Headquarters
US Army Armor Center and Fort Knox
Fort Knox, Kentucky 40121-5230
24 March 2006

C1, Fort Knox Reg 27-10

Change 1

Legal Services

MILITARY JUSTICE

Summary. This change makes a correction to Chapter 2 in the regulation.

Suggested improvements. The proponent of this regulation is the Staff Judge Advocate . Users are invited to send comments and suggested improvements on DA Form 2028 (Recommended Changes to Publications and Blank Forms) through channels to Commander, USAARMC and Fort Knox, (ATZK-JA), Fort Knox, Kentucky 40121-5230.

1. Fort Knox Reg 27-10, 9 July 1999, is changed as follows:

Page 2-1. Remove original and replace with page 2-1 of Change 1.

Page 2-2. Remove original and replace with page 2-2 of Change 1.

2. Post these changes per DA Pam 25-40.

3. File this change in front of the publication.

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Headquarters
U.S. Army Armor Center and Fort Knox
Fort Knox, Kentucky 40121-5000
9 July 1999

Legal Services

MILITARY JUSTICE

Summary. This regulation prescribes policies and procedures governing the administration of military justice for all units within the general court-martial (GCM) jurisdiction of the Commander, U.S. Army Armor Center (USAARMC) and Fort Knox. The policies and limitations set forth herein are for local application only and are not intended to be procedural prerequisites in cases involving nonjudicial punishment (NJP) or trial by court-martial.

Applicability. This regulation applies to all units and organizations assigned or attached to this command for Uniform Code of Military Justice (UCMJ) purposes.

Supplementation. Supplementation of this regulation by subordinate commanders is prohibited without prior approval from this Headquarters.

Suggested improvements. The proponent for this regulation is the Staff Judge Advocate (SJA). Users are invited to send comments and suggested improvements on DA Form 2028 (Recommended Changes to Publications and Blank Forms) through channels to Commander, USAARMC and Fort Knox, ATTN: ATZK-JA, Fort Knox, Kentucky 40121-5000.

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Chapter 1
Introduction.

1-1. **Purpose.** This regulation implements the Manual for Courts-Martial (1998 Edition) and AR 27-10, Military Justice, and prescribes matters of policy and procedure pertaining to the administration of military justice within USAARMC and Fort Knox.

1-2. **References.**

a. Manual for Courts-Martial (MCM), United States (1998 Edition).

b. AR 27-10, Military Justice, 24 June 1996

c. AR 27-40, 19 September 1994, Litigation

d. DA Pamphlet 27-17, 16 September 1990, Procedural Guide for Article 32(b) Investigating Officer

e. AR 600-8-2, 30 October 1987, Suspension of Favorable Personnel Action (Flags)

f. AR 600-8-24, 21 July 1995, Officer Transfers and Discharges,

g. DoD Directive 6490.1, 1 October 1997, "Mental Health Evaluations of Members of the Armed Forces"

h. DoD Instruction 6490.4, 28 August 1997, "Requirements for Mental Health Evaluations of Members of the Armed Forces"

i. USAREC Regulation 27-2, 31 July 1996, Legal Services Support for the United States Army Recruiting Command

1-3. **Responsibilities.**

a. The SJA is the personal legal advisor to the Commander, USAARMC and is responsible for the overall supervision and administration of military justice within USAARMC. The SJA is responsible for the assignment of all soldiers arriving in this command with Military Occupational Specialties of 55A, 71D, and 71DC5. To ensure the timely and efficient processing of military justice and related adverse administrative actions, the SJA has the authority to direct reassignment within this command of all military legal personnel after coordination with losing/gaining commanders and the AG.

b. The Chief, Criminal Law Division, is responsible for the supervision of trial counsel, assignment of cases, processing of courts-martial, and administration of military justice within USAARMC.

c. The Senior Defense Counsel (SDC), Fort Knox Field Office, U.S. Army Trial Defense Service, is responsible for the delivery of defense services and the detail and supervision of defense counsel in support of USAARMC, tenant, and other units in the SDC area of responsibility.

1-4. **Policy.**

a. The maintenance of good order and discipline is a command responsibility. While the military justice system can assist a commander in maintaining good order and discipline, effective leadership that fosters high morale and instills a sense of responsibility remains the best way to avoid disciplinary problems. Commanders and supervisors who recognize and respond to their soldiers' problems and honest grievances typically have less need to resort to the military justice system.

b. Reports of misconduct will be promptly investigated. If disciplinary action is deemed appropriate following completion of the inquiry, the commander may choose from a variety of nonpunitive and punitive options. Any action taken should be prompt and commensurate with the seriousness of the offense and the service record of the alleged offender.

c. Nonpunitive, administrative sanctions are ordinarily the most effective means of dealing with minor disciplinary/criminal infractions. While a detailed discussion of these sanctions is beyond the scope of this regulation, trial counsel from the Criminal Law Division are available to furnish advice in this area.

d. Nonjudicial punishment (NJP) and courts-martial should be reserved for serious misconduct. Procedures for NJP and courts-martial are set forth in the MCM, AR 27-10, and this regulation. Commanders will carefully adhere to these procedures in all military justice actions.

e. Unlawful command influence corrupts the military judicial process and is expressly prohibited by Article 37, UCMJ. At every level of command, a commander's action on NJP or recommendation regarding court-martial charges must represent the commander's own independent judgment based on the seriousness of the allegation and the service record of the accused soldier. Senior commanders will not take any action, directly or indirectly, that attempts or could reasonably be perceived as an attempt to influence a subordinate commander's opinion regarding a military justice matter, nor will anyone in the chain of command attempt to influence the testimony of a potential witness.

