UNITED STATES MARINE CORPS

3D MARINE DIVISION (-) (REIN), FMF
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DIVISION ORDER P5800.23B

From: Commanding General
To: Distribution List

Subj: STANDING OPERATING PROCEDURES FOR LEGAL MATTERS (SHORT TITLE: SOP FOR LEGAL MATTERS)

Encl: (1 Locator Sheet

Reports Required: List, Page v

1. Purpose. To promulgate policies, procedures, guidance, and instructions, with respect to legal matters, to organizations within this Command.

2. Cancellation. DivO P5800.23A.

3. Action. The administration of military justice and other legal matters will be accomplished in accordance with the procedures set forth in this Manual.

4. Summary of Revision. This revision contains a substantial number of changes and must be completely reviewed. The major modifications to this Manual are:

a. New requirements for the protection and assistance of crime victims and witnesses.

b. Updated paragraph cites to references.

5. Deployment. This SOP for Legal Matters was written primarily for use in garrison. However, when the Division or its component commands are deployed, the same basic legal requirements remain in effect. Legal problems encountered on small scale training deployments of short duration are handled on a case by case basis and can usually be resolved once the command returns to Okinawa. A SJA will be assigned on larger scale training deployments and on all real world operational deployments. In addition, a Legal Services Support Team (LSST) will be located in the MAGTF Combat Service Support Unit. Even in a combat situation, the basic procedures outlined in this SOP will be followed.

6. Recommendations. Recommendations concerning the contents of the SOP for Legal Matters are invited. Recommendations will be forwarded to this Headquarters (Attn: SJA) via the appropriate chain of command.

7. Certification. Reviewed and approved this date.

R. A. HORD
Chief of Staff

Distribution: A/D

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CG, 1st MAW (1)/CG, 3d FSSG (1)
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SOP FOR LEGAL MATTERS

RECORD OF CHANGES

Log completed change action as indicated

Change Number	Date of Change	Date Entered	Signature of Person Incorporated Change

SOP FOR LEGAL MATTERS

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REPORTS REQUIRED

REPORT TITLE	CONTROL SYMBOL	PARAGRAPH
I. Disciplinary Statistics	DivO 5800-01	1002.12a
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SOP FOR LEGAL MATTERS

INTRODUCTION

0001. PURPOSE. This Manual is designed to complement the Manual for Courts-Martial (MCM), United States, 1984 and the current edition of JAGINST 5800.7 (hereinafter referred to as JAGMAN). This Manual is primarily a guide to the various references incorporated herein. Assistance in legal matters should be requested from the Staff Judge Advocate, supporting Legal Services Support Team or the Legal Service Support Section, 3d Force Service Support Group.

0002. POLICY. Swift, effective disposition of disciplinary matters is critical to maintaining mission readiness and will receive high priority within the 3d Marine Division. Cases involving officers will be reported as soon as possible to this Headquarters (SJA) as set forth in this Manual.

0003. ORGANIZATION. This Manual is organized in chapters using arabic numbers. Pages are numbered in separate series by chapter; e.g., the fifth page of Chapter 3 is shown as 3-5. Paragraph numbers are four digits; e.g., paragraph 3004.1a refers to Chapter 3, paragraph 3004, subparagraph 1a. The sample figures used throughout this Manual are set forth in the table of contents for each chapter.

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CHAPTER 1

ADMINISTRATIVE AND CORRESPONDENCE MATTERS

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CHAPTER 1

ADMINISTRATIVE AND ORGANIZATIONAL MATTERS

1000. THE STAFF JUDGE ADVOCATE. The Staff Judge Advocate (SJA) is a special staff officer to the Commanding General, 3d Marine Division. The SJA advises the Commanding General, headquarters staff sections and subordinate commands on all legal matters. The responsibilities of the SJA and the doctrinal concept of legal services support are set forth in Fleet Marine Force Manual (FMFM) 3-1, Command and Staff Action, the current edition of Division Order P5000.3 (Staff Regulations), and Operational Handbook (OH) 4-10, Legal Services Support.

1001. LEGAL SERVICES SUPPORT SECTION. The Legal Services Support Section (LSSS), located at Camp Foster and under the control of the Commanding General, 3d Force Service Support Group, is tasked with providing legal services support to Fleet Marine Force units operating in the Western Pacific. The LSSS provides legal support through three geographical locations. Legal Services Support Teams (LSST) are located at Camp Foster, Camp Hansen, Camp Kinser and Marine Corps Air Station Iwakuni. Commanders will request legal services through the nearest LSST. Individuals requiring legal assistance will contact the nearest LSST. The LSSS provides legal services to deployed units through their combat service support element. Legal services will be provided in accordance with OH 4-10, the current edition of 3d Force Service Support Group Order P5800.6 (SOP For LSSS), and this Manual.

1002. COMMAND RESPONSIBILITIES

1. Assignment of a Legal Officer. All commanding officers authorized to convene courts-martial shall appoint, in writing, an organizational legal officer.

2. Preventive Law Program. Many situations which could result in legal problems can be prevented if an attorney is consulted beforehand. Preventive law instruction is valuable in such areas as indebtedness/consumer law, separation/divorce, child support, wills, powers of attorney, marriage, foreign law/Status of Forces Agreement (SOFA) and rights and obligations under the Soldiers' and Sailors' Civil Relief Act. Commanding officers will coordinate with the SJA in arranging preventive law instruction. Personnel requiring the counsel of a legal assistance attorney will be referred to the supporting LSST. See Chapter 6 of this Manual for detailed instruction on preventive law.

3. Law of War Instruction. Commanding officers will schedule and present appropriate instruction in the law of war in accordance with the current edition of MCO 3300.3. The SJA will provide technical advice and review lesson plans for legal accuracy prior

to their use. In addition, the LSSS operational law officer is available to present instruction in the law of war.

4. Military Justice Training. Commanding officers will ensure the instruction required by Article 137, Uniform Code of Military Justice (UCMJ) is conducted. Additionally, the current edition MCO P1900.16, paragraph 6103 requires instruction on the various separations from the Marine Corps and the ramifications thereof. Other desired training regarding military justice should be coordinated with the SJA.

5. Unsatisfactory Performers. Commanders will continually review their personnel and initiate appropriate action to separate individuals whose performance is unsatisfactory. Commanders will ensure that appropriate counseling in accordance with the current edition of MCO P1900.16, paragraph 6105 is made as required. It is recommended that such counseling be accomplished when unsatisfactory conduct occurs whether or not punitive action is taken. In all cases such counseling should be done after an individual receives nonjudicial punishment.

6. Prompt Disposition of Reported Charges. Swift, effective punishment is more conducive to good order and discipline than punishment needlessly delayed until long after the offense has occurred. Commanding officers will submit an appropriate Request for Legal Services (RLS) to their supporting LSST as soon as possible after the offense occurs. See paragraph 3000.3 of this Manual for further guidance regarding the prompt disposition of courts-martial.

7. Nonpunitive Measures. Commanders are encouraged to use nonpunitive measures in appropriate cases to enhance the efficiency of their commands. Such measures include extra military instruction, administrative withholding of privileges, and nonpunitive censure. See JAGMAN, sections 0102-0105. Additionally, administrative reduction in accordance with the current edition of MCO P1400.32 is a viable nonpunitive measure.

8. Disclosure of Disciplinary Information to the Media. Information relating to disciplinary proceedings, investigations, administrative discharge proceedings or courts-martial will not be released by individuals or commands without authorization from the Public Affairs Officer. See JAGMAN, section 0142.

9. JAGMAN Investigations. Commanding officers will initiate investigations pursuant to the JAGMAN when required. See Chapter 5 of this Manual.

10. Legal Hold. Commanding officers will ensure that suspects and witnesses are placed on legal hold in accordance with paragraph 3000.6 of this Manual.

11. Service of Process. Civilian legal documents from CONUS are occasionally received by commands with the request that an individual Marine be "served" with the document. Commanding officers will advise individuals that they are not required to accept service, although the individual may do so voluntarily. The commanding officer should inform the Marine that adverse judgment may result if service is accepted and the complaint is not answered. If the Marine voluntarily accepts service, leave should ordinarily be granted so required appearances can be made. See JAGMAN, section 0616. Requests for return to the United States pursuant to a court order will be referred to the SJA for advice.

12. Reports Required.

a. Disciplinary Statistics. Special court-martial convening authorities will submit a Disciplinary Statistics Report to the Commanding General, 3d Marine Division (SJA) on or before the 5th of each month for the preceding month. Convening authorities will ensure the data of subordinate units is included in the report. Figure 1-1 is the format that will be used in preparing the Disciplinary Statistics Report. Regiments will collect the statistics for their Battalions and submit one report for the entire Regiment.

b. JAGMAN Investigations. Commanding officers will submit a JAGMAN Investigations Status Report via the chain of command to the Commanding General, 3d Marine Division (SJA) on or before the 5th of each month for the preceding month. Figure 1-2 is the format that will be used in preparing the JAGMAN Investigations Status Report. Regiments will collect the statistics for their Battalions and submit one report for the entire Regiment.

c. Reports Required by the Current Edition of MCO P5800.8 (LEGADMINMAN). Commanders will submit reports as required. Reports concerning officer discipline will be coordinated with the Chief of Staff and SJA. See paragraph 2020 and 2026 of this Manual.

d. Reports Provided by the LSSS. The OIC, LSSS will provide the Commanding General, 3d Marine Division with the following reports:

(1 Court-martial Cases Pending Report (Weekly)

(2) Court-martial Review Status Report (weekly).

(3) Administrative Discharge Board Status Report (weekly).

e. Reports Required by MCO 3300.3 (Marine Corps Law of War Program). During 3d Marine Division deployments or operations, all reports of violations of the Law of War will be made immediately to the Commanding General, 3d Marine Division (SJA). Timely reporting is necessary so that appropriate advice and guidance may be provided to the Commanding General, 3d Marine Division on these matters.

13. Legal Administration Inspections. Inspections in legal administration will be conducted in accordance with the current edition of DivO P5040.3.

1003. JAPANESE CRIMINAL JURISDICTION. The Commanding General, Camp Smedley D. Butler (Marine Corps Base) and the Commanding Officer, Marine Corps Air Station Iwakuni have been designated local area coordinators for Japanese jurisdiction matters for all Marine Corps commands on Okinawa and Iwakuni, respectively. Generally, the Japanese Government has the primary right to prosecute cases involving violations of Japanese law, drug offenses, weapons violations, and offenses against a Japanese national. Commanding officers may not take action in the above cases unless the Japanese Government has waived its primary right of jurisdiction. Commanding officers having knowledge of such an offense will telephonically report the same to either the SJA, Marine Corps Base (Japanese Jurisdiction Section) or the SJA, Marine Corps Air Station Iwakuni, as appropriate.

1. Official Duty Certificate. United States military authorities have primary jurisdiction over service members for offenses which arise out of any act or omission done in the performance of official duty. In such cases, an Official Duty Certificate will be issued by the Commanding General, Marine Corps Base upon receipt of justification from the individual's commanding officer. See Marine Corps Base (SJA) for details.

2. International Legal Hold. Military members under investigation or pending legal action by Japanese authorities will be placed on international legal hold in accordance with the SOFA by the Commanding General, Marine Corps Base. Individuals placed on international legal hold will not be transferred or absent from Okinawa for a period in excess of 48 hours unless specific authorization is received from the SJA, Marine Corps Base.

3. Retention in Japan Past Rotation Tour Date (RTD). In some cases, placement on international legal hold will require commanders to involuntarily extend an individual's RTD in order to comply with the SOFA. Commanders are directed to contact the Division Personnel Officer in cases of this nature.

4. Confinement Awaiting Action by Japanese Authorities. Military members may be confined in military correctional facilities while awaiting action by Japanese authorities.

5. Court Appearances. The Chief Trial Observer of the Japanese Jurisdiction Section of Marine Corps Base will inform the command of the date, time, and place of the scheduled court appearance. Commanding officers are responsible for ensuring that the accused appears on time, in the proper uniform and accompanied by a staff noncommissioned officer or officer command representative.

6. Unsuspended Sentence to Confinement. Normally, military personnel given an unsuspended sentence to confinement by a Japanese court will be sent to Yokosuka Prison. These personnel will be transferred by service record book to Marine Barracks, Yokosuka, Japan.

7. Administrative Discharge Processing. Upon receipt of a copy of the final judgment, the Marine will be processed for administrative separation, if applicable, in accordance with the current edition of MCO P1900.16. The LSSS will prepare the administrative discharge package. Commanding officers will ensure that such processing is done as expeditiously as possible. See the current edition of MCO P5800.8.

1004. SIGNING LEGAL CORRESPONDENCE

1. Commanding Officer Must Sign. The commanding officer, officer in charge, or the person "acting" in either position must personally sign documents that deal with certain aspects of military justice and administrative separations. Some examples are court-martial actions, approvals of continued pretrial confinement, endorsements approving and directing an administrative discharge, unit punishment book entries, etc.

2. Signature Block. In order to avoid confusion as to the authority of the person signing a legal document, the word "Acting" will not be used in the signature block. When a temporary successor to command signs a document which requires the personal signature of the commander, the grade and branch of service will be typed below the name and then the word "Commanding".

Example:

I. COMMAND
Colonel, U.S. Marine Corps
Commanding

3. Authority to Sign Certain Documents

a. Routine Correspondence. Authority is hereby given to the SJA and Deputy SJA, 3d Marine Division, the OIC, Administrative Law Branch and the OIC, Review and Research Branch, LSSS, 3d Force Service Support Group to sign "by direction" correspondence and reports relating to legal matters which are not required to be signed personally by the Commanding General.

b. Pretrial Agreement. Authority is hereby given generally to the SJA and Deputy SJA and, in a specific case, to the trial counsel to sign pretrial agreements to which the Commanding General has agreed.

1005. DELEGATION OF AUTHORITY

1. Excusal of Courts-Martial Members. The SJA is hereby delegated the authority to excuse up to one-third of the total members detailed to any court-martial convened by the Commanding General.

2. Post-Trial Confinement. The trial counsel in a specific case is hereby delegated the authority to order an accused into post-trial confinement in any court-martial convened within 3d Marine Division.

1006. UNIT DEPLOYMENT PROGRAM

1. Retention of Members in WESTPAC. It sometimes is necessary to retain in WESTPAC members of organizations and units involved in the Unit Deployment Program past the time when their organization or unit rotates to CONUS. Such members may not be reassigned to another organization or unit except as directed by CMC. Likewise authority must be obtained from the latter in order to extend their tour in WESTPAC past that point. The parent regiment will assume responsibility for such matters of rotating battalions upon the departure of the latter. Members of rotating companies and batteries will become the responsibility of the parent battalion.

