

# MARINE CORPS INSTITUTE

## STAFF NONCOMMISSIONED OFFICERS ADVANCED DISTANCE EDUCATION PROGRAM



# MILITARY JUSTICE AND LAW OF WAR

MARINE BARRACKS  
WASHINGTON, DC

# MILITARY JUSTICE (8202)

## Course Introduction

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### Scope

An outstanding Marine SNCO must be able to train and advise Marines on a vast variety of subjects. Marine SNCOs must be technically and tactically proficient in many areas to accomplish this responsibility.

This course covers many subjects that will enhance your ability to assist junior Marines and commanders to better understand Military Justice. This course is an overview of the military justice system, with highlights in areas that are used more frequently by a senior SNCO whose responsibility is to have extensive knowledge to assist both junior and senior Marines in their command. One key to leadership is knowledge. You must be able to answer junior Marines' questions, show them how to verify those answers, and train them to become knowledgeable leaders.

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### Table of Contents

The following is the table of contents for this course.

Study Unit	Title	Page
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1	Introduction to Military Law	1-1
2	Article 31 Rights	2-1
3	Punitive Investigations	3-1
4	Advise Marines on Non-judicial Punishment Process	4-1
5	Impact of Violating the Standing Rules of Engagement	5-1
--	Review Lesson Exercise	R-1

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### Estimated Study Time

You will spend about 10 hours, 30 minutes completing this course. This includes the time you will need to study the text, complete the exercises, and take the final exam.

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## Course Introduction, Continued

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### Reserve Retirement Credits

You earn three retirement credits for completing this course. You earn reserve retirement credits at the rate of one credit for each 3 hours of estimated study time.

Note: Reserve retirement credits are not awarded for the MCI study you do during drill periods if awarded credits for drill attendance.

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### Summary

The table below summarizes all important “gateways” needed to successfully complete this course.

<b>Step</b>	<b>When you</b>	<b>Then you will</b>	<b>For more information</b>
1	Enroll in the program	Receive your program material	Refer to the Program Introduction
2	Complete the self-paced text	Arrange to take the final examination	Refer to the Program Introduction
3	Pass the final examination	Receive a course completion certificate	Refer to the Program Introduction

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# STUDY UNIT 1

## MILITARY JUSTICE

### Overview

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**Estimated Study Time** 1 hour 40 minutes

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**Scope** This study unit is designed to provide the staff noncommissioned officer (SNCO) with basic information on the military justice system. It also teaches the purpose and various sources of the system.

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**Learning Objectives** After completing this study unit, you should be able to

- State the purpose of the military justice system.
- Identify the different levels of the military justice system by function.
- Identify the different types of punishments.

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**In This Study Unit** This study unit contains the following lessons.

<b>Topic</b>	<b>See Page</b>
Lesson 1 Military Justice System	1-3
Lesson 2 Levels of Military Justice	1-11
Lesson 3 Punishments	1-21

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# LESSON 1

## MILITARY JUSTICE SYSTEM

### Introduction

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**Estimated Study Time** 30 minutes

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**Scope** Before learning about specific procedures and punishments of the military justice system, you must understand its purpose, organization, and power. This lesson describes the purpose of the military justice system and the various components of the system.

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**Learning Objectives** After completing this lesson, you should be able to

- Identify the definition of military justice system.
- Identify the sources of the military justice system.
- Identify the parts of the manual for Courts-Martial.

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**In This Lesson** This lesson contains the following topics.

Topic	See Page
Military Law	1-4
Bodies of Law	1-5
Lesson 1 Exercise	1-8

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# Military Law

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## Definition

Military law is a body of law that regulates the military establishment of a nation. This includes acts which established

- Branches of service
- Bodies of laws governing conduct of service members
- Missions of each branch of service
- Authorized strengths of the branches

An example of these would be the National Security Act of 1947 that restructured the Armed Forces of the United States and the Department of Defense.

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## Military Justice System

The military justice system is part of military law that mirrors federal, state, and local justice systems. It promotes good order and discipline, and regulates the behavior of the Armed Forces of the United States. When the United States became independent, our military establishment was patterned after England's. We adopted their military justice system that was set up in two parts.

- *Articles of War*
  - *The Articles of the Government of the Navy* (known as *Laws of the Sea*)
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## *Articles of War*

*Articles of War* dealt strictly with how land forces would conduct military operations during war. The U. S. Army operated under these articles. One example of such a law would be that officers would not be designated as special targets in combat because their loss would result in the total erosion of military discipline. For both sides, the result could be excessive casualties and possible deaths of noncombatants.

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## *Laws of the Sea*

The Navy and Marine Corps adopted the *Articles of the Government of the Navy*, known as the *Laws of the Sea*. These laws have been fairly consistent from country-to-country and have changed very little.

These laws were for the conduct of service members at sea during war and peacetime. One example of a law would be that civilians aboard a captured ship would not be harmed and would be treated with the utmost respect and dignity.

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# Bodies of Law

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## Sources

The present system of military justice derives its authority from five sources. They are listed in order of precedence.

- The *Constitution*
  - The *Uniform Code of Military Justice* (UCMJ)
  - The *Manual for Court-Martial* (MCM)
  - Other Acts of Congress
  - Service regulations
- 

## The Constitution

The *Constitution* of the United States is the supreme law of the land. The President, Congress, and the Supreme Court derive their authority from the Constitution. The other four sources are granted their powers of law from the Constitution.

Section 8 of Article I of the Constitution grants Congress the authority to make rules for the regulation of land and naval forces of the United States.

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## UCMJ

Congress enacted the 140 articles of UCMJ on 31 May 1951. The UCMJ provided a basis for the administration of justice for the armed forces. The UCMJ is also referred to as “the code.” All United States Armed Forces operate under this unified military justice system established by that act.

The UCMJ applies to

- Active duty military personnel
- Retired or reserve members who are entitled to pay or benefits
- Cadets and midshipmen who attend military academies

A complete listing of those subject to the UCMJ is covered in Article 2 of the UCMJ.

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## Bodies of Law, Continued

### The *Manual for Court-Martial* (MCM)

The MCM is used to implement the UCMJ and covers

- Trial procedures
- Rules of evidence
- Maximum punishment for violations
- Rights of the accused

The MCM is divided into six parts.

Part	Definition
I (Preamble)	Source of military jurisdiction, what agencies may exercise military jurisdiction, and the nature and purpose of military law
II (Rules for Court-Martial)	Rules that govern the procedures and punishments in all court-martial and also some preliminary, supplementary, and appeal procedures
III (Military Rules of Evidence)	Rule of evidence applicable in court-martial, including summary court-martial
IV (Punitive Articles)	Articles 77-134 are the punitive articles. Article 77 explains who is punishable under these articles.
V (Nonjudicial Punishment (NJP))	Explains the procedures for NJP including the authority, limitations of punishment, and appeals
VI (Appendices)	Includes the <i>Constitution</i> , UCMJ, Maximum Punishment Chart, and explanations of various legal forms

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## Bodies of Law, Continued

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### Other Acts of Congress

In addition to the UCMJ, other acts passed by Congress that have a bearing on the present system of military justice include

- Treaties with other nations such as a Status of Forces Agreement (SOFA), which is a treaty between the United States and a host nation to set certain regulations and rules of law for U. S. forces in that nation
  - The U.S. Code which provides authority for the heads of executive and military departments to issue regulations, orders, and directives as required
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### Service Regulations

The Department of Defense, an executive department, and the Department of the Navy issues directives known as service regulations that are authorized by Congress.

An example of a service regulation is the *Judge Advocate General (JAG) Manual*, which is used to set guidelines and formats for administrative investigations in the Navy and Marine Corps.

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## Lesson 1 Exercise

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**Estimated Study Time** 10 minutes

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**Directions** Complete the following items. Check your answers against those listed at the end of this lesson. If you have any questions, refer to the reference page listed for each item.

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**Item 1** Which of the following defines the military justice system?

- a. Promotes good order and discipline, and regulates the behavior of the Armed Forces of the United States
  - b. Decides if an accused is guilty with the evidence presented
  - c. Achieves justice through a trial by the suspect's peers
  - d. Establishes good order through the UCMJ
- 

**Item 2** The President, Congress, and Supreme Court derives its authority from the

- a. JAG Manual.
  - b. Constitution.
  - c. MCM.
  - d. Selected Navy Regulations.
- 

**Item 3** The Congress enacted \_\_\_\_\_ on 31 May 1951.

- a. the MCM
  - b. the JAG Manual
  - c. the Status of Forces Agreement
  - d. 140 UCMJ articles
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## Lesson 1 Exercise, Continued

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**Item 4**

The six parts of the MCM are

- a. Part I (Preamble), Part II (Rules for Court-Martial), Part III (Military Rules of Evidence), Part IV (Punitive Articles), Part V (Nonjudicial Punishment (NJP)), Part VI (Appendices)
  - b. Part I (Introduction), Part II (Charges), Part III (Punishments), Part IV (Punitive Articles), Part V (Rules of the Defense), Part VI (Appendices 1-3)
  - c. Part I (Elements), Part II (Prosecutions), Part III (Rights), Part IV (The Defense), Part V (Rules of the Defense), Part VI (Appendices 1-3)
  - d. Part 1 (Preamble), Part II (Rules of the Court), Part III (NJP), Part IV (Punitive Articles), Part V (Rules of the Defense), Part VI (Appendices 1-3)
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## Lesson 1 Exercise

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### Answers

The table below provides the correct answers to the exercise items. If you have any questions, refer to the reference page listed for each item.

<b>Item Number</b>	<b>Answer</b>	<b>Reference Page</b>
1	a	1-4
2	b	1-5
3	d	1-5
4	a	1-6

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# LESSON 2

## LEVELS OF MILITARY JUSTICE

### Introduction

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**Estimated Study Time** 20 minutes

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**Scope** There are definitions and levels of the military justice system that you should remember. In this lesson, you will go over the main terms and definitions.

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**Learning Objectives** After completing this lesson, you should be able to

- Identify the different levels of the military justice system by function.
- Identify the composition of a summary court-martial.
- Identify the jurisdiction of a special court-martial.

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**In This Lesson** This lesson contains the following topics.

Topic	See Page
Process	1-12
Nonjudicial Punishment (NJP)	1-13
Summary Court-Martial (SCM) (Lowest Level Court)	1-14
Special Court-Martial (SPCM) (Intermediate Level Court)	1-16
General Court-Martial (GCM) (Highest Level Court)	1-17
Courts of Military Review (CMR)	1-18
United States Court of Military Appeals (USCMA)	1-18
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Lesson 2 Exercise	1-19

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# Process

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## **Levels of the Military Justice System**

The military justice system provides a means in which the commanding officer can investigate or charge to determine the validity of the allegation. Based on the results of this investigation, the commander then decides if prosecution is warranted, and, if so, at what level.

The levels of the military justice system are

- Nonjudicial Punishment (NJP)
  - Summary Court-Martial (SCM) (Lowest Level Court)
  - Special Court-Martial (SPCM) (Intermediate Level Court)
  - General Court-Martial (GCM) (Highest Level Court)
  - Courts of Military Review (CMR)
  - United States Court of Military Appeals (USCMA)
  - United States Supreme Court
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## Nonjudicial Punishment (NJP)

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### **Article 15**

NJP is often referred to as company punishment (NJP, Article 15 Punishment, office hours, commanding officer's punishment, and captain's mast). This is the lowest level of punishment. NJP's objective is to correct the offender from minor breaches of discipline without the stigma of a court-martial conviction. If used properly, such authority in the hands of commanders can be an effective tool for promoting discipline within the military.

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## Summary Court-Martial (SCM) (Lowest Level Court)

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**Function** A summary court-martial (SCM) exercises justice promptly with a simple procedure for minor offenses such as

- Unauthorized absence (UA)
- Disrespect
- Disobedience

A SCM may also try any non-capital offense.

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**Jurisdiction** Summary court-martials have jurisdiction to try only enlisted persons subject to the UCMJ for any non-capital offense (larceny for example) made punishable by the UCMJ.

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**Convening Authority** A convening authority is the person or officer empowered by law to create a court-martial.

- The lowest unit commander in the Marine Corps who may convene a summary court-martial is a battalion/squadron commander with the exception of those officers authorized by UCMJ and Section 0115, JAG Manual.
  - Anyone who is authorized to convene a special or general court-martial may also convene a summary court-martial.
  - The decision of the commander to convene or not to convene a summary court-martial can be based on several different circumstances, the offense, military record, prior offenses, or the advice of the senior staff non-commissioned officer (SNCO) who knows the Marines within the command better than anyone due to the day-to-day working relationship.
  - A commander will always seek out the opinion and advice of the senior SNCO in matters of military justice.
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## Summary Court-Martial (SCM) (Lowest Level Court), Continued

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**Composition** A summary court-martial is composed of one commissioned officer on active duty. The officer should be appointed on the basis of age, training, experience, or length of service.

The summary court-martial officer does not have to be a lawyer. He or she may carry any military occupational speciality (MOS). He or she acts as judge, jury, prosecutor, and counselor for the defense.

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**Power** A summary court-martial has the power to

- Subpoena witnesses
- Take depositions
- Punish for contempt of court

All witnesses must testify under oath or affirmation, and there are no challenges. A summary court-martial is a Federal court, and a conviction will follow a Marine throughout his or her remaining military and civilian career.

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## Special Court-Martial (SPCM) (Intermediate Level Court)

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<b>Function</b>	The special court-martial exercises justice for cases that are serious in nature but non-capital such as desertion, assault, larceny, and robbery.
<b>Jurisdiction</b>	Special court-martial has jurisdiction to try officers and enlisted subject to the code for any non-capital offense.
<b>Convening Authority</b>	Only battalion and squadron commanders or above, and those officers authorized by Articles 22 and 23, UCMJ, and Section 0115, JAG Manual, may convene a special court-martial.
<b>Composition</b>	The special court-martial is composed of at least three members with the ranks that can range from officer or enlisted and a military judge.
<b>Authorized Punishment</b>	The most severe sentence that a special court-martial can impose is 6 months forfeiture, 6 months confinement, reduction to private, and a bad conduct discharge. This is generally referred to as “6, 6, and a kick.”

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## General Court-Martial (GCM) (Highest Level Court)

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<b>Function</b>	A general court-martial exercises justice for cases that are very serious in nature including capital offenses such as rape, manslaughter, arson, treason, and mutiny.
<b>Jurisdiction</b>	A general court-martial may try officers and enlisted personnel.
<b>Convening Authority</b>	A general court-martial may only be convened by those flag officers in command of units or activities designated by section 0115, JAG Manual, in addition to those authorized by Article 32, UCMJ.
<b>Composition</b>	A general court-martial is composed of at least five members and one military judge.
<b>Authorized Punishment</b>	A general court-martial may award any allowable punishment to include death, confinement, reduction, forfeiture of all pay, and discharge.

## Courts of Military Review (CMR)

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**Position** Courts of Military Review (CMR) is established within Judge Advocate General's (JAG) Office of each military department. They decide questions of law and fact, and review sentences that involve

- Punitive discharge
- Confinement for one year or more
- Dismissal of an officer

This is an automatic review except when the accused waives or withdraws appellate review in accordance with (R.C.M.) 1110, MCM 2000.

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## United States Court of Military Appeals (USCMA)

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**Establishment** The USCMA is established by Congress under the authority of Article I on the *Constitution*. It is the highest appeals court within the military justice system and composed of three civilian judges appointed by the President. It interprets and modifies the UCMJ and subordinate regulations.

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## The United States Supreme Court

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**Military Justice Act of 1983** The Military Justice Act of 1983 provides for the U.S. Supreme Court to review military cases that USCMA has acted on.

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## Lesson 2 Exercise

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**Estimated Study Time** 10 minutes

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**Directions** Complete the following items. Check your answers against those listed at the end of this lesson. If you have any questions, refer to the reference page listed for each item.

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**Item 1** Which of the following is the lowest level of military justice?

- a. U.S. Court of Military Appeals
- b. Special Court-Martial
- c. U.S. Supreme Court
- d. Article 15, NJP

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**Item 2** Choose the correct composition for a summary court-martial.

- a. One commissioned officer on active duty
- b. At least five members and one military judge
- c. Three civilian judges whom the President appoints
- d. One military judge advocate general

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**Item 3** Which is the correct jurisdiction for a special court-martial?

- a. Try officers and enlisted subject to the code for any non-capital offense made punishable
- b. Try officers and enlisted subject to the code for any capital offense made punishable
- c. Try enlisted subject to the code for any non-capital offense made punishable
- d. Try officers subject to the code for any capital offense made punishable

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**Item 4** What level of justice, established by Congress, is the highest appeals court within the military justice system?

- a. General Court-Martial
- b. The United States Court of Military Appeals
- c. United States Supreme Court
- d. Article 32, UCMJ

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## Lesson 2 Exercise

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### Answers

The table below provides the correct answers to the exercise items. If you have any questions, refer to the reference page listed for each item.

<b>Item Number</b>	<b>Answer</b>	<b>Reference Page</b>
1	d	1-14
2	a	1-15
3	a	1-16
4	b	1-18

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# LESSON 3

## PUNISHMENTS

### Introduction

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**Estimated Study Time** 20 minutes

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**Scope** This lesson will go over the combinations of maximum punishments and the limitations that a commanding officer will decide during sentencing at the conclusion of a judicial proceeding.