1-5. **Designation of Court-Martial Convening Authorities.**

a. **General Court-Martial Convening Authority (GCMCA).** UP Article 22(a)(8), UCMJ, the Commander, USAARMC and Fort Knox, has the authority to

convene general courts-martial (GCM) and ordinarily serves as the GCMCA for all units assigned or attached to USAARMC for the administration of military justice. Only a GCMCA may refer courts-martial to either general courts-martial or special courts-martial empowered to adjudge a bad-conduct discharge. The Commander, United States Army Recruiting Command (USAREC), a tenant unit at Fort Knox, although also designated a GCMCA UP Article 22(a)(8) and General Order No. 18, will ordinarily forward courts-martial charges involving USAREC soldiers assigned to 3d Brigade and Area Support Group, USAREC, to the Commander, USAARMC and Fort Knox, for disposition.

b. **Special and Summary Court-Martial Convening Authorities.** The commanders of units and organizations listed below are recognized as special courts-martial convening authorities (SPCMCA). This list is not exclusive. Except in specific cases approved by the Commander, USAARMC, and in cases within USAREC the authority to convene summary courts-martial (SCM) is limited to SPCMCAs to ensure expeditious processing and the availability of a pool of disinterested officers to choose from when appointing summary court-martial officers.

(1) U.S. Army Garrison, Fort Knox (UCMJ, Art 23(2))

(2) 1st Armor Training Brigade (UCMJ, Art 23(3))

(3) 16th Cavalry Regiment (UCMJ, Art 23(3))

(4) 3d Recruiting Brigade, USAREC (UCMJ, Art 23(3))

(5) Area Support Group, USAREC (UCMJ, Art 23(3) (corresponding unit))

1-6. **Supporting Trial Counsel.** The SJA shall designate a supporting trial counsel for each SPCM jurisdiction. The designated trial counsel will be the primary point of contact for all military justice matters pertaining to that jurisdiction. The Chief, Military Justice, OSJA, USAREC, will be the primary point of contact for all military justice matters pertaining to USAREC prior to referral to courts-martial.

1-7. **Military Justice Instruction.**

a. Commanders and supervisors will not engage in instruction on military justice matters nor publish policies or guidance regarding the administration of military justice without prior coordination with the Chief, Criminal Law Division, or supporting trial counsel.

b. Commanders or supervisors desiring to schedule military justice instruction by a judge advocate should contact their supporting trial counsel or the Chief, Criminal Law Division, to schedule appropriate classes.

Chapter 2
Nonjudicial Punishment

2-1. General. Soldiers may not be punished under Article 15, UCMJ, unless they violate a punitive article of the UCMJ (Articles 77 through 134). A commander should carefully consider the sufficiency of admissible evidence before initiating NJP action, because the accused always has the option to demand trial by court-martial. The commanders will consult with their supporting trial counsel before initiating NJP against a member of their command.

2-2. Limitation of NJP Authority.

a. Minor Traffic Offenses. Except in specific cases approved by the Commander, USAARMC, authority to impose NJP or initiate UCMJ charges for minor traffic offenses occurring on Fort Knox is withdrawn from all subordinate commanders. Minor traffic offenses on post will be processed on DD Form 1805 (Violation Notice) and handled by the U.S. District Court at Fort Knox (Magistrate Court) (See chapter 5 for further detailed information).

b. Certain aggravated traffic offenses. Except in specific cases approved by the Commander, USAARMC, authority to impose NJP or initiate UCMJ charges for the aggravated traffic offenses listed below and occurring on Fort Knox is withdrawn from all subordinate commanders. These aggravated traffic offenses will be processed on DD Form 1805 (Violation Notice) and handled by the U.S. District Court at Fort Knox (Magistrate Court) (See Chapter 5 for further detailed information). The reason for this is to ensure that any resulting conviction can be reported to the offender's licensing state for traffic points assessment and possible license revocation and to ensure that similarly situated defendants receive similar sentences.

(1) Driving under the influence (DUI) of alcohol or drugs.

(2) Driving with revoked or suspended state driving privileges.

(3) Offenses committed under circumstances amounting to reckless driving committed in a civilian vehicle.

(4) Driving without a license, registration, or insurance.

c. Requests for exception to withdrawn jurisdiction. Written requests for exception to withdrawn jurisdiction UP paragraphs 2-2a or 2-2b, above, may be made through the chain of command to Commander, USAARMC (See appendix A).

d. Other aggravated traffic offenses. Other aggravated traffic offenses, such as those listed below, will ordinarily be adjudicated under the UCMJ by NJP or court-martial:

(1) Cases involving multiple offenses in which a traffic offense is incidental to other nontraffic offenses which are not appropriate for disposition in U.S. District Court at Fort Knox.

(2) Offenses committed in a government vehicle.

(3) Driving with revoked or suspended post driving privileges.

e. Trial of an offense in U.S. District Court precludes UCMJ punishment (NJP or court-martial) for the same act. It does not, however, prevent a commander from responding to the same act with an administrative action.

2-3. NJP for Officers.

a. Authority to impose NJP upon commissioned and warrant officers is reserved for the Commander, USAARMC; Commander, Eastern Region ROTC, US Army Cadet Command; Commander, USAREC; and Commander, 4th Cavalry Brigade, 1st US Army, respectively.

b. A commander who believes that NJP action should be taken against an officer within his or her command will forward a Report of Officer Alleged Misconduct through command channels to the appropriate commander listed above. Reports directed to Commander, USAARMC, will be sent through the SJA, ATTN: Criminal Law Division. When transmitting a case for NJP, no recommendation regarding the nature or extent of the punishment will be made.

2-4. Processing. Civilian clerks/legal specialists/noncommissioned officers (NCOs) will ensure that all punishments listed on DA Form 2627 (Record of Proceedings under Article 15, UCMJ) are clearly stated and that any periods of suspensions are properly annotated. In addition, it is their responsibility to ensure summarized proceedings are legibly recorded on a DA Form 2627-1 (Summarized Record of Proceedings under Artile 15, UCMJ). A DA Form 2627-1 should remain in the local unit file for 2 years or until the Soldier is transferred to another GCMCA jurisdiction, whichever occurs first.