2. Procedures. The following procedures will be adhered to in these cases: First, the commanding officer of the rotating battalion, or commanding officer of the parent battalion in the case of rotating companies and batteries, will consult with the OIC of the supporting LSST or the SJA to determine which, if any, members against whom legal action is pending must remain behind. Second, in the cases so identified, he will prepare a request for release of a priority message to request authority from CMC to retain the member in WESTPAC and to attach him to the appropriate unit. In the case of a rotating battalion, the appropriate unit will be the headquarters company of the parent regiment. For rotating companies or batteries, it will be the headquarters and service company or headquarters battery respectively, of the parent battalion. Finally, he will ensure that all administrative arrangements for the member's disposition are coordinated between the departing organization or unit and the receiving unit prior to the former's departure. Additional guidance is provided in the current edition of DivO P1300.4, SOP FOR PERSONNEL ROTATION.

1007. EFFECT OF EXPIRATION OF ACTIVE SERVICE (EAS)

1. Military Disciplinary Action. If prior to EAS, action is initiated with a view toward trial by court-martial for an offense committed by a member, the member may be involuntarily retained on active duty for trial even if the term of enlistment or active service has expired. Jurisdiction having attached by commencement of action with a view toward trial, it continues for all purposes of trial, sentence, and punishment. A member may not be involuntarily retained in the service beyond normal EAS for the purpose of imposing NJP or to serve NJP previously imposed, for the purpose of administrative separation proceedings, or for the purpose of being a witness at any of the foregoing or at a trial by court-martial.

2. Foreign Criminal Proceedings. Members awaiting disposition of criminal proceedings by a foreign jurisdiction--who are not in the custody/confinement of such authorities at their EAS--may not be involuntarily extended. Rather, they will be offered the opportunity to extend their enlistment voluntarily for the duration of legal proceedings and any subsequent punishment. Detailed instructions for handling such cases are contained in the current edition of MCO P5800.8, LEGADMINMAN.

3. Consulting with SJA. Commanding officers are encouraged to consult with the SJA in specific cases in which their member's EAS may be a factor.

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Reporting Unit: _____
Navy or Marine Report: _____
Period Ending: _____

(Navy statistics must be reported separately)

TYPE OF ACTION	NUMBER OF PERSONNEL CONVICTED CONUS	OVERSEAS
General courts-martial	_____	_____
Special courts-martial	_____	_____
Summary courts-martial	_____	_____
Article 15 punishments	_____	_____
U.S. Federal and State Felony convictions		
Foreign convictions	_____	

DISCHARGES ADJUDGED BY COURT

TYPE OF COURT	NUMBER OF DISCHARGES ADJUDGED Conus		Overseas	
	DD	BCD	DD	BCD
General courts-martial	_____	_____		
Special courts-martial				

DISPOSITION OF DRUG ABUSE OFFENDERS

Number of Art 15's	Number of GCM's	Number of SPCM's	Number of SCM's
_____	_____	_____	_____

NUMBER PERSONNEL ACQUITTED

General courts-martial
Special courts-martial
Summary courts-martial

Number of Cases Involving Sexual Harassment	Number of Cases Involving Fraternization
GCM	GCM
SPCM	SPCM
SCM	SCM
NJP	NJP

Figure 1-1.--Sample Format of a Disciplinary Statistic Report

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UNIT_____
REPORT FOR MONTH OF_____
DATE REPORT SUBMITTED_____

JAGMAN INVESTIGATIONS

	DESCRIPTION/DATE OF INCIDENT	DATE IO APPT	DATE RPT TO CA	DATE RPT TO RA	REMARKS
1.					
2.					
3.					
4.					
5.					

Figure 1-2--Sample Format of a JAGMAN Investigations Report

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CHAPTER 2

NONJUDICIAL PUNISHMENT (NJP)

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CHAPTER 2

NONJUDICIAL PUNISHMENT (NJP)

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CHAPTER 2

NONJUDICIAL PUNISHMENT (NJP)

2000. AUTHORITY (ENLISTED PERSONNEL)

1. Statutory and Regulatory Authority. The authority of the commanding officer (CO) and officer-in-charge (OIC) of a unit to impose NJP upon enlisted members of their commands or units is set forth in Article 15, UCMJ. This is amplified by the Manual for Courts-Martial (MCM), 1984, Part V and JAGMAN, Chapter 1, Part B.

2. Commanding Officer/Officer in Charge. The authority to impose NJP on enlisted members is restricted to the CO and any commissioned officer (CWO-2 and above) designated as OIC of a unit by departmental orders, tables of organization, manpower authorizations, orders of a flag or general officer in command, or orders of the senior officer present.

a. Absence of Commanding Officer. When a CO (or OIC) is absent from command (such as temporary additional duty (TAD), on leave, sick), by devolution of authority the next senior eligible officer present becomes the CO/OIC and assumes all legal authority inherent to the position (including title). See Navy Regulations, 1990 Article 0803, and Marine Corps Manual, paragraph 1007.2. While the authority to impose NJP is inherent in the office, the person acting as the commanding officer of a unit is restricted by their own grade in the amount of punishment which may be imposed and not by the grade of the individual replaced. An OIC, regardless of grade, has limited NJP punishment authority. See paragraph 2008 of this Manual.

b. Deployment. There can never be more than one CO/OIC of any organization at the same time. For example, a battalion commander located with elements of the battalion is still the CO of the entire battalion and retains NJP authority over all members of the battalion.

c. Detachments. An OIC of a detachment, if designated as the OIC by the Commanding General, has authority to impose NJP on enlisted members of the detachment. Requests for such designation should be forwarded through the chain of command to the Commanding General, 3d Marine Division (SJA).

2001. JURISDICTION OVER THE ACCUSED. At the time NJP is imposed, the accused must be a member of the organization of the CO/OIC who imposes the punishment. NJP is "imposed" when the punishment is announced by the CO/OIC. A person may be a member of more than one organization or unit at the same time, such as when assigned or attached to an organization or unit for the purpose of performing TAD. Therefore, a person on TAD can receive NJP from either the temporary commander or the parent unit commander, but not both for

the same offense. Coordination between these commanders is recommended to determine who will impose NJP. Consideration of who has authority to impose greater punishment is appropriate.

2002. MINOR OFFENSES. NJP is ordinarily appropriate when administrative nonpunitive measures are inadequate due to the nature of, or circumstances surrounding, the minor offense. The determination of whether an offense is "minor" is a matter within the discretion of the commander. See MCM, Part V, paragraph 1e. Only minor offenses should be disposed of by NJP.

2003. LIMITATIONS ON NJP. The following limitations apply to the imposition of NJP: (1) NJP will not be imposed twice for the same offense, (2) punishment will not be increased (on appeal or otherwise), (3) in general, all known offenses appropriate for disposition at NJP will be disposed of at one NJP hearing, (4) NJP will be imposed within the applicable statute of limitations and (5) NJP will not be imposed for offenses tried in state or foreign court without the approval of the Commanding General, 3d Marine Division. See MCM, Part V, paragraph 1f, and JAGMAN, section 0124.

2004. INITIAL ACTION ON SUSPECTED OFFENSES. On receipt of information that an offense under the UCMJ has been committed, the immediate commander will make or cause to be made a preliminary inquiry into the charges. In simple cases, an informal documentation of witnesses, statements or official records will suffice. In more complicated cases, and in cases that will probably be referred to a court-martial, it is recommended a written preliminary inquiry, using the format found at figure 2-1, be used. See Rules for Courts-Martial (R.C.M.) 303. The preliminary inquiry should include Criminal Investigation Division (CID)/Naval Investigative Service (NIS) investigations, if conducted, as enclosures. The immediate commander may dispose of the reported charges by taking no action, imposing NJP, or recommending/referring the charges to an appropriate court-martial. See R.C.M. 306.

2005. PRIOR TO IMPOSING NJP

1. Notification. The MCM, Part V, paragraph 4, and JAGMAN, section 0109 require that the servicemember be notified of various matters prior to NJP being imposed. Figure 2-2 is a suggested format for providing the necessary notification in those cases where an individual is not attached to or embarked on a vessel. In those cases where an individual is attached to or embarked on a vessel, JAGMAN, appendix A-1-b(1) sets forth the notification requirements. Additionally, in those cases where the accused is not afforded the opportunity to consult with a lawyer, JAGMAN, appendix A-1-c(1) sets forth the notification requirements. If the accused refuses to make an election of rights or refuses to sign item 6 of the unit punishment book (UPB), the commander will indicate "See item 19" on item 6 of the UPB. The words "Various

rights explained and Marine refused to indicate election of rights or sign item 6" will be entered in item 19.

2. Consultation with a Judge Advocate. An accused has no right to consult with a judge advocate prior to the imposition of NJP. However, commanders are encouraged to allow such consultation. Additionally, in compliance with U.S. v. Booker, 5 M.J. 238 (CMA 1977), in order for a record of NJP to be admissible for aggravation during the sentencing phase at a later court-martial, the accused must either consult with a judge advocate or waive consultation prior to the NJP hearing. Consultation with a judge advocate may be done over the telephone. See JAGMAN, section 0109. The following suggested entry on page 12 of the Service Record Book (SRB) will fulfill the requirements.

> 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 held on (date of NJP). I understand that I have the right to refuse that NJP, but I choose not to exercise that right.

_____ _____
(signature of accused) (date)

NOTE: The notification to the accused has an "election" of rights section. The original notification should be filed with the unit punishment book and a copy maintained on the document side of the SRB.

3. Initial Unit Punishment Book (UPB) Entries. Items 1 through 6 of the UPB will be completed in accordance with the current edition of MCO P5800.8 prior to commencement of the NJP hearing.

2006. THE NJP HEARING. Specific instructions for conducting the NJP hearing are set forth in MCM, Part V, paragraph 4 and JAGMAN, section 0110. Figure 2-3 is provided as an NJP hearing guide. The servicemember will either appear personally at the hearing or waive the right to appear. If the servicemember waives the right to appear, written matters may be submitted under MCM, Part V, paragraph 4c(2). The officer imposing NJP is not precluded from notifying the accused, in person, of the punishment imposed.

2007. RIGHT TO DEMAND TRIAL BY COURT-MARTIAL. A servicemember who is not attached to or embarked on a vessel may demand trial by court-martial in lieu of nonjudicial punishment. If such a demand is not made within a reasonable time after the servicemember is given the notice provided for in paragraph 2005.1 of this Manual, the commander may proceed with NJP hearing and impose punishment if

appropriate. Commanders shall ensure that there is sufficient time between the notice and the hearing to allow the servicemember to make a considered election.

2008. MAXIMUM PUNISHMENTS. Figure 2-4 sets forth both the maximum authorized punishments that may be imposed on enlisted personnel by CO's O-3 and below/all OIC's, regardless of grade, and CO's O-4 and above. Captains who are frocked to the grade of major are limited to the maximum punishment authorized O-3's and below. Frocking does not authorize increased disciplinary power under Article 15, UCMJ.

2009. LIMITATIONS ON COMBINING PUNISHMENTS. MCM, Part V, paragraph 5d sets forth detailed instructions regarding the limitation on combining punishments. Of particular importance is the limitation that correctional custody may not be imposed in combination with restriction or extra duties and that restriction and extra duties may be combined to run concurrently (at the same time), but the combination may not exceed the maximum imposable for extra duties. Currently, correctional custody is not available within the 3d Marine Division.

2010. REQUIRED UPB ENTRIES. If punishment is imposed, items 8 through 15 of the UPB will be completed in accordance with the current edition of MCO P5800.8.

2011. ADVICE ON APPEAL. After punishment has been imposed (announced) and prior to concluding the NJP hearing, the commander must advise the accused of the right to appeal. The legal officer or other appropriate person should then instruct the accused to sign and date item 14 on the original and duplicate original UPB.

2012. EFFECTIVE DATE OF PUNISHMENTS

1. Forfeiture of pay and reduction. These punishments, if unsuspended, take effect on the date the punishment is imposed.

2. Punishments involving restraint and extra duties. Ordinarily these punishments, if unsuspended, take effect and are executed when imposed. However, execution of these punishments must be stayed if the following conditions are met:

a. the accused files a timely written appeal and;

b. the accused, in the appeal, requests the punishment be stayed and;

c. the officer who will act on the appeal fails to act on the appeal within 5 days from submission of the appeal. After the 5th day, the punishment automatically must be stayed until the appeal is acted upon. Submission of the appeal occurs when the written appeal is presented, or delivered via mail, to the officer who imposed NJP or to the unit legal officer.

2013. APPEAL FROM NJP

1. Right to Appeal. An accused has the right to appeal NJP which the accused believes was unjust or the punishment imposed was disproportionate to the offense(s) committed. The appeal must be in writing and will be forwarded through the chain of command to the commander next superior to the officer who imposed the punishment.

2. Time Limit. The appeal must be made within 5 days of the date punishment is announced or the right to appeal is waived unless the accused has a good reason for not submitting the appeal in a timely fashion. See JAGMAN, section 0116. Regardless of when submitted, the commander who imposed the punishment must forward the appeal to the commander next superior in the chain of command.

3. Legal Review. Appeals from punishment of correctional custody of more than seven days, forfeitures of more than seven days pay, extra duties of more than 14 days, restriction of more than 14 days, or reduction from pay grade E-4 or above will be forwarded to the SJA for review and advice. See MCM, Part V, paragraph 7.

2014. AUTHORITY TO SUSPEND, REMIT, MITIGATE, AND SET ASIDE PUNISHMENT. A detailed discussion of the commander's authority to suspend, remit, mitigate and set aside punishment is contained in MCM, Part V, paragraph 6.

2015. VACATION OF SUSPENDED PUNISHMENT. Suspended NJP may be vacated by any commander with authority to impose the type and quantity of suspended punishment to be vacated. Vacation of the suspended punishment may only be based on a violation of the UCMJ during the period of suspension. See MCM, Part V, paragraph 6a(5), regarding the right of a servicemember to respond to or appear at a vacation proceeding. See the current edition of MCO P1070.12, paragraph 4015 regarding the SRB entry required upon vacation of NJP.

2016. PUBLICATION OF NJP RESULTS. Commanders may announce and/or publish the results of NJP in the plan of the day within one month of the imposition of NJP, post results on command bulletin boards within one month of the imposition of NJP, and announce results at daily formations. See JAGMAN, section 0115.

2017. AUTHORITY TO IMPOSE NJP ON OFFICERS. Only a CO may impose NJP on officers within the command. An OIC does not have authority to impose NJP upon officers.

2018. JURISDICTION OVER THE OFFICER. An officer accused is "of the command" of the CO if a member of that command at the time NJP is imposed.