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**Learning Objectives** Upon completion of this lesson, you should be able to

- Identify the different types of punishments.
- Identify the limits on combinations of punishments.
- Identify the major circumstances considered when a commanding officer conducts NJP.

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**In This Lesson** This lesson contains the following topics.

<b>Topic</b>	<b>See Page</b>
Types of Punishment	1-22
Determining Appropriate Punishments	1-24
Commander's Authority	1-25
Appealing NJP	1-26
Guide to Punishments	1-28
Lesson 3 Exercise	1-29

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# Types of Punishment

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## **Admonition and Reprimand**

Admonition and reprimand are adverse reflections or criticisms on an individual's character, conduct, or performance. A reprimand is a formal act that rebukes an offender for unbecoming actions.

An admonition is a warning to an individual to deter him or her from committing another offense. In a case involving an officer found guilty of committing an offense, the admonition or reprimand must be in writing.

In the case of enlisted personnel, it can be written or oral. A reprimand is considered the more serious of the two.

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## **Restriction**

Restriction is the least severe form of punishment and is used to deprive the offender of liberty.

It is an order directing the offender to remain within a specified area, usually the barracks, for a set period of time. Restriction may be awarded to both officers and enlisted personnel.

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## **Arrest in Quarters**

Arrest in quarters is only awarded to officers. As in the case of restriction, the restraint is not physical in nature but a moral obligation to restrict the liberty of the offender for a set period of time.

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## **Correctional Custody**

Correctional custody is the physical restraint of an individual during duty or non-duty hours or both, and may include hard labor.

This punishment may not be imposed upon corporals or above, unless the offender was reduced below the rank of corporal and the reduction was not suspended.

The main purpose of correctional custody is to try and rehabilitate the Marine with strict discipline and motivation.

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## Types of Punishment, Continued

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**Extra Duties** Extra duties involve the imposition of duties in addition to those normally assigned to the enlisted person being punished. MCM states “military duties of any kind may be assigned;” however, guard duty shall not be assigned as punishment. Duties assigned to noncommissioned officers should not demean the individual’s grade or position. Extra duties assigned as punishment should be accomplished before or after routine duties. The extra duties normally should not last longer than 2 hours a day. Extra duties should not be performed on Sundays, although Sundays will count in the computation of the period for which punishment was imposed.

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**Reduction in Grade** Reduction in grade is considered one of the most severe forms of nonjudicial punishments. A Marine can only be reduced in rank one grade for each offense. Further, the pay grade from which demoted must be within the promotion authority of the commanding officer or any officer subordinate to the commanding officer. Only sergeants or below may be reduced at an NJP.

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**Forfeiture of Pay** Forfeiture of pay involves a permanent loss of pay. When punishment includes reduction, the forfeiture is based on the grade the individual is reduced.

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**Limitations** There are certain limits placed on combinations of punishments.

- Confinement on bread and water or diminished rations may not be imposed in combination with correctional custody, extra duties, or restriction.
- Correctional custody may not be imposed in combination with restriction or extra duties.
- Restriction and extra duties may be combined to run concurrently, but the combination may not exceed the maximum for extra duties.

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# Determining Appropriate Punishments

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**Type and Amount of Punishment**

During an NJP, there is no particular amount of punishment prescribed for any offense.

In determining the appropriate kind of punishment to impose, commanding officers should consider all matters relating to the commission of the offense, and the age, experience, mental state, and prior record of the offender.

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**Circumstances**

There are three major circumstances a commander should consider.

- Extenuating
  - Mitigating
  - Aggravating
- 

**Extenuating Circumstances**

Extenuating circumstances are facts that explain the commission of an offense. For example, a Marine accused of stealing money may have taken it to feed a starving child. This could be considered an extenuating circumstance.

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**Mitigating Circumstances**

Mitigating circumstances are facts about the accused that may serve to lessen the punishment imposed. For example, if this was the Marine's first offense, and his or her record shows outstanding service in combat or awards that show good conduct of service, these could be considered mitigating circumstances.

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**Aggravating Circumstances**

Aggravating circumstances are facts relating to the commission of an offense that can increase its severity. For example, the offense may have had significant adverse impact on the mission, discipline, or efficiency of the command. This would be an aggravating circumstance.

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## Commander's Authority

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### **Suspending, Mitigating, or Remitting Punishments**

The commanding officer's authority and responsibilities do not end with imposing nonjudicial punishments. The primary objective of NJP is the rehabilitation of the Marine.

A commanding officer's use of power to suspend, mitigate, or remit punishment imposed can enhance his or her position as a leader and often results in a favorable and lasting impact on the offender. Paragraph 6 in Part V of the MCM gives a thorough explanation of these actions.

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### **Suspension**

All or part of the punishment may be suspended at the time the punishment is imposed or after a portion of the punishment has been served. Suspension gives the offender the opportunity to show sincere desire for rehabilitation. A suspension may be vacated (meaning the punishment must now be served) by the commanding officer, if the offender is involved in another incident of misconduct during the suspension period.

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### **Mitigation**

Reduction in either the amount or type of punishment may be appropriate when the offender's good conduct or certain circumstances merit a reduction in the punishment.

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### **Remission**

When any unexecuted portion of a punishment is canceled, remission is appropriate under the same circumstances as mitigation.

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## Appealing NJP

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**Right to Appeal** When nonjudicial punishment is awarded, the commanding officer imposing the punishment must inform the offender of the right to appeal the imposed punishment.

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**Grounds for Appeal** The offender may appeal the nonjudicial punishment imposed if he or she feels the punishment was unjust or disproportionate to the offense.

Examples:

- The type and/or amount of punishment
- The punishment imposed exceeded the maximum that could be awarded by the officer conducting NJP
- The punishment was not one of the types of punishments authorized at NJP
- The offense for which the punishment was imposed was not a violation of the UCMJ
- Insufficient evidence
- The statute of limitations expired when punishment was imposed

The accused may not appeal the commanding officer's decision to vacate a previously suspended punishment.

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**Submitting an Appeal** The appeal must be submitted in writing within 5 days of imposed punishment. At that time, you can ask for an extension. However, the individual must show there are unusual circumstances which prevent an appeal from being submitted in a timely manner.

The appeal should include the offender's reasons for regarding the punishment unjust or excessive. It is submitted to the next superior in the chain of command.

The battalion commander is the appeal authority for all NJPs conducted by the company commanders. Although not specifically required, it is a good idea to have the appeal letter typed before forwarding to the appeal authority.

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*Continued on next page*

## Appealing NJP, Continued

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### **Appellate Authority**

Before acting on an appeal of certain NJP punishments, the appellate authority must refer the case to a judge advocate for consideration and advice.

The appellate authority should act on any request for a stay of punishment before the case is referred for legal review. This process is covered in paragraph e, Article 15 of the MCM.

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### **Actions of Appeal Authority**

The superior authority to whom the appeal was made may abolish, suspend, mitigate, or remit all or a part of the punishment. The appellate authority cannot impose a more severe punishment than originally imposed.

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### **Completed NJP Proceedings**

The NJP process is completed when the appeal process expires or when the offender is notified of the appeal decision.

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# Guide to Punishments

**Maximum  
Punishment  
Authorized at  
NJP**

The kinds and amounts of punishment listed in the chart below are based upon rank, and, in cases of reduction, their authority to promote.

<b>Types of Punishment</b>	<b>Commanders Captain and Below and OICs</b>	<b>Commanders Major and Above</b>
Confinement on bread and water/diminished rations (1)	3 days	3 days
Correctional Custody (2)	7 days	30 days
Restriction (3)	14 days	60 days
Extra duties (3)	14 days	45 days
Reduction in grade (4)	1 rank	1 rank
Forfeiture in pay (5)	7 days pay	½ months pay for 2 months

<b>Explanation</b>	
1	May only be imposed at sea. May not be imposed on a corporal or above (unless reduced at NJP). May not be combined with correctional custody, extra duties, or restriction.
2	May not be imposed on corporal or above. May not be combined with restriction or extra duties.
3	Restriction and extra duties may be combined to run concurrently, but the combination may not exceed the maximum imposed for extra duties.
4	Offender can only be reduced one rank. Rank from which demoted must be within promotion authority of commanding officer. May not be imposed on staff sergeant or above.
5	When punishment includes reduction, forfeiture is based on base pay of the grade to which reduced. The amount forfeited will be in whole dollar amounts.

## Lesson 3 Exercise

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**Estimated Study Time** 10 minutes

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**Directions** Complete the following items. Check your answers against those listed at the end of this lesson. If you have any questions, refer to the reference page listed for each item.

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**Item 1** Which punishment can be awarded to officers only?

- a. Arrest in quarters
- b. Restriction
- c. Confinement to quarters
- d. NJP

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**Item 2** Which punishment may not be imposed upon corporals or above unless the offender was reduced below the rank of corporal and the reduction was not suspended?

- a. Forfeiture of pay
- b. Arrest in quarters
- c. Correctional custody
- d. Admonition

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**Item 3** Which punishment may not be imposed in combination with correctional custody, extra duties, or restriction?

- a. Forfeiture of pay
- b. Reduction in grade
- c. Arrest in quarters
- d. Bread and water or diminished rations

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*Continued on next page*

## Lesson 3 Exercise, Continued

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**Item 4**

Which circumstance(s) explains the commission of an offense?

- a. Extenuating
  - b. Aggravating
  - c. Mitigating
  - d. Mitigating and aggravating
- 

**Item 5**

Which is an example of a mitigating circumstance?

- a. A Marine accused of stealing money taken to feed a starving child
  - b. A Marine's first offense and his or her record shows outstanding service in combat or awards that show good conduct on active duty
  - c. A Marine's second offense but, has shown good faith in returning stolen goods to another Marine
  - d. An offense that may have a significant adverse impact on the mission, discipline, or efficiency of the command
-

## Lesson 3 Exercise

---

### Answers

The table below lists the correct answers to the exercise items. If you have any questions, refer to the reference page.

<b>Item Number</b>	<b>Answer</b>	<b>Reference Page</b>
1	a	1-22
2	c	1-22
3	d	1-23
4	a	1-24
5	b	1-24

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# STUDY UNIT 2

## ARTICLE 31

### Overview

---

**Estimated Study Time** 1 hour, 20 minutes

---

**Scope** The privilege against self-incrimination is based on the 5th Amendment to the Constitution. Article 31 protects the 5th Amendment given to military personnel under the Uniformed Code of Justice (UCMJ).

This study unit covers the elements of Article 31 and describes the elements of the warning in depth and appropriate actions for administering Article 31.

---

**Learning Objectives** After completing this study unit, you should be able to

- Identify the purpose of Article 31.
- Select when Article 31 warning must be administered.
- Identify the types of pertinent questions to ask an individual involved in a legal action.

---

**In This Study Unit** This study unit contains the following lessons.

<b>Topic</b>	<b>See Page</b>
Lesson 1 Rights of the Suspect and Accused	2-3
Lesson 2 Administering Article 31	2-9
Lesson 3 Administer Warning and Question Suspects	2-19

---

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# LESSON 1

## RIGHTS OF THE SUSPECT AND ACCUSED

### Introduction

---

**Estimated Study Time** 20 minutes

---

**Scope** This lesson will help you understand the rights of the suspect or accused against self-incrimination by Article 31 of the UCMJ. Article 31 is taken from the 5th Amendment of the Constitution. It protects those suspected or accused of a violation of the UCMJ from self-incrimination.

---

**Learning Objectives** After completing this lesson, you should be able to

- Identify the purpose of Article 31.
- Identify the requirements of Article 31.
- Identify the elements of Article 31.

---

**In This Lesson** This lesson contains the following topics.

Topic	See Page
Purpose and Requirements of Article 31	2-4
Elements of Article 31	2-5
Lesson 1 Exercise	2-7

---

# Purpose and Requirements of Article 31

---

## **Purpose of Article 31**

Article 31 in the UCMJ is the privilege against self-incrimination for the suspect or accused. This right is guaranteed under the Fifth Amendment to *The Constitution of the United States*. This ensures that an individual's rights under the constitution will be protected.

---

## **Stringent Requirements**

Any statement or evidence collected from the accused or suspect must meet the stringent requirements of Article 31 if they are used as evidence in a court-martial. These requirements are

- Protect against self-incrimination
  - Advise on nature of charge and Article 31 rights
  - Coercion
  - Voluntary statements
- 

## **Self-Incrimination**

An individual suspected or accused of violating the UCMJ has the right not to incriminate (an act or statement that would lead others to believe that someone is guilty of a crime) themselves during any interrogation, hearing, inquiry, or trial. This is a guaranteed right under the 5th Amendment of the Constitution.

---

## **Nature of Charge**

The accused has a right to know the nature of the charge and his or her rights under Article 31.

Anyone in charge of any investigation, interrogation, hearing, inquiry, or trial must read Article 31 rights to the individual and be sure the individual fully understands what is being read.

---

## **Coercion**

Any person acting in an official capacity as an interrogator will not threaten force or coerce by threats of any kind. Anyone suspected or accused of violating the UCMJ to make a statement or produce physical evidence to show guilt is against the law.

---

## **Statements**

All statements made by a suspect or accused must be voluntary. Any statement obtained with use of force or coercion would be unlawful and would not be allowed as evidence in a court-martial.

---

## Elements of Article 31

---

### DD 5810

Listed on DD 5810, *Suspect's Rights Acknowledgment Form*, are ten elements that are divided into two parts: Warning and Waiver. The warning consists of elements one through seven. The waiver consists of elements eight through ten (as shown in the table below).

Number	Element
1	"You are suspected of the offense of ____." (The specific article does not need to be stated.)
2	"You have the right to remain silent."
3	"Any statement may be used as evidence against you in a trial by court-martial."
4	"You have the right to consult with a lawyer prior to questioning and have him present during questioning."
5	"If you desire, you may hire a civilian lawyer at your own expense."
6	"You may have a military lawyer appointed to act as your lawyer at no expense to you."
7	"You have the right to stop answering questions at any time."
8	"Do you want a lawyer?"
9	"Do you understand that if you should decide to answer questions, you may stop answering at any time?"
10	"Do you want to answer questions and make a statement?" (If suspect says, "Yes," then, the suspect is waiving or giving up his right to remain silent.)

---

### Administering Article 31

The best way to administer Article 31 is by reading the ten elements verbatim.

Note: This course should not be used to administer rights to any Marine who is suspected or accused of a crime. The MCM should be consulted in all cases.

---

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# Lesson 1 Exercise

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**Estimated Study Time**

10 minutes

---

**Directions**

Complete the following items. Check your answers against those listed at the end of this lesson. If you have any questions, refer to the reference page listed for each item.

---

**Item 1**

What is the purpose of Article 31?

- a. Advise the accused of their rights under the Constitution and UCMJ during the due process of justice.
  - b. Advise the individual of rights during a trial.
  - c. Advise the accused of their rights under their own state's justice system.
  - d. Waive all rights during an interrogation.
- 

**Item 2**

Evidence collected from the accused or suspect must meet what Article 31 requirement?

- a. Advise on nature of charge and Article 31 rights
  - b. No coercion
  - c. Involuntary statements
  - d. Protection for incriminating evidence
- 

**Item 3**

Identify Element 6 of the Article 31 rights.

- a. "You may have a military lawyer appointed to act as your lawyer at no expense to you."
  - b. "Do you want a lawyer?"
  - c. "You have the right to stop answering questions at anytime."
  - d. "You have the right to consult a lawyer at anytime."
- 

**Item 4**

The DD 5510 is a form used for the

- a. rights of the accused.
  - b. understanding of rights given.
  - c. acknowledgement of suspects rights.
  - d. rights of suspects.
-

## Lesson 1 Exercise

---

### Answers

The table below provides the correct answers to the exercise items. If you have any questions, refer to the reference page listed for each item.

<b>Item</b>	<b>Answer</b>	<b>Reference Page</b>
1	a	2-4
2	b	2-4
3	c	2-4
4	a	2-5

---

# LESSON 2

## ADMINISTERING ARTICLE 31

### Introduction

---

**Estimated Study Time** 15 minutes

---

**Scope** In this lesson, you will familiarize yourself with the administering of Article 31.

---

**Learning Objectives** After completing this lesson, you should be able to

- Identify when Article 31 is administered.
- Identify who receives Article 31.
- Identify who administers Article 31 warning.

---

**In This Lesson** This lesson contains the following topics.

Topic	See Page
When is Article 31 Required	2-10
Who Receives Article 31	2-12
Who Administers Article 31 Warning	2-15
Lesson 2 Exercise	2-17

---

## When is Article 31 Required

---

### **Before Questioning**

Article 31 is required for any individual suspected or accused of violating the UCMJ. It must be given before any official begins to ask the suspect or accused questions pertaining to a violation of the UCMJ. This includes any questions or comments a person may give that could lead to self-incrimination.

---

### **When An Act Requires an Article 31 Warning**

It is improper for any military or civilian personnel in an official investigation to begin questioning an accused person before Article 31 has been administered.