2-5. Correctional Custody. At this time, Fort Knox does not have an approved correctional custody facility. Accordingly, commanders may not adjudge correctional custody as a punishment under Article 15, UCMJ.

2-6. **Filing Determinations.** For soldiers in the grade of E-4 and below (prior to punishment), a filing determination will not be made; instead, item 5 of the DA Form 2627 will be marked "NA" and the form will be maintained in the unit file for 2 years or until the soldiers reach their ETS or are transferred to another GCMCA jurisdiction. For soldiers in the grade of E-5 and above, the imposing commanders will check either "performance" or "restricted" in item 5 of DA Form 2627 to indicate their filing determination.

2-7. **Judge Advocate Review of Article 15 Appeals.**

a. Appeals which require review by a judge advocate UP paragraph. 3-33, AR 27-10, and Note 9, DA Form 2627, prior to the appellate authority's action, must be forwarded to the supporting trial counsel for consideration and advice. All supporting evidence/documents, along with the soldier's written appeal, must be included. The trial counsel will annotate in block 8, DA Form 2627. If the Commander, USAARMC, is the appellate authority, the case will be referred to the SJA for consideration and advice and the SJA will annotate block 8.

b. When the accused or defense counsel submits matters for consideration by the appellate authority, either regarding the merits or appropriateness of the punishment, the imposing commander may submit a comment on any point raised in the accused's appeal. In all cases where the Commander, USAARMC, is the appellate authority, the imposing commander will provide a comment regarding the appeal. The imposing commander will also include the soldier's local personnel file with forwarded matters.

2-8. **Review of NJP Proceedings.** Upon completion of all formal NJP proceedings, units will forward the original and copy 1 of DA Form 2627 and all supporting documentary evidence to the SJA, ATTN: Criminal Law Division. The Criminal Law Division will review the Article 15, date stamp each copy in the lower right hand corner, and return all documents to the supporting legal specialist/clerk for distribution IAW paragraph. 3-37, AR 27-10. Control measures will be established to ensure distribution is completed in a timely manner. Errors noted during the review will be brought to the attention of the supporting legal specialist/clerk for future reference and corrective action if appropriate.

2-9. **Article 15 Reconciliation log.** All battalion/squadron level units will maintain a DA Form 5110-R (Article 15 Reconciliation Log) IAW paragraph 3-39, AR 27-10.

2-10. **Distribution of DA Form 2627.** Distribution and filing will be governed by paragraph 3-37, AR 27-10.

2-11. **JAG-2 Monthly Feeder Report.** Brigade/regimental legal clerks are required to submit a JAG-2 Monthly Feeder Report to the SJA, ATTN: Criminal Law Division, NLT the second working day of each month.

Chapter 3
Civilian Confinement.

3-1. **General.** It is the policy of this command to seek the expeditious release of soldiers from civilian pretrial confinement when appropriate. Commanders at all levels will take an active interest in the return of confined soldiers to military control. When soldiers are available for release to their unit, the commander will ordinarily ensure that custody is taken immediately. Request for exceptions to these guidelines may be granted on a case-by-case basis by the SJA.

3-2. **Responsibilities.**

a. When soldiers are is placed in civilian confinement within 25 miles of their unit, the immediate commander or an officer representative will visit the soldiers within 48 hours after receiving notification of their confinement. During the initial visit, the commander's representative must be a commissioned officer. Thereafter, the soldier must be visited at least once every 30 days. The commander's representative for subsequent visits may be a senior NCO (E-7 through E-9) provided they are senior in grade to the confined soldier. All visits will be coordinated with the DOD Police Civil Liaison Section of the Provost Marshal's Operations Division. Visits will be scheduled during duty hours only (0900-1700, Monday through Friday). Official visits will not be scheduled on normal visiting days. Visits will be limited to not more than two members of the soldier's chain of command and will be for only a short duration of time (10-30 minutes).

b. If the soldiers are in civilian confinement more than 25 miles from their unit and it is not practical to visit them at the confinement facility, the immediate commander must initiate communication with the soldiers by telephone and/or memorandum within 48 hours after receiving notification that they are confined and thereafter in the same manner at least once every 30 days. The supporting trial counsel will be notified immediately of any unusual problems pertaining to or unusual requests from the confined soldier.

c. Commanders will immediately report the confinement of members of their commands by civilian authorities by memorandum to the SJA, ATTN; Criminal Law Division (supporting trial counsel) with information copies to the Provost Marshal (ATZK-PM). This report will include the soldier's unit, place of confinement, charge(s) on which the soldier is being held, and status of the case. Thereafter, a follow-up report will be submitted every 30 days (or upon change in status of the case) until the soldier is either released, acquitted, or convicted and sentenced.

d. Following any civil conviction, whether or not it results in confinement, the commander will consult Chapter 14, AR 635-200, supporting trial counsel, and the supporting Military Personnel Office (MILPO) to determine what action, if any, to take based on the conviction. In cases where soldiers have been convicted of a civil offense which results in a sentence of over six months of confinement, the soldier may be assigned to the Personnel Control Facility which, has the mission of managing soldiers who have been confined by civilian authorities as a result of a criminal conviction.

Chapter 4
Courts-Martial.