2019. INITIAL ACTION ON OFFICER OFFENSES. In addition to the guidance set forth in paragraph 2004 of this Manual regarding the necessity for a preliminary inquiry, it strongly is recommended that a written preliminary inquiry utilizing Figure 2-1 be used in all cases involving officers.

2020. REPORT TO HIGHER HEADQUARTERS

1. Misconduct. The current edition of MCO P5800.8, paragraph 4001 requires allegations/information of misconduct by officers be reported to the Commandant of the Marine Corps (JAM) by the officer exercising general court-martial jurisdiction. Accordingly, upon receipt of any report of alleged misconduct (either military or civilian) by an officer of this command, the commanding officer authorized to convene special courts-martial will make an immediate telephonic report to the SJA. The telephonic report will include all available information pertaining to the following:

a. Name, grade and social security number of officer;

b. Current location of officer;

c. Source of allegation;

d. Nature of alleged offense(s); and

e. Anticipated disposition of matter by military or civilian authority.

2. Unauthorized Absence. The current edition of MCO P5800.8B, paragraph 5003 requires that on the 7th day of an officer's unauthorized absence, a message to the CMC (MHC and JAM (Report Symbol MC-1621-03) will be made. The report will include the date and hour of absence and any known circumstances in connection therewith.

3. Update. All reports will be updated telephonically upon any significant change at least every 30 days until final disposition All reports to the Commandant of the Marine Corps and Commanding General, Fleet Marine Force, Pacific required by the current edition of MCO P5800.8, paragraph 4001 and FMFPACO 5810.1 will be made by the SJA.

2021. PRIOR TO IMPOSING PUNISHMENT

1. Policy. If a CO contemplates taking disciplinary action against an officer assigned to his command, a preliminary investigation will be forwarded to the SJA for advice and assistance.

2. No Unit Punishment Book. A UPB is **not** prepared to process and record NJP imposed upon an officer. All advice, records of, and report of officer NJP is accomplished by naval letter. The SJA will provide assistance in preparing all necessary documentation and reports, including notification of intent to impose NJP. All correspondence will be marked **FOR OFFICIAL USE ONLY**.

3. Consultation with a Judge Advocate. The officer should be afforded the opportunity to consult with a judge advocate prior to deciding whether to accept NJP.

2022. IMPOSING NJP. Provided the officer does not demand trial by court-martial as set forth in paragraph 2007 of this Manual, NJP may be impose as indicated below.

1. NJP HEARING. A hearing will be conducted utilizing the guidelines found in paragraph 2006 of this Manual and utilizing an NJP guide provided by the SJA. The LSST will assist in drafting charges.

2. Formal Investigation. If the individual was accorded the rights of a party regarding the incident upon which NJP is contemplated, then punishment may be imposed without further proceedings. See JAGMAN, section 0110. Likewise, if the offenses were investigated properly under Article 32, UCMJ, no further hearing is required prior to imposition of punishment. Prior to imposing NJP under these circumstances, commanders should consult with the SJA.

2023. MAXIMUM PUNISHMENT. In addition to the limitations on imposing NJP set forth in paragraph 2003 of this Manual, figure 2-5 depicts the maximum punishments imposable on officers.

2024. NOTIFICATION OF PUNISHMENT IMPOSED. An officer receiving NJP will be notified of that punishment in writing and of the right to appeal. The officer concerned will acknowledge receipt of the letter and indicate intention regarding appeal, as well as intention regarding submission of a statement for inclusion in the officer's official records.

2025. APPEALS OF NJP. All appeals from NJP will be in writing, and will be submitted within five days from the date punishment is imposed unless an extension of time has been granted. The guidelines set forth in paragraph 2013 of this Manual are applicable.

2026. RECORD OF OFFICER NONJUDICIAL PUNISHMENT

1. Unit Diary/Officer's Qualification Record (OQR) Entries. NJP upon an officer will not be recorded on the unit diary unless a forfeiture of pay is imposed, and then only that portion of the punishment relating to pay matters will be recorded. Officers NJP will **not** be recorded in the OQR in any case.

2. Report to CMC. In accordance with the current edition of MCO P5800.8, paragraph 4001, reports of officer NJP will be submitted via this Headquarters (SJA), Commanding General, III Marine Expeditionary Force and Commanding General, Fleet Marine Force, Pacific (SJA) to the Commandant of the Marine Corps (Code JAM). Even though the officer indicates an intention not to appeal, the report of punishment may not be forwarded to CMC until the period of appeal (5 days) has elapsed. The report and copies of all correspondence, reports, investigations, etc. will be marked **FOR OFFICIAL USE ONLY**.

(UNIT HEADING)

5800

From: (Preliminary Inquiry Officer)
To: Commanding Officer

Subj: PRELIMINARY INQUIRY IN THE CASE OF _____

Ref: (a) MCM, 1984

Encl: Witness Statement(s)

1. Pursuant to your verbal order of _____ and in accordance with Rule for Courts-Martial (R.C.M.) 303 of the reference, the subject preliminary inquiry is submitted.

2. Synopsis. (A concise summary of what happen: Who, what, when where, and how.

3. Findings of Fact. The following findings of fact are supported by enclosures (1) through ( )

a.
b.
c.
d.
e.

4. Witness Data

GRADE/NAME	UNIT	TEL. NO.

5. Disciplinary Background of Accused. (A summary of all disciplinary/counseling entries in SRB. Additionally, indicate the RTD and EAS of the accused.)

6. Location of tangible evidence:

7. Recommended Disposition. (Include the section head's recommendation as well as a recommendation by the preliminary inquiry officer.)

_____
(Preliminary Inquiry Officer)

Figure 2-1--Sample Format of a Preliminary Inquiry.

SOP FOR LEGAL MATTERS

(UNIT HEADING)

5800

From: Commanding General/Officer
To: Service Member

Subj: NOTIFICATION OF INTENT TO IMPOSE NONJUDICIAL PUNISHMENT

Ref: (a) MCM, 1984
(b) JAGMAN

Encl: (1) Notification and Election of Rights

1. Pursuant to Part V, paragraph 4 of reference (a) and section 0109 of reference (b), you are hereby notified that imposition of nonjudicial punishment is being considered in your case. You are advised that:

a. You allegedly violated Article(s)_____ UCMJ by:

b. The allegation(s) against you are based on the following information:

2. The maximum punishment that could be imposed in your case if you accept nonjudicial punishment is:

3. You are directed to read and complete the enclosure.

Figure 2-2--Sample Format of a Notification of Intent to Impose NJP.

NOTIFICATION AND ELECTION OF RIGHTS
(ACCUSED **NOT** ATTACHED TO OR EMBARKED IN A VESSEL)

1. In accordance with the requirements of MCM, 1984, Part V, paragraph 4, you are hereby notified that you have the right to refuse nonjudicial punishment and demand trial by court-martial in lieu of nonjudicial punishment. If you refuse nonjudicial punishment, charges could be referred for trial by summary, special, or general court-martial. If charges are referred to a summary court-martial, you may not be tried by summary court-martial over your objection. If charges are referred to a special or general court-martial you will have the right to be represented by counsel.

2. If you decide to accept nonjudicial punishment, you may request a personal appearance before the commanding officer or you may waive this right.

a. **Personal appearance waived**. If you waive your right to appear personally before the commanding officer, you will have the right to submit any written matters you desire for the commanding officer's consideration in determining whether or not you committed the offenses alleged, and, if so, in determining an appropriate punishment. You are hereby informed that you have the right to remain silent and that anything you do submit for consideration may be used against you in a trial by court-martial. Such waiver of personal appearance is subject to the approval of the officer hearing the NJP.

b. **Personal appearance requested**. If you exercise your right to appear personally before the commanding officer, you shall be entitled to the following rights at the proceeding:

(1) To be informed of your rights under Article 31(b) UCMJ.

(2) To be informed of the information against you relating to the offenses alleged.

(3) To be accompanied by a spokesperson provided or arranged for by you. A spokesperson is not entitled to travel or similar expenses, and the proceedings will not be delayed to permit the presence of a spokesperson. The spokesperson may speak on your behalf, but may not question witnesses except as the commanding officer may permit as a matter of discretion. The spokesperson need not be a lawyer.

(4) To be permitted to examine documents or physical objects against you that the commanding officer has examined in the

Enclosure (1)

Figure 2-2--Sample Format of a Notification of Intent to Impose NJP.--Continued

case and on which the commanding officer intends to rely in deciding whether and how much nonjudicial punishment to impose.

(5) To present matters in defense, extenuation, and mitigation, orally, in writing, or both.

(6) To have witnesses attend the proceedings, including those that may be against you, if their statements will be relevant, and they are reasonably available. A witness is not reasonably available if the witness requires reimbursement by the United States for any cost incurred in appearing, cannot appear without unduly delaying the proceedings, or, if a military witness, cannot be excused from other important duties.

(7) To have the proceedings open to the public unless the commanding officer determines that the proceedings should be closed for good cause. However, this does not require that the special arrangements be made to facilitate access to the proceedings.

3. In order to help you decide whether to demand trial by court-martial or to exercise any of the rights explained above should you decide to accept nonjudicial punishment, you may obtain the advice of a lawyer prior to any decision. If you wish to talk to a lawyer, a military lawyer may be made available to you, either in person or by telephone, free of charge, or you may obtain advice from a civilian lawyer at your own expense.

ELECTION OF RIGHTS

4. Knowing and understanding all of my rights as set forth in the basic letter and paragraphs 1 through 3 above, my desires are as follows:

a. Lawyer. (Initial one or more, as applicable)

I wish to talk to a military lawyer before completing the remainder of this form.

I wish to talk to a civilian lawyer before completing the remainder of this form.

I do not wish to talk to a lawyer before completing the remainder of this form.

(Note): If you want to talk to a lawyer, the Legal Officer may arrange for you to do so.

_____ I talked to _____
a lawyer, on _____

Enclosure (1)

Figure 2-2--Sample Format of a Notification of Intent to Impose NJP.--Continued

b. Acceptance/Refusal of Nonjudicial Punishment.

I accept nonjudicial punishment.

I refuse nonjudicial punishment and demand trial by court-martial.

c. Personal appearance.

I request a personal appearance before the commanding officer.

I waive personal appearance.

(If personal appearance is waived)

I do not desire to submit any written matters for consideration.

Written matters are attached

d. Elections at personal appearance. (Initial one or more as applicable)

I do not desire that any witnesses be present at my nonjudicial punishment proceedings.

I request that the following witnesses be present at my nonjudicial punishment proceedings:

_____

_____

_____

I request that my nonjudicial punishment proceeding be open to the public.

I do not request that my nonjudicial punishment proceeding be open to the public.

_____ (Signature of witness)

_____ (Signature of accused)

_____ (Date)

Enclosure (1

Figure 2-2--Sample Format of a Notification of Intent to Impose NJP.--Continued

NJP HEARING GUIDE

1. The nonjudicial punishment hearing is not a formal judicial proceeding. The following is a suggested guide for conducting NJP hearings. Mandatory requirements are underscored and must be provided during the office hours.

NOTE: Prior to conducting the hearing, all evidence, the UPB, and the notification form are presented to the commanding officer. The accused then reports to the commanding officer.

CO You are advised that you are suspected of having committed the following offense(s), in violation of Article(s) of the Uniform Code of Military Justice: (Here the commanding officer reads the offenses listed on the UPB or the notification form). Do you understand the charge(s) against you?

ACCUSED _____ (Answer)

CO (Examines the **NOTIFICATION** form) I see that you understand your rights. Do you have any questions concerning your rights?

ACCUSED _____ (Answer)

CO (Article 31b, UCMJ warning) You are advised that you do not have to make any statement regarding the offense(s) of which you are suspected; that any statement you make may be used as evidence against you in a trial by court-martial. In other words, you have the right to remain silent and say nothing at all concerning the offenses of which you are suspected. Do you understand this right?

ACCUSED _____ (Answer)

NOTE: At this time, the commanding officer will consider evidence, to include testimony of any witnesses against the accused, statements, and physical evidence. The commanding officer should allow the accused or his personal representative to examine all available evidence including the questioning of adverse witnesses who appear at office hours. The commanding officer then provides the accused with the opportunity to present any evidence in defense, mitigation or extenuation relating to the offenses. The accused can elect to testify or submit a statement, call witnesses, submit witness statements, and present other evidence.

CO Based on all the available evidence, I am (announce the punishment imposed) for having committed the following offense(s): (Here describe the offense(s)).

Figure 2-3--NJP Hearing Guide

CO (After imposing punishment) You are advised that you have the right to appeal the imposition of this nonjudicial punishment to (name the next superior authority in the chain of command). This appeal must be in writing and based on the grounds that you consider the punishment unjust and/or disproportionate to the offense(s). The appeal must be made within 5 days. If your appeal is submitted after 5 days, unless unusual circumstances are present, the (name the superior authority) may reject your appeal as not having been timely made. You will be required to begin serving your unsuspended punishment immediately, even if you appeal. [Execution of punishment involving restraint or extra duty will be stayed only if you request in your appeal that such punishment be stayed and if a decision on your appeal by (the next senior officer in the chain of command) is not made within 5 days after the appeal is submitted.] You are advised that your appeal is considered "submitted" at the time you present it or, if mailed, it is delivered to myself or to the legal officer. Do you understand your right to appeal?

ACCUSED _____ (Answer)

CO (The commanding officer may then dismiss the accused.)

NOTE: The commanding officer should summarize the proceedings in accordance with paragraph 2007.4 of the LEGADMINMAN.

Figure 2-3--NJP Hearing Guide.--Continued

MAXIMUM PUNISHMENT IMPOSABLE AT NJP (ENLISTED PERSONNEL)
In addition to or in lieu of an Admonition or Reprimand one or more of the following:

TYPE OF PUNISHMENT	By CO, Captain & below/OICs	By CO, Major and above
CORRECTIONAL CUSTODY [1]	7 days	30 days
REDUCTION IN GRADE [2]	1 grade	1 grade
EXTRA DUTY [3]	14 days	45 days
RESTRICTION	14 days	60 days
FORFEITURES [4]	7 days pay	1/2 month's pay per month for 2 months
CONFINEMENT ON BREAD AND WATER OR DIMINISHED RATIONS [5]	3 days	3 days

1. Correctional custody shall not be imposed upon persons in pay grade **E-4** and above unless an unsuspended reduction below pay grade **E-4** is imposed. Additionally, it will not be imposed in combination with restriction, extra duty, or confinement on bread and water or diminished rations.

2. The punishment can <u>only</u> be imposed to the next inferior grade and the grade from which demoted must be within the promotion authority of the NJP hearing officer. Only Marines in pay grade E-5 or below may be reduced at nonjudicial punishment. See MCO P1400.32 (MARCORPROMMAN).