For example, if you ask a suspect to point out his clothing among several items of clothing hanging on a wall, your request would attempt to connect certain items of clothing to the accused. Therefore, the act of pointing out his or her clothes would result in an admission of ownership.

Administering Article 31 rights is needed before asking the suspect or accused to perform the act; then the actions of the suspect or accused and the clothes could be admitted in a court-martial as a statement or an admission of the individual's involvement in an act.

Bottom line, for an act or statement to be admitted as evidence in a court-martial, Article 31 must be administered.

---

### **Interrogation**

An interrogation is any formal or informal questioning in which an incriminating response is either sought or is a reasonable consequence of the questioning.

Example: Corporal Jimes' company gunny suspects that he is in possession of marijuana and informs him, "I think that you have what I want, give it to me." Corporal Jimes hands a package of marijuana and rolling paper over to his superior. The handing over of a package of marijuana cigarettes was unlawful and cannot be used as evidence because Article 31 did not precede the request for the marijuana.

---

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## When is Article 31 Required, Continued

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### **Visual Inspection of the Accused or Suspect**

The visual inspection of the accused or suspect does not violate any constitutional right or provision of the UCMJ.

A person can be compelled to submit to fingerprinting and or photography, write or speak for identification, assume a stance, or make a particular gesture before Article 31 is administered so investigators can determine if the person is a suspect or accused.

---

### **Example**

Investigators, while searching a Marine's room for a weapon, ask the Marine to point out his clothing. The act can be considered an incrimination statement and in this case Article 31 rights should be administered before the Marine is asked to give any statement.

Article 31 is needed before the request is made to point out the clothing. The reason is simple, when an act can constitute a statement or admission, an Article 31 must be given.

---

## Who Receives Article 31

---

### **Recipient**

An individual receives Article 31 warning when they have been

- Suspected of a UCMJ offense. This would be an individual who is believed to have committed a crime.
- Accused of a UCMJ offense. Normally the individual is formally charged with a crime.

A person is usually suspected of an offense before he or she is formally accused of an offense.

---

### **Determining the Suspect**

Determining when a person is a suspect is more difficult. In this instance, it would be whether or not investigator's suspicion of an individual is creditable and a clear motive or facts were uncovered to show a violation of the UCMJ.

- The military court will review whether the interrogator actually suspected the service member. If so, Article 31 warning should have been administered.
  - The military court will review the facts available to the interrogator to determine whether the interrogator should have suspected the service member.
- 

*Continued on next page*

## Who Receives Article 31, Continued

---

### **Suspect Determination Examples**

Individuals can be determined as suspects and therefore, administering Article 31 would be required.

Examples: An investigator found a Marine's military identification card at the scene of a fire where there is evidence of arson.

A company commander was informed by a Marine, whose watch was stolen, that another Marine was wearing a similar one.

---

### **Interrogator Determines Suspect**

An individual must be determined a suspect by information known to the interrogator. Whether a person is a suspect is determined by an examination of the facts the interrogator has uncovered. The important consideration is the facts known by the interrogator and whether these facts would render the person a suspect.

If the commander "suspects" a person, but these facts are not known by the interrogator, the person is not considered a suspect when questioned by this particular interrogator (someone other than the commander). Therefore, no Article 31 warning is required.

---

### **Determining Accused**

Article 31 requires that a warning be given to an accused individual.

To determine when a person is accused should pose no great difficulty. This generally refers to formally bringing charges against an individual or notification that the individual has been accused and is being charged with a particular offense.

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*Continued on next page*

## Who Receives Article 31, Continued

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### **Suspicion During Interrogation**

Suspicion may arise during an interrogation, and any incriminating statement that prompts the suspicion remains admissible.

An interrogator may begin an interrogation without administering Article 31 because he does not suspect the person of any wrongdoing. If, however, during the interrogation, the interrogator begins to suspect the individual being questioned, he must stop the interrogation and administer Article 31.

If an accused is warned and interrogated for one crime and during the questioning the interrogator comes to suspect him of committing another crime, the interrogation should cease until the accused is warned of his rights concerning the second possible offense.

---

### **Example of Admissible Confession**

Master Sergeant Jones conducts a routine monthly audit of a fund for which PFC Smith is the custodian. While counting the money, he discovers an apparent shortage and asks PFC Smith where the balance is. PFC Smith then says, "I'm short this month." Master Sergeant Jones replies, "What do you mean?" PFC Smith then confesses to having taken the missing money.

No warning was needed because PFC Smith was not a suspect. Master Sergeant Jones, the interrogator, was not highly suspicious, and it is likely that he was expecting an innocent explanation of the shortage.

The statement, "I'm short this month" was not enough to make PFC Smith a suspect. Thus, the subsequent incriminating statement did not have to be preceded by an Article 31.

---

## Who Administers Article 31 Warning

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**Administering Article 31** Those individuals responsible for administering Article 31 warning are military or civilian personnel conducting an interrogation in an official capacity (appointed by the commander).

---

**Requirement of “Officiating”** The language of Article 31 is very clear. Military courts have determined that not all persons subject to the UCMJ must give an Article 31.

Military courts have held that an individual subject to the UCMJ need not administer an Article 31 if he or she is not involved in an official investigation. In other words, if a first sergeant is questioning one of his or her Marines about an incident and is not acting as official interrogator (appointed by the commander), then there is no duty to warn.

---

**Test for “Officiating”** Determining whether someone is in an official capacity is governed by two questions.

- Is the interrogator actually appointed by the commander in an official capacity for investigating an offense?
- Does the suspect understand the inquiry is more than casual conversation and official in nature?

If the answer to either question is yes, then Article 31 is required.

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*Continued on next page*

## Who Administers Article 31 Warning, Continued

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**Example of  
“Officiating”**

The victim of a barrack’s larceny, who is attempting to recover his money, has no duty to warn a suspect before questioning him.

In such a case, the victim is acting solely for his benefit and without official sanction. Under this situation, the aura of officiating is missing; an Article 31 is not required.

Any statement offered by the suspect would be admissible in view of this article. Article 31 is required when the interrogator acts in an official capacity, such as a military policeman, legal officer, or has been appointed by the commander as an investigating officer.

The suspect may think the individual is acting in an official capacity, therefore, a warning is required.

---

## Lesson 2 Exercise

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**Estimated Study Time** 10 minutes

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**Directions** Complete the following items. Check your answers against those listed at the end of this lesson. If you have any questions, refer to the reference page listed for each item.

---

**Item 1** When is Article 31 administered?

- e. At the time of official arrest
- f. Before any official begins to ask questions pertaining to a violation
- g. After suspected of a capital crime
- h. After suspected of committing multiple offenses

---

**Item 2** Who receives Article 31?

- a. A suspect after apprehension
- b. Individuals accused or suspected of violating the UCMJ
- c. Suspects of a capital crime
- d. Suspects committing multiple offenses

---

**Item 3** Who administers Article 31?

- a. The commanding officer
- b. Any Marine
- c. Civilian authorities
- d. Military or civilian personnel conducting an interrogation in an official capacity

---

## Lesson 2 Exercise

---

### Answers

The table below provides the correct answers to the exercise items. If you have any questions, refer to the reference page listed for each item.

<b>Item</b>	<b>Answer</b>	<b>Reference Page</b>
1	b	2-10
2	b	2-12
3	d	2-15

---

# LESSON 3

## ADMINISTERING ARTICLE 31 RIGHTS AND QUESTIONING SUSPECTS

### Introduction

---

**Estimated Study Time** 15 minutes

---

**Scope** This lesson will cover the proper methods for administering Article 31 Rights and the questioning of suspects. (only first sentence)

---

**Learning Objectives** After completing this lesson, you should be able to

- Identify the proper method of administering Article 31.
- Identify the types of pertinent questions to ask individuals involved in legal action.
- Identify where the elements of an offense can be found.

---

**In This Lesson** This lesson contains the following topics.

Topic	See Page
Method of Administering Warning	2-20
Admissibility	2-23
Questioning Suspects	2-24
Lesson 3 Exercise	2-25

---

## Method of Administering Warning

---

### Sequence of Administering Rights

The table below lists the proper method and sequence to administering Article 31 to an individual suspected or accused of violating the UCMJ.

Sequence	Action
1	Read the suspect his or her rights.
2	Ask the suspect if he or she has any questions. Answer all questions.
3	Have the suspect read the <i>Suspect's Acknowledgement/Statement Form</i> (5810) found in the JAG Manual. Then have the suspect initial and sign the required areas.
4	Have witnesses present, if possible.
5	<p>If the suspect waives his rights, draft a statement based on your notes or use a recording device.</p> <p><u>Note:</u> Be sure to use words of the suspect, not yours.</p> <p>Have the suspect acknowledge his statement and sign the statement.</p> <p>Be sure to give the accused enough time to modify the statement before signing.</p>
6	<p>If the suspect refuses to have their comments reduced to writing, indicate this on the form.</p> <p>Make notes on the information he or she provides. As long as he or she properly waived their rights, statements to you are still admissible even though he or she refuses to acknowledge them after they have been reduced to writing.</p>

---

*Continued on next page*

# Method of Administering Warning, Continued

**DD 5810 (Front Side)** The form below is the front side of the *Suspect's Rights Acknowledgement/Statement Form* found in the JAG Manual.

SUSPECT'S RIGHTS ACKNOWLEDGEMENT/STATEMENT (See JAGMAN 0170)

SUSPECT'S RIGHTS AND ACKNOWLEDGEMENT/STATEMENT

\_\_\_\_\_  
Full name (accused/suspect)      SSN      Rate/Rank      Service/Branch

\_\_\_\_\_  
Activity/Unit      \_\_\_\_\_  
Date of Birth

\_\_\_\_\_  
Name (interviewer)      SSN      Rate/Rank      Service/Branch

\_\_\_\_\_  
Organization      \_\_\_\_\_  
Billet

\_\_\_\_\_  
Location of Interview      \_\_\_\_\_  
Time      \_\_\_\_\_  
Date

## RIGHTS

I certify and acknowledge by my signature and initials set 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. \_\_\_\_\_

*Continued on next page*

## Method of Administering Warning, Continued

---

**DD 5810  
(Back)**

The form below is the back side of the *Suspect's Rights Acknowledgement/Statement Form* found in the JAG Manual.

### 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

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# Admissibility

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## **Government Proves Suspect Understood Rights**

At the trial, the admissibility of a confession or admission initially depends on whether the government can demonstrate, that before making his or her confession or admission to interrogators, the suspect understood his or her rights.

Of course, no one knows what the accused did or did not understand. The trial counsel must use facts to convince the court that the accused understood his or her rights.

Proof is presented by

- Placing a witness on the stand to testify about what the accused was told
- Presenting a signed and initialed DD 5810

This evidence only shows the circumstances from which the court could conclude that the pretrial statement of the accused was in compliance with Article 31 and otherwise voluntary.

---

## **Defense Counsel Shows Suspect Did Not Understand Rights**

The defense counsel, on the other hand, may introduce testimony of the accused to show that he or she did not understand his or her rights. The signed DD 5810 will be ample proof to show the suspect or accused understood his or her rights.

---

## **Court's Decision**

The court will decide whether any statement is admissible during a trial or hearing.

---

# Questioning Suspects

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## Source of Elements of Offense

To locate elements of offense, use Part IV, *Manual for Court-Martial*.

---

## Dereliction of Duty Elements

Article 92, UCMJ, paragraphs a (3), b (3), and c (3) pertain to dereliction in the performance of duties.

Use this article to find pertinent information required for conviction under the article.

Elements of the offense or offenses for dereliction of duty requires that you prove the accused

- Had certain duties
  - Had knowledge of the duties
  - Was willfully, through neglect or capable inefficiency, derelict in the performance of those duties
- 

## Questions to Determine Dereliction of Duty

The questions you would ask the suspect are those that would reveal if the elements of the offense(s) for dereliction of duty could be proved.

For example,

- Was there a duty roster?
- Did he know he was on duty?
- When and who assigned him to duty?

Ask questions to find out if the dereliction of duty was intentional negligence or was caused by ineptitude.

---

## Get Written Statement from Suspect

Try to get suspect's response reduced to a written statement if possible.

---

## Lesson 3 Exercise

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**Estimated Study Time** 10 minutes

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**Directions** Complete the following items. Check your answers against those listed at the end of the lesson. If you have any questions, refer to the reference page listed for each item.

---

**Item 1** The proper method of administering the Article 31 warning is to

- a. Read suspect his or her their rights, make him or her sign the *Suspect's Acknowledgement/Statement Form* in the required area, and ask him or her any questions you want.
- b. Read the rights, ask any questions, put it in writing, and have a witness if possible.
- c. Ask any questions until you realize they have done something wrong, have someone qualified administer the warning, and have a witness if possible.
- d. Read the suspect their rights, tell them it was just formality and that they must answer questions unless he's guilty, and have a witness if possible.

---

**Item 2** The elements of an offense can be located in what publication?

- a. Part IV, *Manual for Courts-Martial*
- b. JAG Manual
- c. The Constitution of the United States
- d. The UCMJ

---

**Item 3** When interrogating someone you suspect of violating article 92 of the UCMJ, you would ask questions

- a. designed to prove the person guilty.
- b. chosen at random until you get them to confess.
- c. designed to confuse and disorient them.
- d. that reveals if the elements of the offense for dereliction of duty could be proved.

---

## Lesson 3 Exercise

---

### Answers

The table below provides the answers to the exercise items. If you have any questions, refer to the reference page listed for each item.

<b>Item Number</b>	<b>Answer</b>	<b>Reference Page</b>
1	a	2-20
2	a	2-24
3	d	2-24

---

# STUDY UNIT 3

## PUNITIVE INVESTIGATIONS

### Overview

---

**Estimated Study Time** 1 hour, 35 minutes

---

**Scope** Punitive investigations provide commanding officers with a systematic and thorough review of all circumstances surrounding an alleged violation of the UCMJ. This enables the commanding officer to decide if a matter needs to be adjudicated by the military justice system.

There are many different types of punitive investigations. This study unit will give you a better understanding of who conducts each type of punitive investigation and how they are conducted.

---

**Learning Objectives** After completing this study unit, you should be able to

- Identify the purpose of a preliminary inquiry.
  - Identify the purpose of a Judge Advocate General (JAG) Manual investigation.
  - Identify the legal objects of a search.
- 

**In This Study Unit** This study unit contains the following lessons.

<b>Topic</b>	<b>See Page</b>
Lesson 1 Preliminary Inquiries and Pretrial Investigations	3-3
Lesson 2 Investigations and Inquiries	3-11
Lesson 3 Searches and Seizures	3-25

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# LESSON 1

## PRELIMINARY INQUIRIES AND PRETRIAL INVESTIGATIONS

### Introduction

---

**Estimated Study Time** 20 minutes

---

**Scope** This lesson will provide you with an overview of a preliminary inquiry and pretrial investigation.

---

**Learning Objectives** After completing this lesson, you should be able to

- Identify the purpose of a preliminary inquiry.
- Identify an objective of a preliminary inquiry.
- Identify those authorized to direct and conduct a preliminary inquiry.
- Identify the purpose of a pretrial investigation.

---

**In This Lesson** This lesson contains the following topics.

<b>Topic</b>	<b>See Page</b>
Preliminary Inquiry	3-4
Pretrial Investigation	3-6
Lesson 1 Exercise	3-8

---

# Preliminary Inquiry

---

**Purpose** The preliminary inquiry serves to provide the commanding officer with a systematic and thorough review of all circumstances surrounding an incident, which may require adjudication through application of the UCMJ.

---

**When Required** Upon receipt of the preliminary inquiry, the battalion commander determines that the offense is so severe that it warrants a recommendation to a convening authority for a general court-martial. He then directs that an Article 32 investigation be conducted.

---

**Responsibility** Normally, the officer exercising immediate jurisdiction (an officer-in-charge of a command or unit) undertakes the inquiry or appoints another officer in the command to conduct it. The commander may require either an oral or written report of the inquiry so he or she can informally decide whether or not to charge an individual with an offense.

---

**Determination** The preliminary inquiry is usually informal in nature and conducted in a professional expedient manner after the offense is reported. It determines

- The severity of the offense(s) and circumstances surrounding it
- Identity of the person(s) who committed the offense(s)
- Whether an offense(s) was committed

For example, an incident involving larceny may lead to a request to outside agencies, the military police investigators (MPI), or the Naval Criminal Investigative Service (NCIS) to conduct the investigation. It may also require you to

- Question all witnesses
- Collect documentary information
- Search and seize
- Question the accused

---

*Continued on next page*

## Preliminary Inquiry, Continued

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### Objectives

There are certain objectives investigators should obtain at the end of a preliminary inquiry.

- The investigating officer provides the commanding officer an understanding of all circumstances and allegations surrounding the incident.
- An inquiry provides a reliable foundation for drafting charges against the suspect if such an act is required.
- An inquiry preserves justice for the suspect by ruling out the possibility of unwarranted trials resulting from unfounded charges and lack of evidence.

It is the objective of a preliminary inquiry to collect all information whether favorable or unfavorable so the commanding officer can then make a well-informed decision on the incident in question.

