status do not have the right to have such leave terminated on request.

c. After a Marine's court-martial case has been forwarded to the Office of the Judge Advocate General of the Navy for appellate review, unless sooner terminated by written notification from the general court-martial convening authority with jurisdiction to act, appellate leave will continue until final review by the U.S. Navy-Marine Corps Court of Military Review (and/or the Court of Military Appeals, if applicable) is completed and the dismissal or punitive discharge is ordered executed.

e. In the event that a Marine's appellate leave is terminated, for whatever reason, immediate liaison between the Marine's unit, through the unit legal officer or adjutant, and the Office of the Staff Judge Advocate (Review Section) should be effected. No action should be taken by the unit until such liaison has been made, and guidance on the appropriate action has been received by the unit.

14. Consular Protection of Foreign Nationals Subject to the Uniform Code of Military Justice. When a United States Marine who is a national of a foreign country, and who is not also a citizen or national of the United States, is apprehended by military authorities within the United States, under circumstances likely to result in confinement, and states that he or she is a foreign national, or is ordered into military confinement, or referred to trial by court-martial, the officer exercising general court-martial jurisdiction is required to notify the nearest consul of the foreign country concerned. This requirement is subject, in certain cases, to the objection of the foreign Marine, depending on the applicable treaty, if any. A copy of the notification is required to be incorporated into the record of trial, if any. The commander on whose rolls the Marine is carried is responsible for informing the officer exercising general court-martial jurisdiction over a Marine who is a foreign national whenever circumstances arise indicating that consular notification may be required. Amplifying information is contained in SECNAVINST 5820.6. Submit a written report to the Commanding General, Marine Corps Base (Attn: Staff Judge Advocate) within 24 hours of date of confinement or referral to trial by court-martial.

15. Administrative Actions to be Reviewed. Commanders and unit legal officers should review each case of alleged criminal misconduct to determine whether administrative action is appropriate in addition (or as an alternative) to disciplinary action. These actions include:

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a. Victim Compensation

(1) Restitution. Consideration should be given to suspending all or a part of any punishment if the accused makes restitution to the victim. A term to this effect might appropriately be included in a pretrial agreement, or imposed as a condition of a probationary suspension of a court-martial sentence or nonjudicial punishment.

(2) Claims. Each case of reported crime should be reviewed to determine whether the victim may file a claim against the government for compensation. The most common cases involve barracks larceny and vandalism to automobiles, covered by JAGMAN sections 2103(a) and 2103(j), respectively.

b. Administrative Discharge Processing. Each case involving an alleged violation of the UCMJ, or conviction by civil authorities, should be reviewed to determine whether the Marine/Sailor should be processed for administrative separation in accordance with the applicable sections of the MARCORSEPMAN or MILPERSMAN.

c. Terminating Government Quarters Assignment. In cases involving certain misconduct, it may be appropriate to recommend to the Housing Director that the sponsor's assignment to family housing be terminated. See BO P11101.30_.

d. Revoking On-Base Driving Privileges. The on-base driving privileges of any individual who has been convicted by court-martial or a civilian court, or who has received nonjudicial punishment, for any offense involving drugs or drug paraphernalia may be revoked, whether or not a motor vehicle was involved in the offense. See BO P5560.2_ for detailed guidance.

e. Administrative Withholding of Privileges. Commanders are expected to use nonpunitive measures, including administrative withholding of privileges not extending to deprivation of normal liberty, in furthering the effectiveness of their commands. Such measures may include temporary withholding of club, exchange, commissary, theater, etc., privileges, depending on the nature of the disciplinary infraction. See JAGMAN section 0101c.

ENCLOSURE (2)

FORMAT FOR REQUEST FOR LEGAL SERVICES

UNIT HEADING

From: Commanding Officer
To: Staff Judge Advocate, Marine Corps Base, Camp Lejeune, North Carolina 28542
(Attn: Military Justice Officer)

Subj: Request for Legal Services; case of (accused's rank, name, and SSN)

Ref: (a) BO P5810.1_

Encl: (1) Preliminary Inquiry
(2) Service Record Book of SNM

1. In accordance with the provisions of reference (a), it is requested that legal services in the form of drafting appropriate formal charges and specifications be provided this organization based on the information contained in enclosures (1) and (2), and that appropriate personnel be detailed to provide necessary legal services as indicated below.

2. The subject named Marine is to be referred to an (Article 32 investigation) (SPCM w/BCD authority) (SPCM w/o BCD authority) (Summary Court-Martial).

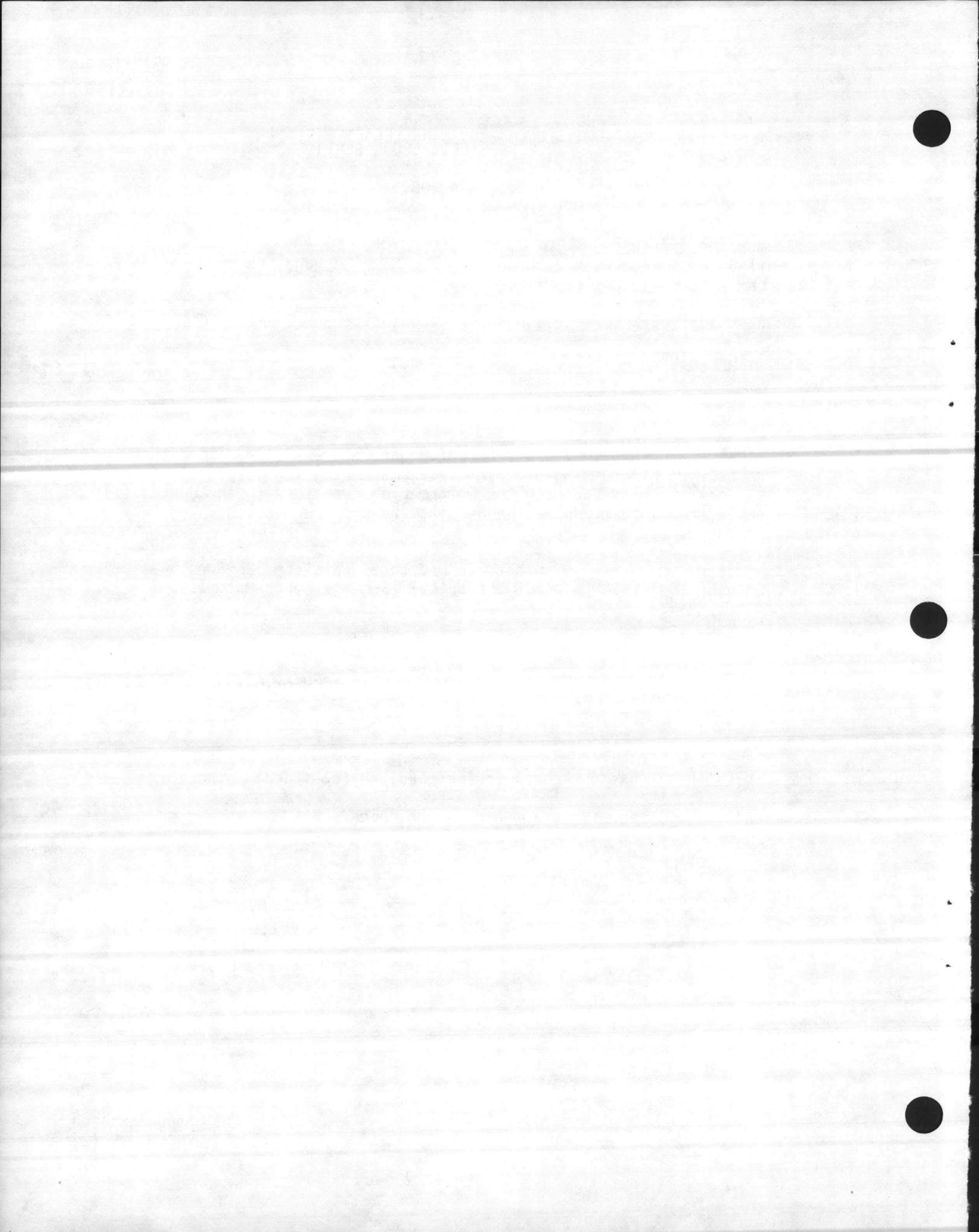
3. The witnesses are:

<u>NAME</u>	<u>RANK</u>	<u>EAS</u>	<u>SECTION</u>	<u>PHONE NO.</u>	<u>INITIATED LEGAL HOLD</u>
-------------	-------------	------------	----------------	------------------	---------------------------------

4. The accused (has) (has not) been (restricted) or (confined) (since _____).

5. Recommend any GOS request be approved/disapproved.

(Signature)



FORMAT FOR LETTER PROVIDING LEGAL SERVICES

OFFICE OF THE STAFF JUDGE ADVOCATE
Marine Corps Base
Camp Lejeune, North Carolina 28542

SJA/PNK/
5800

From: Staff Judge Advocate
To: Commanding Officer,

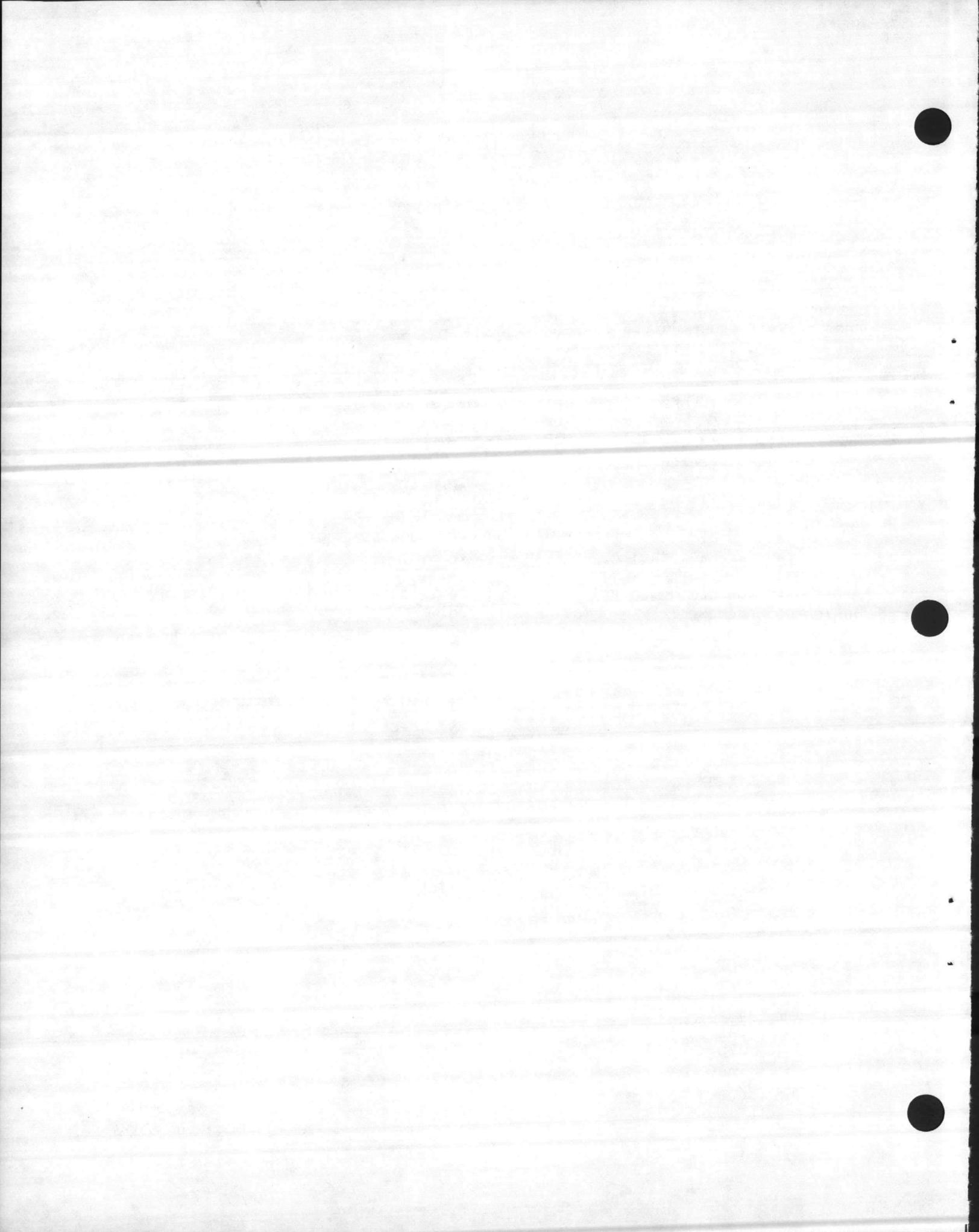
Subj: Request for Legal Services; case of (accused's rank, name, and SSN)

Encl: (1) Sworn Charge Sheet
(2) Convening Order

1. Enclosures (1) and (2) are returned.
2. As requested, appropriate sworn charge(s) and specification(s) have been drafted and are attached as enclosure (1).
3. Should you decide to refer this case to trial by Special Court-Martial, your Convening Order Serial ____ may be utilized.

Military Justice Officer
By direction

Appendix B to
ENCLOSURE (2)



FORMAT FOR CA'S ACTION

UNIT HEADING

Date

From: Convening Authority
To: Staff Judge Advocate, Marine Corps Base, Camp Lejeune, North Carolina 28542

Subj: Convening Authority's Action; special court-martial case of _____

1. The addressee is requested to prepare an action for my signature in accordance with Article 65, UCMJ.

2. My action is as follows:

Comments on request for clemency or recommendation of military judge: _____

(Signature)



FORMAT FOR VOLUNTARY APPELLATE LEAVE REQUEST

UNIT HEADING

 / /
1050

From: Commanding Officer
To: Commanding General, Marine Corps Base, Camp Lejeune, North Carolina 28542
(Attn: Staff Judge Advocate)

Subj: Request for Voluntary Appellate leave; case of _____

Ref: (a) MCO P1050.3_
(b) SECNAVINST P5815.3_

Encl: (1) SNM's request for appellate leave
(2) Appellate leave checklist
(3) Copy of SPCM authority's action
(4) Copy of Waiver of Clemency Review

1. In accordance with references (a) and (b), it is requested that _____ be sent on voluntary appellate leave while awaiting the results of appellate review of his _____ court-martial. The subject Marine cannot be advantageously or economically utilized and his continued presence at this command would not be in the best interest of the Marine Corps.
2. Subject Marine has requested appellate leave effective _____ (enclosure 1) and has given his appellate leave address as: _____.
3. All the applicable administrative requirements of references (a) and (b), including a complete physical examination, have been satisfied as evidenced by enclosures (2) through (4).