3. The daily performance of extra duties, before or after routine duties have been completed, constitutes the punishment. Normally, extra duties should not extend to more than two hours per day. Sundays are counted, but extra duty shall not be performed on Sundays. Extra duties <u>and</u> restriction may be combined to run concurrently (at the same time), but the combination may not exceed the maximum <u>imposable</u> for extra duties.

4. When punishment includes reduction, <u>whether or not suspended</u>, forfeitures will be based on the lower grade.

Figure 2-4--Maximum punishment imposable at NJP (Enlisted Personnel)

5. This punishment may only be imposed on persons attached to or embarked in a vessel and shall not be imposed upon persons in pay grade E-4 and above unless an unsuspended reduction below pay grade E-4 is imposed. It may not be imposed in combination with correctional custody, extra duties, or restriction.

Figure 2-4--Maximum Punishment Imposable at NJP (Enlisted Personnel)--Continued

MAXIMUM PUNISHMENT IMPOSABLE AT NJP (OFFICERS)

TYPE OF PUNISHMENT	By Flag or General Officer in Command/ Officer having GCM Jurisdiction	By any other Commanding Officer
ADMONITION or REPRIMAND	YES	YES
RESTRICTION	60 days	30 days [1]
ARREST IN QUARTERS	30 days	NO
FORFEITURES OF PAY	1/2 months pay per month for 2 months	NO

1. Commanding Officers in the grade of Captain and below may not impose more than 15 days restriction. See JAGMAN, section 0111.

Figure 2-5--Maximum Punishment Imposable at NJP (Officers)

SOP FOR LEGAL MATTERS

CHAPTER 3

MILITARY JUSTICE

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CHAPTER 3

MILITARY JUSTICE

3000. GENERAL

1. Jurisdiction. Rules for Courts-Martial (R.C.M.) 201 through 203 of the MCM discuss in detail the jurisdictional requirements necessary for disposition of cases within the military justice system. Additionally, paragraph 1003 of this Manual should be consulted regarding the Government of Japan exercising jurisdiction in incidents involving Japanese Nationals and certain offenses.

2. Initial Action on Report of Misconduct. On receipt of a report of misconduct, the commander will make or cause to be made a preliminary inquiry in accordance with MCM, R.C.M. 303. Figure 2-1 is a suggested format for conducting a preliminary inquiry in cases where a court-martial is contemplated.

3. Prompt Disposition. Reported charges shall be disposed of promptly and in the best interests of justice and discipline. The accused shall be tried within 120 days after the preferral of charges or the imposition of pretrial restraint, whichever is earlier, or charges can be dismissed. See MCM, R.C.M. 707. Additionally, no accused should be held in pretrial confinement or arrest in excess of 90 days. Within the 3d Marine Division the following guidelines apply:

a. Summary Court-Martial (SCM). The summary court-martial should be held within 14 days of preferral of charges.

b. Special Court-Martial (SPCM). The accused should be tried within 28 days of receipt of an RLS by the supporting LSST.

c. Article 32 Investigation. The investigating officer's report should be submitted to the appointing authority within 21 days of receipt of an RLS by the supporting LSST.

d. General Court-Martial (GCM). The accused should be tried within 21 days of referral to a GCM or within 45 days of receipt of the pertinent RLS, whichever is earlier.

NOTE: While every effort will be made to meet the above goals, failure to do so will not prejudice the Government's right to try an accused.

4. Report of Officer Misconduct. Allegations of officer misconduct will be reported to the CG, 3dMarDiv (SJA) as soon as possible in accordance with paragraph 2020 of this Manual.

5. Pretrial Restraint

a. Basis. A person will not be ordered into pretrial restraint unless the commander has probable cause (a reasonable belief) that an offense triable by court-martial has been committed, the person to be restrained committed it and restraint is required under the circumstances. Restraint consists of conditions on liberty, restriction in lieu of arrest, arrest, or confinement. The restraint will not be more rigorous than the circumstances require to ensure the presence of an accused at trial or to prevent foreseeable serious criminal misconduct. It is strongly recommended that commanders consult with their supporting LSST prior to ordering anyone into pretrial restraint. See MCM, R.C.M. 304, 305, and JAGMAN, section 0127.

b. Who May Order Pretrial Restraint. Only those personnel authorized under MCM, R.C.M. 304(b)(1) and (2) and R.C.M. 305(c) may order a person restrained.

c. Initial Review. Within 72 hours after ordering a person into pretrial confinement, the commanding officer will decide whether pretrial confinement will continue. If continued pretrial confinement is approved, the commanding officer will prepare, and forward to the Initial Review Officer, a written memorandum stating the reasons for continuation of pretrial confinement. Figure 3-1 is set forth as a guide to preparing the memorandum. Commanders are encouraged to consult with their supporting LSST in preparing this memorandum. The Initial Review Officer will review the case within seven days of imposition of confinement. At this review, the accused and/or counsel for the accused will be allowed to make a written and/or oral statement. A representative of the command may appear to make a statement.

6. Legal Hold. Prior to or concurrent with a command submitting a request for legal services, witnesses and the accused should be identified and a written notification for placement on legal hold made by the convening authority. Commanding officers of other organizations shall honor such notifications. Figure 3-2 is a sample form for such notification to other units. Witnesses cannot be held on Okinawa past their RTD without prior approval from HQMC. Marines will not be placed on legal hold past their RTD for NJP. Prior approval from HQMC is required before a Marine can be held past his/her RTD for administrative separation purposes.

7. Incidents Involving Servicemembers Who Are Foreign Nationals. The current edition of SECNAVINST 5820.6 and MCO P5800.8 requires notification of foreign consular officials when a servicemember who is a foreign national is pending a court-martial. Commanding

officers having knowledge of a case meeting the above criteria should immediately notify the SJA.

3001. SEARCH AND SEIZURE. MCM, Military Rules of Evidence (M.R.E.) 314, 315, and 316, provide procedural requirements and guidance concerning search and seizure. Commanders are strongly encouraged to contact their supporting CID, NIS, LSST or the SJA prior to authorizing a search. Figure 3-3 is a sample authorization to search form. Commanders should ensure that any real evidence seized is handled by the absolute minimum number of people and is accurately described. All transfers of evidence must be accounted for by a chain of custody document. The evidence must be safeguarded in a minimum access security area. Figure 3-4 is a format for a voluntary consent to search.

3002. CONFESSIONS AND ADMISSIONS. M.R.E. 305 provides detailed requirements for informing a service member of his rights when suspected of an offense under the UCMJ. As a general rule, commanders are encouraged to use supporting CID/NIS personnel to question individuals suspected of an offense. Figure 3-5 is a sample suspect's rights acknowledgment form.

3003. SUMMARY COURTS-MARTIAL (SCM)

1. Request for Legal Services. SCM convening authorities desiring to dispose of a case by SCM will forward a Request for Legal Services (RLS) to their supporting LSST utilizing figure 3-6. A command conducted preliminary inquiry, NIS or CID investigation or other documentation plus the SRB of the accused will be forwarded with the RLS. The SCM officer's name should be included on the RLS.

2. Preferral/Referral of Charges. The LSST will prepare a charge sheet, prefer the charges and prepare a convening order. The charge sheet and allied papers will be returned to the convening authority for referral. Before referring the case, the convening authority must find, or be advised by a judge advocate, that there are reasonable grounds to believe that (1) an offense triable by court-martial has been committed, (2) the accused committed it, and (3) the specification alleges an offense. See MCM, R.C.M. 601.

3. Consultation with a Judge Advocate. In compliance with U.S. v. Booker, 5 M.J. 238 (CMA 1977) and U.S. v. McLemore, 10 M.J. 238 (CMA 1981), before a summary court-martial can be considered in aggravation at a subsequent court-martial, case law implies that a written statement is required showing that the accused was given an opportunity to consult with independent counsel prior to accepting trial by SCM, the accused did not exercise the right to refuse trial by SCM, and that acceptance of a trial by SCM does not preclude the command from taking other adverse administrative action against the accused. The following suggested entry from the

IRAM (MCO P1070.12, paragraph 4015.2b) on page 13 of the SRB/OQR will fulfill the requirements.

I certify I have been given the opportunity to consult with a lawyer, provided by the Government at no cost to me, in regard to a pending SCM for violation of Article(s) _____ of the UCMJ. I understand I have the right to refuse that SCM; I (do) (do not) choose to exercise that right. I further understand that acceptance of trial by SCM does not preclude my command from taking other adverse administrative action against me. I (will) (will not) be represented by a civilian/military lawyer.

_____ _____
(signature of accused) (date)

4. Conduct of Trial. MCM, R.C.M. 1301 through 1305 provides detailed guidance for conducting a SCM. A SCM Trial Guide is found at Appendix 9, MCM, 1984. This guide, Figure 3-7, or one provided by the LSST should be used when conducting a SCM. During the preliminary proceeding of the SCM as set forth in the SCM guide, the officer conducting the SCM shall have the Acknowledgement of Rights found on page 3-34, completed by the accused before proceeding with the trial.

5. Post-Trial Matters

a. Confinement. The accused will be ordered into confinement in accordance with MCM, 1984, R.C.M. 1101.

b. Record of Trial. The original and two copies of the record of trial will be prepared by the convening authority in accordance with MCM, 1984, R.C.M. 1305 and JAGMAN, section 0150. The format to be used for the SCM record of trial is found at Appendix 15, MCM.

c. Service of Record of Trial on Accused. The convening authority will ensure that a copy of the record of trial is served on the accused immediately after authentication by the SCM officer.

d. Matters Submitted by the Accused. The accused has 7 days from the date sentence is imposed to submit written matters to the convening authority which may reasonably tend to affect the convening authority's decision to disapprove any findings of guilty or to approve the sentence (See MCM, 1984, R.C.M. 1105).

e. Convening Authority's Action. The convening authority will not take action on the case prior to the expiration of the 7 day period in which the accused may submit matters. The convening authority's action will be recorded on the record of trial (See MCM, 1984, Appendix 16, for guidance). If confinement is awarded, the confinement begins to run on the date adjudged unless it has been deferred. All remaining punishment awarded by the court can be executed at the time of the convening authority's action.

6. Review By a Judge Advocate. Each summary court-martial in which there is a finding of guilty will be reviewed by a judge advocate in accordance with MCM, R.C.M. 1112. Convening authorities will forward the following documents for the judge advocate's review to the LSSS Review section:

a. Original record of trial;
b. Original charge sheet;
c. Receipt for record of trial;
d. Summary of Proceedings with enclosures;
e. Results of trial;
f. Acknowledgment of R.C.M. 1105 Rights Form; and
g. Booker Counseling form. The accused and the convening authority will receive copies of the Judge Advocate's Review.

7. Filing and Supervision of SCM. The LSSS Review Section will maintain the original record of trial for at least three months and then forward it to the National Personnel Records Center. Each unit will maintain a copy of the record of trial in accordance with SECNAVINST 5212.5c.

3004. SPECIAL COURTS-MARTIAL (SPCM)

1. Request for Legal Services. The same procedure for submission of an RLS as set forth in paragraph 3003.1, above, is applicable for SPCM, with one exception: the SPCM convening authority will indicate the particular members for the court-martial on the RLS.

2. Referral of Charges. The supporting LSST will prepare a charge sheet and convening order and prefer the charges. The charge sheet and convening order will be returned by the fastest means possible to the convening authority. The immediate commanding officer will inform the accused of the charges. The convening authority will sign the convening order and refer the charges by completing section 4 of the charge sheet. Before referral, the convening authority must find, or be advised by a judge advocate, that there are reasonable grounds to believe that (1) an offense triable by

court-martial has been committed, (2) the accused committed it, and (3) each specification alleges an offense. See MCM, R.C.M. 601. A copy of the referred charges and convening order will be served on the accused, and noted on the charge sheet.

3. Conduct of Trial. The supporting LSST will ensure that the SPCM is processed to completion in an expeditious manner. The trial counsel will keep both the convening authority and the SJA apprised of the progress in disposing of a SPCM.

4. Post-Trial Matters

a. Results of Trial. Trial counsel will report the results of trial to the immediate commanding officer, the convening authority and the SJA as soon after trial as possible.

b. Confinement. Adjudged confinement, unless deferred, will be ordered served immediately. See MCM, R.C.M. 1101 and paragraph 1005 of this Manual.

c. Request for Deferment. A convening authority may, upon written application by the accused, defer confinement. MCM, R.C.M. 1101 provides specific guidance in acting on a request for deferment. Since the request and the response thereto will be attached to the record of trial, convening authorities will utilize the supporting LSST in preparing a response to a deferment request.

d. Record of Trial/Service on the Accused. The record of trial will be prepared by the LSSS and authenticated. The LSSS Review Section will serve a copy of the authenticated record of trial on the accused or his counsel if the accused so requests at trial.

e. Staff Judge Advocate's Recommendation (SJAR). In each special court-martial wherein a bad conduct discharge is adjudged, the SJA shall forward a written recommendation to assist the convening authority in deciding what action to take on the case. The LSSS Review Section will serve a copy of the SJAR on counsel for the accused and the accused (unless the accused requests at trial to have a copy served only on his counsel). Counsel for the accused shall have 10 days from service of the SJAR or service of the record of trial, whichever is later, in which to submit comments on the SJAR. See R.C.M. 1106.

f. Matters Submitted by the Accused. The accused may submit virtually anything which might influence the convening authority's decision to disapprove any findings of guilty or approve the sentence. Such matters must be submitted within 10 days after service of the record of trial or, if applicable, service of the SJAR, whichever is later. If the accused shows that additional time is required to submit such matters, the convening authority may, for good cause, extend the 10 day period for not more than 20

additional days. Requests for extensions and responses thereto will be in writing and forwarded to the LSSS Review Section for inclusion in the record of trial. The accused may waive, in writing, the right to submit such matters. See R.C.M. 1105.

g. Convening Authority's Action

1. The convening authority may take action only after the applicable time periods for submission of matters pursuant to R.C.M. 1105 and 1106 (if applicable) have expired or after the accused has properly waived the right to present such matters. The LSSS Review Section will forward the record of trial, the SJAR (if applicable), any matters submitted pursuant to R.C.M. 1105 or 1106, and a proposed promulgating order and convening authority's action to the convening authority.

2. Matters Considered.

a. Before taking action on the case the convening authority will consider the 1) results of trial, 2) record of trial, 3) SJAR (if applicable), and 4) any matters submitted pursuant to R.C.M. 1105 or 1106.

b. The convening authority may also consider the personnel records of the accused and any other matters he/she deems appropriate. If the convening authority considers matters outside the record, see R.C.M. 1107 (b)(3)(B)(iii) for further guidance.

3. If the convening authority desires to take an action different from that which has been prepared, the LSSS Review Section shall be notified and a new action will be prepared.