---

# Pretrial Investigation

---

**Purpose** The pretrial investigation is the same as any other punitive investigation; to uncover the facts and circumstances surrounding an incident. It provides the commanding officer with a systematic review so he or she can make an informed decision about the matter.

---

**Differences** There are differences between a preliminary inquiry and a pretrial investigation.

- A preliminary inquiry is conducted to assess if an offense has been committed.
- A pretrial investigation is conducted when an individual has already been charged and will be tried for a committed offense.

---

**When Required** Article 32 of the UCMJ is an investigation required before an incident is referred to a general court-martial. It will investigate the validity of the charges and give its recommendations and opinions to the disposition of the matter.

---

**Responsibility** The first officer in the chain of command having court-martial jurisdiction for any unit is responsible for ordering a pretrial investigation. For example, the first officer in a battalion's chain of command having court-martial jurisdiction would be the battalion commander.

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*Continued on next page*

## Pretrial Investigation, Continued

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### **Example**

If a search inside a trunk reveals several thousand dollars worth of stolen ordnance and ammunition, an officer would probably be assigned to conduct a preliminary inquiry immediately. He would probably require the assistance of the Naval Criminal Investigative Service (NCIS) because of the unusual nature or severity of the offense.

Upon receipt of the preliminary inquiry, the battalion commander determines that the offense is so severe that it warrants a general court-martial. He then directs that an Article 32 investigation be conducted.

The investigating officer would need to conduct two investigations into the same offense. A preliminary inquiry is required in every case and the pretrial investigation is required because the individual is formally charged and will go to a court-martial.

Whether a pretrial investigation is conducted depends upon the facts found in the preliminary inquiry. Often an Article 32 investigation varies greatly from a preliminary investigation.

---

### **Composition**

The officer appointed is usually a field grade officer with extensive experience in military legal matters or at least 6 to 8 years as an officer.

---

### **Suspect's Rights**

The suspect is fully protected by the provisions of Article 31 with regard to interrogations and self-incrimination.

---

# Lesson 1 Exercise

---

**Estimated Study Time** 10 minutes

---

**Directions** Complete the following items. Check your answers against those listed at the end of this lesson. If you have any questions, refer to the reference page listed for each item.

---

**Item 1** The purpose of a preliminary inquiry is to

- a. Conceive a plan to convict a Marine under suspicion of a crime.
- b. Provide the commanding officer with a thorough review of all information surrounding an incident.
- c. Inquire into allegations of wrong doing in a unit.
- d. Initiate investigations into capital crimes.

---

**Item 2** Who is the convening authority for a preliminary inquiry?

- a. The officer exercising immediate jurisdiction
- b. The officer who discovers the crime
- c. Battalion commanders and above
- d. The officer in charge of suspect

---

**Item 3** The objective of a preliminary investigation is to collect all

- a. evidence to convict the accused.
- b. evidence to require a court-martial.
- c. facts on the accused.
- d. information regarding the incident for the commander to make a well-informed decision.

---

*Continued on next page*

## Lesson 1 Exercise, Continued

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**Item 4**

What is the purpose of a pretrial investigation?

- a. Uncover the facts and circumstances surrounding an incident
- b. Accept charges for the crime committed
- c. Conceive a plan to convict a Marine under suspicion
- d. Establish a date for a court hearing

---

*Continued on next page*

## Lesson 1 Exercise

---

### Answers

The table below provides the answers to the exercise items. If you have any questions, refer to the reference page listed for each item.

<b>Item Number</b>	<b>Answer</b>	<b>Reference Page</b>
1	b	3-4
2	a	3-4
3	d	3-5
4	a	3-6

---

# LESSON 2

## INVESTIGATIONS AND INQUIRIES

### Introduction

---

**Estimated Study Time** 20 minutes

---

**Scope** Investigations and inquiries are administrative fact-finding bodies that provide reviewing boards with vital information that decisions are based on. This study unit will give a brief overview of the processes involved with investigations and inquiries.

Note: In all cases, refer to the applicable legal manual for more specific detail in performing and producing an investigation for submittal. Do not use this study unit to prepare an investigation for the record.

---

**Learning Objectives**

After completing the lesson, you should be able to

- Identify the purpose of a Judge Advocate General (JAG) Manual investigation.
  - Identify the requirements of a formal investigation.
  - Identify the characteristics of a command investigation.
  - Identify the characteristic of a litigation report investigation.
  - Identify persons subject to a court of inquiry.
  - Identify the proper authority for convening a board of inquiry.
- 

*Continued on next page*

## Introduction, Continued

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**In This Lesson** This lesson contains the following topics.

<b>Topic</b>	<b>See Page</b>
JAG Manual Investigations	3-13
Selection of Fact-Finding Bodies	3-14
Command Investigations	3-16
Litigation Report Investigations	3-18
Courts of Inquiry and Boards of Inquiry	3-19
Investigative Report	3-21
Lesson 2 Exercise	3-22

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# JAG Manual Investigations

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**Definition** A JAG Manual investigation is an administrative fact-finding process set forth in Chapters II through X of the JAG Manual.

---

**Purpose** The primary purpose of a JAG Manual investigation is to provide convening and reviewing authorities with adequate information to base their decisions on. For example, there is an accident involving a military vehicle. The commander would order a JAGMAN investigation to find out how it occurred, the reasons behind the accident, who was at fault, and give recommendations to the command if legal action is or is not required. These investigations are administrative, not judicial; their reports are only advisory and not legally binding. Their opinions do not constitute final determination or legal judgments.

---

**Types** There are two types of JAGMAN investigations.

- Formal
  - Informal
- 

**Formal** Formal investigations need the following requirements.

- Convened by a written appointing order
  - Testimonies taken under oath
  - Proceedings recorded verbatim
- 

**Informal** Informal investigations are the absence of one or more formal requirements.

---

**Who Conducts JAGMAN Investigations** The commanding officer appoints an officer or SNCO in writing to conduct a JAGMAN investigation. Depending on the seriousness of the investigation and the requirements, formal or informal, the commander will choose the rank of the individual investigating the incident.

---

## Selection of Fact-Finding Bodies

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### **Fact-Finding Investigation**

A fact-finding body is another term for an investigation that uncovers the facts and information related to a certain incident and makes recommendations to the command on how to conclude. It is ordered by the commander to investigate an incident and give recommendations on how to handle the incident on the facts collected. These recommendations are not the final word in a matter nor are they legally binding. They give the commanding officer all facts and information on an incident so he or she can intelligently decide how to best proceed in a particular matter.

---

### **Determining Factors**

The type of fact-finding body ordered in a case is determined by the commanding officer's consideration of the following factors.

- Seriousness of the case and the complexity of the facts and legal issues
  - The authority required to convene the investigation
  - Formal investigations
  - Informal investigations
- 

### **Seriousness of the Case**

A single officer can complete the investigation of a minor traffic accident. A complex incident such as the death of a Marine in recruit training requires a formal court or board of inquiry. The seriousness of a case will most often be determined by the legal officer or consulting the JAG Manual.

Note: Explanations and examples of fact-finding investigations are located in JAGINST 5800.7\_ Judge Advocate General's Manual, Chapter 2. This manual will be utilized in all investigations.

---

### **Formal Investigation**

Formal investigations, because they are bound by the requirement to take sworn testimony and submit a verbatim record of their proceedings, are limited. They must be conducted with hearing-room techniques, which can, at times, create a difficult and time-consuming process, limiting the scope of their operations.

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*Continued on next page*

## Selection of Fact-Finding Bodies, Continued

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### **Informal Investigations**

Informal investigations can determine the best means of eliciting information and has considerable latitude in the methods used.

Occasionally, hearing-room methods are desirable, but since there is no verbatim record or testimony taken under oath, the investigating officer or officers can move from place to place, interrogating witnesses, obtaining signed statements, and collecting evidence and other items in an expeditious manner.

---

### **Commanding Officer**

The final selection of the type of fact-finding body ultimately rests with the officer that has convening authority.

---

### **Types of Fact-Finding Bodies**

A full investigation into the facts and circumstances is required for the commander to make an informed decision. Investigations are used to uncover all relevant facts and aid the commanding officer in making well-informed decisions. There are four types of fact-finding investigations.

- Command investigations
  - Litigation report investigations
  - Punitive investigations
  - Other investigations
-

# Command Investigations

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**Purpose** The purpose of a command investigation is to gather, analyze, and record relevant information about an incident.

---

**Types** There are four types of command investigations that are used:

- Significant property loss
  - Injuries caused by misconduct
  - Death
  - Mishaps
- 

**Significant Property Loss** A significant loss or damage of government property is cause for a command investigation. For example, a vehicle runs into and causes the destruction of a portion of the motor transport maintenance facility.

---

**Injuries Caused By Misconduct** A Marine diagnosed with a disease or injury may result in permanent disability or physical inability to perform duty for a period exceeding 24 hours due to the misconduct of another active duty member or civilian employee. For example, a Marine points his weapon at another Marine in a joking manner, the weapon fires and causes bodily harm to his or her fellow Marine.

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**Death** The death of military personnel aboard an installation or on ship due to suspicious circumstances or apparent suicide is cause for a command investigation.

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**Mishaps** Accidents with military vehicles or aircraft that are not caused by extreme weather conditions are not major incidents.

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*Continued on next page*

## Command Investigations, Continued

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### Limitations

Command investigations may not be used to inquire into

- Major incidents
  - Incidents that have resulted or are likely to result in claims or a suit against the government
- 

### Responsibility

Generally, an officer in command (including an officer in charge) would be the convening authority and responsible for initiating a command investigation.

The investigating officer provides the commanding officer with recommendations. Upon review of recommendations, the convening authority may treat it as an internal report or forward it to the appropriate authority (higher echelon of command) for action.

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# Litigation Report Investigations

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**Purpose** The purpose of the litigation report is to gather facts of an incident when the incident is likely to result in significant claims against the government or a civil lawsuit. For example, a 5-ton vehicle owned by MWSS-171 hits a guardrail in town. This could result in a large claim against the government. The command involved would order and conduct a litigation report investigation to uncover the circumstances behind the accident.

---

**Characteristics** There are characteristics common to litigation report investigations.

- Judge advocate is the first party notified of the investigation
  - Conducted under the direct supervision of the judge advocate
  - Primarily conducted in anticipation of claims \$5,000 or more
  - May not have an individual as the subject of the investigation
  - Forwarded to judge advocate upon completion
  - Not to be used to investigate a major incident
  - Does not involve a hearing
- 

**Responsibility** The unit's commanding officer involved in the incident is responsible for ordering a litigation report investigation.

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# Courts of Inquiry and Boards of Inquiry

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**Purpose** The purpose for courts and boards of inquiry is to investigate major incidents or serious significant events. They are conducted in a formal hearing room (similar to a courtroom) setting.

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**Board of Inquiry Characteristics** A board of inquiry has six characteristics.

- Generally for a less serious incident
- Convened by written order
- Convened by any officer with general court-martial convening authority
- Consists of two or more commissioned officers, may include appointed advisors to assist the board members
- Testimony taken under oath and all statements recorded verbatim
- Has no power to request civilian witnesses for testimony

---

**Court of Inquiry Characteristics** A court of inquiry is more stringent in its characteristics than a board of inquiry. A court of inquiry has five characteristics.

- Convened by a written order
- Convened by an officer with general court-martial convening authority
- Consists of two or more commissioned officers, may include appointed advisors to assist members of the court
- Testimony taken under oath and all statements recorded verbatim
- Has the power to request civilian witnesses for testimony

---

**Persons Subject** Those subject to a court or board of inquiry are

- Active, reserve, and retired members of the Armed Forces
- Civilian employees of the Department of Defense
- Civilian witnesses requested to testify as witnesses (only for a court of inquiry)

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*Continued on next page*

## Courts of Inquiry and Boards of Inquiry, Continued

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### Historical Examples

Courts of inquiry have been convened to uncover facts leading to conclusions in major incidents of such as:

- The 1956 death of a Marine recruit at Parris Island as a result of drowning during training
  - Mysterious sinking of the nuclear submarine *USS Thresher* in 1963
  - Circumstances surrounding the boarding and capture of the *USS Pueblo* and her crew by North Korean forces in 1968
-

# Investigative Report

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**Requirements** A JAG Manual investigation finally results in a JAG Manual Report. Chapter VI of the JAG Manual has five format requirements for these reports.

Preliminary statement	Requirements that are met during the investigation
Findings of fact	Evaluation of all facts collected during investigation
Opinions	Developed from the evidence contained in findings of fact
Recommendations	When appointing authority directs or the nature of the facts requires it
Enclosures	Contains all evidence developed by the investigation

Note: Refer to Section 0217 of the JAG Manual if you wish to view examples of formats and complete explanations of these requirements.

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## Privacy Act

During an investigation, witnesses make statements of facts. Individuals who do not have a need for such knowledge could easily access those individuals who submitted these items and could give personal information that infringes on their privacy. The privacy act was established to give greater control of records for an individual and to eliminate needless intrusion of personal privacy. Some provisions of the privacy act are

- No Federal government personal file that exists is secret
  - Access to government files is limited to those authorized to view them
  - Individuals have the right to view and challenge information collected
  - Personal information collected is used for authorized purposes unless the individual consents to other uses
-

## Lesson 2 Exercise

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**Estimated Study Time** 10 minutes

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**Directions** Complete the following items. Check your answers against those listed at the end of this lesson. If you have any questions, refer to the reference page listed for each item.

---

**Item 1** The JAG Manual investigation provides

- a. convening and reviewing authorities with adequate information based on decisions in the matters involved.
- b. the investigating SNCOIC with adequate based on decisions in the matters involved.
- c. strict guidelines based on decisions in a pretrial investigation.
- d. judicial authorities with adequate based on legal decisions during an NJP.

---

**Item 2** Which of the following is a formal requirement for an investigation?

- a. Legal and fact-finding
- b. Proceedings recorded verbatim
- c. Formal and informal
- d. Testimonial and judicial

---

**Item 3** Which of the following is a type of a command investigation?

- a. Request civilian witnesses
- b. Unable to request civilian witnesses
- c. Uses a hearing room
- d. Significant property loss

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*Continued on next page*

## Lesson 2 Exercise, Continued

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**Item 4** Which of the following is a characteristic of a litigation report investigation?

- a. Convened by any officer with general court-martial convening authority
  - b. All testimony taken under oath and all statements recorded verbatim
  - c. May not be used to investigate a major incident
  - d. Civilian witnesses requested to testify as witnesses
- 

**Item 5** Which of the following identifies those subject to a court of inquiry?

- a. Active duty members of the Armed Forces
  - b. Active duty members of the Armed Forces and their families
  - c. Active and reserve members of the Armed Forces
  - d. Active, reserve, and retired members of the Armed Forces
- 

**Item 6** Which of the following identifies the individual who has the authority to convene a board of inquiry?

- a. Civilian judge
  - b. Platoon commander
  - c. Commanding officer with authority to convene a general court-martial
  - d. Battalion commanders with authority to convene a summary court-martial
-

## Lesson 2 Exercise

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### Answers

The table below provides the correct answers to the exercise items. If you have any questions, refer to the reference page listed for each item.

<b>Item Number</b>	<b>Answer</b>	<b>Reference Page</b>
1	a	3-13
2	b	3-13
3	d	3-16
4	c	3-18
5	d	3-19
6	c	3-19

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# LESSON 3

## SEARCHES AND SEIZURES

### Introduction

---

**Estimated Study Time** 25 minutes

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**Lesson Scope** This lesson will provide you with a working knowledge of the searches and seizures and their relevance to the military justice system.

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**Learning Objectives** After completing this lesson, you should be able to

- Identify the definition of probable cause.
- Identify the legal objects of a search.
- Identify the lawful purpose of an inspection.
- Identify when evidence may be lawfully seized.
- Identify the purpose for maintaining the proper chain of custody.

---

**In This Lesson** This lesson contains the following topics.

<b>Topic</b>	<b>See Page</b>
Searches	3-26
Legal Objects of a Search	3-27
Types of Searches	3-28
Administrative Searches	3-31
Seizures	3-32
Chain of Custody	3-33
Lesson 3 Exercise	3-34

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# Searches

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## Background

The 4th Amendment to the United States Constitution safeguards the individuals' right to privacy by stating

*“The right of the people to secure in their persons, houses, papers and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.”*

How the 4th Amendment is to be applied today is constantly being re-examined by the judicial system in the United States. For searches involving the Armed Forces, the Military Rules of Evidence (MRE), Part III of the MCM, has been established as a guideline to be followed and adhered to during the conduct of searches. The MRE provides an outline of the rules governing the military when we execute a search or seizure.

---

## Probable Cause

The definition of probable cause is a reasonable belief exists, based on the facts known that a crime has been committed. For example, items connected with a specific crime or evidence of a crime located on a certain person or in a certain place gives probable cause.

---

## Fruit of the Poisoning Tree

Knowledge of what constitutes a lawful search and seizure is important because only evidence seized during a lawful search can be allowed as evidence in a court-martial. Evidence, which has been seized during an illegal search, will not be allowed in a court-martial. This is known as the *fruit of the poisoning tree* doctrine. Basically the fruit of the search, the evidence, has been poisoned because they were obtained illegally hence the term *fruit*. The term *poisoning tree* refers to the search itself that was conducted.