Appendix D to
ENCLOSURE (2)

BO 5810.1E
10 Jan 1983

UNIT HEADING

1050 / /

From: SNM
To: Commanding General, Marine Corps Base, Camp Lejeune, North Carolina 28542
(Attn: Staff Judge Advocate)
Via: Commanding Officer, org, Marine Corps Base, Camp Lejeune, North Carolina
28542
Subj: Voluntary Appellate Leave; request for
Ref: (a) Paragraph 3025, MCO P1050.3

1. In accordance with reference (a), it is hereby requested that I be sent on voluntary appellate leave while awaiting your taking of your action and the results of appellate review of my case.

2. If authorization for voluntary appellate leave is granted I understand the following:

a. That any accrued leave to my credit shall be charged as ordinary leave until such accrued leave is exhausted, at which time leave beyond that which was accrued will be charged as excess leave;

b. That I am in a no-pay-due status while in an excess leave status;

c. That while I am on appellate leave, I am subject to the orders of competent authority until my punitive discharge (dismissal if appropriate) is effected, and until then, I am required to keep my Commanding Officer notified of my current address;

d. That I am not entitled to travel in kind, travel pay or per diem from my place of duty to my home address, and, in the event of the termination of my appellate leave, for whatever reason, I am not entitled to travel in kind, travel pay or per diem from my leave address to my place of duty;

e. That, prior to approval of my court-martial sentence by the officer exercising general court-martial jurisdiction over my case, I may terminate my voluntary appellate leave upon written notification to my command;

f. That upon approval of my court-martial sentence by the officer exercising general court-martial jurisdiction over my case, my leave status will be changed from voluntary to involuntary and my command shall send me written notification of the change of status;

Enclosure (1)

Appendix D to
ENCLOSURE (2)

g. That appellate leave may be terminated at any time prior to the execution of my punitive discharge (dismissal if appropriate) by my command at any time by notifying me in writing; and,

h. That when appropriate authority approves and orders into execution my punitive discharge (dismissal if appropriate), separation processing may be completed without my presence at my command.

3. My appellate leave address will be _____ (address and phone number) _____.

Respectfully,

SNM
Rank, U.S. Marine Corps

Enclosure (1)

Appendix D to
ENCLOSURE (2)

CHECKLIST FOR APPELLATE LEAVE

CASE OF _____

1. The court-martial sentence included an unsuspended punitive discharge and there is no pretrial agreement to suspend the punitive discharge.

Initials

2. Action of the officer exercising general court-martial jurisdiction taken and copy is attached. (This is required on involuntary appellate leave request only)

Initials

3. Discharge physical examination has been completed and copy of SF 88 is attached.

Initials

4. All government property, including uniform clothing, has been recovered as required by MCO P10120.28.

Initials

5. The identification card of the accused and his dependents, if any, have been recovered and a Temporary ID issued in accordance with MCO 5512.10.

Initials

6. Administrative action has been initiated to stop all allotments with the last deduction the month prior to the month the leave commences as directed by the current edition of MCO P7220.31 (JUMPS Field Procedures Manual.)

Initials

7. DD214 (items 1 through 5, 8, 14 through 17, 19, 20, 23, 25, 26, and 28) has been completed. The accused has signed item 29, and the original and copies No. 1 through 7 have been inserted in the accused's service record book. (A reproduced copy is attached.)

Initials

8. Concerning the sentence to confinement:

a. All confinement has been served.

Initials

b. All confinement will be served on _____ and the appellate leave orders should become effective on or after the foregoing date.

Initials

c. The unexecuted confinement and forfeitures will be remitted/deferred effective upon commencement of excess leave. (A duplicate original of the accused's WRITTEN request for deferment and the convening authority's WRITTEN approval of that request are attached.)

Initials

Enclosure (2)

Appendix D to
ENCLOSURE (2)

d. No confinement was adjudged.

Initials

NOTE: If the accused was confined after trial, documents required by the Naval Clemency and Parole Board (SECNAVINST 5815.3 and MCO P5800.8, par. 2004 and 2005) will be obtained from the place where confinement was served.

NOTE: If the accused was NOT confined after trial, the following forms MUST be completed, signed, and the originals of each must be attached.

(1) A Progress Report, (consisting of DD Forms 1476, 1477, 1478, 1479, and a Request for Restoration/Clemency (NAVSO 5815/2)) have been completed and a copy is attached. or;

Initials

(2) A Waiver of Clemency Review (NAVSO 5815/4) has been signed by the accused, witnessed, and a copy is attached.

Initials

(3) Ensure that an Appellate Rights Statement has been signed by the accused and also a Power of Attorney has been executed for the defense counsel.

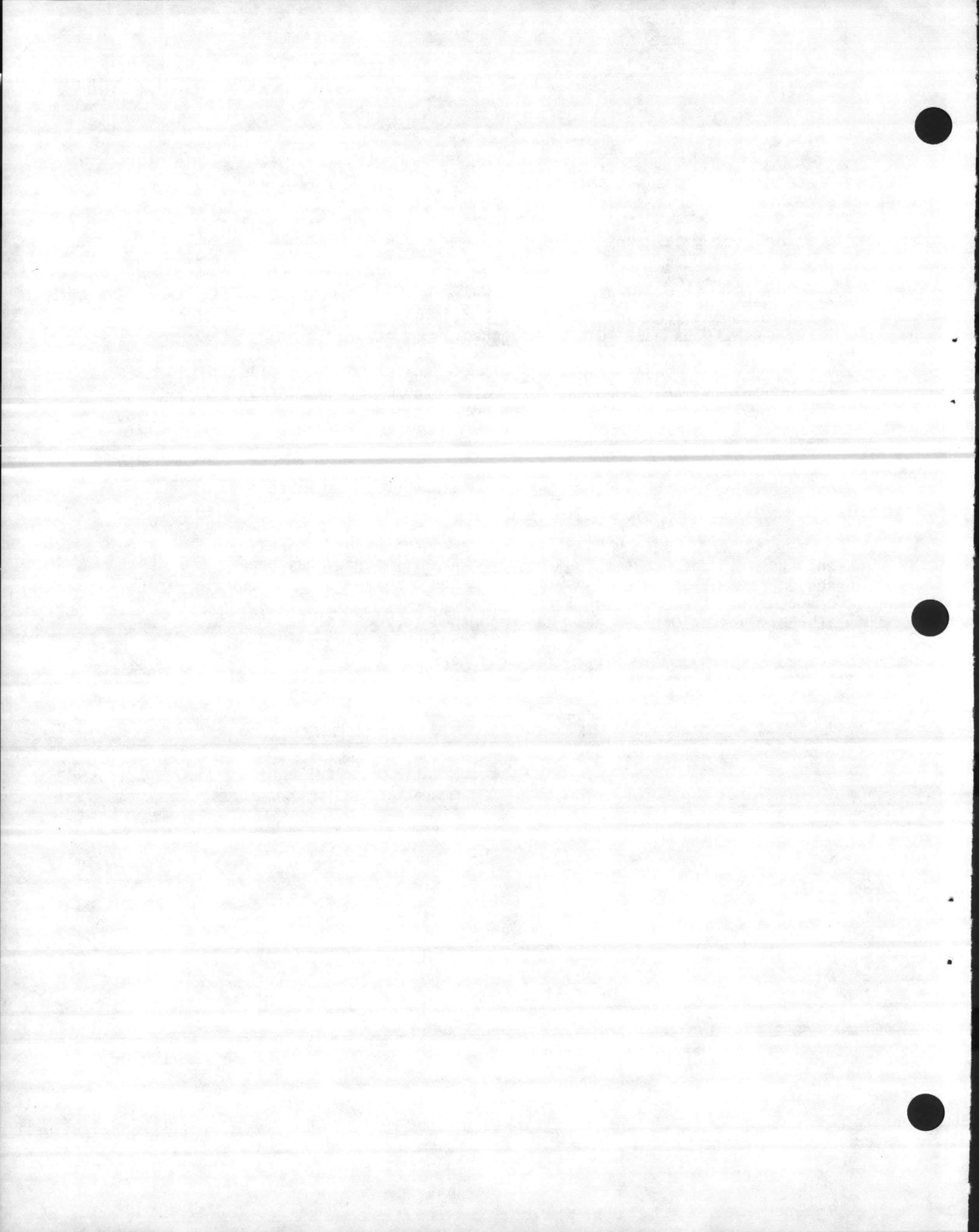
Initials

9. The Disbursing Officer has been requested to forward the documents in JFPM, par. 10307, to the Marine Corps Finance Center, Code CPJ-1, upon commencement of excess leave.

Initials

Enclosure (2)

Appendix D to
ENCLOSURE (2)



FORMAT FOR INVOLUNTARY APPELLATE LEAVE REQUEST

UNIT HEADING

 / /
1050

From: Commanding Officer
To: Commanding General, Marine Corps Base, Camp Lejeune, North Carolina 28542
(Attn: Staff Judge Advocate)

Subj: Request for Involuntary Appellate leave; case of _____

Ref: (a) MCO P1050.3
(b) SECNAVINST P5815.3__

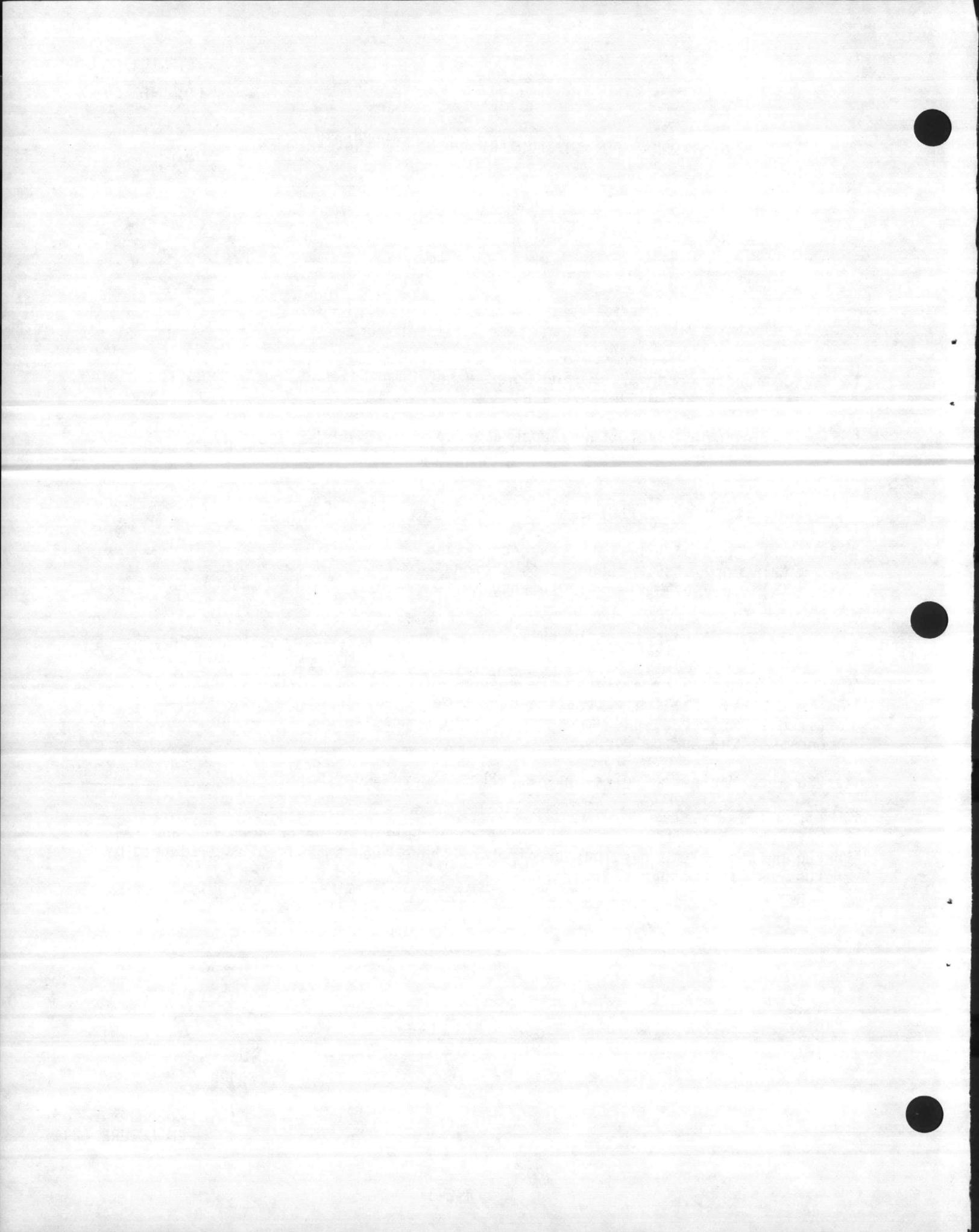
Encl: (1) Copy of appellate leave checklist
(2) Copy of GCM authority's action
(3) Copy of Waiver of Clemency Review/Request for Restoration w/Progress Report

1. In accordance with references (a) and (b), it is requested that _____
_____ be sent on involuntary
appellate leave while awaiting the results of appellate review of his _____
court-martial. The subject Marine cannot be advantageously or economically
utilized and his continued presence at this command would not be in the best
interest of the Marine Corps.

2. Subject Marine has given his appellate leave address as: _____
_____.

3. All the applicable administrative requirements of references (a) and (b),
including a complete physical examination, have been satisfied as evidenced by
enclosures (1) through (3).