4-1. Types of Courts-Martial.

a. A summary court-martial (SCM) is a court composed of one officer who may or may not be a lawyer. The SCM handles minor crimes and has simple procedures. The maximum punishment, which depends upon the rank of the accused, is limited to confinement for 1 month, forfeiture of two-thirds pay for 1 month, and reduction in grade. A SCM may not try an accused against their will. If they object, their case may be considered for trial by a higher court-martial.

b. A special court-martial (SPCM) consists of a military judge, at least three court members, a trial counsel, and a defense counsel. The maximum sentence is confinement for 6 months, forfeiture of two-thirds pay per month for 6 months, and reduction to the lowest enlisted grade.

c. A special court-martial empowered to adjudge a bad-conduct discharge (BCD SPCM) differs from an ordinary SPCM in that a verbatim court reporter is required. If a BCD is adjudged, the accused has a right to an automatic appeal to the Army Court of Criminal Appeals.

d. A general court-martial (GCM) tries the most serious offenses. It consists of a military judge, at least five members, a trial counsel, and a defense counsel; the counsel must be lawyers. Unless waived by the accused, a formal investigation must occur before a general court-martial may try the case. The GCM may adjudge the most severe sentences authorized by law, including a dishonorable discharge.

4-2. Pretrial Restraint.

a. The imposition of pretrial confinement, as well as certain lesser forms of pretrial restraint (see Rules for Courts-Martial (RCM) 304(a)) requires the government to bring an accused soldier to trial within a set time period as prescribed by the speedy trial rules of RCM 707. The time frame may vary depending upon the triggering event. The following types of pretrial restraint trigger the speedy trial clock. See RCM 707(a)(2):

(1) Restriction to specified limits (RCM 304(a)(2)).

(2) Arrest (restriction plus cessation of duties) (RCM 304(a)(3)).

(3) Pretrial confinement (RCM 304(a)(4)).

(4) Restriction tantamount to confinement.

b. Since pretrial restraint triggers the speedy trial provisions, commanders will not impose any form of pretrial restraint without making prior coordination with their supporting trial counsel. For detailed guidance on pretrial confinement, see appendix B.

4-3. **Processing Court-Martial Charges.**

a. Before court-martial charges are preferred, the legal clerk/NCO will coordinate with the supporting trial counsel, who will draft and/or review the charges for legal sufficiency. The trial counsel will initial the charge sheet after each specification of each charge.

b. Court-martial packets will contain the following:

(1) Charge Sheet;

(2) Evidence supporting the charges;

(3) Certified copies of the soldiers DA Form 2-A and 2-1; and,

(4) Transmittal memoranda forwarding the charge(s) through the chain of command (See appendix C).

c. Trial counsel will coordinate the preferral of charges with the preferring commander. An original packet and four copies, along with the soldier's local file, will be hand carried to the SJA, ATTN: Criminal Law Division, when the charges are forwarded to the Commander, USAARMC and Fort Knox, for referral to a general courts-martial or a special court-martial empowered to adjudge a conduct discharge. See appendix C for detailed guidance.

4-4. **Article 32 Investigation.**

a. **Appointment of an investigating officer (IO).** Prior to recommending that a case be tried by GCM, the Special Courts-Martial Convening Authority (SPCMCA) will appoint an officer, who has not been previously exposed to the facts of the case, to conduct a pretrial investigation of the charges IAW Article 32, UCMJ, and RCM 405. If possible, the IO should be a field grade officer. With the concurrence of the SJA, Judge Advocate General's Corps officers may be appointed as IOs in complex cases. The SPCMCA should appoint an IO within 24 hours of receiving the court-martial charges. The appointment will be in writing. To facilitate the timely processing of each case, the IO will be relieved of all other duties which would interfere with the investigation and given all administrative support necessary to complete the investigation without undue delay.

b. **Conduct of the Article 32 Investigation.** The investigation will be conducted IAW Article 32, UCMJ; RCM 405, and DA Pam 27-17. Within 24 hours of being appointed, the IO will contact the Chief, Administrative Law Division, Office of the Staff Judge Advocate (OSJA) (624-7414 or 624-4668), for a briefing on the procedural requirements of the investigation. The IO must conduct a thorough and impartial investigation. The IO will not seek legal advice from either the trial or defense counsel assigned to the case. The appointed legal advisor from the Administrative Law Division is the IO's point of contact for all legal questions. The IO is to inquire into the truth of the matter set forth in the charges, consider the form of the charges, and make a recommendation regarding the disposition of the charges. The DD Form 457 (Investigating Officer's Report) should be forwarded to the appointing authority within 7 days of the IO being appointed, excluding any authorized delay. In all cases, the IO will include a brief chronology of the course of the investigation in item 21, DD Form 457, to include specifically an explanation of any periods of delay. The SPCMCA may delegate the authority to approve delays to the IO by including the following language in the appointment memorandum. "IAW RCM 707(c), you are authorized to approve requests for delay of the Article 32 hearing." Note: SPCMCA must approve delays in writing.

c. **Authorization for payment of transportation expenses and allowances for civilian witnesses at Article 32 investigations.** When an IO determines that a civilian witness is necessary to the investigation and reasonably available, the IO will submit a request for payment of transportation expenses and allowances to the SJA, ATTN: Criminal Law Division. Pursuant to paragraph 5-12, AR 27-10, the authority to approve the payment of transportation expenses and allowances for civilian witnesses at Article 32 investigations is delegated to the SJA. The Commander, USAARMC, retains the authority to disapprove such payments.

4-5. **Court Reporters.**

a. Court reporters will not ordinarily be detailed to a SPCM.

b. Any request for a court reporter to prepare a verbatim transcript of the testimony of a witness at an Article 32 investigation will be forwarded to the Deputy Staff Judge Advocate for resolution.