---

## Example

A commanding officer searches the car of one of his or her Marines because he believes the Marine is hiding marijuana there. During the search, the commanding officer finds no marijuana but discovers a letter in which the Marine tells a friend that he or she has hidden marijuana in his personal footlocker in the barracks. The commanding officer searches the footlocker and seizes the marijuana. Neither the letter nor the marijuana can be used as evidence in a court-martial because the search of the footlocker was unlawful.

---

# Legal Objects of a Search

---

**Categories** Only certain items are legal objects of a search. To conduct a legal search, the item or items you look for must fall under one of four categories.

- Instruments of the crime
  - Evidence of the crime
  - Fruits of the crime
  - Contraband
- 

**Instruments of the Crime** Instruments of the crime are items used to commit a crime, but are not illegal to possess, such as a stocking mask and hunting knife.

---

**Evidence of the Crime** Evidence of the crime are items which could link the accused to the crime, but are not actually instruments used to commit it, such as blood stained clothing or a gunshot wound.

---

**Fruits of the Crime** Fruits of the crime include items in the possession of the accused acquired as result of the crime, such as stolen goods or a stolen car.

---

**Contraband** Contraband are items that are illegal to possess. If during an authorized search these items are found, they may be seized and the individual having these items in his or her possession can be charged for those illegal items.

In a search incident to lawful apprehension, you may search for and seize items that a suspect uses to resist arrest or to help in an escape attempt from authorities. This would include large sums of money, weapons, or any other item that might be used to aid in an escape.

---

# Types of Searches

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## **Most Common Search**

The most common type of search in the military is a search authorized by a commanding officer. His power to search is limited by several factors. First, probable cause must exist. The search must be within the commander's area of jurisdiction, or the individual is in his or her command, and is limited to property and persons subject to military control. The authority to conduct searches may not be delegated. The commanding officer may authorize searches like a judge would issue a search warrant.

---

## **Limitations of a Search**

Assuming the commanding officer has probable cause to authorize a search, what may he or she order to be searched? The commanding officer can

- Search only where he reasonably believes evidence (related to the crime that the Marine is suspected of) will be found.
  - Authorize a search only of people or places under or in his or her control. This includes the authority to order a search of any personnel of his or her command, whether they are on or off base, and in any area or property under his control.
  - Authorize a search of government property or property owned by personnel of his or her command. For example, a commanding officer could order a search of a Marine's room on base if the commanding officer had probable cause, but not of a Marine's house on base or civilian housing off base. The commanding officer could also order a search of a Marine's private vehicle if it were on base in his or her area only.
  - Search a car or housing on base with the approval of the base commander. This can be accomplished if the commanding officer requesting the search can show probable cause.
- 

## **Conduct of a Search**

A commanding officer is not permitted to personally conduct a search that he has authorized. He cannot authorize a search when he has been personally involved in gathering information that would lead to probable causes to authorize such a search. The order must state precisely what person or place is to be searched and the object of the search.

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*Continued on next page*

## Types of Searches, Continued

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**Basic Searches** There are four basic searches that can be conducted in the military.

- Necessity search
  - Search pursuant to a search warrant
  - Search incident to a lawful apprehension
  - Search where no expectation of privacy exists
- 

**Necessity Search**

In some cases, there may not be time to obtain an authorization from the commanding officer (CO) to conduct a search. In cases where immediate action is necessary to prevent the removal or destruction of evidence, a necessity search may be conducted. In such a case, you must not only establish probable cause, but also show that the commander could have authorized the search if there had been time.

In most cases, as a staff noncommissioned officer (SNCO), your authority to issue lawful orders will eliminate the need for this search.

A necessity search should only be used as a last resort; however, there may be times that this type of search is necessary.

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**Search Pursuant to a Search Warrant**

Occasionally, a commander may find that there is probable cause to search an area outside his or her jurisdiction. If the area is subject to military control, the CO in command of that area should be contacted and given the evidence for probable cause so he can authorize the search.

In the case of off-base civilian property, the request to search is brought to the attention of the civilian authorities having jurisdiction in the suspected area. Once convinced that probable cause does exist, the civilian authorities issue the warrant, which is then served by the appropriate civilian law enforcement agency in this situation.

Military personnel may act only as observers and will not actively take part in the search.

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*Continued on next page*

## Types of Searches, Continued

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### **Consent Search**

In this case, the owner of the property or the person to be searched freely gives his or her consent to search. No probable cause is needed in this kind of search. For example, a SNCO asks a Marine if he can look in the Marine's wall locker for stolen goods and the Marine says yes to this search. This would constitute a consent search.

Consent must be freely given. This means that the suspect has an absolute right to refuse the search.

---

### **Search Incident to a Lawful Apprehension**

When a lawful apprehension is made, the apprehending personnel are authorized to conduct a search of the person being apprehended and the immediate area, which is near the person being apprehended. This search, designed to prevent the destruction or disposal of evidence and to protect the person performing the apprehension by revealing any weapons, must be conducted as soon as possible after the apprehension.

A lawful apprehension must be based on a different type of probable cause. There must be reason to believe that the person being apprehended has committed or is committing an offense.

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# Administrative Searches

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## **Inspections**

A commanding officer is responsible for the combat readiness, cleanliness, safety, and maintenance of a command. The lawful purpose of an inspection is the health, discipline, and welfare of a command.

The uniqueness of military life and the responsibility of the commanding officer permits command-sanctioned inspections of military personnel and their property. General inspections for such purposes are lawful and are not required based on probable cause. Items of contraband or other evidence seized during such inspections are allowed as evidence in future proceedings.

---

## **Inventories**

An inventory of the personal property of an individual is allowed as evidence in a court-martial. For example, if an inspection of a Marine's ALICE pack uncovers an illegal weapon, the weapon can be used as evidence in a court-martial.

---

## **Security Checks**

Local commanders have the right to limit entrance to military bases and to inspect or search those who enter to ensure the safety and security of their commands. Routine checks and inspections of personnel and vehicles that enter and leave military installations accomplish this.

Security checks of personnel and their property while boarding and disembarking military ships and planes would also fall into this category.

---

# Seizures

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**Power to Seize** Any commissioned officer, warrant officer, SNCO, NCO, or military police officer may seize property in the execution of their duties.

There are four categories for seizures of evidence and property.

- Abandoned Property
  - Property with Consent
  - Government Property
  - Other Property
- 

**Abandoned Property** Abandoned property may be seized without probable cause and without a search warrant or search authorization. Any person may make such a seizure.

---

**Property With Consent** Property or evidence may be seized with the suspect's agreement to a consent search.

---

**Government Property** Government property may be seized without probable cause and without a search warrant or search authorization by any person listed under *Power to Seize* above. The exception is if a person to whom the property is issued has a reasonable expectation of privacy at the time of seizure.

---

**Other Property** Persons listed under Power to Seize above may also seize other property. The person or persons must have justification to seize the property and exercise control, such as a search warrant or probable cause.

This also includes items that are illegal to possess for example, drugs or unregistered weapons.

---

# Chain of Custody

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## **Positive Control**

To allow evidence in a court-martial, a prosecutor must prove that the items introduced are the same that was seized as evidence. This means that positive control, through a chain of custody, must be maintained on the seized items from the initial seizure to the evidence table in court. For example, an illegal substance seized from a Marine's footlocker must be the same substance seized when it is introduced as evidence at that Marine's court-martial. By conducting proper chain of custody procedures, anyone who handled the substance has signed for and controlled it from being changed or contaminated before it arrives in a courtroom as evidence in a court-martial.

To maintain a chain of custody a signed receipt should be obtained when evidence is transferred to your commanding officer or legal officer.

Once a seizure has been made, contact a higher authority as soon as possible and arrange for disposition of the evidence. This authority may be the Military Police Investigations Department (MPI) or the Naval Criminal Investigation Service (NCIS).

---

## **Drug Custody**

The chain of custody is very important. Since drugs are difficult to identify, (the seized drugs may look like pills, tablets, or powder that could be purchased in a drug store over the counter), the chain of custody may be the only method of proving authenticity of the evidence that the drugs turned in as evidence are the same as those found on the accused.

It is important in drug seizures to show that the evidence has not been tampered with because the seized drugs must be tested to determine what they are.

The chain of custody applies to the strict urinalysis testing conducted in the military. The samples travel great distances to be tested in most cases and are handled by a great number of individuals. Without proper chain of custody, the test could be declared irrelevant in a court martial due only to the fact of improper chain of custody.

---

## Lesson 3 Exercise

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**Estimated Study Time**

10 minutes

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**Directions**

Complete the following items. Check your answers against those listed at the end of this lesson. If you have any questions, refer to the reference page listed for each item.

---

**Item 1**

A reasonable belief that a crime has been committed and that the item being searched for is in the place being searched is considered

- a. not a good enough reason to search.
  - b. probable cause.
  - c. a fact allowed in a court-martial.
  - d. evidence of a crime.
- 

**Item 2**

Which of the following are legal objects of a search?

- a. Guns and knives
  - b. Government property
  - c. Vehicles and property aboard a military base
  - d. Fruits of the crime and contraband
- 

**Item 3**

The lawful purpose of an inspection is to

- a. see if the troops are hiding weapons.
  - b. prepare for a higher inspection.
  - c. ensure all uniforms are pressed and starched.
  - d. ensure the security, health, and welfare of the troops.
- 

**Item 4**

Probable cause to seize property or evidence exists when

- a. someone acts like they are trying to hide something.
  - b. there is reasonable belief that it is contraband or there is evidence of a crime.
  - c. one of your Marines is driving a new expensive car.
  - d. you see a person with a radio that looks like the one stolen from one of your Marines.
- 

*Continued on next page*

## Lesson 3 Exercise, Continued

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**Item 5**

The purpose for maintaining a proper chain of custody ensures

- a. evidence is not tampered with.
  - b. a prisoner does not escape.
  - c. duty logs will be complete.
  - d. evidence is always in the presence of two or more people.
- 

*Continued on next page*

## Lesson 3 Exercise

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### Answers

The table below provides the answers to the exercise items. If you have any questions, refer to the reference page listed for each item.

<b>Item</b>	<b>Answer</b>	<b>Reference Page</b>
1	b	3-26
2	d	3-27
3	d	3-31
4	b	3-32
5	a	3-33

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# STUDY UNIT 4

## THE NONJUDICIAL PUNISHMENT PROCESS

### Overview

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**Estimated Study Time**

1 hour

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**Scope**

A Marine in your command is suspected of committing an offense or offenses against the UCMJ. The commander is considering imposing nonjudicial punishment (NJP) against this Marine. He has been brought before you, the senior SNCO, to be advised of his rights and the procedures associated with NJP. This study unit will prepare you on the actions needed to advise the Marine on the details of the NJP process, his or her rights under Article 31, possible punishments, and the appeals process.

---

**Learning Objectives**

After completing this study unit, you should be able to

- Identify the NJP process.
  - Identify the possible outcomes from NJP.
- 

**In This Study Unit**

This study unit contains the following lessons.

Topic	See Page
Lesson 1 Conduct of Nonjudicial Punishment Proceedings	4-3
Lesson 2 Possible Outcomes From NJP Proceedings	4-13

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# LESSON 1

## CONDUCT OF NONJUDICIAL PUNISHMENT PROCEEDINGS

### Introduction

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**Estimated Study Time**

25 minutes

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**Scope**

This lesson will explain the purpose of nonjudicial punishment (NJP) and the various components.

---

**Learning Objectives**

After completing this lesson, you should be able to

- Identify the purpose of NJP.
  - Identify the commander's responsibility in NJP.
  - Identify the four factors a commander considers when conducting NJP.
  - Identify the options included in the notice given to the accused.
  - Identify the rights of the accused under NJP.
  - Identify the five commander's options when disposing of an offense.
- 

**In This Lesson**

This lesson contains the following topics.

Topic	See Page
Article 15 Authorization	4-3
Nonjudicial Punishment Procedure	4-4
Preliminary Inquiry	4-5
Rights of the Accused	4-7
Disposition of Charges	4-8
Lesson 1 Exercise	4-9

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## Article 15 Authorization

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### Authority

Nonjudicial punishment (NJP) in the United States Armed Forces is authorized by Article 15. A commander, officer in charge, or principal assistant may impose NJP.

---

### Purpose

NJP provides commanders with an essential and prompt means of maintaining good order and discipline and also promotes positive behavior changes in service members without the stigma of a court-martial conviction. NJP is a disciplinary measure more serious than the administrative corrective measures but less serious than trial by court-martial.

---

### Commander's Responsibility

Commanders are responsible for good order and discipline in their commands. Generally, discipline can be maintained through effective leadership including, when necessary, administrative corrective measures.

Nonjudicial punishment is ordinarily appropriate when administrative corrective measures are inadequate due to the following four factors:

- Nature of the offense
  - Record of the service member
  - Need for good order and discipline
  - Effect of NJP on the service member and the service member's record
- 

### Commander's Discretion

A commander who is considering a case for disposition under Article 15 will exercise personal discretion in evaluating each case to decide

- Whether nonjudicial punishment is appropriate
- The nature and appropriate amount of punishment

Note: No superior may direct a subordinate authority to impose NJP in a particular case; issue regulations, orders, or guides which suggest to subordinate authorities that certain categories of minor offenses be disposed of by NJP instead of by court-martial or administrative corrective measures; or predetermined kinds or amounts of punishments be imposed for certain classifications of offenses the subordinate considers appropriate for disposition by NJP.

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# Preliminary Inquiry

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**Suspected Offenses**

Upon receipt of information that a member of the command is accused or suspected of committing an offense or offenses tried by court-martial, the immediate commander shall decide or task an officer to conduct a preliminary inquiry into the charges or suspected offenses.

---

**Notification**

If the commander determines that disposition by NJP is appropriate after the preliminary inquiry, the accused is given notification by the command's senior staff noncommissioned officer using the NAVMC 10132 (Rev 10-81) Unit Punishment Book.

This notice shall include:

- Statement that the command is considering the imposition of NJP
- Description of the alleged offenses including the articles broken
- Brief summary of the information which the allegations are based, and a statement that the member may request to examine all available statements and evidence
- Statement of the accused rights under NJP
- Opportunity for the accused, unless embarked aboard a vessel, to refuse NJP proceedings and demand a trial by court-martial
- Option to talk with military or civilian legal counsel before accepting or refusing NJP

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*Continued on next page*

# Preliminary Inquiry

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## **Article 31 Compulsory Self-incrimination Prohibited**

- No person subject to Chapter 47 (UCMJ) may compel any person to incriminate himself or to answer any questions that may incriminate him.
- No person may interrogate or request any statement from an accused or a person suspected of an offense without informing him/her of the nature of the accusation and advising him/her that he/she does not have to make any statement regarding the offense of which he/she is accused or suspected. Any statement made by him/her may be used as evidence against him/her in a trial by court-martial.
- No person may compel any person to make a statement or produce evidence before any military tribunal if the statement or evidence is not material to the issue and may tend to degrade him.
- No statement obtained from any person in violation of this article, or through the use of coercion, unlawful influence, or unlawful inducement may be received in evidence against him in NJP.

---

## **Right to Demand Trial**

If the service member demands trial by court-martial, the NJP process is terminated; however it is within the commander's discretion whether or not to refer or forward charges for trial by court-martial. If the request is accepted, the service member is advised of the maximum punishment, which can be imposed from a summary, special, or general courts-martial. NJP punishment cannot be imposed in this case unless the demand for trial by court-martial is voluntarily withdrawn. If the service member does not request trial by court-martial within a reasonable time after notice, or the right to demand trial by court-martial is not applicable, then the NJP process may proceed.

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# Rights of the Accused

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## Acceptance of NJP

Upon acceptance of NJP, the service member is entitled to appear personally before the NJP authority (unit commander) prior to the sentence being imposed. The service member may submit any written material to the NJP authority for consideration in determining whether the service member committed the alleged offenses, and if so, in determining the appropriate punishment. When appearing at his or her NJP hearing, the service member is

- Informed of his or her rights under Article 31(b), UCMJ
- Informed orally or in writing of the evidence against him relating to the alleged offenses
- Accompanied by a spokesperson provided by the service member unless the punishment will not exceed extra duty for 14 days, restriction for 14 days, and an oral reprimand.

Note: The spokesperson need not be a lawyer and is not entitled to travel or similar expenses. The proceedings will not be delayed to permit the presence of a spokesperson. The spokesperson may speak on the service member's behalf, but may not question witnesses except as the NJP authority may permit as a matter of discretion.

- Allowed to examine documents or physical objects against him, which the NJP authority has examined in connection with the case, and on which NJP authority intends to rely in deciding whether, and how much punishment to impose
  - Present matters in defense, extenuation, and mitigation orally, in writing, or both
  - Have witnesses present, if their statements will be relevant and they are reasonably available (including those adverse to the service member)
  - Open the proceedings to the public unless the NJP authority determines that the proceedings should be closed for good cause. However this does not require that special arrangements be made to facilitate access to the proceeding.
-

# Disposition of Charges

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## Commander's Decision

Each commander has the discretion to dispose of (to settle) offenses by members of that command. The disposition decision is one of the most important and difficult decisions facing a commander. As a senior SNCO, you will recommend to the commander how charges should be disposed. Many factors are considered in deciding how to dispose of the case.