4. After the Promulgating Order (which includes the Action) has been signed and dated, it will be returned to the LSSS Review Section. The Review Section will make the required distribution of copies.

h. Review by a Judge Advocate/Appellate Review

(1) Special Court-Martial (No BCD Adjudged). A SPCM wherein a BCD was not adjudged will be forwarded to the LSSS Review Section for review by a judge advocate. The LSSS Review Section will distribute copies of the Judge Advocate's Review to the accused and the convening authority. The LSSS Review Section will maintain the original record of trial for at least three months and then forward to the National Personnel Records Center. Each unit will maintain a copy of the record of trial in accordance with SECNAVINST 5212.5c.

(2) Special Court-Martial (BCD Approved). A SPCM which includes an approved bad conduct discharge will be sent to the Judge Advocate General of the Navy for review unless the accused

has waived appellate review. In the latter case, the proceedings will be forwarded to the LSSS for review by a judge advocate.

3005. ARTICLE 32 INVESTIGATION

1. Request for Legal Services. The same general procedure for submission of an RLS as set forth in paragraph 3003.1 of this Manual is applicable for an Article 32 investigation.

2. Preferral of Charges/Appointing Letter. The supporting LSST will prepare a charge sheet and an Article 32 appointing letter for the convening authority. Commanders will telephonically consult with the SJA prior to appointing an Article 32 IO. The convening authority will sign the Article 32 appointing letter, cause the sworn charges to be receipted for, and ensure the accused is informed of the charges.

3. Conduct of the Investigation. The investigation will be conducted in accordance with MCM, R.C.M. 405.

4. Action on the Investigation. The IO's report will be submitted to the Article 32 Investigation appointing authority within 21 days of receipt of the RLS by the supporting LSST or as soon as possible, if the accused is in pretrial confinement or under arrest. If the commander desires to recommend to the CG, 3d MarDiv that the charges be disposed of at a general court-martial, the record of proceedings will be forwarded to the Commanding General, 3d MarDiv (SJA) for further review. The commander may otherwise dispose of the charge by referral to SPCM, referral to SCM, imposition of NJP or dismissal of all charges.

3006. GENERAL COURTS-MARTIAL (GCM)

1. Article 34, Pretrial Advice. The Government Counsel will prepare a proposed pretrial advice for the SJA in accordance with Article 34, UCMJ and MCM, R.C.M. 406 prior to any charge being referred to trial by GCM.

2. Referral. If the Commanding General determines that trial by GCM is the appropriate disposition, a GCM convening order will be prepared by the SJA for the Commanding General's signature. The charges will be referred to a GCM in accordance with MCM, R.C.M. 601.

3. Conduct of Trial. The supporting LSST will ensure that GCM's are processed to completion in accordance with paragraph 3000.3 of this Manual. The trial counsel will keep the SJA apprised of the progress in disposing of the GCM.

4. Post-Trial Matters. The matters addressed in paragraph 3004.4 apply to general courts-martial with the following clarifications.

a. SJAR. In each GCM wherein there is a finding of guilty, the SJA shall forward a written recommendation to the Commanding General in accordance with R.C.M. 1106.

b. Convening Authority's Action. The Commanding General will take action on all GCM's.

c. The LSSS Review Section will forward all post-trial documents through the office of the Staff Judge Advocate.

5. Review by a Judge Advocate/Appellate Review. If the accused waives appellate review and the sentence does not include death, the record of proceedings will be forwarded to the LSSS for review by a judge advocate, preparation of a promulgating order and retention of the original record of proceedings. If appellate review is not waived, the GCM will be forwarded to the Judge Advocate General of the Navy for review in accordance with MCM, R.C.M. 1111 and JAGMAN, section 0153.

3007. MATTERS RELATIVE TO DISCIPLINARY PROCEEDINGS

1. Appeal by the Government. The Government is allowed to appeal a ruling of the military judge under certain circumstances. See MCM, R.C.M. 908. In no event will a trial counsel initiate an appeal without the specific consent of the SJA.

2. Witness Requests. The production of witnesses at courts-martial will be in accordance with MCM, R.C.M. 703. All requests for witnesses who are not physically on Okinawa will be coordinated through the SJA.

3. Grants of Immunity. Only the CG, 3d MarDiv is authorized to grant immunity. Requests for grants of immunity will be forwarded to the CG, 3d MarDiv (SJA) for disposition in accordance with MCM, R.C.M. 704.

4. Pretrial Agreements. A convening authority may enter into a pretrial agreement with an accused under the provisions set forth in MCM, R.C.M. 705. The convening authority may authorize the trial counsel or SJA to sign an approved pretrial agreement. See MCM, R.C.M. 705(d)(4) and paragraph 1004 of this Manual.

5. Discharge to Avoid Court-Martial. Under the provisions of the current edition of MCO P1900.16, paragraph 6419, an accused may request an administrative discharge to avoid trial by court-martial in those cases wherein the maximum imposable punishment includes a punitive discharge. As a condition precedent to approval of the

request, an accused in the grade of corporal or above must also request administrative reduction to lance corporal.

6. Officer Cases. Cases involving officer misconduct will be handled expeditiously and in accordance with paragraph 3000.4 of this Manual. Additionally, convening authorities should be familiar with provisions of the current edition of MCO P1900.16, chapter 4, and the current edition of SECNAVINST 1920.6 regarding administrative separation of officers.

7 Modifications to Convening Orders

a. Before the Court-Martial is Assembled. The court-martial is assembled when the military judge so announces. This normally occurs in the first session of the court-martial. Prior to the court-martial being assembled, a convening authority may add, excuse, or substitute members of the court-martial. Additionally convening authorities may delegate to their executive officer, legal officer, or SJA the authority to excuse up to and including one third of the total members detailed for any particular court-martial. See MCM, R.C.M. 505(c), JAGMAN section 0136 and paragraph 1005 of this Manual.

b. After the Court-Martial is Assembled. After the court-martial is assembled, members will not be added, excused, or substituted except under the following conditions:

(1) The convening authority or military judge may excuse a member for good cause shown on the record.

(2) Members may also be excused pursuant to a challenge under R.C.M. 912. Members may be added if the court falls below a quorum (3 at a special court, 5 at a general court).

8. Release from Legal Hold. Persons placed on legal hold will be released from legal hold when they are no longer required for disposition of the case. The trial counsel will notify the appropriate unit legal officer for administrative action.

9. Execution of Sentences. Except for those portions of a sentence concerning a punitive discharge, dismissal or death, the adjudged sentence may be executed in the convening authority's action. See MCM, R.C.M. 1113.

10. Administrative Action and Action Required after CA's Action. The current edition of MCO P1080.35, PRIM, requires court-martial convictions to be reported on the unit diary. Additionally, page 13 of the SRB will be prepared in accordance with the current edition of MCO P1070.12, IRAM.

11. Clemency and Parole Review. The current edition of SECNAVINST 5815.3 (Department of the Navy Clemency and Parole Review) provides detailed instructions regarding clemency and parole procedures.

Any accused sentenced to 8 months or more confinement or an unsuspended punitive discharge or dismissal will have the case reviewed by the Navy Clemency and Parole Board unless review is waived. It is noted that personnel eligible for clemency review are carried on the rolls until review is either completed or waived and punitive separation effected. Commanding officers will initiate and monitor clemency and parole review procedures in accordance with the current edition of SECNAVINST 5815.3.

12. Request Mast Regarding Military Justice Matters. The current edition of MCO 1700.23 and DivO 1740.3 provide that commanding officers may deny request mast or refuse to further process the request mast if the subject is disciplinary action or involuntary separation action. Such action taken by commanders will be reported in accordance with the current edition of DivO 1740.3.

13. Psychiatric Evaluation

a. Before Referral. When a commanding officer, investigating officer, trial counsel or defense counsel has reason to believe that an accused lacked mental responsibility for an offense charged or lacks the mental capacity to stand trial, this conclusion will be reported to the convening authority along with the facts and observations which form the basis for the belief. When the report provides a reasonable basis for the belief, the convening authority will forward the case to the Commanding Officer, U.S. Naval Hospital located at Camp Lester, or the Branch Hospital, located at MCAS Iwakuni, as appropriate, for an evaluation of the accused by a board convened pursuant to MCM, R.C.M. 706.

(1) Documentation. The commanding officer's request for a psychiatric evaluation will include the following documents as enclosures:

Certified true copy of the charge sheet;

(b) Copy of the Article 32 investigation report and/or preliminary inquiry report;

(c) Sworn statements of persons observing questionable behavior by the accused;

Previous psychiatric consultation, if known;

Service Record Book; and

Health Record.

(2) Findings. The board must make separate and distinct findings on each of the following questions:

(a) At the time of the alleged offense was the accused suffering from a mental disease or defect?

(b) What is the clinical psychiatric diagnosis?

(c) Did such disease or defect result in a lack of substantial capacity on the part of the accused concerning the particular act charged, to either appreciate the criminality of the act or conform to the requirements of the law?

(d) Does the accused possess sufficient mental capacity to understand the nature of the judicial proceedings and to conduct or cooperate intelligently in defense thereof?

3. Distribution and Effect of the Board's Report. The full report of the board will be provided to the defense and, if appropriate, to other medical personnel for medical purposes. The full report will be provided to the accused's commanding officer on request. The full report will not be provided to other personnel unless authorized by the convening authority or, after referral of charges, by the military judge. The board's ultimate conclusions (not the full report) will be distributed to the accused's commanding officer, the Article 32 IO, all counsel, and the convening authority. Based on the report, the convening authority may suspend further action in the case, initiate administrative discharge proceedings, or continue to process the case through the military justice system.

b. After Referral. Normally, after charges have been referred, only the military judge will order a psychiatric evaluation of the accused.

3008. VACATION OF SUSPENDED SENTENCE. Prior to the vacation of a suspended GCM sentence or a SPCM sentence which includes an approved BCD, the convening authority will personally hold a hearing on the alleged violation of probation. See MCM, R.C.M. 1109, paragraph (d). In cases other than those set forth above, the officer having power to convene the court which sentenced the accused will cause a hearing to be held in accordance with MCM, R.C.M. 1109, paragraph (e). Commanding officers will request the assistance of their supporting LSST prior to vacating a suspended sentence. The LSSS Review Section shall be notified prior to the action of the convening authority so that a supplementary court-martial order can be prepared.

3009. APPELLATE LEAVE. Members awaiting appellate review of a punitive discharge or dismissal may be permitted (voluntary leave awaiting appellate review) or required (involuntary leave awaiting appellate review) to take leave. Members being administratively separated for cause may also be granted leave when in the best

interests of the command. Involuntary leave is not authorized, however, for Marines awaiting administrative separation. Convening authorities will comply with the current edition of FMFPacO 1910.1, MCO P1050.3 and MCO P1900.16 in processing an accused for appellate leave. Requests to place an accused on appellate leave will be forwarded via the claim of command to the CG, 3d MarDiv (SJA). Commanders will ensure that all required documentation accompanies the Marine to be separated to CONUS for separation.

3010. PROTECTION AND ASSISTANCE OF CRIME VICTIMS AND WITNESSES.

1. Too often victims under our criminal justice system are victims twice. Once when an offense is committed against them or their property, and again because they are subjected to insensitive and uncaring treatment at the hands of the "system." Witnesses are also often subjected to this same insensitive and uncaring treatment. MCO 5800.15 provides detailed information concerning the protection and assistance to be provided to victims and witnesses, and tasks each general court-martial convening authority to ensure that victims and witnesses are provided this information.

2. Mandated training for law enforcement personnel and judge advocates will be carried out by their parent commands. In some cases, however, law enforcement personnel will have limited or no contact with victims and witnesses. Judge advocates are normally not involved until later in the criminal process, and only then if the case will be tried by special or general court-martial. Therefore, involvement by the commander is required to ensure the rights of victims and witnesses are protected.

3. Action. (a) Each regimental and separate battalion commander will establish procedures that will ensure that military victims and witnesses, as well as dependents of military members of their commands receive the victims and witnesses information package found in MCO 5800.15 and ForO 5800.1 and that they be provided necessary assistance in securing needed victim and witness services. (i.e. legal, chaplain, family services center)

(b) The Division Staff Judge Advocate will ensure that appropriate training in the protection and assistance of crime victims and witnesses is provided to unit legal officers.

UNIT HEADING

5810

From: Commanding Officer
To: Initial Review Officer

Subj: FACTUAL BASIS FOR PRETRIAL CONFINEMENT OF (NAME) (SOCIAL SECURITY NUMBER)

Ref: (a) MCM, 1984
(b) JAGMAN

Encl: (May include witness statements, investigating reports, or official records)

1. In accordance with Rule for Courts-Martial (R.C.M.) 305 in reference (a) and section 0127 of reference (b), the following information is submitted.

a. The hour, date, and place of confinement:

b. The servicemember is alleged to have committed the following offense(s): (Provide a brief summary of the circumstances surrounding each offense; the enclosures may be incorporated here)

c. The disciplinary record of the servicemember:

1. Nonjudicial Punishments

DATE	OFFENSE	PUNISHMENTS

2. Court-Martial Conviction(s)

DATE	TYPE COURT	OFFENSE	PUNISHMENT

d. I have found there is probable cause to believe that the servicemember committed the offense(s) set forth at paragraph 1b, above; that there is apparent court-martial jurisdiction over the servicemember for the offense(s) involved; and that the servicemember should remain in pretrial confinement.

Figure 3-1.--Format of Pretrial Confinement Memorandum.

2. My decision that the servicemember should remain in pretrial confinement is based on the following reason(s). (Elaborate briefly as appropriate)

a. To ensure presence at trial. The servicemember is not likely to be present at the court-martial because: (For example: previous UA's, breaking restriction).

[and/or]

b. There is a likelihood that the servicemember will harm or intimidate other members of the command or potential witnesses if not confined. I am convinced of this because:

[and/or]

c. There is evidence that the servicemember will commit other criminal acts which pose a serious threat to the morale, readiness discipline, or safety of the command if the servicemember is not confined. Specifically, there is evidence indicating the servicemember has a tendency to:

3. Less severe forms of restraint have been considered and are inadequate. I am convinced that continued pretrial confinement of the servicemember is necessary and that the requirements set forth in MCM, R.C.M. 305(h)(2)(B) have been met.

Figure 3-1.--Format of a Pretrial Confinement Memorandum Continued

UNIT HEADING

5800

From: Commanding Officer
To: Commanding Officer
Via: Commanding Officer

Subj: NOTIFICATION OF LEGAL HOLD

1. It is requested that the following named Marine be placed on military legal hold pending (NIS Investigation, Special Court-Martial, etc.)