Appendix E to
ENCLOSURE (2)



FORMAT FOR LETTER TERMINATING APPELLATE LEAVE

UNIT HEADING

ID Data
Date

From: Commanding General, (of Marine on Appellate Leave)
To: (Marine's grade, name, SSN, component and home address)

Subj: Termination of Leave Awaiting Appellate Review

Ref: (a) MCO P1050.3_
(b) (Here indicate the decision of the Navy Court of Military Review or U.S. Court of Military Appeals decision that reversed the sentence and either disapproved the punitive discharge or authorized a rehearing)

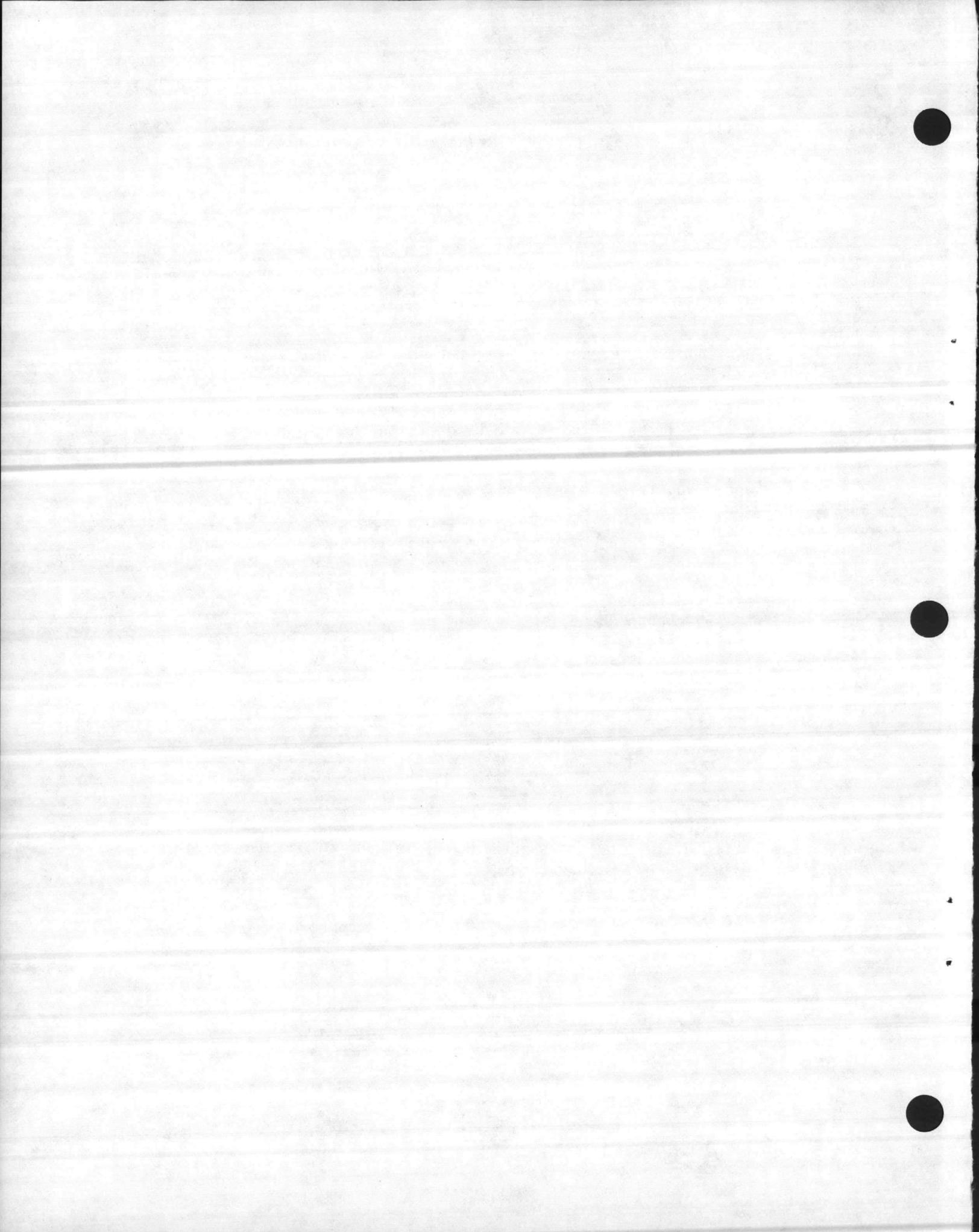
1. You are hereby notified that your leave while awaiting appellate review is terminated. On (Here indicate the date the NMCM or COMA authorized a rehearing or disapproved the punitive discharge) the (U.S. Navy-Marine Corps Court of Military Review) (United States Court of Military Appeals) (disapproved the punitive discharge in your case) or (authorized a rehearing in your case).

2. You are directed to report to (Here, specify the command to which the Marine is to report) not later than (Here, specify the date that the individual is to report back from appellate leave). Failure to report will result in your entering an unauthorized absence status or desertion and may subject you to apprehension and trial by court-martial.

Signature

NOTE: The notice of termination should always be sent to the Marine via "REGISTERED MAIL - RETURN RECEIPT REQUESTED - DELIVERED TO ADDRESSEE ONLY"

Appendix F to
ENCLOSURE (2)



INSTRUCTIONS FOR INVESTIGATIONS

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APPENDIX

Appendix A	JAG Manual investigation statement of witness	3-A-1
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1. Scope. To provide supplemental instructions for the conduct and reporting of investigations convened by Marine Corps Base organizations.

2. Mandatory Investigations. Incidents falling into the categories listed below must be investigated:

a. Injury to military personnel (other than by enemy action) which results in physical inability to perform duties for a period in excess of 24 hours or the injury is likely to result in permanent disability. In those cases where there is no possibility of a finding of misconduct, or no possibility of a third party liability claim, the report of injury may be submitted on the Accidental Injury/Death Report, NAVJAG Form 5800/15; Marine Corps Accident and Injury Report (NAVMC 10767); or Standard Form 91A, for injuries resulting from motor vehicle accidents.

b. Disease of military personnel which results in loss of time from duty in excess of 24 hours (as distinguished from a period of hospitalization for evaluation or observation) and which is attributable to vicious habits, drugs, intemperance or other factors suggesting misconduct.

c. Death of military personnel occurring under peculiar or doubtful circumstances, including all apparent suicides; and those cases which suggest that a finding of misconduct or not in the line of duty by the Veterans Administration or other agency might result.

d. Any case in which civilians or other non-naval personnel are found dead on a naval installation under peculiar or doubtful circumstances unless the incident is one over which the Naval Investigative Service has exclusive jurisdiction. The Commanding General, Marine Corps Base will appoint the fact-finding body in all such cases.

e. Where claims against or in favor of the government may be involved. Examples of such cases are:

(1) Damage to or loss of private property by government personnel (military or civilian) while such personnel are engaged in government business and acting within the scope of employment or in the line of duty, or by fire, flood, hurricane or other serious occurrence.

(2) Damage to government property by government personnel who are not engaged in lawful government business, and damage to government property by persons other than government personnel.

(3) Injury to civilians (including, but not limited to, dependents and employees) by government personnel while such personnel are engaged in government business and acting within the scope of employment or in the line of duty.

(4) Injury to government personnel by persons other than government personnel, or by government personnel who are not engaged in lawful government business, and the government has suffered medical expenses because of the injury exceeding three inpatient days or ten outpatient treatments.

ENCLOSURE (3)

f. Losses involving a shortage of public funds. Any loss involving a shortage of public funds from the custody of an accountable person, officer or agent will be investigated if the shortage of funds exceeds \$250.00 or if, regardless of amount, there are indications of fraud or other criminal acts.

g. For administrative purposes, when there is a loss, damage or destruction of government property; where there has been a failure of equipment which should be brought to the attention of higher authority for design modifications, where the conduct of persons involved in the incident is especially worthy of praise or censure; or, where an investigation would probably indicate a method of preventing similar incidents in the future.

3. Nonappropriated Fund Activities (Marine Corps Base). Upon the occurrence of any incident which may result in a claim for or against a nonappropriated fund activity, loss or damage to nonappropriated fund activity property, or the personal injury or death of a nonappropriated fund employee, the Officer in Charge will make a report to this Headquarters.

4. Responsibility to Order Investigations. The responsibility for ordering necessary investigations normally rests upon the commanding officer of the organization to which the involved military personnel are attached, to which the involved government property belongs, and/or (in the case of civilian employees), to which the employee's Officer in Charge is attached. However, if the incident includes death or serious injury to civilians and occurs within the geographic limits of Camp Lejeune, or involves a fire in government quarters, or complaints of tenants of government quarters, whose military sponsor is not attached to a unit in the local area, involving lost/damaged private property from fire, flood, hurricane or other serious occurrence, or theft, the investigation will be convened by the Commanding General, Marine Corps Base. Only commanding officers who exercise special court-martial jurisdiction may convene investigations concerning loss, damage or destruction of government property.

5. Multiple Investigations of the Same Incident. If it is determined that an investigation should be conducted and personnel and/or government property of more than one organization are involved, only one investigation will be made. The decision as to which organization will conduct the investigation will be made on the following basis:

a. In incidents involving Base organizations only, the senior commanding officer shall determine which organization will conduct the single investigation. Reports of investigation will be forwarded to the Commanding General, Marine Corps Base (Attn: Staff Judge Advocate), via the other interested organizations for the endorsement indicating the latter's action thereon.

b. When 2d Marine Division, 2d Force Service Support Group or other non-Base organizations are concerned, the Staff Judge Advocate, Marine Corps Base will be notified and requested to coordinate with those commands in the determination of the responsibility for conducting the necessary investigation. Reports of investigation when made by Marine Corps Base organizations will be forwarded to the

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Commanding General, Marine Corps Base (Attn: Staff Judge Advocate), without first routing them via organizations outside of this Command.

c. When an incident requiring investigation occurs at a place located more than 50 miles from Camp Lejeune, the commanding officer will submit a request to the Staff Judge Advocate, that the Commandant of the Naval District in which the incident occurred cause an appropriate investigation to be conducted. JAG Manual, subsection 0207b refers. The request shall contain all available information such as time, place, and nature of the incident; full names, grades, service numbers, and leave status of naval personnel involved, and any other information available to the Command which is considered pertinent to the investigative body.

6. Investigating Officers. Investigating officers will be guided by the pertinent provisions of the JAG Manual. In addition, the following policies will be observed:

a. Investigating officers desiring to interview personnel or visit areas under the control of organizations other than their own will inform the organization commander (normally through his Adjutant) of their presence and purpose in the area.

b. Investigating officers desiring to interview patient or staff personnel of the Naval Regional Medical Center, Camp Lejeune, or to obtain diagnosis and prognosis reports therefrom, will report to the Director of Administrative Services, present credentials showing them to be investigating officers and state what services are desired. The Director of Administrative Services will direct them to the Chief, Patient Affairs Division (Decedent Affairs); Chief, Personnel Division, or others, as appropriate. Visiting wards or offices without prior permission from the above offices is prohibited. Requested diagnosis reports will be mailed or held for pick up, as desired.

c. In cases of investigation into incidents involving a death where the remains have been removed to the Naval Regional Medical Center, Camp Lejeune, the investigating officer will visit, at the earliest opportunity, the Chief, Patient Affairs Division (Decedent Affairs) of the hospital to view the body, request required autopsies, and release the remains for disposition.

(1) Duly appointed fact-finding bodies have the duty to request of the commanding officer having custody of the remains, autopsies upon deceased military personnel on active duty when death occurred under peculiar or doubtful circumstances, or when there is reason to believe that the cause of death may constitute a menace to public health, or where the cause of death is unknown.

(2) An autopsy will not be ordered on a deceased civilian, who dies aboard the Base, except with the written authorization of the next of kin, or upon request of the local coroner or medical examiner. JAG Manual, section 0810e refers. When fact-finding bodies deem it necessary that autopsies be performed on civilians who have died under peculiar or doubtful circumstances, they will request that the next of kin sign the original and two copies of Standard Form 523, Authorization for

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Postmortem Examination. Blank Standard Form 523 may be obtained from the Base Dispensary, Building 15, or the Naval Regional Medical Center. When permission is granted, the signed original will be delivered to the Patient Personnel and Records Office, Naval Regional Medical Center, and the signed copy will be made an enclosure to the investigative report. The Staff Judge Advocate will be notified immediately if this requested permission is refused.

d. Personnel designated as investigating officers (commissioned or warrant officers, senior enlisted persons, or senior civilian employees) shall devote maximum time and effort to complete the assigned inquiry within 10 working days, unless otherwise instructed by the convening authority.

e. Investigating officers must comply with the provisions of the Privacy Act in the conduct of all inquiries. A Privacy Act Statement for JAG Manual investigations must be included in every investigation. The Privacy Act Statement must be provided to and signed by each witness giving testimony contained in the report. Sections 0308, 0606, and 0608 of the JAG Manual refer. See Appendices A, B, and C to this enclosure.

f. Investigating officers must accord all injured military personnel their applicable rights pursuant to section 0306 of the JAG Manual prior to the taking of their statements relating to the origin, incurrence or aggravation of any disease of injury. All statements by injured military personnel must reflect compliance with the foregoing. See Appendices B and C to this enclosure.

g. The attention of all investigating officers is invited to the provisions of sections 0805, 0810, and 0817 of the JAG Manual, and paragraph 4017, MARCORSUPMAN, Volume I.

7. Claims For or Against the Government. The investigating officer does not have any authority to settle claims; he should be careful to advise all interested persons of this limitation on his power. The investigating officer is responsible for providing all possible claimants with the correct claim forms, either Standard Form No. 95 (Claim for Damage or Injury), or DD Forms 1842 and 1845 (Claim for Personal Property Against the United States) and (Schedule of Property). See Chapters XX and XXI of the JAG Manual.

8. Civil Charges in Claims Cases. If, in the course of an investigation into an incident involving possible claims against or in favor of the United States, it becomes evident that an operator of government equipment has received a citation, subpoena, or other notice of arrest from civil authorities based upon the incident in question, the investigating officer will report such fact to the Staff Judge Advocate (Legal Administrative Officer).

9. Accidents Involving Government Vehicles. The Base Accident Investigating Officer will investigate all accidents involving government vehicles occurring on or within a 50 mile radius of Camp Lejeune. These investigations do not relieve the unit commanders of the responsibility to convene investigations to satisfy the requirements of Chapter VIII of JAG Manual or Part B, Chapter 4, Volume I of Marine Corps Supply Manual.

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10. Claims For Personal and Household Effects. Pursuant to Base Order P4400.5, the assigned claims investigating officer of the Claims Unit, Household Goods Section, Traffic Division, Marine Corps Base, will investigate claims arising through loss or damage to household goods or personal effects incident to shipment or storage authorized at government expense by the Joint Travel Regulations.
11. Fire in Government Quarters/Buildings and Damage to Private Property. The Commanding General, Marine Corps Base, will convene all investigations into fires in government quarters. Investigations into incidents involving complaints from tenants of government quarters concerning the loss of, or damage to private property from fire, flood, hurricane, or other serious occurrence, or theft, wherein a claim against the government might arise and the military sponsor is not attached to a unit in the local area will also be convened by the Commanding General, Marine Corps Base. Where the sponsor is attached to a unit in the local area, the claims investigation will be the responsibility of the Commanding Officer of the unit to which he/she is attached. The Director of Family Housing will submit a request for investigation with all the pertinent facts to the Staff Judge Advocate via the Assistant Chief of Staff, Facilities. The Assistant Chief of Staff, Facilities, will obtain an investigating officer from the command of the military sponsor through the Assistant Chief of Staff, Manpower, or 2d Marine Division or 2d Force Service Support Group, as appropriate, prior to forwarding the request to the Staff Judge Advocate. The Office of the Staff Judge Advocate will prepare the appointing order, brief the investigating officer, provide the necessary assistance for completion of the investigation, including the typing of the report for the investigating officer's signature and conduct a review of the report for substantial compliance with Chapters VI, XX, or XXI, as appropriate, of JAG Manual and Part B, Chapter 4, Volume I, Marine Corps Supply Manual. After review, the investigative report will be forwarded to the Assistant Chief of Staff, Facilities, for appropriate action. The investigative reports involving claims against the government will be forwarded to the appropriate adjudicating authority with a copy to the Assistant Chief of Staff, Facilities. Investigations of fires in other government buildings will be convened by the unit commander to whom the building is assigned.
12. Advice on Investigative Procedures. The Staff Judge Advocate is the technical advisor for Marine Corps Base on matters pertaining to investigations. Commanding officers, organizational legal officers and investigating officers of Marine Corps Base organizations should make informal requests for advice on investigative procedures to the Staff Judge Advocate (Legal Administrative Officer) when necessary.
13. Misconduct and Line of Duty Hearings. When a service member has been injured due to his own misconduct or while in a status of unauthorized absence (not in the line of duty and due to the member's own misconduct) or (not in the line of duty and not due to the member's own misconduct), a hearing is required pursuant to Section 0815 of the JAG Manual prior to the findings of the investigating officer being approved by the convening authority. Appendix D to this enclosure is a hearing format. The hearing may be conducted by any officer/staff noncommissioned officer, other than the investigating officer. Following the hearing, the convening authority may take his action on the record of proceedings. During the conduct of the hearing, the injured Marine must be accorded Privacy Act rights and

evidence of such compliance must accompany the record of the hearing. No adverse line of duty determination may be entered or approved in any injury case unless a member has been afforded a hearing, or the member was designated a party before a formal fact-finding body and was fully accorded his rights as such.