4-6. **Witness Attendance.**

a. Subpoenas, invitational travel orders (ITO's), payment vouchers, and travel arrangements for all witnesses required to testify at courts-martial or Article 32 investigations are processed by the Criminal Law Division. Requests from other installations asking for witnesses located at or near Fort Knox will also be processed by the Criminal Law Division.

b. Trial counsel will notify the appropriate unit commander of the names of the witnesses requested by the government and the defense as well as the time and the date of the court-martial. It is the responsibility of the appropriate unit commander to ensure that all witnesses are present for interview by trial counsel or defense counsel and for trial. Unit commanders will release the witnesses from other military duties and provide adequate transportation for the witnesses and the accused to attend trial. Unit commanders will ensure that all designated witnesses under their command appear to testify in a clean Class A uniform.

c. Commanders will not issue passes, ordinary leave, or TDY orders to potential court-martial witnesses (including witnesses for Article 32 investigations), suspects, defendants scheduled to appear in U.S. District Court, or accused soldiers without the prior coordination with the supporting trial counsel or the Chief, Criminal Law Division. Whenever practical, emergency leave should not be granted to these individuals without first coordinating with the supporting trial counsel or the Chief, Criminal Law Division.

d. If the PCS or extended TDY of a witness appears likely before trial, the unit commander will forward a request for administrative hold through the SJA, ATTN: Criminal Law Division (supporting trial counsel), to the supporting MILPO. The request will name the case for which the testimony is needed and the date and place of the witness' prospective reassignment. If it appears that a military witness will terminate active service before trial, i.e., ETS, the witness' commander will promptly notify the supporting trial counsel or the Chief, Criminal Law Division.

e. Failure to comply with these provisions may result in substantial expenditure of government and individual funds to return personnel to this command and could, in some instances, result in the dismissal of charges.

4-7. **Accused Attendance.**

a. It is the responsibility of the appropriate unit commander to ensure that an accused is present for interview by defense counsel and for trial. The unit commander of an accused in pretrial confinement will provide guards and transportation to escort the accused from the place of confinement to the place of trial so that the accused arrives at least 30 minutes before the designated time of trial. While ultimately the personal responsibility of the accused, upon the request by the defense counsel, the unit commander will render reasonable assistance to ensure that the accused is properly attired (Class A uniform).

b. The unit commander will provide three escorts to accompany an accused during trial. The escorts will be of a grade equal or senior to that of the accused and no less than the grade of E-5. Escorts will also be in the Class A uniform. During the trial, the escorts will serve as the court's bailiffs. If confinement is adjudged, one of the escorts will serve as a prisoner guard and will take immediate custody of the prisoner.

(The prisoner guards will not allow the prisoner out of sight and custody until the prisoner is duly delivered to the appropriate confinement authority, unless they are relieved of this prescribed duty by a commissioned officer, to include the prisoner's military defense counsel.)

4-8. **Discharge UP Chapter 10, AR 635-200.** A request for discharge in lieu of trial by court-martial is typically initiated by the Trial Defense Service on behalf of the accused and forwarded up the accused's chain of command through the SJA to the convening authority. Each commander is required to recommend approval or disapproval and, in cases involving a recommendation for approval, the type of discharge the accused should receive. See appendix D for a sample endorsement.

Chapter 5
U.S. District Court at Fort Knox (Magistrate Court).

5-1. Court Procedures.

a. The U.S. District Court at Fort Knox normally convenes every Thursday (federal holidays excluded) in Building 1310 to dispose of offenses which are charged by the issuance of a violation notice (DA Form 1805) or by the filing of an information, a Federal criminal complaint, by the Magistrate Court prosecutor.

b. Each violation notice issued will have marked on the lower left-hand corner whether an appearance is mandatory or optional. A violation notice marked "mandatory" means the recipient must appear in court at a later date (notice of date is mailed to defendant under separate cover). A violation notice marked "optional" specifies a collateral sum that the recipient may pay to the Central Violations Bureau in lieu of appearing in court. Failure to appear on a mandatory court violation, or on an optional appearance violation if payment of the collateral sum has not been made, will result in the issuance of a criminal summons or a warrant for the arrest of the recipient.

c. If a defendant is unable to appear in U.S. District Court due to some compelling reason (e.g., extended TDY, emergency leave, civilian confinement, etc.), the defendant, or the defense attorney if one has been retained, must report to the Magistrate Court Clerk in the OSJA prior to the scheduled court date to formally request a delay. The Magistrate Court Clerk will assist the defendant in preparing a written request to the Clerk of the U.S. District Court, Western District of Kentucky, asking that the court date be rescheduled. The Magistrate Court Clerk will submit the request and notify the defendant of the new court date.

d. To ensure that soldiers comply with court appearance notices they receive by mail, the U.S. Magistrate Court Clerk at Fort Knox will provide copies of upcoming court dockets to each brigade/regimental legal section. The brigade/regimental legal sections are directed to provide notice of each defendant's court date to the appropriate unit commander. Commanders will ensure that their soldiers comply with court notices.

e. United States Marshals are authorized to execute warrants for the arrest of individuals who fail to appear in U.S. District Court. Commanders, when presented with a warrant for a soldier, will ensure the soldier is delivered into custody of the arresting officer. Military duties will not interfere with the execution of a federal warrant.

f. Commanders having administrative control over reservists who are prosecuted in U.S. District Court for offenses other than minor traffic offenses will notify the individual's reserve unit of the offense charged and the scheduled court appearance date.

g. A soldier who fails to appear in U.S. District Court when lawfully ordered to do so may be punished by UCMJ action or other administrative actions.

Chapter 6
Mental Health Evaluations.

6-1. **General.** Often, the actions of a suspect or the accused of a crime may lead a commander to believe a mental evaluation is required. A commander should understand the guidance of DoD Directive 6490.1, 1 October 97, Mental Health Evaluations of Members of the Armed Forces, and DoD Instruction 6490.4, 28 August 1997, Requirements for Mental Health Evaluations of Members of the Armed Forces, prior to referring a soldier for a mental evaluation.