NAME	GRADE	SSN	UNIT	RTD

Figure 3-2.--Format of a Notification of Legal Hold.

SOP FOR LEGAL MATTERS

RECORD OF AUTHORIZATION FOR SEARCH

1. At _____ on _____ , I was approached by _____
Time Date Name

in his capacity as_____ who,
Duty 1

having been first duly sworn, advised me that he suspected
2_____ of _____ and
Name Offense

requested permission to search his/her_____
Object or place 3

for_____
Items 4

2. The reasons stated to me for suspecting the above named person were: 5

_____

_____

_____

_____

_____

_____

_____

_____

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 [the fruits of crime] [the instrumentalities of a crime] [contraband] [evidence].

4. I have therefore authorized _____ to search the place named for the property specified, and if the property be found there, to seize it.

_____

Grade Signature Title

_____

Date and time

Figure 3-3.--Format of an Authorization to Search.

SOP FOR LEGAL MATTERS

INSTRUCTIONS

1. Although the person bringing the information to the attention of the individual empowered to authorize the search will normally be one in the execution of investigative or police duties, such need not be the case. The information may come from a private individual.

2. Other than his/her own prior knowledge of facts relevant thereto, all information considered by the individual empowered to authorize a search on the issue of probable cause must come from oral or written statements provided to the authorizing officer. Prior to receiving the information which purports to establish the requisite probable cause, the individual 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)?"

3. The area or place to be searched must be specific, such as wall locker and locker box, residence, or automobile.

4. A search may be authorized only for the seizure of certain classes of items: (1) Fruits of a crime (the results of a crime such as stolen objects); (2) Instrumentalities of a crime (example: search of an automobile for a crowbar used to force entrance into a building which was burglarized); (3) Contraband (items, the mere possession of which is against the law, i.e. marijuana, etc.); (4) Evidence of crime (example: bloodstained clothing of an assault suspect).

5. Before authorizing a search, probable cause must exist. This means a reasonable belief by the commander that:

a. More likely than not an offense is about to be, is being, or has been committed; and

b. Specific fruits or instrumentalities of the crime contraband or evidence of the crime exist; and

c. Such fruits, instrumentalities, contraband, or evidence are more likely than not in a certain place.

Figure 3-3.--Format of an Authorization to Search--Continued.

In arriving at the above determination it is generally permissible to rely on hearsay information, particularly if it is reasonably corroborated or has been verified in some substantial part by other facts or circumstances. However, unreliable hearsay cannot alone constitute probable cause, such as where the hearsay is several times removed from its source, or the information is received from an anonymous telephone call.

Hearsay information from an informant may be considered if the information is reasonably corroborated or has been verified in some substantial part by other facts, circumstances or events.

The mere opinion of another that probable cause exists is not sufficient; however, along with the pertinent facts, it may be considered in reaching the conclusion as to whether or not probable cause exists.

If the information available does not satisfy the foregoing, additional investigation to produce the necessary information may be ordered.

Figure 3-3.--Format of an Authorization to Search--Continued.

CONSENT TO SEARCH (See JAGMAN 0170)

CONSENT TO SEARCH

I, _____, have been advised that inquiry is being made in connection with _____. I have been advised of my right not to consent to a search of [my person] [the premises mentioned below]. I hereby authorize _____ and _____ who [has] [have been] identified to me as _____
Duty
_____ 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

_____

_____

Date:

Figure 3-4.--Format of a Consent to Search

SUSPECT'S RIGHTS ACKNOWLEDGMENT/STATEMENT

Suspect's Rights Acknowledgment/Statement

FULL NAME (ACCUSED/SUSPECT) SSN GRADE SERVICE(BRANCH)

ACTIVITY/UNIT TELEPHONE NUMBER DATE OF BIRTH

NAME (INTERVIEWER) SOCIAL SECURITY NO. GRADE/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 lawyer counsel prior to any questioning. This lawyer counsel may be a civilian lawyer retained by me at my own expense, a military lawyer appointed to act as my counsel without cost to me, or both._____

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

Figure 3-5. --Format of a Suspect's Rights Acknowledgment/Statement

WAIVER OF RIGHTS

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

1. I expressly desire to waive my right to remain silent;

2. I expressly desire to make a statement;

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

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

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

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)

Figure 3-5.--Format of a Suspect's Rights Acknowledgment/Statement Continued.

SOP FOR LEGAL MATTERS

REQUEST FOR LEGAL SERVICES/ADMINISTRATIVE DISCHARGE SERVICES

NAME OF ACCUSED/RESPONDENT GRADE/SSN/MOS

UNIT

DOCUMENTARY EVIDENCE ATTACHED SRB ATTACHED SRB AUDIT COMPLETED

-YES -YES Date:

-NO (Explain in Remarks) - No (Explain in Remarks)

_____ Signature of Admin Officer

REQUEST APPROPRIATE SERVICES FOR:

TRIAL BY SCM (See Reverse)

TRIAL BY SPCM (See Reverse)

- ART 32 PRETRIAL INVESTIGATION (See Reverse)
- ADMINISTRATIVE DISCHARGE FOR:
  - MISCONDUCT BY REASON OF _____

    HOMOSEXUAL

    OTHER _____

RECOMMEND CHARACTERIZATION AS:

HONORABLE- ____ GENERAL- ____ UNDER OTHER THAN HONORABLE-____

ENTRY LEVEL- RETENTION IS RECOMMENDED -____

SHOULD THE ACCUSED QUALIFY FOR AND SUBMIT A REQUEST TO BE DISCHARGED WITH AN OTHER THAN HONORABLE DISCHARGE FOR THE GOOD OF THE SERVICE IN ORDER TO AVOID TRIAL BY COURT-MARTIAL, I RECOMMEND APPROVAL/DISAPPROVAL OF THE REQUEST.

REMARKS:

SIGNATURE OF CO DATE:

Figure 3-6.--Format of a Request for Legal Services.

FOR LEGAL MATTERS

THE SUMMAR COURT-MARTIAL OFFICER WILL BE _____

PE IAL COURT MARTIAL MEMBERS

NAME	GRADE	USMC	USMCR

THE ACCU WILL BE INFORMED THE CHGS BY _____

THE FOLLOWIN CER LL RECE PT OR CHGS _____

THE FOLLOWING OFFICER WILL REFER THE CHGS _____

TH FOLLOW G OFF CER W LL ERVE CHG ON THE ACC _____

_____

_____

REMARKS (CONT D FROM PG 1)

gure t Requ f Lega Services
in

SOP FOR LEGAL MATTERS

TRIAL GUIDE FOR SUMMARY COURT-MARTIAL

1. The legal officer should ensure that the court is properly convened and the charges referred to such court. This may be accomplished by inserting the following notation in Block V ("Referral; Service of Charges") of the Charge Sheet:

_____	_____	_____
Insert designation of Command of Convening Authority	Insert Place	Insert Date

Referred for trial to the summary court-martial convened by: (Insert name and grade of summary court officer) is hereby detailed as summary court-martial in this case _____ _____19___, subject to the following instructions: _____ by _____ of _____
Command or Order

_____	_____
Insert Name, Grade, and Official Capacity of Officer Signing, (Normally "Commanding")	Signature

2. Provide the charge sheet, record of trial form (Appendix 15, MCM 1984) and the attached trial guide to the summary court-martial officer. TO BE USED BY THE SUMMARY COURT-MARTIAL OFFICER IN CONDUCTING THE SUMMARY COURT (Instructions for the Summary Court-Martial Officer are indented.)

ADVICE TO THE ACCUSED (To be read to the accused)

"I have reviewed the charge sheet in this case. It reflects that on _____, _____ was sworn as
(DATE) (NAME OF ACCUSER)
the accuser. On _____, these charges were referred to the above detailed court by _____.
(CONVENING AUTHORITY)
You have been charged with _____
(DESCRIBE OFFENSES)

The following witnesses will probably be called to testify in your case:

_____	_____
_____	_____
(NAME) (ORGNIZATION)	(NAME) (ORGANIZATION)

Figure 3-7. --Summary Court-Martial Guide.

You may cross examine these witnesses or have me ask any question you desire. You may call any available witnesses or produce any evidence in your behalf and I will assist you in doing so. You have the right to remain silent or testify as you desire and I will draw no adverse inference from your silence if you do not testify. The maximum sentence that I may adjudge, if there is a conviction, is as follows:

REDUCTION Sergeants and above may be reduced only one pay grade. Corporals and below may be reduced to Private.

CONFINEMENT for one month. (Sergeants and above may not have this punishment adjudged even if reduced in grade.)

HARD LABOR WITHOUT CONFINEMENT for 45 days (Sgts and above may not have the punishment adjudged even if reduced in grade).

RESTRICTION TO SPECIFIED LIMITS for 60 days.

FORFEITURE of two-thirds pay for one month computed at the grade to which reduced, if reduced.

You are advised that you have a right to inspect the relevant documents of your case.

During the trial I will not consider any matters, including statements you may have previously made, unless admitted into evidence in accordance with the Military Rules of Evidence.

You are further advised that you may refuse trial by Summary Court-Martial and you have a reasonable time to consider your decision.

The summary court should have the accused initial and execute the attached Acknowledgment of Rights and Waiver Form before proceeding with the summary court-martial. After consulting with counsel or waiving his right to do so, the accused should initial block 6 on the Record of Trial form indicating his consent or objection to trial.

If the accused objects to trial by summary court-martial, return the charge sheet and record of trial form to the convening authority. If the accused consents to trial by summary court-martial, proceed as follows:

"I am now showing you the charges..... and I ask you, how do you plead, but before you give me your pleas, do you have any motions? (If there are any motions, recess the court and consult a judge advocate.)"

Show the accused the charges and determine his pleas. Record the accused's pleas on page 2 of the Record of Trial form in the format provided.

Figure 3-7.--Summary Court-Martial Guide--Continued.

NOTE: After determining the accused's pleas, the Summary Court officer should recess and research the elements of the offenses to which the accused has pleaded before proceeding.

GUILTY PLEAS

FOR EACH GUILTY PLEA advise the accused as follows:

"You have a legal and moral right to plead not guilty and place the burden on the government to prove your guilt on each element of the offense(s) beyond a reasonable doubt even though you may feel you are guilty. By your plea of guilty, you are waiving your right against self-incrimination, your right to a trial of the facts by a court-martial and your right to confront and cross-examine the witnesses against you. By your plea, you admit every element of the offense(s) to which you are pleading guilty. Your plea authorizes conviction without need for further proof.

You are further advised that I will not accept your plea of guilty unless I am satisfied that you understand its meaning and effect and willingly admit to each and every element of the offense.

If you desire to change your plea, or, if I am in doubt that you understand its meaning and effect at any time before I announce a sentence, I will enter a plea of not guilty on your behalf and try this case as if you had pleaded not guilty in the first place.

Do you understand what I have just read to you?

I will now set out the elements of (each of) your offense(s) and ask if they correctly describe what you did or failed to do. I will summarize your admission as to each of these elements."

Do you swear that the statements you are about to make regarding the offense(s) shall be the truth, the whole truth, and nothing but the truth, so help you God?

(The elements of each offense and a discussion of those elements can be found in Part IV of the Manual for Court-Martial. An example of what should be attached to the record is set forth below.)

Charge 1 Article 91

Element 1: That the accused enlisted person assaulted a certain noncommissioned officer as alleged.
Accused's Admission: The accused admitted that he struck Staff Sergeant any Marine in the face with his fist on the day in question.

Figure 3-7.--Summary Court-Martial Guide--Continued.

Element 2: That the assault was committed while the noncommissioned officer was in the execution of his duties.
Accused's Admission: The accused admitted that the Staff Sergeant was in the execution of his duties at the time of the assault.

Element 3: That at the time of the assault the noncommissioned officer was the superior of the accused.
Accused's Admission: The accused admitted that the victim was a SSgt and that the accused was a Corporal at the time of the assault.

Element 4: That the accused knew Staff Sergeant Any Marine was his lawful superior.
Accused's Admission: The accused admitted that the SSgt was in uniform, with grade insignia clearly visible at the time of the assault.

NOT GUILTY PLEAS

For each not guilty plea, the court must hear live, sworn, non-hearsay testimony and afford the accused the opportunity to confront and cross-examine the witnesses against him. Ordinarily, written statements of witnesses or other comments are not proper evidence. An exception to this rule would include a page 12 from the accused's SRB which would be admissible to show that the accused was UA from his unit. A judge advocate should be consulted, however, before considering any other documents as evidence.

Witnesses shall be sworn to tell the truth as follows:

"Do you swear or affirm that the evidence you are about to give is the truth, the whole truth and nothing but the truth, so help you God?"

The accused should be advised that: "You have the right to remain silent or testify as you desire. You also have the right to present any evidence in your behalf; I will help you in any way I can to present that evidence."

FOR A FINDING OF NOT GUILTY TO ALL CHARGES AND SPECIFICATIONS

The Summary Court will terminate the proceedings. The findings of not guilty should be recorded in the "findings" block in section 8 of the record of trial and the record returned to the legal officer for the Convening Authority's action.

Figure 3-7.--Summary Court-Martial Guide--Continued

SENTENCING

If the accused is found guilty of any offense, a hearing should be held to determine the appropriate sentence. The summary court officer should inquire thoroughly and impartially into both sides of the case. The summary court therefore has a duty to find favorable material, if available, and present it on the accused's behalf. At a minimum, the summary court officer should review the accused's SRB and contact superiors as to performance and character. Hearsay evidence (oral or written statements made out of the hearing of the summary court-martial) are admissible during the sentencing hearing, if first offered by, or on behalf of the accused.

Records of prior conviction(s) by a courts-martial may be considered in aggravation of the accused's offense.

If the accused has a record of conviction(s) by summary court-martial, however, it may be considered only if there is a record of the accused having been afforded the opportunity to consult with counsel or of his waiving this right before making his decision concerning whether or not to accept trial by summary court-martial. Also, the record must indicate that the prior summary court-martial was reviewed by a judge advocate.

Records of prior nonjudicial punishments may be considered if there is a written record of the accused's having been afforded an opportunity to consult with counsel or of his having waived this right before electing to accept or refuse nonjudicial punishment.

After admitting all documentary evidence:

ADVISE THE ACCUSED AS FOLLOWS:

"You are advised that you now have the opportunity to present any evidence in extenuation or mitigation of your offense(s). I will accept any written or oral statement, made by you or anyone else on your behalf. You also have the right to remain silent, to make a statement under oath (where I would have the opportunity to ask you questions) or to make an unsworn statement (where I would not have the opportunity to ask you questions).

I am considering the following (records of conviction) (nonjudicial punishments) dated _____ in aggravation of your offense(s).