14. Records of Proceedings. Reports of investigations convened by commanding officers of Marine Corps Base organizations will be reviewed by the staff section cognizant of the matter under investigation and action taken pursuant to Section 0210, JAG Manual. Those involving claims for or against the government, misconduct/line of duty investigations or where disciplinary action is taken or contemplated, come under the cognizance of the Staff Judge Advocate, who will review and prepare appropriate endorsements for the Commanding General. Where appropriate, copies will be sent to appropriate staff sections for information and action. No fact-finding body need be convened and no report need be forwarded to the Judge Advocate General concerning misconduct and line of duty when:

a. In the opinion of the medical officer (or representative of a medical department) as concurred in by the commanding officer, the injury is not likely to result in a permanent disability and was incurred "in the line of duty" and "not as a result of the member's own misconduct"; or

b. Appropriate entries to this effect have been made in the service member's health or dental record in accordance with section U814b(2) of JAG Manual.

15. Disposition of Record. The distribution of investigative reports is necessarily dependent on the type of investigation conducted. The following guide is submitted:

a. Reports of injuries or deaths are forwarded to the Judge Advocate General via this Headquarters. Where records or reports involve Marine Corps personnel and disciplinary action has been taken or is contemplated, they will be forwarded via the Commandant of the Marine Corps. Sufficient copies should be included for each via addressee.

b. Investigations conducted relating to shortages of public funds are also forwarded to the Commandant of the Marine Corps.

c. If the investigation concerns a line of duty/misconduct determination and contains the basis of a claim for or against the government, it will be forwarded to the Judge Advocate General via the Commandant, Fifth Naval District and the Commandant of the Marine Corps. If the investigation does not relate to a line of duty/misconduct determination, but contains the basis of a claim for or against the government, it will be addressed to the Commandant, Fifth Naval District for Navy personnel and Commandant of the Marine Corps for Marine Corps personnel. Injuries to naval personnel under circumstances indicating a possible third-party liability claim shall be forwarded to the Judge Advocate General via the Naval District in which the incident occurred.

d. When investigation reports (NAVMC 10843 or similar) are prepared in the case of civil service employees, the following procedures apply:

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(1) The report will be prepared immediately following the incident and a copy forwarded to the appropriate commanding officer or staff section head with an additional copy being sent to the Civilian Personnel Officer. This action will permit appropriate administrative action to be initiated.

(2) Narrative statements containing the basic facts will be prepared, dated, and signed by personnel under the cognizance of the Provost Marshal as well as by other personnel from whom a written statement is appropriate. Any statement obtained will be distributed as shown in subparagraph (1) above.

(3) In those cases where the civil service employee has been referred to the United States Magistrate or other judicial authority, results of the appearance before the Magistrate will be expeditiously included in the investigation or forwarded to the reviewing authority for inclusion in his forwarding endorsement

16. Convening Authority's Actions. Upon review of investigative reports, convening authorities will ensure that their actions thereon reflect the following, when appropriate:

a. Express approval or disapproval of findings of fact, opinions, and recommendations. Section 0210b, JAG Manual.

b. Express determination as to line of duty and misconduct. Chapter VIII, JAG Manual.

c. Documentation that an injured member was afforded his/her rights to a hearing required by Section 0815, JAG Manual.

d. Names and address(es) (and when available, the policy number(s) and extent of coverage thereunder) of insurance companies carrying liability insurance on private vehicles involved in cases where there is a potential claim by or against U.S. Government. Sections 2007 and 2405, JAG Manual.

ENCLOSURE (3)

JAG MANUAL INVESTIGATION STATEMENT OF WITNESS

NAME: _____ RANK: _____
UNIT: _____

This date, _____ 19____, I hereby acknowledge that the following advice has been given to me by _____ who has been assigned by the Commanding Officer of _____ to gather information on the matter under investigation:

1. PRIVACY ACT STATEMENT

a. AUTHORITY: 44 USC 3101; 5 USC 301; 38 USC 105; 42 USC 2651.

b. PRINCIPAL PURPOSES: The information which will be solicited is intended principally for the following purposes:

(1) Determinations on the status of personnel, regarding entitlements to pay during disability, disability benefits, severance pay, retirement pay, increases of pay for longevity, survivor's benefits, involuntary extensions of enlistment, dates of expiration of active obligated service, and accrual of annual leave.

(2) Adjudication, pursuit, or defense of claims for or against the Government or among private parties.

(3) Other determinations, as required, in the course of Naval administration.

c. ROUTINE USES: In addition to being used within the Departments of the Navy and Defense for the purposes indicated above, records of investigations are routinely furnished, as appropriate, to the Veterans Administration for use in determinations concerning entitlement to veteran's and survivor's benefits; to Servicemen's Group Life Insurance administrators for determinations concerning payment of life insurance proceeds in the event of a death; and to the Department of Justice for use in litigation involving the Government. Additionally, the records of investigations are provided to agents and authorized representatives of persons involved in the incident, for use in legal or administrative matters. Records of investigations are sometimes provided to agencies of the Federal, State, or local law enforcement authorities, court authorities, administrative authorities, and regulatory authorities, for use in connection with civilian and military criminal, civil, administrative, and regulatory proceedings and actions.

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d. Disclosure is voluntary, and if you do not provide the requested information, any determination or evaluation made as a result of this investigation will be made on the basis of the evidence contained in the investigative report.

WITNESSED BY: _____

DATE: _____

Appendix A to
ENCLOSURE (3)

JAG MANUAL INVESTIGATION STATEMENT OF INJURED PERSON NOT
SUSPECTED UNDER ARTICLE 31, UCMJ

NAME: _____ RANK: _____

UNIT: _____

This date, _____ 19____, I hereby acknowledge that the following advice has been given to me by _____ who has been assigned by the Commanding Officer of _____ to gather information on the matter under investigation:

1. 0306 WARNING

That, under section 0306, JAG Manual, if the matter under investigation involves disease or injury that I have incurred, I cannot be required to give any statement relating to the origin, incurrence, or aggravation of a disease or injury that I may have acquired.

2. PRIVACY ACT STATEMENT

a. AUTHORITY: 44 USC 3101; 5 USC 301; 38 USC 105; 42 USC 2651.

b. PRINCIPAL PURPOSES: The information which will be solicited is intended principally for the following purposes:

(1) Determinations on the status of personnel, regarding entitlements to pay during disability, disability benefits, severance pay, retirement pay, increases of pay for longevity, survivor's benefits, involuntary extensions of enlistment, dates of expiration of active obligated service, and accrual of annual leave.

(2) Adjudication, pursuit, or defense of claims for or against the Government or among private parties.

(3) Other determinations, as required, in the course of Naval administration.

c. ROUTINE USES: In addition to being used within the Departments of the Navy and Defense for the purposes indicated above, records of investigations are routinely furnished, as appropriate, to the Veterans Administration for use in determinations concerning entitlement to veteran's and survivor's benefits; to Servicemen's Group Life Insurance administrators for determinations concerning payment of life insurance proceeds in the event of a death; and to the Department of Justice for use in litigation involving the Government. Additionally, the

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records of investigations are provided to agents and authorized representatives of persons involved in the incident, for use in legal or administrative matters. Records of investigations are sometimes provided to agencies of the Federal, State, or local law enforcement authorities, court authorities, administrative authorities, and regulatory authorities, for use in connection with civilian and military criminal, civil, administrative, and regulatory proceedings and actions.

d. Disclosure is voluntary. You are advised that you are initially presumed to be entitled to have the personnel determinations in subparagraph b above, resolved in your favor, but the final determination will be based on all the evidence in the investigative record. If you do not provide the requested information, you will be entitled to a favorable determination only if the record does not contain sufficient evidence to overcome the presumption in your favor. Furthermore, your refusal to disclose the requested information could result in a requirement for you to assign to the Government your medical care claims, if any, against third parties in connection with the incident, or authorize withholding of the records of your treatment in Naval medical facilities.

3. Having been advised of the general nature of this investigation and of the possible effect of an adverse determination, and fully understanding my rights enumerated above, I desire to make the following statement:

WITNESSED BY: _____

DATE: _____

Appendix B to
ENCLOSURE (3)

JAG MANUAL INVESTIGATION STATEMENT OF INJURED PERSON
SUSPECTED UNDER ARTICLE 31, UCMJ

NAME: _____ RANK: _____
UNIT: _____

This date, _____ 19____, I hereby acknowledge that the following advice has been given to me by _____ who has been assigned by the Commanding Officer of _____ to gather information on the matter under investigation:

1. ARTICLE 31, UCMJ WARNING

a. That, under Article 31, UCMJ, I am suspected of the following offense(s) punishable under the UCMJ _____

b. That I have the right to remain silent;

c. That any statement I do make may be used as evidence against me in a trial by court-martial;

d. That I have the right to consult with a lawyer prior to questioning. This lawyer may be a civilian lawyer retained by me at my own expense, or if I wish, Navy or Marine Corps authority will appoint a military lawyer to act as my counsel without cost to me; and

e. That I have the right to have such retained civilian lawyer or appointed military lawyer present during the interview.

2. 0306 WARNING

That, under section 0306, JAG Manual, if the matter under investigation involves disease or injury that I have incurred, I cannot be required to give any statement relating to the origin, incurrence, or aggravation of a disease or injury that I may have acquired.

3. PRIVACY ACT STATEMENT

a. AUTHORITY: 44 USC 3101; 5 USC 301; 38 USC 105; 42 USC 2651.

b. PRINCIPAL PURPOSES: The information which will be solicited is

Appendix C to
ENCLOSURE (3)

intended principally for the following purposes:

(1) Determinations on the status of personnel, regarding entitlements to pay during disability, disability benefits, severance pay, retirement pay, increases of pay for longevity, survivor's benefits, involuntary extensions of enlistment, dates of expiration of active obligated service, and accrual of annual leave.

(2) Adjudication, pursuit, or defense of claims for or against the Government or among private parties.

(3) Other determinations, as required, in the course of Naval administration.

c. ROUTINE USES: In addition to being used within the Departments of the Navy and Defense for the purposes indicated above, records of investigations are routinely furnished, as appropriate, to the Veterans Administration for use in determinations concerning entitlement to veteran's and survivor's benefits; to Servicemen's Group Life Insurance administrators for determinations concerning payment of life insurance proceeds in the event of a death; and to the Department of Justice for use in litigation involving the Government. Additionally, the records of investigations are provided to agents and authorized representatives of persons involved in the incident, for use in legal or administrative matters. Records of investigations are sometimes provided to agencies of the Federal, State, or local law enforcement authorities, court authorities, administrative authorities, and regulatory authorities, for use in connection with civilian and military criminal, civil, administrative, and regulatory proceedings and actions.

d. Disclosure is voluntary. You are advised that you are initially presumed to be entitled to have the personnel determinations in subparagraph b above, resolved in your favor, but the final determination will be based on all the evidence in the investigative record. If you do not provide the requested information, you will be entitled to a favorable determination only if the record does not contain sufficient evidence to overcome the presumption in your favor. Furthermore, your refusal to disclose the requested information could result in a requirement for you to assign to the Government your medical care claims, if any, against third parties in connection with the incident, or authorize withholding of the records of your treatment in Naval medical facilities.

4. Having been advised of the general nature of this investigation and of the possible effect of an adverse determination, and fully understanding my rights enumerated above, I desire to make the following statement:

WITNESSED BY: _____

DATE: _____

Appendix C to
ENCLOSURE (3)

FORMAT FOR REPORT OF PROCEEDINGS UNDER SECTION 0815(A)(3) JAG MANUAL

REPORT OF PROCEEDINGS UNDER
PARAGRAPH 0815(a)(3) OF JAG MANUAL

I, _____, have been afforded a hearing which included the following advice and by initialling opposite each item I confirm that it was explained to me and that I fully understand the contents of each one:

- ___ 1. That questions have arisen concerning whether or not my injury/disease, sustained or discovered on _____, 19____, was incurred in the line of duty and/or not as the result of my own misconduct;
- ___ 2. That, in the event such injury/disease is determined to have been incurred not in the line of duty and/or as a result of my own misconduct, I will be required to serve for an additional period beyond my present enlistment or to make up for the duty time lost;
- ___ 3. That lost duty time will not count as creditable service for pay entitlement purposes;
- ___ 4. That I may be required to forfeit some pay (where absence from duty in excess of one day immediately follows intemperate use of liquor or habit-forming drugs);
- ___ 5. That, if I am permanently disabled, I may be barred from receiving disability pay or allowances, as well as veterans' benefits;
- ___ 6. That I have been given the opportunity to inspect the complete investigative report including all the enclosures and endorsements thereto; and to discuss said report with a disinterested person of my choosing (chaplain, lawyer, supervisor, or anyone else not acting for the Government in the investigation);
- ___ 7. That I may not be required to give a statement relating to the origin, incurrence, or aggravation of any disease/injury that I have suffered;
- ___ 8. That I have been given a full opportunity and a reasonable time to present any evidence, statements, letters, or other matters in explanation, refutation, rebuttal, or otherwise on my behalf respecting my injury/disease;

(Items 1 through 5 below need only be completed if the individual is suspected of an offense which is punishable under the Uniform Code of Military Justice. The

fact that the individual is suspected of having incurred his injury/disease as the result of his own misconduct and/or not in the line of duty does not necessarily mean that he is suspected of having committed an offense).

I further certify and acknowledge by my initials opposite each item that I have been advised as follows:

- ___ 1. That I am suspected of the following offense which is punishable under the UCMJ _____

- ___ 2. That I have the right to remain silent;
- ___ 3. That any statement I do make may be used as evidence against me in a trial by court-martial;
- ___ 4. That I have the right to consult with a lawyer prior to any questioning. This lawyer may be a civilian lawyer retained by me at my own expense, or if I wish, Navy or Marine Corps authority will appoint a military lawyer to act as my counsel without cost to me; and
- ___ 5. That I have the right to have such retained civilian lawyer or appointed military lawyer present during the interview.