6-2. **Emergency Referrals.**

a. A commander shall refer a soldier for an emergency mental health evaluation as soon as is practical whenever soldiers, by actions or words, such as actual, attempted, or threatened violence, intend or are likely to cause serious injury to themselves or others and when the commanding officer believes the soldier may be suffering from a severe mental disorder.

b. Prior to transporting the soldier for an emergency evaluation, or shortly thereafter if time does not permit, the commanding officer shall consult with a mental healthcare provider at the place where the soldier is to be transported. The commanding officer will discuss with the provider the facts and circumstances leading to the referral and forward a memorandum documenting the information discussed. The final decision to admit a soldiers rests solely with a mental healthcare provider granted hospital-admitting privileges.

c. Upon request by a soldier for advice from an attorney, an attorney who is a member of the Armed Forces or employed by DoD shall be appointed at no cost to the soldier to advise them of ways in which they may seek redress.

6-3. **Non-Emergency Referrals.**

a. In other than emergency situations, a commander shall consult with a mental health professional before referring a soldier for a mental health evaluation to be conducted on an outpatient basis.

b. The commander will ensure that the soldier is provided with a written notice of referral at least 2 business days before the referral is made (See appendix E).

c. The soldier must acknowledge having received the notice. If the soldier declines to do so, the commander shall so indicate on the notice.

6-4. **Rights.**

a. In any case in which a soldier is referred for a mental health evaluation, in other than an emergency situation, the following provisions apply:

(1) Upon request of the soldier, a Trial Defense Service (TDS) attorney shall advise the soldier. A soldier may consult with a civilian attorney at no expense to the government.

(2) A soldier may submit a complaint of wrongful referral to the Office of the Inspector General (IG), Fort Knox, or to the DOD Inspector General.

(3) A soldier has the right to obtain a second opinion from a mental healthcare provider of the soldier's own choosing, at the soldier's own expense, if reasonably available.

(4) The soldiers will not be restricted from lawfully communicating with the IG, an attorney, member of Congress, or others about their referral.

(5) In a nonemergency situation, a soldier shall have at least two business days before a scheduled mental health evaluation to meet with an attorney, IG, chaplain, or other appropriate party. If a commander believes that the soldier's condition requires a mental health evaluation occur sooner, such reason shall be stated as part of the request for consultation.

b. If the soldier's military duties make compliance with any of the above procedures impractical, the commander shall prepare a memorandum stating the reasons for the inability to comply.

6-5. **Prohibitions.**

a. No person shall refer a soldier for a mental health evaluation as a reprisal for making or preparing a lawful communication to a member of Congress, any appropriate authority in the chain of command of the individual, an IG, or a member of a DOD audit inspection, investigation, or law enforcement organization.

b. No person may restrict a soldier from lawfully communicating with an IG, attorney, member of Congress, or other person about the soldier's referral for a mental health evaluation.

c. Any violation of the provisions of subparagraphs a and b above by any person subject to the UCMJ may be punishable as a violation of Article 92 of the UCMJ. Violations by civilian employees are punishable under regulations governing civilian disciplinary or adverse actions.

Chapter 7
Victim/Witness Assistance Program.

7-1. General.

a. Public Law 97-291, the Victim and Witness Protection Act of 1982, is implemented by Chapter 18, AR 27-10, the Victim/Witness Assistance Program. The Victim/Witness Assistance Program designates responsibility and guidance for the treatment of persons who are victims of offenses under the UCMJ and persons requested as witnesses in proceedings conducted pursuant to the UCMJ.

b. **Policy.** All persons working with and in support of the military justice system must ensure victims of and witnesses to crimes under the UCMJ are treated with dignity and courtesy. Interference with personal privacy and property rights will be kept to a absolute minimum. Special consideration should be given when the victim is a child or the case involves domestic abuse or sexual misconduct.

c. **Objectives.** The objectives of the Victim/Witness Assistance Program are to mitigate the physical, psychological, and financial hardships suffered by victims and witnesses of offenses investigated by Department of the Army (DA) authorities, to foster the full cooperation of victims and witnesses within the military criminal justice system, and to ensure victims and witnesses are advised and accorded rights under Chapter 18, subject to available resources.

7-2. Victim/Witness Liaison.

a. The Victim/Witness Liaison (VWL) for Fort Knox is located within the Criminal Law Division (624-1852). The VWL is the point of contact through which victims and witnesses may obtain services and information regarding the status of a pending case.

b. Military law enforcement and investigative personnel will promptly inform all victims about the Victim/Witness Assistance Program and provide assistance in contacting the VWL.

7-3. Victim Services.

a. At the earliest opportunity after the detection of a crime, but no later than the appointment of an Article 32 Investigation Officer or referral of charges to court-martial, the VWL will provide a Victim Information Packet to all known victims.

b. The VWL will assist victims in obtaining financial, legal, and other social services, as appropriate, by providing the victims with information concerning the sources of such services, and if necessary, by arranging for appointments with relevant service agencies.

7-4. **Consultation with Victims.** When appropriate, trial counsel, VWL, or commanders of soldiers suspected of crimes shall consult with victims of serious offenses concerning:

(1) Decisions not to prefer charges;

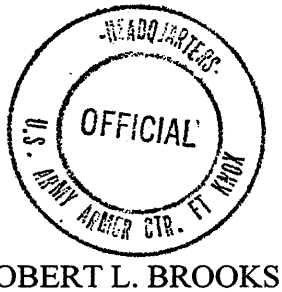
(2) Decisions concerning pretrial restraint or release from pretrial confinement of the alleged offender;

(3) Dismissal of court-martial charges; and/or

(4) Negotiation of pretrial agreements and their potential terms.

Consultation may be postponed or limited when justified by the circumstances. Nothing in the chapter limits the responsibility and authority of commanders to take such action as they deem appropriate.

FOR THE COMMANDER:



ROBERT L. BROOKS
Director, Information Management

OFFICIAL:
FRANK J. GEHRKI III
Colonel, GS
Chief of Staff

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Appendix A
Sample Request for Exception to Withdrawn Jurisdiction.