- Nature of the offense
- Mitigating or extenuating circumstances
- Character and military service of the accused
- Any recommendations from subordinate commanders
- Effect of the decision on the accused and the command

The goal should be a disposition that is warranted, appropriate, and fair.

---

## Commander's Options

A commander has five options to initially dispose of a charge or suspected offense.

<b>Option</b>	<b>Action</b>
<b>No Action</b>	A commander may decide to take no action on an offense. If charges have been preferred, they may be dismissed. A decision to take no action or to dismiss charges at this stage does not bar later disposition of the offense.
<b>Administrative Action</b>	A commander may take administrative action, in addition to or instead of other actions subject to regulations. Administrative actions include, but are not limited to corrective measures such as counseling, rehabilitation, reprimand, exhortation, extra military instruction, withholding of privileges, or any combination of the above.
<b>NJP</b>	A commander may conduct Article 15 proceedings, NJP.
<b>Forwarding for Disposition</b>	A commander may forward a matter concerning an offense or charge to a superior or subordinate authority for disposition. The immediate commander may lack the authority to take an action that he believes would be an appropriate disposition. In such cases, the matter should be forwarded to a superior officer with a recommendation on disposition. The disposition decision becomes a matter for the discretion of the higher authority.
<b>Referral to court-martial</b>	A commander may dispose of the charges by referring them to a court-martial if the commander has convening authority. Generally, a battalion or squadron commander is the lowest commander with authority to convene a court-martial.

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## Disposition of Charges, Continued

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### **Considering Recommendations**

When making recommendations to the commander on the disposition of offenses, the SNCO should consider if the charges fall into the category of a minor offense. NJP may be imposed for acts or omissions that are minor offenses under the punitive articles. The severity of an offense depends on several relevant factors:

- Nature of the offense and the circumstances surrounding its commission
- Offender's age, rank, duty assignment, record, and experience
- Maximum sentence possible for the offense if the defendant is tried by a general court-martial

The final decision whether an offense is minor is a matter of discretion for the commander imposing NJP.

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### **Other Considerations**

Other considerations when deciding punishment are mitigating, extenuating, and aggravating circumstances which is discussed in study unit 1.

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### **Punishments**

The commander may solicit any additional mitigating circumstances about the accused from the SNCO's present at the proceedings before punishment is imposed. The amount of punishment authorized under Article 15 by commander's grade is discussed in study unit 1.

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### **Commander's Suspension Authority**

Commanders should consider suspending all or part of any punishment selected under Article 15, particularly in the case of first offenders or when significant extenuating or mitigating matters are present. The possibility of suspension provides an incentive to the offender and gives the commander the opportunity to evaluate the offender during the period of suspension.

---

### **Appeals**

After punishment has been imposed, the commander or NJP authority will brief the service member on the NJP appeals process. This process applies to any service member punished under Article 15 who considers the punishment to be unjust or disproportionate to the offense. The senior SNCO will assist the Marine through the appeals process.

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## Lesson 1 Exercise

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**Estimated  
Study Time**

10 minutes

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**Directions**

Complete the following items. Check your answers against those listed at the end of this study unit. If you have any questions, refer to the reference page listed for each item.

---

**Item 1**

The purpose of the NJP is to

- a. provide commanders with an essential and prompt means of maintaining good order and discipline.
  - b. promote discipline within UCMJ.
  - c. provide a basic and efficient means of maintaining good behavior.
  - d. provide positive changes in UCMJ.
- 

**Item 2**

What is the commander's responsibility in NJP?

- a. Good leadership and guidance in their commands
  - b. Good order and discipline in their commands
  - c. Honest and fair disposition in NJP proceedings
  - d. Upholding the rules and regulations of the UCMJ
- 

**Item 3**

Which is one of the four factors a commander considers when conducting NJP?

- a. Need for discipline
  - b. Extenuating circumstances
  - c. Record of the service member
  - d. The offender's rank
- 

*Continued on next page*

## Lesson 1 Exercise, Continued

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**Item 4**

Which option is included in the notice given to the accused?

- a. Have witnesses present
  - b. Refuse NJP and demand a trial by court-martial
  - c. Destroy any evidence or materials used against the accused
  - d. Make a statement in defense of the accused
- 

**Item 5**

The accused has a right under the NJP to

- a. be informed of his or her rights under Article 31.
  - b. a speedy trial.
  - c. be released on his own recognizance.
  - d. influence the jury.
- 

**Item 6**

Which is not a commander's option when disposing of an offense?

- a. Punitive action
  - b. Forwarding to a superior authority
  - c. Administrative action
  - d. No action
- 

*Continued on next page*

## Lesson 1 Exercise

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### Answers

The table below provides the correct answers to the exercise items. If you have any questions, refer to the reference page listed for each item.

<b>Item Number</b>	<b>Answer</b>	<b>Reference Page</b>
1	a	4-4
2	b	4-4
3	c	4-4
4	b	4-5
5	a	4-7
6	a	4-8

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## LESSON 2

# POSSIBLE OUTCOMES FROM NONJUDICIAL PUNISHMENT PROCEEDINGS

### Introduction

---

**Estimated Study Time**

15 minutes

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**Scope**

In this lesson, we will cover the combinations of and limitations on the types of punishment a commanding officer is authorized to impose during sentencing at the conclusion of an NJP proceeding.

---

**Learning Objectives**

At the end of this lesson, you should be able to

- Identify the maximum punishment that can be imposed at battalion level NJP.
  - Identify the maximum punishment that can be imposed at company level NJP.
  - Identify the punishments that may not be imposed with confinement on bread and water or diminished rations.
- 

**In This Lesson**

This lesson contains the following topics.

Topic	See Page
Punishments	4-14
NJP Outcomes	4-15
Lesson 2 Exercise	4-16

---

# Punishments

**Maximum Punishment Authorized at NJP**

The kinds and amounts of punishment listed in the chart below are based on rank, and in cases of reduction, their authority to promote.

<b>Types of Punishment</b>	<b>Commanders Captain and Below and OICs (Company-Level)</b>	<b>Commanders Major and Above (Battalion-Level)</b>
Confinement on bread and water/diminished rations	3 days	3 days
Correctional Custody	7 days	30 days
Restriction	14 days	60 days
Extra duties	14 days	45 days
Reduction in grade	1 rank	1 rank
Forfeiture in pay	7 days	½ months' pay for 2 months

**Limitations on Combinations of Punishment**

There can be any number of outcomes from NJP. These punishments can be imposed in various combinations of sentences, but there are some limitations on how they can be combined.

- Confinement on bread and water or diminished rations may not be imposed in combination with correctional custody, restriction, or extra duties.
- Correctional custody may not be imposed in combination with restriction or extra duties.
- Restriction and extra duties may be imposed together but they may not exceed the maximum number of days for extra duties.

Note: For further information that outlines specifics on reductions, restrictions, and suspensions, refer to MCM Part V. This course is designed to give a broad overview on military justice. In all cases of military justice, the current MCM and JAG Manual should be utilized for specific elements of information.

# NJP Outcomes

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## **Suspension**

The commanding officer who imposes NJP may at any time suspend any part or amount of the unexecuted punishment, reduction in grade, or a forfeiture provided

- The unexecuted portion of the punishment is suspended within 4 months after the date of execution.
- The suspension is not longer than 6 months from the date of execution or the expiration of the current enlistment of the service member.
- It was voided sooner, then the suspended portions of the punishment are remitted without further action upon termination of the suspension period.
- An action suspending a punishment includes a condition that the service member will not violate any punitive articles of the UCMJ. The commanding officer may specify in writing additional conditions of the suspension.
- A suspension may be vacated by any commanding officer or competent NJP authority, based only on a violation of the conditions of suspension, which occur during the suspension period.

---

## **Remission**

Remission is when any unexecuted portion of a punishment is canceled. It is appropriate when the offender's good conduct merits a cancellation of punishments. The commanding officer may remit any part or amount of the unexecuted portion of the punishment imposed. The expiration of the current enlistment automatically remits any unexecuted punishment imposed under Article 15.

---

## **Setting Aside**

The commanding officer can set aside any part or amount of an imposed punishment whether executed or unexecuted. Any property, privileges, or rights affected by the portion of punishment set aside is restored. This option should be exercised only when the authority considering the case believes that under all circumstances of the case the punishment has resulted in a clear injustice. This should be done within 4 months after the punishment has been executed.

---

## Lesson 2 Exercise

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**Estimated Study Time**

10 minutes

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**Directions**

Complete the following items. Check your answers against those listed at the end of this lesson. If you have any questions, refer to the reference page listed for each item.

---

**Item 1**

Which is the maximum punishment that can be imposed at battalion level NJP?

- a. Correctional custody for 7 days
  - b. Restriction for 60 days
  - c. Forfeiture of pay for 14 days
  - d. Extra duties for 90 days
- 

**Item 2**

Which is the maximum punishment that can be imposed at company level NJP?

- a. Extra duties for 45 days
  - b. Forfeiture of ½ months' pay for 3 months
  - c. Restriction for 14 days
  - d. Correctional custody for 30 days
- 

**Item 3**

Which punishment may not be imposed with confinement on bread and water or diminished rations?

- a. Forfeiture of pay
  - b. Reduction in grade
  - c. Arrest in quarters
  - d. Restriction and extra duties
- 

*Continued on next page*

## Lesson 2 Exercise

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### Answers

The table below lists the answers to the exercise items. If you have any questions about these items, refer to the reference page.

<b>Item Number</b>	<b>Answer</b>	<b>Reference Page</b>
1	b	4-14
2	c	4-14
3	d	4-14

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# STUDY UNIT 5

## IMPACT OF VIOLATING STANDING RULES OF ENGAGEMENT

### Overview

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**Estimated Study Time**

1 hour, 25 minutes

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**Unit Scope**

This study unit will discuss the standing rules of engagement (SROE) and advise on how violating these rules can impact Marines.

---

**Learning Objectives**

After completing this study unit you should be able to

- Identify the policy of the SROE.
  - Identify the impact of violating SROE.
- 

**In This Study Unit**

This study unit contains the following lessons:

Topic	See Page
Lesson 1 Standing Rules of Engagement Policy	5-3
Lesson 2 Impact of Violating Rules of Engagement	5-13

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# LESSON 1

## STANDING RULES OF ENGAGEMENT POLICY

### Introduction

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**Estimated Study Time** 25 minutes

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**Lesson Scope** This lesson will discuss the purpose, policy options, and intent of the standing rules of engagement (SROE).

---

**Learning Objectives** After completing this lesson you should be able to

- Define the SROE.
  - List the purpose of the SROE.
  - Identify the scope of SROE.
  - Identify the policy of an SROE.
  - Identify the intent of the SROE.
  - List the types of self-defense.
  - Define a hostile act.
- 

**In This Lesson** This lesson contains the following topics:

<b>Topic</b>	<b>See Page</b>
Standing Rules of Engagement	5-4
Types of Self-Defense	5-6
Hostile Acts	5-7
Lesson 1 Exercise	5-8

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# Standing Rules of Engagement

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**Definition** Standing rules of engagement (SROE) are directives issued by competent military authority that determine the circumstances and limitations under which U.S. forces will initiate and/or continue combat engagement with other forces.

---

**Purpose** The purpose of the SROE is

- Provide implementation guidance on the application of force for mission accomplishment.
- Exercise the inherent right and obligation of self-defense.

---

**Scope** In the absence of superseding guidance, SROE establish fundamental policies and procedures governing the actions to be taken by U.S. force commanders in the event of military attack against the United States and during all military operations, contingencies, terrorist attacks, or prolonged conflicts outside the territorial jurisdiction of the United States.

---

**Multinational Forces** U.S. forces under operational control of a multinational force (MNF) will follow the SROE of the MNF, unless otherwise directed by the National Command Authority (NCA). If operating in conjunction with an MNF, reasonable effort will be made to establish common SROE. If such SROE cannot be established, U.S. forces will exercise the right of self-defense contained in the SROE of the MNF, while seeking guidance from the appropriate combatant command.

---

**Policy** U.S. national security policy serves to protect the United States, U.S. forces, and, in certain circumstances, U.S. citizens and their property. The policy also protects U.S. commercial assets, other designated non-U.S. forces, and foreign nationals and their property from hostile attack.

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## Standing Rules of Engagement, Continued

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**Policy Options** These rules do not limit a commander's inherent authority and obligation to use all necessary means available and to take appropriate action in defense of the commander's unit and other U.S. forces in the vicinity. If hostilities escalate and deterrence fails, U.S. policy provides flexibility to respond to crises with options that

- Are proportional to the provocation
  - Are designed to limit the scope and intensity of the conflict
  - Will discourage escalation of the conflict
  - Will achieve political and military objectives
- 

**Intent** Standing rules of engagement are intended to

- Provide general guidelines on self-defense.
  - Be applicable worldwide to all echelons of command.
  - Provide guidance governing the use of force consistent with mission accomplishment.
  - Be used in military operations other than war (MOOTW), during transition from peacetime to armed conflict or war, and during armed conflict in the absence of superseding guidance.
- 

**Mission-Specific SROE** Commanders may augment the SROE as necessary to reflect the mission specific to their area of responsibility. Four factors that influence the development of mission-specific SROE are as follows:

- Operational
  - International law
  - Domestic law
  - National security policy
-

# Types of Self-Defense

---

**Inherent Right of Self-Defense** A commander has the authority and obligation to use all necessary means available and take all appropriate action to defend that commander's unit and other U.S. forces in the vicinity from hostile acts or demonstrated hostile acts.

Neither these rules nor the supplemental measures activated to augment these rules limit this inherent right and obligation.

---

**National Self-Defense** This is the act of defending the United States, U.S. forces, and, in certain circumstances, U.S. citizens and their property, U.S. commercial assets, other designated non-U.S. forces, and foreign nationals and their property from hostile acts or hostile intent.

---

**Collective Self-Defense** This is the act of defending other designated non-U.S. forces and personnel and their property from hostile acts or demonstration of hostile intent. Only the NCA may authorize U.S. forces to exercise collective self-defense.

---

**Unit Self-Defense** This is the act of defending a particular unit of U.S. forces, including elements or personnel thereof, and other U.S. forces in the vicinity against hostile acts or hostile intent. "Vicinity" is generally the ranges of the available weapons systems.

---

**Elements of Self-Defense** The application of armed force in self-defense requires two elements, necessity and proportionality.

- Necessity—a hostile act occurs or a force or terrorist unit exhibits hostile intent.
- Proportionality—the force used must be reasonable in intensity, duration, and magnitude, based on all facts known to the commander at the time, to decisively counter the hostile act or hostile intent and to ensure the continued safety of U.S. forces.

---

## Hostile Acts

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<b>Definition</b>	A hostile act is an attack or other use of force by a foreign force or terrorist unit/group (organization or individual) against the United States.
<b>Hostile Intent</b>	The threat of imminent use of force by a foreign force or terrorist unit (organization or individual) against the United States.
<b>Hostile Force</b>	Any force or terrorist unit, with or without national designation, that has committed a hostile act, demonstrated hostile intent, or has been declared hostile.
<b>Declaring a Force Hostile</b>	Once a force is declared hostile by the appropriate authority, U.S. forces need not observe a hostile act or demonstration of hostile intent before engaging.

---

# Lesson 1 Exercise

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**Estimated Study Time**

10 minutes

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**Directions**

Complete the following items. Check your answers against those listed at the end of this study unit. If you have any questions, refer to the reference page listed for each item.

---

**Item 1**

Define the standing rules of engagement (SROE).

- a. Rules that provide guidance on the application of force for mission accomplishment.
  - b. Directives issued by a competent military authority, that determine the circumstances and limitations under which U.S. forces will initiate and/or continue combat engagement with other forces.
  - c. Rules to be used in operations other than war, during transition from peacetime to armed conflict or war in the absence of superseding guidance.
  - d. Rules that increase deterrent force capabilities and posture deliberately so that any potential aggressor will assess their own risk as unacceptable.
- 

**Item 2**

The purpose of the SROE is to

- a. provide implementation guidance on the application of force for mission accomplishment.
  - b. protect the United States, U.S. forces, and in certain circumstances, U.S. citizens and their property from hostile attack.
  - c. provide guidelines for incorporating ROE development into crisis action planning and deliberate planning processes.
  - d. provide guidance for all military operations, contingencies, terrorist attacks, and conflicts outside the United States.
- 

*Continued on next page*

## Lesson 1 Exercise, Continued

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**Item 3**

What is the scope of the SROE?

- a. Establishes fundamental policies and procedures governing the actions taken by U.S. force commanders in the event of a military attack against the United States.
  - b. Establishes policies and procedures restricting the actions taken by U.S. force commanders in the event of a military attack against the United States.
  - c. Sets guidelines and standards for U.S. force commanders to determine the actions taken in the event of a hostile attack.
  - d. Determines policies and procedures for U.S. force commanders to handle any hostile attack against the United States.
- 

**Item 4**

U.S. policy dictates that an SROE will

- a. protect U.S. property during a hostile attack.
  - b. allow U.S. forces to attack and destroy hostile threats.
  - c. achieve political and military objectives.
  - d. give U.S. forces operational authority in foreign countries.
- 

**Item 5**

What is the intent of the SROE?