I do/do not choose to submit evidence in refutation, explanation, rebuttal, or otherwise respecting the incurrence of my injury/disease. (If matters are submitted, they should be attached as enclosures to the investigative report.)

Witness

Signature

Date

INSTRUCTIONS FOR LEGAL ASSISTANCE

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1. General. The Tri-Command Legal Assistance Office provides legal advice and assistance to active duty military personnel and their dependents, and if resources are available, to retired military personnel and their dependents, on civil legal matters. The Legal Assistance Program is operated in accordance with Chapter XIX of the JAG Manual. Judge advocates and paralegal personnel from Marine Corps Base, 2d Marine Division, and 2d Force Service Support Group serve with the Tri-Command Legal Assistance Office.

2. Services Provided. Assistance includes, but is not limited to, family law matters, garnishment, child support, alimony, wills, powers of attorney, promissory notes, landlord/tenant matters, citizenship, taxes, paternity allegations, real estate transactions, indebtedness, complaints, insurance, consumer matters, violations of the civil rights act, name changes, adoptions, notarial functions, and assistance in preparation and filing of matters before small claims court.

3. Services Not Provided. Legal assistance officers do not provide assistance regarding disciplinary matters under the Uniform Code of Military Justice, matters related to the conduct of military investigations, or administrative discharge hearings. (These services are provided by defense counsel). Legal assistance attorneys are also prohibited by 18 USC Sections 201 and 205, from acting as an attorney for a client whose interests are opposed to the interests of the U.S. Government. Additionally, the office will not prepare fitness report rebuttals, address problems involving MOS or duty station options/guarantees, business incorporations or formations, rental of income property, or representation of personnel in civilian court.
4. Appointments. Personnel desiring the services of a legal assistance attorney may schedule an appointment with the office by calling 451-1903/5860/2704. Unit legal officers should ascertain the nature of problems faced by personnel in their unit, determine the type of disposition, and if necessary, arrange for an appointment with the legal assistance office. Clients with bona fide emergency cases who cannot make an appointment may see an attorney on a "first come, first served" walk-in basis. If a client must cancel an appointment, the Legal Assistance Office must be notified at least 24 hours in advance of appointment.
5. Legal Assistance Lectures. Legal assistance attorneys are available to give lectures, classes, etc., on legal assistance topics to groups of interested persons, including, but not limited to, command scheduled training lectures, wives groups, family days, etc. Arrangements for such lectures or instructors may be made by calling the Chief Legal Assistance Officer at the numbers listed in paragraph 4 above.
6. Preventive Law Program. The Preventive Law Program is designed to apprise Marines of common legal problems and to ensure that they have their legal affairs in order prior to any potential deployment. The program consists of lectures given to units and groups. When time permits, Marines with legal problems can be interviewed after the lecture or an appointment will be made. The Legal Assistance Office has prepared a comprehensive Preventive Law Handbook, copies of which are available upon request.
7. Violations of the Civil Rights Act. As required by SECNAVINST 5350.6, Legal Assistance attorneys assist military personnel and their dependents in seeking relief from off-base discrimination and other violations of Civil Rights laws, including discrimination in public accommodations and received police brutality by civilian police. Procedures for processing civil rights cases are contained in the current edition of SECNAVINST 5350.6 and Base Order 5350.1.
8. Insurance. The Chief Legal Assistance attorney is designated as the Base Insurance Officer. All organizational insurance officers are encouraged to consult with the OIC in the performance of their duties in accordance with Base Order 1741.1.
9. Income Tax Assistance. The Chief Legal Assistance attorney is designated as the Base Tax Assistance Officer. He will coordinate and organize the base Volunteer Income Tax Assistance (VITA) program sponsored by the Internal Revenue

Service. He will insure VITA instructors and preparers are provided by each Battalion in the Tri-Command Area. Legal Assistance attorneys will not prepare tax returns but will provide advice on complex tax questions.

10. Voting. The Chief Legal Assistance Officer is the Base Voting Officer. All organizational voting officers are encouraged to consult with the Base Voting Officer in the performance of their duties in accordance with Base Order 1742.1_.

11. Consumer Complaints. Military personnel or their dependents who have consumer complaints should contact the Legal Assistance Office for an appointment. Consumer complaints will be processed in accordance with Base Order 5000.42_.

12. Passport and Visa Assistance. The Legal Assistance Office will provide a "Passport Agent" who will provide assistance to military personnel and their dependents in obtaining No-Fee Passports. The Passport Agent will also give advice and assistance regarding obtaining Regular Fee Passports, Foreign Passports and Visas.

13. Immigration and Naturalization. The Legal Assistance Office shall assist personnel in complying with current procedures established for United States citizenship applications.

14. Debt Collection. Subject to certain narrow exceptions, Federal and State law prohibit debt collectors from contacting a debtor's employer unless a court judgment has been rendered or the debtor (or his attorney) has given permission for employer contact. See NCGS 75-50 and 66-49.42. To insure that commanders do not inadvertently aid debt collectors in violating the law, and to protect Marines from unlawful debt collection methods, the following procedures will be utilized in dealing with debt collection correspondence.

a. All debt collectors' correspondence which does not include reference to a judgment or proof of the debtor's prior permission for employer contact will be forwarded to the Legal Assistance Office. Legal Assistance attorneys will contact the alleged debtor directly to offer legal assistance in resolving the debt. Assistance may include legal advice regarding consumer law, counselling regarding refinancing, etc. The debt collector will be notified that the Marine Corps has no authority to either adjudicate civil complaints or to force payment.

b. If correspondence from the debt collector contains proof of judgment or evidence that the debtor has given permission for the employer to be contacted, commanding officers will comply with the provisions of Chapter 6 of MCO P5300.8_ (LEGADMINMAN). Chapter 6 requires:

- (1) Debtor be interviewed in private;
- (2) Debtor be counselled on adverse consequences of failure to pay just debt;
- (3) Advise debtor to communicate intent to collector if debt acknowledged;

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(4) Unit commander reply to debt collector; and

(5) In case of officers and enlisted ranks of sergeant or above, appropriate enclosures shall be forwarded to CMC. In the case of corporals and below, correspondence shall be retained in files of debtor's unit. Entry on page 11 of SRB will comply with requirements of MCO P1070.12_, IRAM.

15. Compensation or Fee. Legal assistance attorneys and staff are prohibited from accepting, directly or indirectly, any fee or compensation of any nature for legal services rendered to any person entitled to legal assistance. Reserve judge advocates on inactive duty may not accept any fee or compensation of any nature for legal services rendered to any person entitled to legal assistance, with respect to matters that they consulted or advised such person in an official capacity.

ENCLOSURE (4)

INSTRUCTIONS FOR CIVIL LAW/CONSUMER PROTECTION

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1. Scope. The Civil Law Section provides legal support to the command in all areas that do not come within military justice, legal administration or legal assistance. This includes, but is not limited to, labor relations, civilian employment law, environmental law, the Ethics in Government Act, the Standards of Conduct governing Department of the Navy personnel and lawsuits against the command or individuals for acts arising out of their official performance of duty.

2. Advisory Opinions. The Civil Law Section is tasked with providing memoranda of law and other legal research to the Staff Judge Advocate in responding to requests for legal advisory opinions. Requests for opinions may be in any subject area and should be addressed to the Staff Judge Advocate. Requests should include the factual background and identify the pertinent issues to be discussed. Copies of all advisory opinions are filed and indexed by topic.

3. Civilian Employment Law. The Civil Law Section provides legal support regarding labor law (collective bargaining, arbitration, unfair labor practices, etc.) and civilian employment law (grievances under Department of the Navy regulations, Merit Systems Protection Board, equal employment opportunity proceedings) involving both appropriated and nonappropriated fund employees.

4. Environmental Law. The Environmental Law Counselor provides legal support to the command on all environmental law matters, including but not limited to, the National Environmental Policy Act, the Resource Conservation and Recovery Act, the Clean Air Act, the Clean Water Act, and the Comprehensive Environmental Response, Compensation and Liability Act.

5. Lawsuits Against the Command. Department of the Navy personnel who are sued for acts arising out of their official performance of duty are entitled to representation by the Department of Justice (DOJ). In order that the necessary coordination with DOJ; Office of the Judge Advocate General, Department of the

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Navy, Headquarters, Marine Corps, and the United States Attorney for the Eastern District of North Carolina may be effected, it is essential that individuals who are sued promptly notify the Office of the Staff Judge Advocate.

6. Consumer Protection Officer. The Chief, Civil Law Section is the Base Consumer Protection Officer. Consumer complaints will be processed in accordance with Base Order 5000.42_.

7. Miscellaneous Tasks. The Civil Law Section provides, on a recurring basis, legal support to the Armed Forces Disciplinary Control Board, individuals called before a medical board, nonappropriated fund instrumentalities, Camp Lejeune, Dependent Schools System, and the Child Advocacy Program Committee.

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INSTRUCTIONS FOR SPECIAL ASSISTANT TO THE UNITED STATES ATTORNEY

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1. General. The Special Assistant to the U.S. Attorney (SAUSA) represents the U.S. Attorney locally, prosecutes civilians who have committed minor criminal offenses aboard the base, provides liaison and coordination with civilian law enforcement agencies, and supervises the Civil Process Section. In addition, the Special Assistant to the U.S. Attorney reviews proposed repossessions of collateral by secured parties, reviews all matters of juvenile misconduct occurring aboard the base, and provides the Provost Marshal's Office and the Naval Investigative Service with after-hours legal advice.

2. Prosecutions. The Special Assistant to the U.S. Attorney is tasked with the prosecution of civilians for misdemeanors, including petty offenses, committed aboard Marine Corps Base, Camp Lejeune, and Marine Corps Air Station (Helicopter), New River. These prosecutions normally take place monthly in U.S. District Court in New Bern, North Carolina, before a U.S. Magistrate. In cases involving the commission of serious felonies aboard Camp Lejeune and MCAS(H), New River, the SAUSA will arrange the initial appearance before the U.S. Magistrate of any civilian taken into custody and, subsequent to the initial appearance, will assist the U.S. Attorney as required.

3. Liaison Functions. It is the responsibility of the Special Assistant to the U.S. Attorney to maintain liaison with the Onslow County District Attorney's office in order to facilitate the handling of criminal cases, both military and civilian, of mutual interest to Camp Lejeune and Onslow County communities. In addition, the Special Assistant to the U.S. Attorney is tasked to make liaison and ensure effective communication with other state and federal law enforcement agencies, as necessary.

4. Juveniles. The Special Assistant to the U.S. Attorney is tasked to review all cases of juvenile misconduct, prepare the Staff Judge Advocate's memorandum in this

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area, and assist the Base Inspector as required. In cases which are determined sufficiently serious to warrant proceedings for juvenile delinquency in U.S. District Court, the SAUSA will make liaison with the U.S. Attorney's office and will take all actions necessary to further such proceedings.

5. Letters of Persona Non Grata. Commands desiring that an individual be barred from entering this base must submit a proposed letter of persona non grata and documentation supportive thereof to the Commanding General, Marine Corps Base (Attn: Staff Judge Advocate). The SAUSA is tasked to review the proposed letter and its supporting documents, prepare the Staff Judge Advocate's opinion, and monitor the letter through service on individuals barred. An individual must present a clear threat to the peace and security of the base for a letter of persona non grata to be issued.

6. Civil Process Section. The Special Assistant to the U.S. Attorney is the immediate supervisor of the Civil Process Section and will ensure the orderly and timely service of summons, subpoenas, writs, orders, warrants, and orders of arrest, and other process issued by state and federal courts. See enclosure (7) to this order.

7. Miscellaneous Functions. All bail bondsmen and persons seeking to repossess collateral aboard Marine Corps Base, Camp Lejeune, must report to the Special Assistant to the U.S. Attorney with all papers and documents pertinent to the proposed repossession. Additionally, the SAUSA will monitor and maintain a log book on all arrests and state court convictions for drug-related offenses occurring in Onslow County. The SAUSA is available after normal working hours for consultation with the Provost Marshal's Office, Criminal Investigative Division, and Naval Investigative Service, for notification of incidents involving civilians, and to examine documents and authorize delivery of Marines to civilian authorities in cases involving serious felonies committed off base.

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INSTRUCTIONS FOR LIAISON WITH CIVIL AUTHORITIES

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1. <u>Scope</u> . This enclosure sets forth the necessary actions for delivery of military personnel to civil authorities, service of civil process and subpoenas, and guidance for officers representing their organizations in local courts.	
2. <u>Delivery of Personnel to Federal and State Authorities</u>	
a. Delivery of military personnel to federal and state authorities will be effected in accordance with Chapter XIII, JAG Manual.	
b. All requests for delivery of military personnel to federal or state authorities for trial on criminal charges will be directed to the Civil Process Section, Office of the Staff Judge Advocate, Marine Corps Base. This section is physically located in Building #3 with the Provost Marshal's Office.	
c. The Civil Process Section will notify, in writing, the officer exercising special court-martial jurisdiction over the individual concerned of the existence	

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of the warrant or order for arrest. This letter will specify a date and time for the delivery of the individual concerned to the appropriate federal or state authorities. In the majority of cases, delivery will be made at the Civil Process Section.

d. The Civil Process Section, upon request, will provide the officer exercising special court-martial jurisdiction over the individual all known, pertinent facts about a case and whether the warrant or order for arrest appears to be in due form. All questions of a legal nature about a warrant or order for arrest will be directed to the Office of the Staff Judge Advocate, Marine Corps Base, for review by the Judge Advocate acting as the Special Assistant to the United States Attorney.

e. The officer exercising special court-martial jurisdiction shall authorize and cause the delivery to the Civil Process Section of the individual for arrest by the appropriate federal or state officials. The command will ensure that the individual is properly attired in civilian clothes or the uniform of the day. Each command will ensure that the individual(s) is accompanied to the Civil Process Section at Building 3 by an officer or staff noncommissioned officer. If it appears that the individual will not return to the command within 24 hours, the individual should report with personal toilet articles in his possession. When an individual cannot be delivered for arrest the officer exercising special court-martial jurisdiction will notify the Civil Process Section before the scheduled date of delivery.

f. The delivery of the person concerned to civil authorities will be effected in the presence of the Civil Process Section. At that time, the Civil Process Section will have the requesting civil authorities execute the agreement required by Section 1305 of the JAG Manual. No agreement form is necessary upon delivery of persons to federal authorities. At least five copies of the agreement form will be completed in all particulars, including signatures of the accepting and witnessing officers. The original and two copies will be sent to the command, one copy will be presented to the civil authority accepting delivery, and one copy will be retained in the Civil Process Section files.

g. In all cases where delivery has been refused in accordance with the provisions of Section 1308, JAG Manual, the commanding officer will report to the Judge Advocate General of the Navy by message, or if the circumstances require, by telephone, said report to be followed by a letter setting forth a full statement of the facts. A copy of the report will be forwarded to the Commandant, Fifth Naval District. See section 1310, JAG Manual.

h. To ensure the orderly delivery of personnel and to minimize conflict between the military and civilian judicial systems, the Civil Process Section will provide the Commanding Generals and Staff Judge Advocates of 2d Marine Division and 2d Force Service Support Group with copies of the Civil Process delivery notification letters affecting military personnel within their respective commands.