I am considering the following favorable matters taken from your Service Record Book (rifle/pistol scores, pro/con marks, awards) summarized as follows:

_____

_____

Figure 3-7.--Summary Court-Martial Guide--Continued.

I am calling the following witnesses to testify as to your character and general value to the service:

_____

_____

_____

"Do you wish to make a sworn statement, an unsworn statement or remain silent?

A sentence should be determined within the following limits:

1. When adjudging a reduction and forfeitures. the forfeitures must be computed at the pay grade to which the accused is reduced.

2. Forfeitures must be awarded in whole dollars, rounded down to the nearest dollar (i.e. no "2/3").

3. Extra duties may <u>not</u> be adjudged by a summary court. "Hard labor without confinement" is the appropriate equivalent and may be adjudged by a summary court-martial.

4. A summary court-martial may not suspend any part of the sentence. A summary court can, however, recommend suspension of any part of the sentence.

The sentence should be announced as follows:
"_____ this summary court-martial
(Accused)
sentences you:

1. To be confined at hard labor for _____ (not more than 30) days. (Note, Sergeants E-5 and above may not be confined or perform hard labor without confinement even if reduced to corporal).

<u>or</u>

To perform hard labor without confinement for (not more than 45) days.

<u>or</u>

To be restricted to the limits of _____
_____
for _____(not more than 60) days

Figure 3-7.--Summary Court-Martial Guide--Continued.

2. To forfeit a maximum of $_____ pay per month for one month. (Computed as a percentage of base pay of accused at rate to which reduced, rounded down to the nearest whole dollar. Do not put a fraction, e.g. "2/3".)

3. To be reduced to pay grade E-___. (E-5 and above may be reduced one pay grade. E-4 and below may be reduced to pay grade E-1.)

The sentence should be entered in block 9 of the Record of Trial form exactly as it was announced. The date the sentence was adjudged should be entered and the summary court-martial officer should sign in the appropriate block. The accused should be advised as follows:

"You have the right to submit in writing a petition or statement to the convening authority. This statement may include any matters you feel the convening authority should consider, a request for clemency, or both. This statement must be submitted within 7 days, unless you request and the convening authority approves an extension of up to 10 days. After the convening authority takes action, your case will be reviewed by a judge advocate for legal error. You may suggest, in writing, legal errors for the judge advocate to consider. If, after final action has been taken in your case, you believe that there has been a legal error, you may request review of your case by the Judge Advocate General of the Navy. Additionally, (if confinement was adjudged) you have the right to request that confinement be deferred. Do you understand these rights?

_____
DATE SENTENCE ADJUDGED

_____
SIGNATURE OF SUMMARY COURT-MARTIAL OFFICER

Figure 3-7. --Summary Court-Martial Guide--Continued

SOP FOR LEGAL MATTERS

ACKNOWLEDGEMENT OF RIGHTS

UNITED STATES

V

_____
NAME OF ACCUSED

SUMMARY COURT-MARTIAL OFFICER

RIGHTS

I certify and acknowledge by my signature set forth below that before proceeding with the Summary Court-Martial, the Summary Court Officer advised me that:

_____(1) I have the right to be represented in my defense by a civilian lawyer provided by me at no expense to the Government.

_____(2) I have the absolute right to refuse trial by Summary Court-Martial.

_____(3) I may be provided the opportunity to consult with military counsel prior to deciding whether or not to accept a Summary Court-Martial.

WAIVER OR NON-WAIVER OF RIGHTS

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

_____(1 I (do) (do not) desire to be defended by a civilian lawyer.

_____(2) I (do) (do not) desire to consult with military counsel, and (have) (have not) done so.

_____
NAME OF LAWYER CONSULTED

_____ _____
ACCUSED'S SIGNATURE AND DATE SCMO'S SIGNATURE AND DATE

Figure 3-7.--Summary Court-Martial Guide--Continued

SOP FOR LEGAL MATTERS

CHAPTER 4

INVOLUNTARY ADMINISTRATIVE DISCHARGES

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CHAPTER 4

INVOLUNTARY ADMINISTRATIVE DISCHARGES

4000. GENERAL

1. The timely, correct and complete processing for administrative discharge of members of this command who are no longer qualified or suitable for retention is of the utmost importance. It is the responsibility of each commander in the chain of command to recognize these individuals and expeditiously process them for the appropriate type of discharge in accordance with current edition of MCO P1900.16.

2. This Manual applies to all administrative separation actions under chapters 4 and 6 of the current edition of MCO P1900.16.

4001. POLICY REGARDING PERSONNEL WITH ADMINISTRATIVE DISCHARGE ACTION PENDING

1. Reassignment. Enlisted members for whom administrative discharge action has been initiated will not be reassigned within the command, assigned to temporary additional duty or participate in training exercises away from the parent command until all administrative action has been completed.

2. Holding Beyond Rotation Tour Date (RTD). An enlisted member can be held beyond normal RTD for the purpose of administrative discharge processing only with prior approval of CMC. No one may be held beyond EAS for the processing of an involuntary administrative discharge. Personnel who are to be held beyond their RTD must be identified as soon as possible and direct liaison made with this Headquarters (PersO and SJA) in order for authorization to be obtained from CMC in accordance with the current edition of MCO 1300.8.

3. Transfer. Once an administrative discharge is approved the respondent is to be transferred to CONUS for separation as expeditiously as possible.

4002. PROCESSING INVOLUNTARY ADMINISTRATIVE DISCHARGES. The Marine's immediate commanding officer will accomplish the following with regard to processing involuntary administrative discharges.

1. Documentation. Before initiating processing for administrative separation of any Marine, the commanding officer will document the pertinent circumstances of the case. The recommendation for discharge must be substantiated by SRB entries, documents, or statements.

2. Counseling. In cases where the specific basis for discharge is misconduct based upon minor disciplinary infractions or a pattern of misconduct; unsatisfactory performance; or in most cases where a Marine may be separated for convenience of the government, formal counseling regarding the individual's deficiencies must have been accomplished and documented in the SRB and the individual afforded an opportunity to overcome the deficiencies. The current edition of MCO P1900.16, paragraph 6105 sets forth specific instructions for the accomplishment and recording of the counseling. The absence of such counselling, when required, is an absolute bar to administrative discharge processing. Further, there must exist clear documentation that the respondent has failed to overcome the deficiencies noted in his/her SRB counseling entry. To simply make a page 11 entry for the purpose of starting separation processing will not suffice.

3. Request for Legal Services (RLS). Figure 3-6 is a sample RLS. The SRB, supporting documents, and the RLS must be forwarded to the supporting LSST. In all cases, the commanding officer is strongly encouraged to attach statements from the immediate superiors of the Marine concerning conduct, performance, attitude, motivation, and potential for further service.

4. LSST Processing of the RLS. Upon receipt of the RLS, the supporting LSST will review the RLS, SRB and supporting documentation. An appropriate administrative discharge package will be prepared and returned directly to the originating commander for further processing. In the event the RLS and/or SRB lacks supporting documentation and/or counseling, the package may be returned to the unit for corrective action.

5. Official Notification to the Respondent. Upon receipt of the prepared correspondence, the commanding officer will sign the basic correspondence notifying the individual of proposed separation action and provide the notification to the respondent. The respondent, with an officer signing as witness, is required to complete, sign, and date the rights acknowledgment to the CO's letter and return it to the commanding officer. Per paragraph 6303.3c of MCO P1900.16, the respondent must be afforded at least two working days to respond. The member should be instructed to indicate elections/waiver of rights by appropriately lining out and initialling blanks on the form provided. After completion, the member is required to return all original correspondence to the commanding officer.

a. If the member elects to consult with a judge advocate or retain civilian counsel prior to executing the rights acknowledgment, the member should be directed to report to the supporting LSST office with a copy of the notification letter and the original rights acknowledgment.

b. The LSST will make arrangements for the member's consultation with a judge advocate as soon as possible. Following consultation with a judge advocate and completion of the rights acknowledgment , the member will be instructed to return the original correspondence to the originating commander.

6. Forwarding of Recommendation for Discharge. Upon receipt of the original notification and the member's completed rights acknowledgment, the commanding officer will sign and date the letter to the discharge authority and expeditiously forward the package via the chain of command to the supporting LSST for further processing.

7 Administrative Discharge Boards

a. Convening. Administrative Discharge Boards shall be convened in writing by the commander with special court-martial convening authority.

b. Conduct. In those cases where an administrative discharge board is authorized and requested, the Discharge Board Recorder at the supporting LSST will coordinate with the convening authority to ensure that it is heard as soon as possible.

8. Discharge Physical. Immediately after being informed of an administrative discharge board's recommendation for discharge or in cases where the respondent waives the right to a board, the commanding officer will schedule the member for a separation physical.

4003. COMPLIANCE WITH OTHER DIRECTIVES. Inasmuch as this chapter is designed to complement the detailed guidance set forth in the current editions of MCO P1900.16 and FMFPacO 1910.1, commanders are referred to those directives for detailed guidance.

4004. TRANSFER TO CONUS. If a discharge is directed, this Headquarters (PersO) will coordinate the transfer of the Marine to CONUS.

4005. REVIEW. All administrative discharge proceedings enumerated in paragraph 6308.1c of this Manual will be reviewed by the SJA.

4006. SEPARATION PAY. All administrative discharge endorsements prepared for the CG, 3d MarDiv's signature will reflect whether or not the respondent is eligible to receive separation pay under DODINST 1332.29.

SOP FOR LEGAL MATTERS

CHAPTER 5

JAGMAN INVESTIGATIONS/CLAIMS

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CHAPTER 5

JAGMAN INVESTIGATIONS/CLAIMS

5000. GENERAL. A JAGMAN investigation is an administrative fact finding body appointed pursuant to JAGMAN, Chapter II for the purpose of collecting all available information relative to the matter under investigation. Refer to JAGMAN, section 0214 regarding the format for such investigations.

5001. WHEN INVESTIGATIONS ARE REQUIRED. There are numerous types of incidents which require an investigation, either pursuant to the JAGMAN or other directives. Figure 5-1 contains general rules for when an investigation of an incident is required.

5002. STAFF COGNIZANCE OVER INVESTIGATIONS. The Staff Judge Advocate will exercise staff cognizance over all JAGMAN claims or investigations convened. All investigations shall be forwarded to the Commanding General (SJA) via the normal chain of command.

5003. RESPONSIBILITY TO ORDER INVESTIGATIONS. The Battalion Commander of the organization affected by an incident is generally responsible for ordering an investigation in accordance with section 0206a, JAGMAN. The commander of the organization next senior in the chain of command to the organization involved will consider convening an investigation and appointing an investigating officer of training or operational incidents causing serious injury or death. See JAGMAN, section 0602e(1).

5004. MULTIPLE INVESTIGATIONS OF THE SAME INCIDENT. Incidents requiring investigation where personnel/property are of different organizations may be ordered investigated by a common superior. If a dispute arises as to who should convene an investigation, contact the SJA.

5005. THE JAGMAN INVESTIGATION. The JAGMAN investigation will be accomplished pursuant to the instructions contained in Chapter II, JAGMAN, in the format prescribed by section 0214, JAGMAN and Figure 5.2.

5006. CONVENING/REVIEWING AUTHORITY'S ACTION. Reports of investigations will be reviewed and action taken pursuant to JAGMAN, Section 0210.

5007. LIAISON WITH THE LEGAL SERVICE SUPPORT SECTION, 3D FSSG. Commanders shall encourage and may require investigating officers to contact the Administrative Law Officer, LSSS, in order to receive advice, guidance and technical assistance with the investigation. The ALO maintains up to date Handbooks which contain all forms, examples, and checklists necessary for completion of a report.

5008. TIMELY PROCESSING OF INVESTIGATIONS. The following guidelines apply to convening, reviewing, and forwarding investigations within the Division.

1. The investigating officer should be appointed within five days of the date an incident requiring an investigation occurs. A copy of the appointing letter shall be forwarded to the SJA as soon as possible.

2. Normally the investigating officer's report should be submitted to the convening authority within 30 days from the date of the appointment. The convening authority may prescribe more stringent processing times than stated and is encouraged to do so in uncomplicated investigations.

3. The convening authority should complete review within 10 days from the date of receipt of the completed report.

4. Each reviewing authority should complete review within 10 days from the date of receipt of the completed, endorsed report.

5. Each convening authority will establish procedures to ensure that JAGMAN investigations are ordered in a timely manner and that ongoing investigations are monitored for compliance with the established processing times. Convening authorities must also establish reporting procedures to ensure that approved recommendations are carried out.

5009. STATUS REPORT. Commanders will submit a status report of all JAGMAN investigations by the 5th of each month using the format set forth in figure 1-2. Negative reports are required. See paragraph 1002.12 of this order.

5010. CLAIMS. JAGMAN, Chapter VIII and JAGINST 5890.1 provide information regarding various claims for and against the Government.

5011. PROCESSING OF CLAIMS. In addition to the JAGMAN and JAGINST 5890.1, the current edition of Marine Corps Base, Camp Smedley D. Butler Order 5890.1 should be consulted regarding the processing of claims.

5012. CLAIMS BY FOREIGN NATIONALS AND MOTOR VEHICLE ACCIDENT CLAIMS. A claim against the U.S. Government by a foreign national of a claim arising from a motor vehicle accident involving a government vehicle and privately owned vehicle will require an investigation. A "short report" utilizing the format contained in MCB Camp Butler Order 5890.1 may be used when: (1) the total property damage does not exceed $2,500.00; (2) there are no injuries to personnel; (3) there is only one claimant; and (4) there are no possible claims in favor of the government. The SJA, Marine Corps Base, Camp Butler should be consulted when there is any question as to format of a claims investigation.

5013. CLAIMS BY MILITARY PERSONNEL

1. Marine Corps Personnel. Personnel claims of Marine Corps personnel submitted pursuant to enclosure (5) of JAGINST 5890.1 must be investigated. Completed and endorsed investigations will be forwarded through the chain of command to the Commandant of the Marine Corps (MHP 40).

2. Navy Personnel. Personnel claims of Navy personnel submitted pursuant to enclosure (5) of JAGINST 5890.1 must be investigated and the completed, endorsed report shall be forwarded through the chain of command to the Commander, Fleet Activities, Okinawa (Attn: Staff Judge Advocate).

5014. SPECIAL REQUIREMENTS

1. Autopsies. Completion of a death investigation and its forwarding will not be delayed to await final autopsy reports, autopsy protocols, death certificates, or similar documents unless their inclusion is absolutely necessary to the completion of the report. The unavailability of such documents should be noted in the preliminary statement of the investigating officer and forwarded separately once received.

2. Advance copy of death investigation. The convening authority will expeditiously forward an advance copy of all death investigations to the SJA.