- a. Provides general guidelines on self defense and are applicable worldwide to all echelons of command.
  - b. Provides U.S. force commanders policies and procedures to govern actions taken in the event of a military attack against the United States.
  - c. Provides specific standing rules governing the use of force in a combatant commander's area of operation.
  - d. Provides for the use of force proportional to the provocation.
- 

**Item 6**

Which of the following is a type of self-defense?

- a. Inert
  - b. Proportional
  - c. Collective
  - d. Company
- 

*Continued on next page*

## Lesson 1 Exercise, Continued

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**Item 7**

What is a hostile act?

- a. An attack or other use of force by a foreign force or terrorist unit/group against the United States.
- b. A threat or imminent use of force by a foreign or terrorist unit/group against the United States.
- c. An act of aggression or hostility against the United States.
- d. The use of force against a U.S. force to enforce terrorist aggression against the United States.

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*Continued on next page*

# Lesson 1 Exercise Solutions

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**Answers**

The table below provides the answers to the exercise items. If you have any questions, refer to the reference page listed for each item.

<b>Item Number</b>	<b>Answer</b>	<b>Reference Page</b>
1	b	5-4
2	a	5-4
3	a	5-4
4	c	5-5
5	a	5-5
6	c	5-6
7	a	5-7

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## LESSON 2

### IMPACT OF VIOLATING RULES OF ENGAGEMENT

#### Introduction

---

**Estimated Study Time** 40 minutes

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**Lesson Scope** This lesson will discuss the impact of violating the rules of engagement and probable outcome resulting from violation.

---

**Learning Objectives** After completing this lesson you will be able to

- State the rule of engagement violation.
- State the consequences of violating the rules of engagement.

---

**In This Lesson** This lesson contains the following topics.

<b>Topic</b>	<b>See Page</b>
ROE for Somalia “Operation Restore Hope”	5-14
Tactical Scenario One	5-20
Tactical Scenario Two	5-22
Lesson 2 Exercise	5-24

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# ROE for Somalia “Operation Restore Hope”

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## Introduction

The following is an example of an unclassified rules of engagement (ROE) and instructions for the use of force and weapons policy. These ROE were included in “Operation Restore Hope”—a sanctioned humanitarian relief and enforcement operation conducted in Somalia in 1992 and 1993.

---

## “Operation Restore Hope” ROE

- I. Situation.
- II. Mission.
- III. Execution.
  - A. Concept of the Operation.
    1. If you are operating as a unit, squad, or other formation, follow the orders of your leaders.
    2. Nothing in these rules negates your inherent right to use reasonable force to defend yourself against dangerous personal attack.
    3. These rules of self-protection and rules of engagement are not intended to infringe upon your right of self-defense. These rules are intended to prevent indiscriminate use of force or other violations of law or regulation.
    4. Commanders will instruct their personnel on their mission. This includes the importance of proper conduct and regard for the local population and the need to respect private property and public facilities. The *Posse Comitatus Act* does not apply in an overseas area. Expect that all missions will have the inherent task of force security and protection.
    5. ROE cards will be distributed to each deploying Marine.
  - B. Rules of Self-Protection for All Marines.
    1. U.S. forces will protect themselves from threats of death or serious bodily harm. Deadly force may be used to defend your life, the life of another U.S. soldier, or the life of persons in areas under U.S. control. You are authorized to use deadly force in self-defense when:
      - a. You are fired upon.
      - b. Armed elements, mobs, and/or rioters threaten human life.
      - c. There is a clear demonstration of hostile intent in your presence.

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*Continued on next page*

## ROE for Somalia “Operation Restore Hope” Continued

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### “Operation Restore Hope” ROE, (continued)

2. Hostile intent of opposing forces can be determined by unit leaders or individual Marines if their leaders are not present. Hostile intent is the threat of imminent use of force against U.S. forces or other persons in those areas under the control of U.S. forces. Factors you may consider include:
  - a. Weapons: Are they present? What types?
  - b. Size of the opposing force.
  - c. If weapons are present, the manner in which they are displayed: Are they being aimed? Are the weapons part of a firing position?
  - d. How did the opposing force respond to the US forces?
  - e. How does the force act toward unarmed civilians?
  - f. Other aggressive actions.
  
3. You may detain persons threatening or using force that would cause death, serious bodily harm, or interference with mission accomplishment. You may detain persons who commit criminal acts in areas under U.S. control. Detainees should be given to military police as soon as possible for evacuation to central collection points.

C. Rules of Engagement. The relief property, foodstuffs, medical supplies, building materials, and other end items belong to the relief agencies distributing the supplies until they are actually distributed to the populace. Your mission includes safe transit of these materials to the populace.

1. Deadly force may be used only when.
  - a. Fired upon.
  - b. Clear evidence of hostile intent exists.
  - c. Armed elements, mobs, and/or rioters threaten human life, sensitive equipment and aircraft, and open and free passage of relief supplies.
2. In situations where deadly force is not appropriate, use the minimum force necessary to accomplish the mission.

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*Continued on next page*

## ROE for Somalia “Operation Restore Hope” Continued

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### “Operation Restore Hope” ROE, (continued)

3. Patrols are authorized to provide relief supplies to U.S. forces and other persons in those areas under the control of U.S. forces. Patrols may use deadly force if fired upon or if they encounter opposing forces that evidence a hostile intent. Non-deadly force or a show of force should be used if the security of U.S. forces is not compromised by doing so. A graduated show of force includes:
  - a. An order to disband or disperse.
  - b. Show of force/threat of force by U.S. forces that is greater than the force threatened by the opposing force.
  - c. Warning shots aimed to prevent harm to either innocent civilians or the opposing force.
  - d. Other means of non-deadly force.

If this show of force does not cause the opposing force to abandon its hostile intent, consider if deadly force is appropriate.

4. Use of barbed wire fences is authorized.
5. Unattended means of force (mines, booby traps, trip guns) are not authorized.
6. If U.S. forces are attacked or threatened by unarmed hostile elements, mobs, and/or rioters, U.S. forces will use the minimum amount of force reasonably necessary to overcome the threat. A graduated response to unarmed hostile elements may be used. Such a response can include:
  - a. Verbal warnings to demonstrators in their native language.
  - b. Shows of force, including the use of riot control formations.
  - c. Warning shots fired over the heads of the hostile elements.
  - d. Other reasonable uses of force, to include deadly force when the element demonstrates a hostile intent, which are necessary and proportional to the threat.

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*Continued on next page*

## ROE for Somalia “Operation Restore Hope” Continued

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**“Operation  
Restore Hope”  
ROE,,  
(continued)**

7. All weapons systems may be employed throughout the area of operation unless otherwise prohibited. The use of weapons systems must be appropriate and proportional to the threat.
8. U.S. forces will not endanger or exploit the property of the local population without their explicit approval. Use of civilian property usually is compensated for by contract or other form of payment. Property that has been used for the purpose of hindering our mission will be confiscated. Weapons may be confiscated and demilitarized if they are used to interfere with the mission of U.S. forces.
9. Operations will not be conducted outside of the landmass, airspace, and territorial seas of Somalia. However, any USCENTCOM force conducting a search and rescue mission shall use force as necessary and intrude into the landmass, airspace, or territorial sea of any county necessary to recover friendly forces.
10. Crew-served weapons are considered a threat to U.S. forces and the relief effort whether or not the crew demonstrates hostile intent. Commanders are authorized to use all necessary force to confiscate and demilitarize crew-served weapons in their area of operations.
  - a. If an armed individual or weapons crew demonstrates hostile intentions, they may be engaged with deadly force.
  - b. If an armed individual or weapons crew commits criminal acts but does not demonstrate hostile intentions, U.S. forces will use the minimum amount of necessary force to detain them.
  - c. Crew-served weapons require more than one individual to operate. Crew-served weapons include but are not limited to tanks, artillery pieces, anti-aircraft guns, mortars, and machine guns.

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*Continued on next page*

## ROE for Somalia “Operation Restore Hope” Continued

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**“Operation  
Restore Hope”  
ROE,,  
(continued)**

11. Within those areas under the control of U.S. forces, armed individuals may be considered a threat to U.S. forces and the relief effort, whether or not the individuals demonstrate hostile intent. Commanders are authorized to use all necessary force to disarm and demilitarize groups or individuals in those areas under control of U.S. forces. Absent a hostile or criminal act, individuals and associated vehicles will be released after any weapons are removed/demilitarized.
- D. Use of riot control agents (RCAs). Use of RCAs require the approval of the joint task force commander. When authorized, RCAs may be used for purposes including but not limited to:
1. Riot control in the division area of operations includes the dispersal of civilians who obstruct roadways or otherwise impede distribution operations after lesser means have failed to result in dispersal.
  2. Riot control in detainee holding areas or camps in and around material distribution or storage areas.
  3. Protection of convoys from civil disturbances, terrorists, or paramilitary groups.
- E. Detention of Personnel. Personnel who interfere with the accomplishment of the mission of who use or threaten deadly force against U.S. forces, U.S. or relief material distribution sites, or convoys may be detained. Persons who commit criminal acts in areas under the control of U.S. forces may likewise be detained.
1. Detained personnel will be treated with respect and dignity.
  2. Detained personnel will be evacuated to a designated location for turnover to military police.
  3. Troops should understand that any use of the feet in detaining, handling or searching Somalia civilians is one of the most insulting forms of provocation.
- IV. Service Support.
- V. Command and Signal.
- 

*Continued on next page*

## ROE for Somalia “Operation Restore Hope” Continued

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“Operation  
Restore Hope”  
ROE, Card

### **Rules of Engagement Joint Task Force for Somalia Relief Operations Ground Forces**

Nothing in these rules of engagement limits your right to take appropriate action to defend yourself and your unit.

1. You have the right to use force to defend yourself against attacks or threats of attacks.
2. Hostile fire may be returned effectively and promptly to stop a hostile act.
3. When U.S. forces are attacked by unarmed hostile elements, mobs, and/or rioters, U.S. forces should use the minimum force necessary under the circumstances and proportional to the threat.
4. You may not seize the property of others to accomplish your mission.
5. Detention of civilians is authorized for security reasons or in self-defense.

#### **Remember**

- The United States is not at war.
  - Treat all persons with dignity and respect.
  - Use minimum force to carry out the mission.
  - Always be prepared to act in self-defense.
-

# Tactical Scenario One

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## History

This scenario is roughly patterned after an incident that occurred in Somalia in February 1993. In circumstances similar to these, an American soldier shot and killed an unarmed Somali man.

*United States v. Mowris (headquarters, Fort Carson & 4<sup>th</sup> Inf. Div. 1 July 1993.*

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## Situation

A platoon has formed a hasty perimeter in a small village. The platoon leader is talking with one of the villagers through an interpreter. United States forces are deployed in a flat, hot, dry, famine-stricken country as part of a multinational coalition force. The mission of the coalition is to provide a secure environment for the distribution of humanitarian relief supplies. Armed bands have been frustrating these efforts for months and have even fired upon United States soldiers several times over the past few days. The mission of the platoon is to search the village and seize weapons and munitions that were sighted there the night before, when a firefight among rival bands had taken place. If necessary, the platoon also has the mission of disarming members of any of the bands found in the village. The platoon has completed a sweep of the village and has found a few small arms and live mortar rounds, but no armed individuals or bands. The soldiers of the platoon bear M-16A2 rifles, which are in condition one.

---

## Event

Two armed men in white shirts suddenly dash through an alley in the village. The platoon leader orders several soldiers to chase after the men to determine whether they know anything about the firefight the night before. One soldier chases one of the men into an area outside the village. The soldier notices movement in a bush about twenty-five meters away and then sees the white shirt of a man running away from him and from the remainder of the American platoon.

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## Tactical Scenario One, Continued

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**Considerations** The ROE addresses the use of force in self-defense and the application of force for mission accomplishment. The following factors are to be considered when determining violations of ROE.

- The key is to measure the amount of force to fit the level of the threat.
- The soldier must use only the amount of force necessary to protect lives and accomplish the mission.
- The force used must fit the scale of the threat in magnitude, intensity, and duration.

Soldiers must apply a graduated escalation of force when facing civilians who are unarmed, but also confrontational and unfriendly. In the scenario, the civilian man is unarmed and running away. The man poses no immediate threat to the safety of the soldier or his American comrades.

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**Violation** It was determined that the soldier used excessive force, despite his claiming to have fired a “warning” shot in the dirt to the left of the fleeing man. Fault was also found in the chain of command for not ensuring that the soldiers understood the ROE. The soldier’s Division Commander set aside the conviction for negligent homicide.

---

**Recommendation** No use of force is appropriate. The man did not fire any shots and this fleeing unarmed man endangered no lives. The course of action would be to continue chasing the man but refrain from firing the rifle.

---

**Consequences** A violation of the rules of engagement is subject to criminal prosecution under the Uniform Code of Military Justice (UCMJ). Prosecution may include multiple charges and multiple counts. Violations of the ROE may be the use of excessive force or violations of specific prohibitions under the ROE, such as targeting protected persons or objects without military necessity.

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## Tactical Scenario Two

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### History

This scenario is roughly patterned after an incident that occurred in Somalia in February 1993. An American Marine leaned out the window of the vehicle and discharged his M-79 over and behind his right shoulder. Fragments from the canister wounded two Somali boys.

*United States v. Conde, (First Marine expeditionary Force, 6 April 1993)*

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### Situation

A soldier sits on the passenger side in the front of a HMMWV. He and the driver are in the first vehicle of a two-vehicle convoy in the center of a city. As the vehicles move through the city, they pass many civilian men, women, and children. United States forces are deployed as part of a multinational coalition force. The mission of the coalition is to provide a secure environment for the distribution of humanitarian relief supplies. Armed bands have been frustrating these efforts for months and have fired upon United States soldiers several times over the past few days. Civilians frequently taunt coalition soldiers and attempt to steal items from passing vehicles. The immediate mission of the convoy is to link up with the remainder of the company. The soldier is armed with an M-79 grenade launcher; the weapon has a canister loaded in the chamber.

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### Event

As the vehicle rounds a bend, an unarmed boy puts his hand through the window, pushes back the soldier's head, and removes an expensive pair of prescription sunglasses. The vehicle moves forward, and the youth slips back into the crowd.

---

### Considerations

The key rule is to protect with deadly force only human life and property designated by your commander.

- The Marine must stop short of using deadly force when protecting other property.
  - The property stolen by the youth is not the sort of sensitive or mission-essential equipment that commanders must protect with deadly force.
  - Marines may return fire, but the youth has fired no shots.
  - Marines may anticipate an attack and fire first if they see clear indicators of hostile intent, but none of the S-A-L-U-T-E factors indicate hostile intent.
  - Marines must measure the amount of force to fit the level of the threat, in magnitude, intensity, and duration.
  - Marines must apply a graduated escalation of force when facing civilians who are unarmed, but also confrontational and unfriendly.
- 

*Continued on next page*

## Tactical Scenario Two, Continued

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**Considerations, continued** The youth has used some force and has committed an aggressive act; however, he is unarmed and has moved away from the departing vehicle. The youth poses no immediate threat to the safety of the Marines.

The Marines may shout verbal warnings in the native language to disperse

- Stay away
- Halt.

He may visibly show his weapon to indicate available force. He may use pepper spray or some other irritant to ward off those who may reach toward a vehicle. He may use a riot stick to ward off or even strike persistent individuals in non-vital regions.

---

**Violation** It was determined that the Marine used excessive force in his attempt to recover the stolen property.

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**Recommendation** The suggested action is to refrain from firing the M-79, while maintaining alertness for others who attempt to steal from the vehicle, and file a claim with his command for the lost glasses.

---

**Consequences** A violation of the rules of engagement is subject to criminal prosecution under the Uniform Code of Military Justice (UCMJ). Violations of the ROE may be the use of excessive force, or violations of specific prohibitions under the ROE such as targeting protected persons or objects without military necessity.

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## Lesson 2 Exercise

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**Estimated Study Time**

10 minutes

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**Directions**

Complete the following items. Check your answers against those listed at the end of this study unit. If you have any questions, refer to the reference page listed for each item.

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**Item 1**

What is the platoon mission in tactical situation one?

- a. Search the village and seize weapons and munitions.
  - b. Search and seize all contraband items.
  - c. Interrogate all suspected enemy supporters.
  - d. Search and destroy all weapons.
- 

**Item 2**

Which rule of engagement was violated in tactical situation one?

- a. Prevent unnecessary suffering or destruction.
  - b. Use only the amount of force necessary to accomplish the mission.
  - c. Do not attack non-combatants.
  - d. Do not fire on medical personnel.
- 

**Item 3**

What is the recommended action based on tactical situation one?

- a. Continue to chase the man but refrain from firing the rifle.
  - b. Fire rifle in the air over the man's head instead of at his feet.
  - c. Pretend to lose sight of the fleeing man and give up chase.
  - d. Continue the chase firing at intervals at the man's feet.
- 

**Item 4**

What are the consequences of violating the rules of engagement?