Co/Trp OFFICE SYMBOL (27) (DATE)

MEMORANDUM THRU

Commander, (Squadron or Battalion), Fort Knox, Kentucky 40121-5000

Commander, (Brigade, Regiment, or Garrison), Fort Knox, Kentucky 40121-5000

FOR Commander, USAARMC and Fort Knox, Fort Knox, Kentucky 40121-5000

SUBJECT: Request for Exception to Withdrawn Jurisdiction

1. Purpose. Per Fort Knox Reg 27-10, Military Justice, paragraph 2-2c, this request is forwarded to you for action.

2. Recommendation. Recommend that (soldier's name)'s chain of command be permitted to consider and, if appropriate, initiate UCMJ action in this case as an exception to paragraph 2-2a or 2-2b, USAARMC 27-10.

3. Discussion. Provide a brief factual summary of the alleged misconduct and attach any supporting documentation. Give time, date, and facts surrounding the alleged offense(s). State how fairness and judicial efficiency would be promoted by exercise of UCMJ jurisdiction over this/all offenses involving the soldier. Note that this recommendation has been coordinated with appropriate Magistrate Court officials and with the Staff Judge Advocate and that they have no objection to this course of action.

Encls
as

SIGNATURE BLOCK
CPT, AR
Commanding

APPROVED _____
DISAPPROVED _____
SEE ME _____
NOTED _____

(Each superior commander in the chain of command personally signs a forwarding endorsement with recommendation for approval/disapproval)

Appendix B
Confinement Procedures.

B-1. Pretrial Confinement.

a. General. As a general rule, an accused pending court-martial should continue normal duties while awaiting trial. Pretrial confinement may be imposed only when lesser forms of restraint are inadequate to ensure the accused's presence for trial or to prevent the accused from engaging in serious criminal misconduct.

b. Grounds for pretrial confinement.

(1) Pretrial confinement is governed by RCM 305, MCM, United States (1998 Edition) which provides that when probable cause exists to believe that soldiers have committed an offense triable by court-martial, they may be placed in pretrial confinement only if there is probable cause to believe: (1) that they will not be present for trial, a pretrial hearing, or investigation, **or** (2) they will engage in serious criminal misconduct, **and** (3) lesser forms of restraint are inadequate to ensure their presence or prevent serious criminal misconduct. Serious criminal misconduct includes intimidation of witnesses, obstruction of justice, seriously injuring others, or other offenses which pose a serious threat to the safety of the community, or to the effectiveness, morale, discipline, readiness, or safety of the command, or to the national security of the United States.

(2) A person will not be confined as a mere matter of convenience or expedience. In deciding whether or not confinement is necessary, some of the factors which should be considered are as follows:

(a) Nature and circumstances of the offenses charged or suspected, including extenuating circumstances;

(b) Amount of the evidence against the accused;

(c) Ties to the local area, including family, off-duty employment, financial resources, and length of residence;

(d) Character and mental condition;

(e) Service record, including any record of previous misconduct;

(f) Record of appearance at or flight from other pretrial investigations, trials, or other similar proceedings; and

(g) Likelihood that the accused can and will commit further serious criminal misconduct if allowed to remain at liberty.

(3) Although the Military Rules of Evidence are not applicable, the commander should judge the reliability of the information available. Before relying on the reports of others, the commander must have a reasonable belief that the information is believable and has a factual basis. The information may be received orally or in writing. Information need not be received under oath, but an oath may add to its reliability. A commander may examine the accused's personnel and police records and may consider the recommendations of others.

(4) Pretrial confinement will not be ordered in cases in which disposition by Article 15 is contemplated. A case in which trial by SCM is contemplated is also not appropriate for pretrial confinement absent highly unusual circumstances. The time spent in pretrial confinement counts against whatever confinement is adjudged by a court-martial.

c. A commander, or any other commissioned officer may order an enlisted soldier into pretrial confinement, but only a commanding officer may order an officer into pretrial confinement. This authority may not be delegated. A superior commander may, if deemed appropriate, withhold the pretrial confinement authority of subordinate commanders.

d. Procedure for pretrial confinement:

(1) To place an accused in pretrial confinement, the commander must take the following actions in all cases before delivering the accused to the Fort Knox Regional Corrections Facility (RCF):

(a) Make telephonic coordination with the supporting trial counsel. Nonduty hour telephone numbers can be obtained from the Military Police Desk Sergeant (624-2111). A comment must be entered on the back of the DD Form 497 (Confinement Order) as to the coordination made; i.e., "Pretrial confinement coordinated with (name, date, time)." A soldier will not be accepted into pretrial confinement without prior legal coordination.

(b) Pursuant to RCM 305(e), advise the accused of the nature of the offenses for which held, the right to remain silent, the right to counsel, and the procedure for review of pretrial confinement, utilizing a pretrial confinement rights advisement memorandum (See sample). Complete and sign the memorandum.

(c) Complete and sign the DD Form 497 with UCMJ article number(s) and offenses(s) listed.

(d) Prepare DA Form 5112-R (Checklist for Pretrial Confinement) explaining the reasons for the conclusion that the requirements for pretrial confinement have been met. The DA Form 5112-R will refer to witness statements, investigative reports, or other records considered by the commander. Copies of such documents will be attached. The supporting trial counsel will assist in the preparation of this document.

(e) Except when impractical, escort the accused to Building 1310, Trial Defense Service, to permit them to consult with a military defense counsel before entering the RCF. In all cases, the confinee must be permitted to consult with a defense counsel within 48 hours of entry into pretrial confinement. This consultation should be coordinated with supporting trial counsel.

(2) Escort the accused to the RCF. All pretrial inmates must have the following articles with them to be accepted into confinement by the RCF:

(a) Original and one copy of the DD Form 497;

(b) DA Form 5112-R;

(c) Pretrial Confinement Rights Advisement Memo;

(d) Military ID Card;

(e) Medical and dental records;

(f) All basic issue of military clothing; and

(g) One copy of an inventory of all personal effects retained in the unit.

(3) Ensure proper security of the prisoner's personal effects while in confinement.