3. Civil Authorities From States Other Than North Carolina. Any commanding officer or other person who receives a request for delivery of a military person to

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a civil authority other than the state of North Carolina, where such request does not contain express authority for such delivery from the Judge Advocate General of the Navy or his authorized representative, shall forward the request to the Special Assistant to the United States Attorney located in the Office of the Staff Judge Advocate, Marine Corps Base, for disposition. Those requests received for which the Judge Advocate General of the Navy or his authorized representative has authorized delivery will be processed as outlined above.

4. Effect of Disciplinary Status Upon Delivery. Upon presentation of a proper warrant by federal or state civil authorities, delivery will be effected except when disciplinary proceedings involving military offenses are pending or the requested person is undergoing a sentence of a court-martial. Before delivery of the requested person is refused for any reason, the officer exercising special court-martial jurisdiction over the accused will report the full circumstances of the case to the Staff Judge Advocate, Marine Corps Base, through the Staff Judge Advocate of his command.

5. Administrative Action. Upon delivery to civil authorities, appropriate entries will be made in the requested individual's service record book in accordance with paragraph 4013, IRAM.

6. Service of Civil Process and Subpoenas on Military Personnel

a. All service of civil process and subpoenas issued by state or federal courts for service upon military personnel will be conducted through the Civil Process Section. The officer exercising special court-martial jurisdiction over the individual addressed by the process will be notified in writing by the Civil Process Section of the existence of and the date and time for service of the process. The Civil Process Section, upon request, will inform the officer exercising special court-martial jurisdiction of all known facts pertinent to the process. If the officer exercising special court-martial jurisdiction is unable to provide the individual for service, he will notify the Civil Process Section of the whereabouts of the individual concerned prior to the scheduled service date.

b. Where the process or subpoena issues from other than a federal or North Carolina civil authority, the individual to whom it is addressed will be advised in accordance with section 1320b, JAG Manual, prior to service.

c. Process will be served at the Civil Process Section of the Office of the Staff Judge Advocate, Marine Corps Base.

d. Process received by mail will be forwarded to the Civil Process Section for handling in accordance with section 1320 of the JAG Manual.

7. Command Representative in Civil Courts

a. When off Marine Corps Base, Camp Lejeune, military personnel are subject to state, county, or municipality laws as well as to federal laws and military regulations. They may be arrested, confined, charged, and tried like any other citizen.

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b. On occasion, Marines cited to appear in local civilian courts to answer complaints regarding traffic and other minor offenses fail to appear. A warrant is issued for the arrest of those individuals. Warrants are served by the sheriff through the Civil Process Section of the Office of the Staff Judge Advocate, Marine Corps Base. The individual concerned then has to post bond, which is normally twice that usually required, and also has to answer two complaints, one for his original offense and one for failure to appear. Sentences imposed are correspondingly higher.

c. To help decrease the incidents of failure to appear, local courts have agreed to notify the commanding officers concerned via the Provost Marshal of the individual Marine's impending court date.

d. Unit Commanders are directed to assure that the information contained in subparagraphs b and c above is brought to the attention of those within their commands. Enlisted personnel should be counseled to inform their respective Sergeant Major/ First Sergeant as soon as possible after receiving a citation of the time and place of their required appearance. Unit Commanders are directed to ensure that such individuals are granted leave or liberty to enable them to appear when required. Unit Commanders are directed to ensure that such persons are accompanied to court by a command representative, either officer or staff noncommissioned officer. In this regard, the provisions of paragraph 8 are applicable.

e. Military attorneys are not permitted to appear before civil courts as attorneys for military personnel. However, it is proper for an officer or staff noncommissioned officer to be present in court as a representative of his command, to assist the defendant in obtaining civilian counsel, if needed or desired, to offer to testify as to the defendant's character and military record, if the defendant or his counsel desire such testimony; to be available to explain relevant Marine Corps and Navy Department policies to the judge, if requested; to receive the defendant if he is released in the custody of his command; and to report the results of the trial to his Commanding Officer. This type of assistance is a command function.

8. Procedures

a. When military personnel are to be tried in District Court, Superior Court, or Federal District Court within 50 miles of Camp Lejeune, Commanding Officers will appoint an officer or staff noncommissioned officer to accompany the defendant to court as a representative of the command. The appointment of a command representative to accompany a defendant to a court located beyond 50 miles from Camp Lejeune is left to the discretion of the Commanding Officer. Officers and staff noncommissioned officers appointed to perform such duties should familiarize themselves with the instructions contained in paragraph 10 of this enclosure.

b. When personnel are to be tried by a civilian court on charges resulting from their performance of official duties, the Staff Judge Advocate will be notified without delay by telephone of that fact in order that the government's interests in a possible claims action will not be prejudiced.

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9. Production of Official Records. All requests for production of official records relative to court action shall be referred to the Staff Judge Advocate.

10. Instructions For Officer and Staff Noncommissioned Officers Representing Their Commands in Civil Courts. Officers and staff noncommissioned officers assigned to accompany military personnel to civil courts in nearby communities will be guided by the following instructions:

a. Upon Assignment and Prior to Going to Court:

(1) Obtain all available information within the command regarding the facts of the case. Discuss it with the defendant if he desires. If it appears that there may be grounds for contesting the charges against the defendant, or if charges of a serious nature are involved, advise the defendant to consider retaining a civilian attorney. If the defendant specifies no choice of attorney, refer the defendant to the Base Legal Assistance Officer for advice and a list of attorneys who may be willing to take the case. Inform the defendant that you cannot act as his attorney in court.

(2) Obtain a synopsis of the defendant's military record and ascertain what his superiors think of his character and value to the service. Inform the defendant, or his attorney if he has retained one, that you will be available to testify upon his record and character if such testimony is desired.

(3) Determine how much money the defendant has on hand, on the books or otherwise available to him for the payment of any possible fine.

(4) Familiarize yourself with applicable Marine Corps and Navy Department policies, particularly Chapter 6, MARCORSEPMAN and paragraph 3420185, MILPERSMAN, regarding the discharge of enlisted personnel who are convicted by civilian authorities.

(5) If the defendant is confined in a civilian jail, he may normally be visited during the regular visiting hours by making arrangements with the confining authority. Requests to visit confined defendants in cases of emergency during other than normal visiting hours must be made to the sheriff of the county (Chief of Police in Wilmington). Command representatives have no authority to demand to see a prisoner.

(6) If the defendant obtains civilian counsel, command representatives will not interfere with the attorney's handling of the case. A representative may cooperate with the defendant's civilian counsel to the extent he requests, but such cooperation will not exceed the action authorized in this guide.

b. Conduct in Court. When civilian counsel has been retained by the defendant, the command representative will remain available to testify if called, and to observe the proceedings in order to report the outcome of the trial to his Commanding Officer. If civilian counsel has not been retained the command representative will conduct himself as follows:

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(1) Command representatives have no official standing in the eyes of the court, and may take part in the proceedings only when invited to do so by the judge, and then only to the extent of his invitation. Command representatives who fail to conduct themselves with the proper degree of respect for the court may find themselves summarily punished by the court for contempt. Although it is proper for a civilian attorney to arrange with a prosecuting attorney to accept a plea to a lesser included offense or to dispose of the case out of court, command representatives are forbidden to do so.

(2) When the defendant's case is called, step up beside him and remain silent until the judge acknowledges your presence. Most local judges will know why you are there and will request information from you when they desire it. If the judge does not understand your presence and inquires regarding your interest in the case, inform him that you are a representative of the defendant's Commanding Officer, and that you are present: (1) to furnish the court with information regarding Marine Corps and Navy Department policies and procedures, if such is desired; (2) to receive the defendant if the court wishes to release him to the custody of the Marine Corps; (3) to report the results of the trial to the accused's Commanding Officer; and (4) if the defendant or the judge desires it, to furnish testimony regarding the defendant's military record and character. Avoid giving the impression that you are either representing the defendant or acting as an inspector for the Marine Corps regarding the manner in which the court is being conducted. If the defendant has difficulty addressing the court and omits relevant material facts or extenuating/mitigating circumstances which would be in his favor if known, inform the judge that you know of such facts and suggest that he might desire to examine the defendant thereon. Do not address questions or remarks to the defendant in the judge's presence unless the judge specifically invites you to do so.

(3) If the judge sentences the defendant to a fine and/or costs of court in excess of the funds he has on his person and on the books, you may inform the judge of that fact, as well as when the defendant will have sufficient funds due him to pay the amount adjudged. You may ask the judge if he will consider releasing the man to the custody of the Marine Corps, putting off the execution of judgment until a future date set by the judge. While you can neither guarantee the court that the defendant will pay the fine nor assume an obligation for the government to pay if he doesn't, assure the court that the serviceman will be granted liberty or leave to return to court on the date set by the judge, unless the exigencies of the service demand otherwise, and that the command will endeavor to have the matter settled before the defendant is transferred from the area.

(4) Should the matter arise, inform the judge that Marine Corps policy forbids the Marine Corps from entering into any agreement to accept custody of the defendant on any terms imposed by the court which would impose obligations on Marine Corps officials to become part of a probation arrangement. Specifically, the Marine Corps cannot agree to submit reports to the court on future conduct of the defendant, to carry out any conditions of probation which involve performance of his military duties, or to guarantee the continued presence of the defendant within the jurisdiction of the court. Any known plans to transfer or deploy the defendant should be made known to the judge.

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(5) Do not express displeasure with the sentence awarded or attempt to bargain with the judge for a reduction therein. It must be remembered that in performing command representative duty, you are representing the Marine Corps. The manner in which you conduct yourself may become a matter of public interest.

c. After Trial

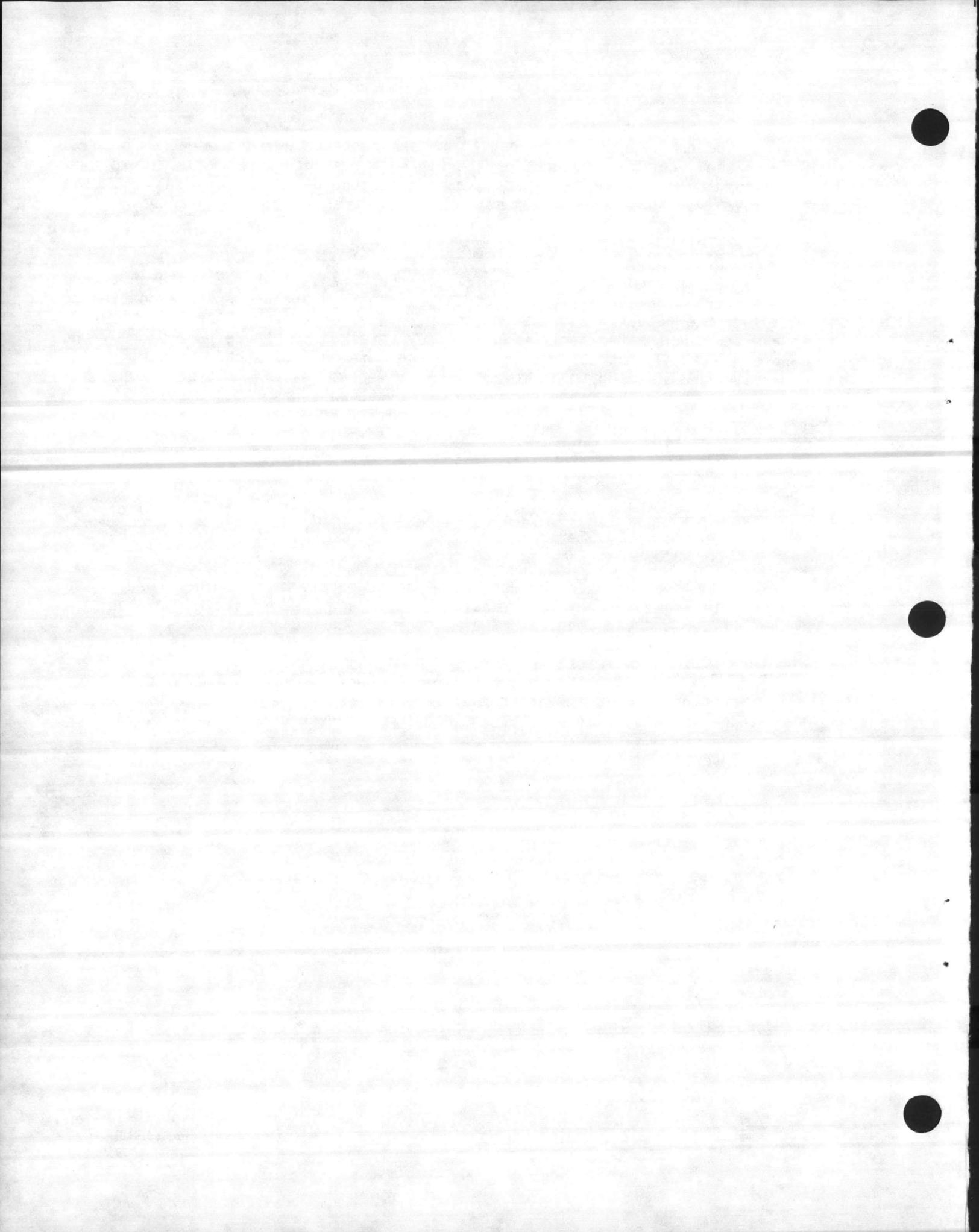
(1) After a conviction in a civilian court, an appeal may be taken to the next higher court upon the giving of notice of intent to appeal, and the posting of bond to ensure the appearance of the defendant. Whether to appeal in a particular case is a determination for a civilian attorney retained by the defendant or by the defendant himself. Do not attempt to advise the defendant on such a matter. However, if you have reason to believe that a different result would be reached by a higher court, advise the defendant to obtain civilian counsel and assist him in doing so immediately, unless he is so represented.

(2) If necessary, assist the defendant in obtaining a Special Money Requisition.

(3) Inform the Commanding Officer of the result of the trial, and of any promises made to the court regarding the payment of a fine or request for the return of the defendant for future proceedings.

(4) Any concern over the actions of a judge, clerk of court, prosecuting attorney, or civilian attorney in a particular case should be directed to the Commanding Officer and the cognizant Staff Judge Advocate.