3. Liaison with NIS/CID. The investigating officer shall contact the local NIS/CID office to determine if a criminal investigation is being conducted into the incident. Coordination must be made to ensure that the JAGMAN investigation does not interfere with the criminal investigation. In addition, the NIS/CID report of investigation itself shall not be included as an enclosure to the JAGMAN investigation. However, individual statements or documents from the NIS/CID report may be included.

4. Adequacy of Medical Care. A JAGMAN investigation will be conducted in all death and injury cases in which the adequacy of medical care by Navy medical personnel or facilities is an issue. An advance copy of all such investigations will be forwarded to the Judge Advocate General of the Navy by the SJA.

5. Possible claims for or against the government. When there is an incident giving rise to a possible claim for or against the government, the investigating appointing order shall include the following statement: "This investigation is appointed in contemplation of litigation and for the express purpose of assisting attorneys representing the interests of the United States in this matter."

5015. PRIVACY ACT STATEMENTS

The Privacy Act of 1974 requires that an individual be informed of the provisions of the Privacy Act when asked to provide personal information which will be placed into a system of records. A JAGMAN investigation is part of a system of records. Generally, an investigating officer should not request personal information (SSN, home address, home telephone number, personal financial or family information, etc.). This obviates the need for a Privacy Act Statement. (See chapter V JAGMAN, Sections 0202 and A-2-a). Such information may be obtained from official records such as service record books or unit rosters.

5016. ARTICLE 31, UCMJ, WARNINGS

Article 31, UCMJ, must be given to any active duty member prior to soliciting any statement for an investigation, **IF AND ONLY IF**, that individual is suspected of committing an offense under the UCMJ.

GUIDE TO INVESTIGATION ACTION

1. WHO CONVENES AN INVESTIGATION: Battalion Commanders and above or Company Commanders who do not report to a Battalion Commander.

2. WHERE ARE INVESTIGATIONS FORWARDED: All investigations are forwarded to the Commanding General (Attn: Staff Judge Advocate).

3. WHEN ARE INVESTIGATIONS REQUIRED:

a. Death. All deaths of a service member, unless by natural causes or enemy action must be investigated.

b. Injury. Where a member of the naval service incurs a disease or injury that might result in a permanent disability or that results in the members's physical inability to perform duty for a period exceeding 24 hours (as distinguished from a period of hospitalization for evaluation or observation), findings concerning line of duty and misconduct must be made.

4. HOW LINE OF DUTY/MISCONDUCT DETERMINATIONS ARE TO BE RECORDED

a. Entry in health or dental record. A fact-finding body need not be convened and a report need not be forwarded to the Judge Advocate General concerning misconduct and line of duty when:

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

(2) Appropriate entries to this effect have been made in the member's health or dental record. See articles 16-45 and 16-71, Manual of the Medical Department.

b. Use of forms

(1) An injury report form may be used in any case in which "line of duty" and "misconduct" determinations are required by section 0215, JAGMAN and when the following conditions are met:

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

(b) In the opinion of the medical officer a permanent or permanent partial disability will likely result.

Figure 5-1. Guide to Investigative Action

(2) Reports may be made to the Judge Advocate General using NAVJAG Form 5800/15 (S/N 0105-LF-105-8075) without a cover letter.

c. JAGMAN investigations. A fact-finding body must be convened and the commanding officer must make findings concerning misconduct and line of duty in any case that:

(1) The injury was incurred under circumstances that suggest a finding of "misconduct" might result;

(2) The injury was incurred under circumstances that suggest a finding of "not in line of duty" might result;

(3) There is a reasonable chance of permanent disability and the commanding officer considers the appointment of a fact-finding body the appropriate means to ensure an adequate official record is made concerning the circumstances surrounding the incident.

5. Claims (submitted by a foreign national pursuant to the SOFA or as a result of a motor vehicle accident involving GOV/POV). Any incident giving rise to a possible claim for or against the government must be investigated. Commanders must be aware of the ability to submit a short report in lieu of the regular investigation format in certain foreign/SOFA claims.

6. Personnel Claims. All incidents where a personnel claim has been submitted against the U.S. Government by military personnel must be investigated and forwarded pursuant to paragraph 5013 of this Manual.

7. Loss/Damage or Destruction of Government or Private Property. Incidents of loss, damage or destruction of government or private property in the government's control must be investigated pursuant to the current edition of chapter 8 DivO P4400.22 with the following exceptions:

a. An individual admits responsibility and agrees to voluntarily reimburse the government pursuant to Chapter 6 of MCO P4400.150C.

b. The Commander knows the cause of the loss, damage or destruction, no negligence is indicated, and an investigation would be an administrative burden upon the command.

c. In cases of motor vehicle accidents, if the total property damage is less than $2,000.00; there are no injuries; there are no possible claims for or against the government; and responsibility is indicated. A letter report shall be submitted to the CG (SJA) following the guidance of paragraph 6001.3 of MCO P4400.150C.

Figure 5-1. Guide to Investigative Action
Continued

8. Article 139 Complaints or Claims. Under Article 139, UCMJ where there is willful damage, or taking of property by a person in the Naval service and the claim is not cognizable under any other claims provision, a complaint or claim shall be investigated pursuant to Chapter IV of the JAGMAN.

Figure 5-1. Guide to Investigative Action Continued

CHECKLIST FOR INFORMAL JAG MANUAL INVESTIGATIONS

1. Is the investigation convened by the proper officer? (Not chief of staff, chief staff officer, executive officer, safety officer, etc.) JAGMAN 0206.

2. Is (are) the investigating officer(s) senior to any individual whose conduct is likely to be or was subject to inquiry? JAGMAN 0211.

3. Has a single report been made of one incident? JAGMAN 0203a.

4. Is the report properly addressed? JAGMAN 0206

5. Has the convening authority and each subsequent addressee set forth in their forwarding endorsement, what actions were taken on the investigation? JAGMAN 0209, 0210, and 0225.

6. Has the convening authority and each subsequent addressee included in his forwarding endorsement all relevant disciplinary, administrative, and operational information known at the time the investigation was reviewed but which was not contained in the record or prior endorsement? JAGMAN 0210.

7. Are there sufficient copies (complete with all enclosures, exhibits, etc.) provided for the convening and subsequent reviewing authorities? JAGMAN 0210.

8. Are all mechanically reproduced copies of documents completely readable?

9. Has an advance copy of the investigation been forwarded to appropriate addressees? JAGMAN 0209.

10. If the investigation pertains to security violations, is the investigation conducted in accordance with OPNAVINST 5510.1H?

11. Has the investigation fulfilled the special reporting requirements of JAGMAN Chapter II, Part B?

12. If the evidence suggests that a member was injured either "not in the line of duty" or "due to his own misconduct," is any rebuttal information provided by the servicemember included as enclosures to the report?

13. Does the report contain a preliminary statement? JAGMAN 0214b.

Figure 5-2--Checklist for Informal JAG Manual Investigations--Continued.

14. Has the appointing order been attached to the record? JAGMAN 0214f.

15. Are appreciable delays properly explained in the preliminary statement? JAGMAN 0214b.

16. Are facts stated with definiteness and are opinions properly labeled? JAGMAN 0214c and 0214d.

17. Is every finding of fact supported by evidence or specifically stated to be based upon personal observation of the investigative officer as described in his statement attached as an enclosure? JAGMAN 0213c and 0214f.

18. Has the investigating officer recorded and enclosed information that he personally acquired during the course of the investigation? JAGMAN 0213c(2).

19. Is each person or witness connected with the incident identified by grade or rate, service number, organization, occupation, and residence? JAGMAN 0214.

20. Are dates, times, places, and events definitely fixed? JAGMAN 0214.

21. Is there a finding of fact as to the leave, liberty, or duty status of the injured person? JAGMAN 0229.

22. Is the amount of lost time clearly stated as a fact? If the injured person is still disabled at the time of submission of the report, is a medical officer's prognosis included? JAGMAN 0229.

23. Is the date and time of injury or death stated as a fact or opinion? JAGMAN 0229.

24. Are the nature and extent of injuries of all injured personnel and place, extent and cause of hospitalization ascertained and included? Particularly, are periods of alcohol or habit-forming drug impairment and periods of psychiatric treatment differentiated? JAGMAN 0229.

25. Has all the factual evidence been considered and included in the report as an enclosure and as findings of fact? JAGMAN 0210.

Figure 5-2--Checklist for Informal JAG Manual Investigations--Continued.

26. Has anything which would cast doubt on the reliability of evidence been included? If there is a conflict in the evidence, is there a reason for reliance on particular information stated? JAGMAN 0214.

27. Are all opinions logical and has the investigating officer expressly supported each opinion by citing the appropriate finding(s) of fact. JAGMAN 0214d.

28. Are recommendations logical and consistent with the findings of fact and opinions. JAGMAN 0124.

29. Is there an opinion as to the line of duty and misconduct status of each member whose injury or disease disabled him over 24 hours? JAGMAN 0215.

30. Does the report affirmatively show that the injured person has been advised of his right not to give a statement regarding his disability? JAGMAN 0215b.

31. Was each witness subject to the Uniform Code of Military Justice reminded, if appropriate, of his rights under Article 31, UCMJ? JAGMAN 0213c.

32. Is each witness statement dated and signed by the declarant? JAGMAN 0212c.

33. Have copies of all necessary documents required as exhibits or enclosures been obtained and attached to the record? JAGMAN 0213 and 0214f.

34. Is there evidence as to whether the unauthorized absence materially interfered with military duty? JAGMAN 0217d.

35. Are authenticated copies of relevant medical, psychiatric, and dental records included as enclosures? JAGMAN 0227c.

36. Are all photographs properly identified and labeled? JAGMAN 0213 and 0214f.

37. Have ALL aspects of the incident been thoroughly investigated? JAGMAN 0213.

38. Have the Privacy Act requirements been complied with? JAGMAN 0202 and Appendix A-2-a.

Figure 5-2--Checklist for Informal JAG Manual Investigations--Continued.

CHAPTER 6

PREVENTIVE LAW PROGRAM

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CHAPTER 6

PREVENTIVE LAW PROGRAM

6000. GENERAL. The preventive law program is designed to apprise military personnel of common legal problems encountered overseas and to insure that they have their legal affairs in order prior to any deployment. The preventive law program places primary emphasis on preventing and providing assistance regarding civil law problems. Legal assistance officers provided by the LSSS are tasked with assisting military personnel with civil law problems. Generally these problems are not brought to the legal assistance officer until they have developed beyond the stage where assistance would be most effective. The majority of civil law problems are discovered subsequent to departure from CONUS. Where possible, the best interests of the individual and the command are served by preventing problems from reaching a stage where they can no longer be easily controlled. Most civil law problems are aggravated when personnel are overseas, and particularly when they are subject to frequent deployments.

6001. PREVENTIVE LAW. All personnel of 3d Marine Division are subject to deployment on short notice. The phasing of the preventive law program is designed to prepare personnel for deployment to the maximum extent possible.

1. Phase I - Preventive Law Lecture. This lecture (given by legal assistance attorneys) will cover, among other things, the following topics:

a. The preventive law program and legal assistance.

b. Wills.

c. Powers of attorney

d. Indebtedness/consumer law

e. Contracts.

f. Marriage

g. Divorce and separation/child support and spousal support.

h. Foreign law/Status of Forces Agreement (SOFA)

i. Family support.

j. Taxes.

k. Rights and obligations under the Soldiers' and Sailors' Civil Relief Act. 6-3

l. Scheduling of legal assistance appointments for personnel with identified problems.

2. Phase II - Legal Assistance. Legal assistance appointments will be scheduled as required.

3. Phase III - Priority Assistance. When a unit is placed in an imminent deployment status, a legal assistance team will, on request, visit the unit and be available to counsel personnel/prepare documents. During deployments limited legal assistance will be available from Judge Advocates deployed with the MAGTF combat service support unit. Therefore, it is imperative that Marines receive legal assistance prior to deployment. Legal assistance is a year round task. Commanders should not wait until the last minute before deployment to have their Marines' and Sailors' legal needs taken care of.

6002. COMMAND RESPONSIBILITY. Commanding officers and officers in charge will coordinate with the Chief Legal Assistance Officer, Legal Service Support Section to ensure that all members of their units attend the preventive law lecture once per year. Commanding officers and officers in charge will ensure that members of their units receive a preventive law lecture not later than 30 days prior to a scheduled deployment. Commanding officers will further ensure that attendance of personnel at preventive law lectures is recorded in individual training records.

6003. PREVENTIVE LAW PRESENTATIONS. The Chief Legal Assistance Officer, Legal Service Support Section will ensure that appropriate preventive law instruction/legal assistance is provided to personnel of 3d Marine Division. Contact the Chief Legal Assistance Officer at the LSSS for scheduling a preventive law lecture.

6004. LEGAL DEPLOYMENT READINESS

1. In the event of a large scale short notice deployment, there are not enough judge advocates available on Okinawa to adequately take care of, on short notice, the volume of legal matters that potentially will exist. However, the majority of legal issues encountered when a deployment is imminent could have been routinely handled earlier.

2. Unit legal officers or other designated personnel should use Figure 6-1 as a guide and go over the personal legal needs of every Marine and Sailor who joins the unit. If a will, power of attorney or other legal assistance is needed, an appointment should immediately be made with a legal assistance attorney. Judge advocate strength on Okinawa is being reduced sharply. Therefore, timely resolution of legal problems has become even more critical. In addition, unit legal officers should have an established procedure for monitoring the legal needs of unit personnel and assist in making appointments with legal assistance attorneys as the need arises.

3. The Division Inspector will include legal readiness as part of all appropriate unit inspection programs.

SOP FOR LEGAL MATTERS

DOCUMENT CHECKLIST FOR DEPLOYING MARINES

It is important that certain documents and family records be kept in a safe accessible location. Should an emergency arise, your family may need some or all of these documents. Some may be used often. Gather this information and these documents now and put them in a special container or a safe place so you and your spouse both know where they are. Use the checklist below to identify the documents or information you need to have in your possession.

ON HAND	IMPORTANT DOCUMENTS	LOCATION
	1. Marriage Certificate	
	2. Birth Certificates of all Family members	
	3. Shot Records of all Family members	
	4. Citizenship papers, if any	
	5. Adoption Papers, if any	
	6. Armed Forces Identification Card-ID Card (for all family members under 10)	
	7 Insurance Policies (or list of companies, policy Numbers, type of insurance address and phone numbers)	
	8. Last LES (leave and earning statement)	
	9. Power of Attorney	
	Copy of your will (husband and wife)	
	Bank Books	
	State and Federal Tax Records	
	Car Registration/Title	
	Deed(s) and Mortgage(s)	

Figure 6-1--DOCUMENT CHECKLIST FOR DEPLOYING MARINES