- a. Charges and court martial proceedings being brought against you.
  - b. Congressional inquiry.
  - c. Death conviction.
  - d. Letter of reprimand.
- 

*Continued on next page*

## Lesson 2 Exercise, Continued

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### Answers

The table below provides the correct answers to the exercise items. If you have any questions, refer to the reference page listed for each item.

<b>Item Number</b>	<b>Answer</b>	<b>Reference Page</b>
1	a	5-20
2	b	5-21
3	a	5-21
4	a	5-23

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# MILITARY JUSTICE

## REVIEW LESSON EXAMINATION

### Review Lesson

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**Introduction** The purpose of the review lesson examination is to prepare you for your final examination. We recommend that you try to complete your review lesson examination without referring to the text, but for those items (questions) you are unsure of, restudy the text. When you finish your review lesson examination and are satisfied with your responses, check your responses against the answers provided at the end of this review lesson examination.

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**Directions** Select the ONE answer that BEST completes the statement or that answers the item. For multiple-choice items, circle your response. For matching items, place the letter of your response in the space provided.

---

**Item 1** A system to promote good order, discipline, and regulate the behavior of the armed forces of the United States is called

- a. military justice.
- b. an NJP court-martial.
- c. the Uniformed Code of Military Justice.
- d. a special court of inquiry.

---

**Item 2** What entity established the Uniform Code of Military Justice?

- a. *The Constitution*
- b. The Joint Chief of Staff
- c. Congress
- d. The Supreme Court

---

*Continued on next page*

## Review Lesson Examination, Continued

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**Item 3** Which of the following receives its authority from *The Constitution*?

- a. JAG Manual
  - b. UCMJ
  - c. The Manual for Courts-Martial
  - d. The Status of Forces Agreement
- 

**Item 4** Select Part 5 of the Manual for Courts-Martial.

- a. Rules for court-martial
  - b. Preamble
  - c. Military Rules of Evidence
  - d. Non-Judicial Punishment
- 

**Item 5** What is the lowest level of military justice?

- a. Article 15, NJP
  - b. Article 31
  - c. The U.S. Military Court of Appeals
  - d. The U.S. Supreme Court
- 

**Item 6** Define the composition of a summary court-martial.

- a. One commissioned officer and one military judge
  - b. One commissioned officer and one senior enlisted
  - c. One commissioned officer
  - d. One commissioned officer and one civil judge
- 

*Continued on next page*

## Review Lesson Examination, Continued

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- Item 7** To try officers and enlisted subject to the UCMJ for any non-capital offense made punishable is the jurisdiction of a
- special court-martial.
  - summary court-martial.
  - general court-martial.
  - special court of inquiry.
- 

- Item 8** What is the highest court an active duty member can appeal to which is established by Congress?
- Special Court-Martial
  - The United States District Court
  - The United States Military Court of Appeals
  - A Marine Court of Inquiry and Appeals
- 

- Item 9** What is the correct term for restriction of a commissioned officer?
- Restriction under guard
  - Arrest in quarters
  - Confinement to quarters
  - Article 31
- 

- Item 10** What type of punishment may not be imposed on corporals or above, unless the offender was reduced below the rank of corporal and the reduction was not suspended?
- An official reprimand
  - Restriction for officers
  - Correctional custody
  - Correctional punishment
- 

*Continued on next page*

## Review Lesson Examination, Continued

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- Item 11** Bread and Water/Diminished Rations may not be imposed as a sentence in combination with
- a. court-martial, extra duties, and restriction.
  - b. correctional custody, extra duties, and restriction.
  - c. a full reduction in grade.
  - d. forfeiture of 2 month's pay.
- 

- Item 12** What legal terminology is used to describe why an offense was committed?
- a. An extenuating circumstance
  - b. A mitigating circumstance
  - c. Both aggravating and mitigating circumstances
  - d. A reasonably doubtful circumstance
- 

- Item 13** A PFC shows up for formation 45 minutes late. This is the Marine's first infraction with a clean record and an outstanding service thus far. This would be an example of
- a. an extenuating circumstance.
  - b. a court-martial offense.
  - c. a mitigating circumstance.
  - d. an NJP circumstance.
- 

- Item 14** The purpose of Article 31 is to
- a. advise the accused of their rights under the Constitution and the UCMJ during the due process of justice.
  - b. advise the individual of their rights during a trial.
  - c. advise the accused of their rights under their own state's justice system.
  - d. waive all rights during an interrogation.
- 

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## Review Lesson Examination, Continued

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**Item 15**

A requirement of Article 31 is

- a. to advise the suspect of the charge and Article 31 rights.
  - b. that evidence does not have to be physical to the case.
  - c. that statements must be voluntary.
  - d. an offer of protection against incriminating evidence.
- 

**Item 16**

What form is used in conjunction with the Article 31 rights?

- a. DD 5310, Rights of the Accused sheet
  - b. DD 5510, Form of Understanding sheet
  - c. DD 5810, Suspects Rights Acknowledgment form
  - d. DD 5510, Suspects Rights sheet
- 

**Item 17**

What is Element 6 of the Article 31 rights?

- a. "You may have a military lawyer appointed to act as your lawyer."
  - b. "You may have a civilian lawyer appointed to act as your lawyer."
  - c. "You have the right to stop answering questions at any time."
  - d. "You have the right to consult a lawyer at any time."
- 

**Item 18**

At the time of arrest, which article should be administered?

- a. Article 31
  - b. Article 43
  - c. Article 92
  - d. Article 94
- 

**Item 19**

Article 31 rights would be administered to

- a. a suspect after one has been jailed.
  - b. an individual accused or suspected of a crime.
  - c. a Marine suspected of a capital crime.
  - d. someone that committed a capital offense.
- 

*Continued on next page*

## Review Lesson Examination, Continued

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**Item 20** Who is authorized to administer an Article 31 rights?

- a. An officer
  - b. Any Marine
  - c. A civilian police officer
  - d. Military or civilian investigators
- 

**Item 21** The simple and correct way to administer Article 31 rights is to

- a. read the suspect their rights, make them sign the statement that they received their rights, and ask them any questions you want.
  - b. read them their rights, ask any questions you want, put everything in writing, and have a witness, if possible.
  - c. ask any questions you want until you realize they have committed a crime, have someone qualified administer Article 31, and have a witness present.
  - d. read the suspect their rights, tell them it was just a formality and that they must answer questions unless they are guilty, and have a witness, if possible.
- 

**Item 22** The questioning of a suspect requires investigators to ask questions that are

- a. designed to prove the individual guilty.
  - b. randomly selected until they confess.
  - c. designed to confuse and disorient them.
  - d. based on the limits of the article that they violated.
- 

**Item 23** The elements of an offense can be found in the

- a. Manual for Courts-Martial.
  - b. Judge Advocate General handbook.
  - c. Constitution of the United States.
  - d. Uniform Code of Military Justice.
- 

*Continued on next page*

## Review Lesson Examination, Continued

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- Item 24** The preliminary inquiry is designed to provide the CO with a thorough review of
- a. a plan to convict a Marine suspected of a crime.
  - b. all information surrounding an incident.
  - c. certain information surrounding an incident.
  - d. information surrounding a suspect involved in a capital crime only.
- 

- Item 25** A preliminary inquiry is mandatory
- a. when charges are received.
  - b. during an investigation.
  - c. during a court-martial.
  - d. after a court-martial.
- 

- Item 26** The responsibility to convene a preliminary inquiry goes to
- a. the officer exercising immediate jurisdiction.
  - b. the officer who discovers the crime.
  - c. battalion commanders and above.
  - d. the officer in charge of the suspect.
- 

- Item 27** The mission of a pretrial investigation is to collect all
- a. evidence used to convict the accused.
  - b. evidence required for a special court-martial only
  - c. information for a summary court-martial and general court-martial only.
  - d. information regarding the incident for the commander to make a well informed decision.
- 

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## Review Lesson Examination, Continued

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- Item 28** A JAG Manual investigation is designed to provide
- convening and reviewing authorities with adequate information on which to base decisions in matters involved.
  - the SNCOIC investigator with adequate information based on decision matters involved.
  - strict guidelines for authorities to collect information on which to base decisions in matters involved.
  - judicial authorities with adequate information from which to base legal decisions during an NJP.
- 

- Item 29** Which is a formal requirement for an investigation?
- Legal and fact-finding
  - Recorded verbatim
  - Formal and informal
  - Involving significant property loss
- 

- Item 30** The loss of significant property is considered to be a type of
- a preliminary inquiry.
  - a pretrial investigation.
  - a court of inquiry.
  - a command investigation.
- 

- Item 31** Which of the following is a characteristic that establishes a litigation-report investigation?
- It is convened by any officer with general court-martial convening authority.
  - All testimony is taken under oath and all statements are recorded verbatim.
  - It may not be used to investigate a major incident.
  - Civilians may be requested to testify as witnesses.
- 

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## Review Lesson Examination, Continued

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- Item 32**            The responsibility for convening a Board of Inquiry belongs to
- a. a civil judge with power of grand jury.
  - b. a platoon commander with NJP authority.
  - c. a commander with authority to convene a general court-martial.
  - d. a battalion commander with authority to convene a summary court-martial.
- 

- Item 33**            Individuals who can be subjected to the main focus of a Court of Inquiry are
- a. active duty members of the Armed Forces.
  - b. active duty members of the Armed Forces and their dependents.
  - c. active duty and reserve members of the Armed Forces.
  - d. active, reserve, and retired members of the Armed Forces.
- 

- Item 34**            “Reasonable belief that a crime has been committed and that the item being searched for is in the place being searched” is the definition of
- a. search and seizure.
  - b. probable cause.
  - c. elements of a search.
  - d. evidence of misdemeanor.
- 

- Item 35**            Objects considered legal to search and seize are
- a. guns and knives.
  - b. government property.
  - c. vehicles and property on base.
  - d. fruits of a crime and contraband.
- 

*Continued on next page*

## Review Lesson Examination, Continued

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- Item 36** A lawful inspection is designed to
- see if troops are hiding weapons.
  - prepare for a detailed inspection.
  - ensure all uniforms are pressed and starched.
  - ensure security, health, and welfare of the troops.
- 

- Item 37** The seizure of property or evidence is made legal by which of the following conditions?
- Troops that are hiding cleaning gear for field day in their rooms.
  - A reasonable belief that contraband or evidence of a crime can be found.
  - One of your Marines is buying expensive items beyond their means.
  - A Marine has a car radio that looks like the one stolen from one of your fellow Marines.
- 

- Item 38** The proper chain of custody is designed to ensure that
- the evidence is not tampered with.
  - a prisoner does not escape.
  - duty logs will be complete.
  - evidence is always accounted for.
- 

- Item 39** Identify the article that gives officers in the chain of command the authority to conduct NJP.
- Article 15
  - Article 31
  - Article 86
  - Article 91
- 

*Continued on next page*

## Review Lesson Examination, Continued

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- Item 40**      What is in the notification of NJP that is given to the accused?
- a. The opportunity to refuse NJP and demand a trial by court martial.
  - b. The opportunity to call witnesses
  - c. The right to appear before a jury of their peers.
  - d. The right to remain silent.
- 

- Item 41**      Which article protects against self-incrimination?
- a. Article 91
  - b. Article 86
  - c. Article 77
  - d. Article 31
- 

- Item 42**      What is a right of the accused during an NJP?
- a. To have a speedy trial.
  - b. To question the witnesses.
  - c. To plead guilty to a lesser charge.
  - d. To be accompanied by a spokesman.
- 

- Item 43**      What incentive does the commander's suspension authority provide to Marines in their command?
- a. It allows the offender time to prepare for punishment.
  - b. It gives the commander the opportunity to evaluate the offender during the suspension period.
  - c. It gives the offender an opportunity to question the offense with in the allowed time period.
  - d. It allows the commander time to consider the punishment for the offense.
- 

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## Review Lesson Examination, Continued

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**Item 44** Which punishment that can be awarded concurrently with restriction?

- a. Extra duties
  - b. Correctional custody
  - c. Arrest in quarters
  - d. Confinement on bread and water, or diminished rations
- 

**Item 45** Select the maximum time an imposed punishment can be suspended.

- a. 4 months
  - b. 6 months
  - c. 12 months
  - d. 14 months
- 

**Item 46** The SROE are defined as

- a. guidelines issued by a lawful authority, which decide the limitations and justification for use of deadly force in a hostile environment.
  - b. rules that increase deterrent force capabilities and posture deliberately so that any potential aggressors will assess their own risk as unacceptable.
  - c. directives issued by a competent military authority, that determine the circumstances and limitations under which U.S. forces will initiate and/or continue combat engagement with other forces.
  - d. policies and procedures governing the actions taken by U.S. force commanders in the event of a military attack against the United States.
- 

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## Review Lesson Examination Continued

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**Item 47**

The purpose of the SROE is to provide

- a. guidance for all military operations, contingencies, terrorist attacks, and conflicts outside the United States.
  - b. guidance for establishing policies and procedures for using deadly force in a hostile environment.
  - c. protection to the United States and its forces, and in certain circumstances, the U.S. citizens and their property from hostile attack.
  - d. implementation guidance on the application of force for mission accomplishment.
- 

**Item 48**

The scope of the SROE is to

- a. establish policies and procedures governing the actions taken by U.S. force commanders in the event of a military attack against the United States and during all military operations.
  - b. provide general guidelines on self-defense and are applicable worldwide to all echelons of command.
  - c. establish policies and procedures restricting the actions taken by U.S. force commanders in the event of a military attack against the United States.
  - d. determine policies and procedures for U.S. force commanders to handle any hostile attack against the United States.
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## Review Lesson, Continued

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**Item 49**

A policy option of the SROE is to

- a. allow U.S. forces to attack and destroy hostile threats.
  - b. achieve political and military objectives.
  - c. promote the general welfare and provide for the common defense.
  - d. limit the growth of a terrorist threat.
- 

**Item 50**

Which is an intent of the SROE?

- a. Provide specific standing rules governing the use of force in a combatant commander's area of operation.
  - b. Establish rules and regulations for use during military operations other than war.
  - c. Provide general guidelines on self-defense and are applicable worldwide to all echelons.
  - d. Provide U.S. forces operational control in the event of national crisis.
- 

**Item 51**

What is the only agency able to authorize the use of collective self-defense?

- a. Commander in Chief
  - b. National Command Authorities
  - c. Joint Chiefs of Staff
  - d. Department of Justice
- 

**Item 52**

Which is an element of self-defense?

- a. Collectivity
  - b. Proportionality
  - c. Rationality
  - d. Security
- 

*Continued on next page*

## Review Lesson Examination, Continued

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- Item 53** An attack or other use of force by a foreign force or terrorist group against the United States is defined as a
- a. hostile attack.
  - b. hostile force.
  - c. hostile act.
  - d. hostile intent.
- 

- Item 54** Violation of the rules of engagement can result in a
- a. congressional inquiry.
  - b. letter of reprimand.
  - c. prosecution under the UCMJ.
  - d. death conviction.
- 

- Item 55** The mission of the coalition force in tactical scenario two found in Study Unit 5 is to
- a. provide a secure environment for the distribution of humanitarian relief supplies.
  - b. search and disarm suspected gang members of any weapons and munitions.
  - c. capture rival gang leaders and hold for interrogation by intelligence personnel.
  - d. destroy enemy supply routes and break down their lines of communication.
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## Review Lesson Examination, Continued

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**Item 56**

What ROE was violated in tactical scenario one found in Study Unit 5?

- a. Not to seize property of others to accomplish your mission.
  - b. U.S. forces should use the minimum force necessary to accomplish the mission.
  - c. Detention of civilians is authorized for security reasons or in self-defense.
  - d. Do not fire on medical personnel.
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# Review Lesson Examination Solutions

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**Correct  
Answers**

The table below lists the answers to the exercise items. If you have any questions about these items, refer to the reference page.

<b>Item Number</b>	<b>Answer</b>	<b>Reference Page</b>
1	a	1-4
2	c	1-5
3	b	1-5
4	d	1-6
5	a	1-13
6	c	1-15
7	a	1-14
8	c	1-18
9	b	1-22
10	c	1-22
11	b	1-28
12	a	1-24
13	c	1-24
14	a	2-4
15	a	2-4
16	c	2-5
17	a	2-5
18	a	2-12
19	b	2-13
20	d	2-15
21	a	2-20
22	d	2-24
23	a	2-24
24	b	3-4
25	a	3-4
26	a	3-4
27	d	3-6

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## Review Lesson Examination Solutions, Continued

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**Correct  
Answers  
continued**

The table below lists the answers to the exercise items. If you have any questions about these items, refer to the reference page.

<b>Item Number</b>	<b>Answer</b>	<b>Reference Page</b>
28	a	3-13
29	b	3-13
30	d	3-16
31	c	3-18
32	c	3-19
33	d	3-19
34	b	3-22
35	d	3-23
36	d	3-27
37	b	3-28
38	a	3-29
39	a	4-1
40	a	4-5
41	d	4-6
42	d	4-7
43	b	4-2
44	a	4-14
45	c	4-15
46	c	5-4
47	d	5-4
48	a	5-4
49	b	5-5
50	c	5-5
51	b	5-6
52	b	5-6
53	c	5-7
54	c	5-18
55	a	5-21
56	b	5-22

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