11. Foreign Civil Authorities. Paragraph 4-8 of SECNAVINST 5820.4 requires a message report to JAG (Code 10) when a Marine is placed in pretrial confinement by foreign authorities. The cognizant commander will notify the appropriate office of the staff judge advocate immediately should a Marine be so confined.



INSTRUCTIONS FOR SEARCHES AND SEIZURES

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1. Scope. This enclosure is designed to provide basic guidance on the subject of searches, seizures, and inspections. The law regulating searches, seizures, and inspections is complex and constantly evolving. For specific guidance concerning a particular case, call the Military Justice Officer, Office of the Staff Judge Advocate.

2. Background

a. Evidence obtained as the result of a search of the person or personal effects of a suspect may need to be introduced into evidence at a subsequent legal proceeding. However, evidence obtained as the result of an unreasonable search or seizure, and all evidence derived as a result thereof, may be inadmissible in a court-martial. It is, therefore, imperative that all searches and seizures be conducted in accordance with the applicable law. The intent of this enclosure is to present the law pertaining to search and seizure in a clear and brief format that will enable the commander and his staff to readily apply these rules in day to day situations.

b. There are two basic rules to which adherence is strongly suggested: first, time permitting, and absent the applicability of one of the several exceptions to this basic rule, get command authorization based upon probable cause, and second, attempt to obtain consent, if at all practical, in essentially all situations. At trial, overlapping bases to justify the search may well make the difference between evidence being admitted or excluded.

3. Searches Requiring Command Authorization. Military Rule of Evidence 315 addresses command authorized searches based upon "probable cause to search". These searches are the military's version of civilian search warrants. If there is any doubt in a particular situation whether or not command authorization to search should be sought, get command authorization (or at the very least, try to). While, as noted below, there are a number of exceptions to the requirement for command authorization based upon probable cause, there will be situations where none of the exceptions will apply, and the only way to legally search and seize admissible evidence will be by first obtaining command authorization.

a. Authority to Authorize Searches and Seizures. A commanding officer, a designated officer-in-charge, or the Commanding General can authorize the search of property or persons situated or found in a place over which he or she has control. The term "commanding officer" includes the commanding officer of a company, school, battalion, detachment, Naval Regional Medical Center or Naval Regional Dental Center. Thus, a unit commander or designated officer-in-charge can authorize the search of property or persons situated or found within the geographical limits of the unit or organization. Further instructions for officers designated area commanders by BO 11100.5 are contained in BO 5810.3.

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Furthermore, a unit commander or designated officer-in-charge can authorize the search of the military property of that unit or organization, or of a military member of that unit or organization, wherever that military property or member is located, on or off base. Search authorization should normally be obtained from the area commander or the commanding officer at the battalion, school, or detachment level if there is any doubt regarding who is empowered to authorize a search at a particular location. The Commanding General can authorize a search of family housing or other "common areas" outside the purview of any area commander. Only a commanding officer, area commander, designated officer-in-charge, or the Commanding General can authorize a search. This responsibility cannot be delegated to anyone, including a duty officer or unit executive officer. Under certain circumstances, however, a subordinate on whom command has devolved in the absence of the Commanding General, commanding officer or area commander may authorize a search as "acting commander" if, under the prevailing circumstances, the subordinate is the functional commander, i.e., is making command decisions in the commander's absence. Thus, a subordinate on whom command has devolved can authorize a search if the commander is on leave or TAD, or is away from his command and quarters for an extended period of time (more than overnight) and cannot be contacted through the exercise of reasonable diligence. A subordinate cannot authorize a search, however, if the commander is only temporarily absent. If probable cause to search exists and there is insufficient time to await the return of a commander who is temporarily absent lest the evidence being sought is removed or destroyed, there are exigent circumstances which would justify a search without command authorization. See paragraph 4 below.

b. Probable Cause. There must be cause to search before command authorization can be given. Probable cause exists when there is, in the mind of the commanding officer, a reasonable belief that the specific person, specific property or specific evidence sought is located in the specific place or on the specific person to be searched. Before a commander may conclude that probable cause to search exists, he must first be satisfied that the information which is to serve as the basis for probable cause to search and/or seize is believable and has a factual basis. For example, an individual making a probable cause determination who relies upon the "in person" report of an informant must determine both that the informant is believable and that the property observed is likely to be what the observer believes it to be. The determining individual may rely upon the demeanor of the informant in order to determine whether the observer is believable. An individual known to have a "clean record" and no bias against the individual to be affected by the search is likely to be credible. Likewise, an individual making a probable cause determination who relies upon the report of an informant not present before the authorizing individual must determine both that the informant is credible and that the property observed is likely to be what the informant believed it to be. The determining individual may utilize one or more of the following factors, among others, in order to determine whether the informant is believable:

(1) Prior record as a reliable informant--Has the informant given information in the past which proved to be accurate?

(2) Corroborating detail--Has enough detail of the informant's information been verified to imply that the remainder can reasonably be presumed to be accurate?

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(3) Statement against interest--Is the information given by the informant sufficiently adverse to the fiscal or penal interest of the informant to imply that the information may reasonably be presumed to be accurate?

(4) Good citizen--Is the character of the informant, as known by the individual making the probable cause determination, such as to make it reasonable to presume that the information is accurate?

Commanders are cautioned that mere allegations may not be relied upon. For example, an individual may not reasonably conclude that an informant is reliable simply because the informant is so named by a law enforcement agent. The individual making the probable cause determination must be supplied with specific details of the informant's past actions to allow that individual to personally and reasonably conclude that the informant is reliable.

c. Items Which May be Seized. The following items are properly seizable:

- (1) Evidence of crime;
- (2) Unlawful weapons;
- (3) Property, the possession of which is a crime; or
- (4) Items which might be used to resist apprehension or aid in escape.

d. Legal and Administrative Considerations

(1) Documentation. Although probable cause may be based on information verbally conveyed to the authorizing commander, and although authorizing commanders need only verbally authorize searches and seizures, it is strongly recommended that command authorized searches and seizures be recorded by means of utilizing documentation similar to that found at Appendices C and D of this enclosure. Use of this documentation will alleviate confusion at a later time when it becomes necessary for a court-martial to ascertain the commander's basis for believing that probable cause to search and seize existed. Use of this documentation will also alleviate confusion at a later time when it becomes necessary for a court-martial to ascertain exactly what persons and/or what areas were to be searched, and what type of evidence was to be seized. Whenever practicable, the documentation found at Appendices C and D should be completed prior to the effectuation of a search and seizure. When completing the documentation found at Appendices C and D, great care should be exercised in:

(a) Setting forth the information that serves as the basis for probable cause.

(b) Setting forth with specificity the name of the person to be searched, the exact area or location to be searched, and the date when the search may be executed.

Note. All documentation that is executed in order to request or authorize a search and/or seizure must be retained for future use in possible court-martial proceedings. Failure to do so may cause evidence seized to be excluded from consideration at a court-martial.

(3) Disqualification of Commanders Authorized to Order Searches and Seizures. Commanders normally authorized to order searches and seizures may become disqualified from doing so if the commander's action in a particular case renders him no longer neutral and detached. A commander is not neutral and detached if he becomes personally involved as an active participant in gathering evidence against an accused, or otherwise demonstrates personal bias or involvement in the investigative or prosecutorial process against the accused. Nothing in this Order would preclude a commander from being present at a search or authorizing an investigation or the use of informants or drug detection dogs. The commander may not, however, actively participate in the investigation by personally conducting a search and seizure, personally directing the activities of an informant or drug detection dog, or engaging in any other conduct that would normally be considered a police function.

(4) Searches of Civilians. See BO 5810.3_.

4. Exigent Circumstances. There are two situations where, although probable cause to search exists, command authorization to search need not be obtained. The first involves situations where there is insufficient time to obtain command authorization due to a real danger of evidence being destroyed or removed. The second involves the search of an operable vehicle. An example of the former situation would be where a duty officer detects the odor of burning marijuana emanating from a barracks room through a door or window and there are people in the room; should he leave the immediate area to request command authorization to search that room, there is a fair likelihood that the potential evidence would be destroyed or removed well before authorization could be obtained. In this example probable cause to search exists as the duty officer personally smelled the odor of burning marijuana, but the "exigent circumstances" surrounding the situation would justify an immediate search without first obtaining command authorization. Searches of automobiles are discussed in BO 5810.3_.

5. Searches Not Requiring Command Authorization

a. Search Incident to a Lawful Apprehension. Following an apprehension by a noncommissioned officer or above, or by law enforcement personnel, based on probable cause to apprehend (a reasonable belief that an offense violative of the UCMJ has occurred and that the individual about to be apprehended has committed that offense), a search can be conducted, incident to that apprehension, of both the individual apprehended and of the area immediately surrounding that individual (encompassing about a ten-foot circle around the individual). Searches incident to apprehension should be conducted as soon after the apprehension as possible. If the apprehension is made in a room, any unlocked wall lockers, drawers, cabinets, briefcases, etc., within "lunging distance" can be searched. Similarly, if the apprehension occurs in a vehicle, any unlocked portion of the vehicle (under the seat, behind the seat, an unlocked glove compartment, etc.) can be searched,

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provided that the apprehended individual could possibly lunge for a weapon or hide evidence there. Also try to obtain consent before searching incident to an apprehension. It is proper to look into an adjacent room or rooms, as an accomplice of the individual apprehended could be lurking there. Any evidence found during this reasonable "fan-out" should be admissible. It would be improper, however, to look inside containers or items of furniture not within the "lunging distance" of the person being apprehended without the person's consent or command authorization. If the individual Marine/Sailor about to be apprehended is situated in a place where he/she has some expectation of a right of privacy (a BEQ/BOQ room or family quarters, for example), command authorization to apprehend, based on probable cause, is required unless the particular situation will not allow the time to obtain command authorization. The procedures delineated in paragraphs 3a and b, above, for command authorized searches are generally applicable, and Appendices C and D to this enclosure may be modified and utilized, as appropriate. As with command authorized searches, command authorized apprehensions can be requested, and authorized, orally, although personal notes should be taken to record the occurrence. Exigent circumstances justifying an apprehension based on probable cause without command authorization are discussed at paragraph 4 of this enclosure. The search may only extend to the person being apprehended and the area within his "lunging distance", however.

b. Consent Search. No probable cause to search is required if voluntary consent to search is obtained. Submission to authority is not consent. Consent can be given orally, although a written "Consent to Search" form helps to establish that consent was given voluntarily, and was not just submission to authority. See Appendix A to this enclosure. Note that Article 31, UCMJ, and right to counsel warnings need not be given prior to requesting consent to search. However, if the Marine/Sailor whose consent to search is being sought is suspected of a particular offense, proper Article 31 and right to counsel warnings should be given so that any admission or confession that may be made will be admissible at a subsequent court-martial. Use of Appendix B to this enclosure to properly effect those warnings is recommended. The Marine/Sailor should be advised that he/she has a right to refuse the requested search; such advice, however, is not required.

c. Government Property. United States government property, wherever located, on or off base, can be properly searched and any evidence found may be seized without probable cause to search, unless the government property has been issued for what amounts to "private use". As an example, a government vehicle, regardless of where located, can be searched without probable cause. Similarly, a government desk located within regular working spaces, although "assigned" to a particular individual, can be searched without probable cause as it is intended primarily for official, and not private, use. However, a wall locker assigned to an individual is intended primarily to provide a secure place to store his/her personal effects, thus, probable cause or consent would be required to search.

d. Within Correctional Facilities. See Base Order 5810.3_.

e. Emergencies to Save Lives. In a life-threatening situation, a search conducted to save life may yield admissible evidence although there was no probable cause to search. Examples would include a search conducted of an automobile

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accident victim for identification, or of an apparent drug overdose victim in an attempt to identify the drug used so that the correct medical treatment could follow.

f. Searches of Open Fields or Woods and Common Areas. Evidence found in open fields or woods, or in the common area of a barracks or building may be seized without probable cause.

g. Random Vehicle Searches. See Base Order 5810.3_.

h. Stop and Frisk. Persons authorized to apprehend (officers, noncommissioned officers, and persons performing law enforcement or security duties) may stop a person temporarily when the person making the stop has reason to believe that criminal activity may be afoot. The purpose of the stop must be investigatory in nature, i.e., to determine the identity and motive of the person stopped. If the person making the stop has reason to believe that the person being stopped is armed and dangerous, he or she may frisk that person for weapons. Any contraband or evidence found in a lawful frisk may be seized.

i. Plain View. A person who, while in the course of otherwise lawful activity, observes in a reasonable fashion property he or she has probable cause to believe is contraband or evidence may seize such property. Thus, if during a routine walk-through inspection of a barracks room for general cleanliness a unit representative sees contraband lying in plain view, he or she may seize it. If, however, the unit representative opens a wall locker and finds contraband inside a trouser pocket, he or she may seize it, but it would be inadmissible in a court-martial as it was not in plain view. If the contraband is seen in a barracks room through a window from the outside, the better practice is to get command authorization to search the room unless exigent circumstances exist. See paragraph 4 above.

6. Inventories and Inspections

a. Inventories. Any contraband found during a lawfully conducted inventory (e.g., of the personal effects of a Marine/Sailor who has entered an unauthorized absence status) may be seized.

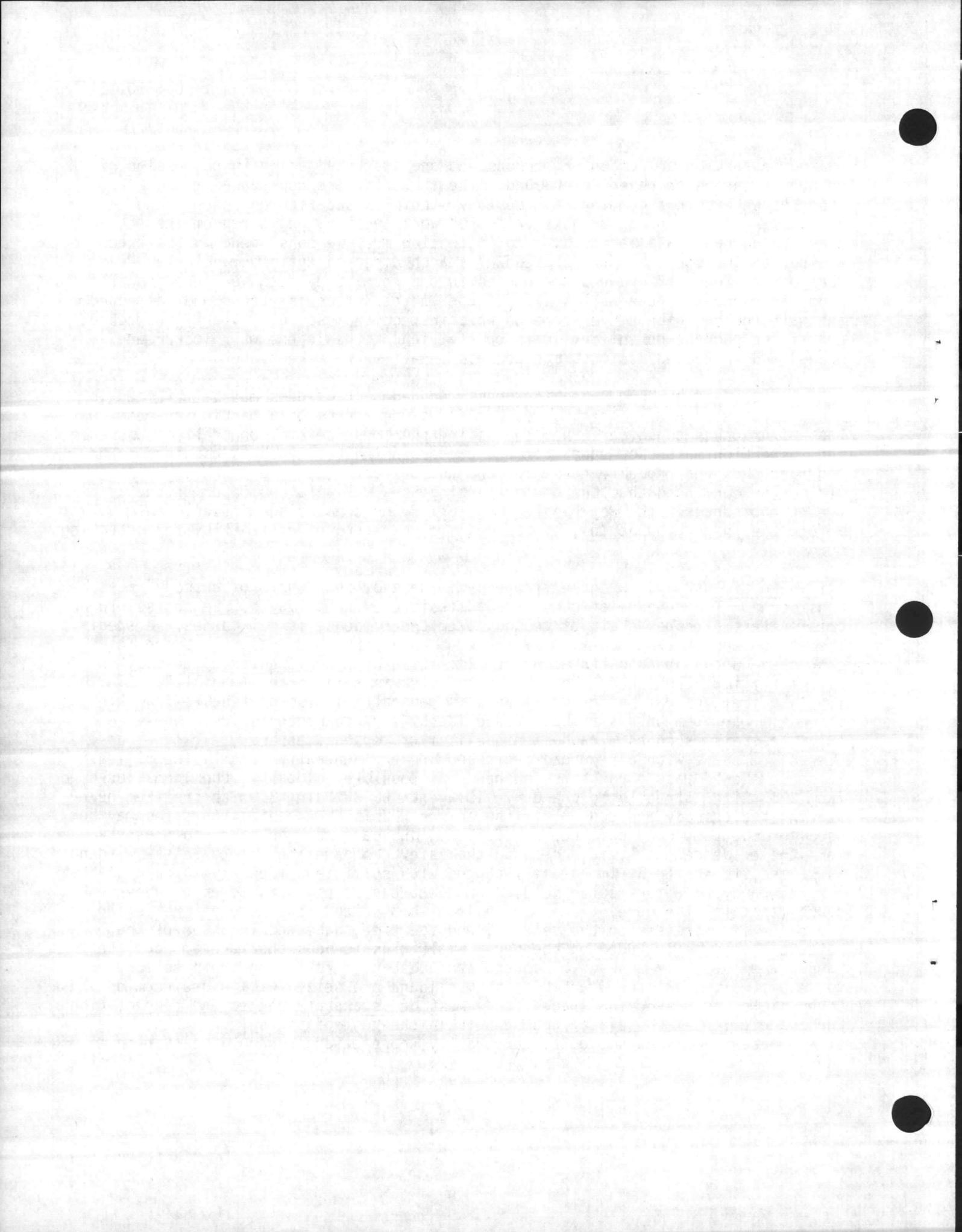
b. Military Inspections

(1) General Guidance. Contraband discovered during a lawfully conducted inspection may be seized. An inspection includes an examination to locate and confiscate unlawful weapons and other contraband when such property would affect adversely the security, military fitness, or good order and discipline of the command and when (a) there is a reasonable suspicion that such property is present in the command, or (b) the examination was previously scheduled. An examination made for the primary purpose of obtaining evidence for use in a trial by court-martial or other disciplinary proceedings is not an inspection within the meaning of this Order. Inspections shall be conducted in a reasonable fashion. The entire unit or organization need not be inspected. Any reasonable portion can be inspected, provided the inspection is not a subterfuge for a search directed

against a particular person or persons who are suspected to be in possession of unlawful weapons or other contraband. The following are considered reasonable: one platoon within a company; one company within a battalion or school; one entire barracks; one deck of a barracks; a "port" work section; and a random inspection of every third room in a barracks. The inspection must be consistent in its execution and not an improper sham or "shakedown" search directed against particular "targets." Thus, if drawers are opened in one room, they must be opened in all rooms inspected; if the wall locker of one Marine/Sailor is opened and inspected, all wall lockers within the scope of that inspection must be similarly inspected; and if the pockets on uniform items or civilian attire in one wall locker are opened and inspected, so must the pockets in all wall lockers.

(2) Use of Drug-Detection Dogs. Drug-detection dogs may be utilized in conjunction with a military inspection. If a dog alerts on a particular room, wall locker, or other container, thus indicating the presence of a controlled substance, the inspection must stop until command authorization to search is obtained. The dog furnishes the probable cause for the authorization, provided the commanding officer is convinced that the dog's alerting is a reliable indicator of the presence of drugs. The dog handler must brief the commanding officer, preferably before the inspection begins, of the dog's past record of reliability for detecting drugs.

7. Chain of Custody. Whenever property is seized, the "chain of custody" must be considered. The seizure of otherwise admissible evidence may not be admissible at trial unless a proper chain of custody over the evidence is maintained. A specific item of potential evidence is only relevant to a particular case if it can be connected to that particular accused. Establishing a solid chain of custody is especially important where the item of evidence is said to be "fungible". A fungible item, like a bag of marijuana, is generally indistinguishable from every other similar item unless it has unique identifying characteristics. Non-fungible items, such as a rather unique item of personal apparel, a camera, or a stereo component with a recorded serial number are generally readily identified. Evidence should pass through as few hands as possible. Ideally, the item should go from the seizer directly to the duty CID agents at Building 3, with the item never leaving the custody and control of the seizer. Unit or organization safes may be used for the temporary safekeeping of items, but care must be taken to properly mark the evidence and limit access to the safe. When an item of potential evidence is seized, it should be immediately tagged with sufficient identifying data so that its relevancy to a particular accused or event can be established at a subsequent court-martial. The name of the person from whom seized, the name of the seizer, the names of witnesses to the seizure, and the time, date and location of the seizure should be included on the tag. Small plastic bags that are appropriately tagged are ideal for storage of controlled substances following their seizure. If, for example, two or more quantities of marijuana are seized within one room or other billeting or working spaces, they must be separately bagged and tagged, with the description of the exact location within the room of the seizure then being all-important. Any bags used to temporarily store evidence should be stapled shut.



CONSENT TO SEARCH

I, _____, have been advised that inquiry is being made in connection with _____
_____.

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

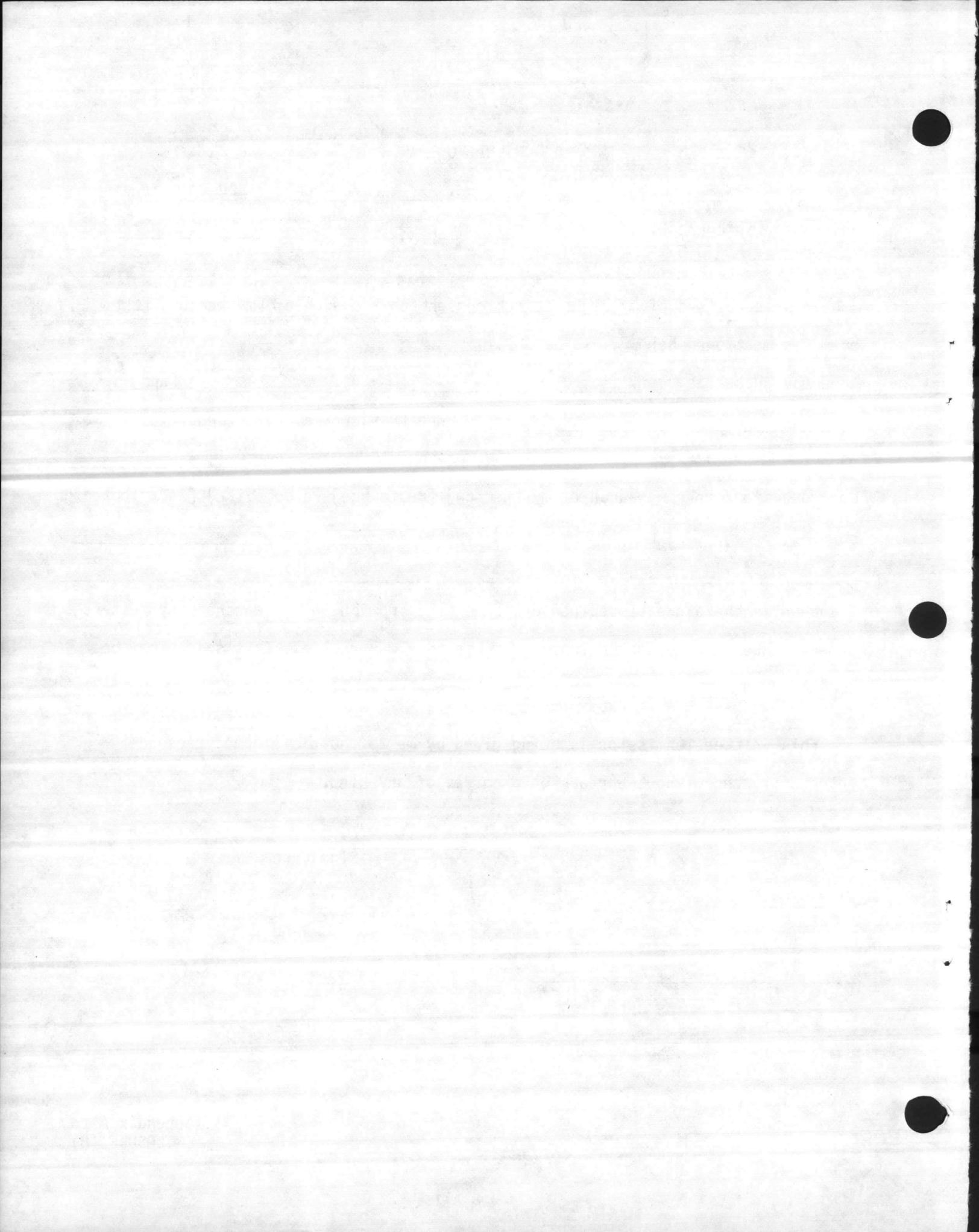
I hereby authorize _____ [and] _____
_____ who [has] [have been] identified to me as _____
_____ Position(s)
to conduct a complete search of my [person] [residence] [automobile] [wall locker] [_____] [_____] located at _____
_____.

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

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

Signature

WITNESSES



SUSPECT'S RIGHTS ACKNOWLEDGEMENT/STATEMENT

Suspect's Rights Acknowledgement/Statement

FULL NAME (ACCUSED/SUSPECT)	FILE/SERVICE NO.	RATE/RANK	SERVICE (BRANCH)
ACTIVITY/UNIT	SOCIAL SECURITY NUMBER		DATE OF BIRTH
NAME (INTERVIEWER)	FILE/SERVICE NO.	RATE/RANK	SERVICE (BRANCH)
ORGANIZATION		BILLET	
LOCATION OF INTERVIEW		TIME	DATE

RIGHTS

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

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

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

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

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

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

WAIVER OF RIGHTS

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

Appendix B to
ENCLOSURE (8)

(1) I expressly desire to waive my right to remain silent; - - -

(2) I expressly desire to make a statement; - - - - -

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

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

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

SIGNATURE (ACCUSED/SUSPECT)	TIME	DATE
SIGNATURE (INTERVIEWER)	TIME	DATE
SIGNATURE (WITNESS)	TIME	DATE

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

SIGNATURE (ACCUSED/SUSPECT)

REQUEST FOR AUTHORIZATION TO CONDUCT SEARCH AND/OR SEIZURE

Instructions: This form will be completed in accordance with instructions on reverse.

1. I, _____, _____,
(Name) (Organization or address)
having been duly sworn, state that (1) _____

2. I further state that (2) _____

3. In view of the foregoing, I am requesting that permission be granted for a search of (3) _____ (the person) _____ (and)

(the quarters or billets) _____ (and) _____ (the automobile)
_____ and seizure of (3) _____
(_____) _____ (items searched for)

_____ Date

_____ Signature, name and organization

INSTRUCTIONS FOR COMPLETING FORM

REQUEST FOR AUTHORIZATION TO CONDUCT SEARCH AND SEIZURE

1. In paragraph 1, set forth a concise factual statement of the offense that has been committed or probable cause to believe that it has been committed. Use additional pages if necessary.
2. In paragraph 2, set forth facts establishing probable cause for believing that the person, premises, or place to be searched and the property to be seized are connected with the offense mentioned in paragraph 1, plus facts establishing probable cause to believe that property to be seized is presently located on the person, premises, or place to be searched. The facts stated in paragraphs 1 and 2 must be based on either the personal knowledge of the person signing the request or on hearsay information which he has plus the underlying circumstances from which he has concluded that the hearsay information is trustworthy. If the information is based on personal knowledge, the request should so indicate. If the information is based on hearsay information, the request should so indicate. If the information is based on hearsay information, paragraph 2 must set forth some of the underlying circumstances from which the person signing the request has concluded that the informant, whose identity need not be disclosed, or his information was trustworthy. Use additional pages if necessary. If applicable, attach any witness statements which might clarify the facts of the case, or assist the commanding officer in making his decision as to if probable cause exists.
3. In paragraph 3, the person, premises, or place to be searched and the property to be seized should be described with particularity and detail.

SEARCH AND/OR SEIZURE AUTHORIZATION

Instructions: This form will be completed in accordance with instructions on reverse.

1. At _____ on _____ I was approached by _____
Time Date
_____ in his capacity as _____,
Duty (1)
who, (having been first duly sworn), (if applicable) (2) advised me that he
suspected _____ of _____
Name Offense
and requested permission to search his _____
Object or Place (3)
for _____

Items (4)

2. The reasons stated to me for suspecting the above named person were: _____

3. After carefully weighing the foregoing information, I was of the belief that the crime of _____ (had been) (was being) (was about to be) committed, that _____ was the likely perpetrator thereof, that a search of the object or area stated above would probably produce the items stated and that such items were (evidence of crime) (unlawful weapons) (contraband).

4. I have therefore authorized _____ to search the place named for the property specified, and if the property is found there, to seize it. This search and seizure authorization expires at _____ on _____
Date(5) Time

Grade Signature Title

Date and Time

INSTRUCTIONS FOR COMPLETING AUTHORIZATION FORM

1. Although the person bringing the information to the attention of the Commanding Officer will normally be one in the execution of investigative or police duties, such need not be the case. The information may come from one as a private individual.
2. Other than his own prior knowledge of facts relevant hereto, all information considered by the commander empowered to authorize a search, on the issue of probable cause, should if practicable, be provided under oath or affirmation. Accordingly, prior to receiving the information which purports to establish the requisite probable cause, the commander empowered to authorize the search should administer an oath to the person(s) providing the information. An example of an oath is as follows: Do you solemnly swear (or affirm) that the information you are about to provide is true to the best of your knowledge and belief, so help you God? (This suggestion does not apply when all information considered by the commander empowered to authorize the search, other than his/her prior personal knowledge, consists of affidavits or other statements previously duly sworn to before an official empowered to administer oaths).
3. The area or place to be searched must be specific, such as wall lockers, foot lockers, rooms, or automobiles.
4. A search may be authorized only for the seizure of certain classes of items: (1) Unlawful weapons; (2) Evidence of crime (example: blood stained clothing, stolen objects); (3) Contraband items (the mere possession of which is against the law; i.e., marijuana, etc.).
5. A search authorization may not be held for future unforeseen contingencies. A search authorization should state an expiration time and date. Once probable cause is established and search authorization is granted, the search should be conducted as soon thereafter as possible.