(4) Commanders of inmates in pretrial confinement are required to conduct a command visit at a minimum of two times per month.

(5) Questions regarding specific pretrial confinement requirements may be directed to the supporting trial counsel or the RCF at 624-1111.

(6) Ordinarily within 48 hours and not later that 72 hours after ordering a prisoner into pretrial confinement or after receipt of a report that a member of the commander's unit has been confined, the commander shall decide whether pretrial confinement will continue. If continued pretrial confinement is approved, the commander shall prepare a written memorandum which states the reasons for the conclusion that the requirements for confinement in RCM 305(h)(2)(b) have been met. If a written memorandum was prepared by the commander before ordering confinement, a second memorandum need not be prepared. Nevertheless, the commander can add to the original memorandum at a later time.

(7) If necessary, a neutral and detached officer or a military magistrate will review each case of pretrial confinement per RCM 305i(1) within 48 hours of the accused being ordered into confinement. The Office of the Staff Judge Advocate will arrange for this review which will ordinarily be performed by a military magistrate. Within 7 days, a military magistrate shall review the 48-hour probable cause determination and necessity for continued pretrial confinement per RCM 305i(2). However, nothing precludes the military magistrate from reviewing continued pretrial confinement per RCM 305i(2) within 48 hours. Any appearance of the accused before a military magistrate shall ordinarily take place at the RCF. The neutral and detached officer or the military magistrate may order the release of the confinee whose incarceration does not meet legal requirements. When such a release order is issued, the confinee's unit commander will ensure immediate release. Absent new facts, the command may not confine the soldier again or place the soldier on restriction tantamount to confinement.

B-2. Post Trial Confinement.

a. Commanders will inventory the equipment of all personnel scheduled for trial by court-martial no later than 48 hours before the scheduled trial date. Commanders will institute appropriate action to ensure that if subsequently found guilty and ordered confined, the accused can be transported without delay to the RCF with the requisite records, equipment, and health and comfort items.

b. Soldiers sentenced to confinement will be incarcerated without delay unless the sentence to confinement is deferred by appropriate authority.

c. Soldiers previously held in pretrial confinement are required to have the following articles with them upon reentry into the RCF:

(1) Original and one copy of the confinement order (DD Form 497) and

(2) Report of Result of Trial and Charge Sheet.

d. Soldiers sentenced to post trial confinement who are making initial entry into the RCF must have, in addition to the above, the following articles:

(1) Military ID card;

(2) Medical and dental records;

(3) Mental Health File;

(4) Report of Investigation (CID Report);

(5) DD Form 2704 - Victim/Witness Certification and Election (Sealed);

(6) PCS orders for sentences of over 30 days with a discharge;

(7) Military personnel file;

(8) Basic issue military clothing; and

(9) Copy of an inventory of all personal effects retained at the unit.

e. Post trial inmates with sentences of 90 days or less, without a discharge, remain assigned to their parent unit. Soldiers sentenced to 30 days or less, regardless of discharge, remain assigned to their parent unit. Soldiers sentenced to more than 30 days and a punitive discharge, or more than 90 days without a punitive discharge, will be reassigned to the Personnel Control Facility (PCF) (WOUXPR), Fort Knox, Kentucky and transferred to the RCF. Sentenced females who fall into one of the above categories will serve their confinement at the RCF, Fort Sill, Oklahoma, and assigned to the PCF (WOVGPR), Fort Sill, Oklahoma 73503. Females in pretrial confinement will be held at Fort Knox. All officers regardless of sentence and all soldiers sentenced to over 5 years will serve their confinement at the U.S. Disciplinary Barracks, Fort Leavenworth, Kansas, and assigned to the Correctional Holding Detachment (W21B1A), Fort Leavenworth Kansas 66027-1363. The unit is responsible for providing prisoner escorts to the USDB.

f. The unit is responsible for clearing the soldier from Fort Knox on AG Format 410, Permanent Change of Station orders.

B-3. Construction. Nothing in this appendix shall be construed to grant rights to an accused not otherwise provided by law, and no failure to comply with the provisions of this appendix shall invalidate confinement or provide a basis for any remedy not otherwise provided by law.

Sample Pretrial Confinement Rights Advisement.

Co/Trp OFFICE SYMBOL (27) (DATE)

MEMORANDUM FOR (NAME), (SS#), (UNIT)

SUBJECT: Notification of Pretrial Confinement Rights Advisement

1. I, _____, have probable cause to believe that you have committed the following offense(s) which is(are) triable by court-martial: _____.

2. I am ordering you into pretrial confinement because I have concluded that your confinement is required (to ensure your presence during the investigation and trial of these offenses) and to prevent you from engaging in serious criminal misconduct while pending trial) and that lesser forms of restraint are inadequate for this purpose.

3. You have the right to remain silent. You do not have to answer any questions concerning the offense(s) with which you are charged. Anything you say or do can be used as evidence against you in a trial by court-martial.

4. You have the right to consult with a lawyer. This lawyer can be a civilian lawyer of your own at no expense to the government. Whether or not you hire a civilian lawyer, a military lawyer will be detailed to represent you at no expense to you and will consult with you within 48 hours of the time you are placed into pretrial confinement.

5. Within 48 hours of your entering pretrial confinement, either a neutral and detached officer or a military magistrate will review my decision to determine whether there is probable cause to believe that you committed these offense(s) and that continued pretrial confinement is necessary. If initial review is not by a magistrate, within 7 days, a military magistrate shall review the probable cause determination. You and your counsel may appear before the military magistrate and make a statement. You may also submit a statement in writing to the military magistrate. I or another representative of the command may also appear to make a statement. The military magistrate may approve continued confinement, or order your release. You will be notified of the magistrate's decision and a record of the decision will be filed in your correctional treatment file at the Regional Corrections Facility. A copy of the record will be provided to you upon request.

6. If the military magistrates approve continued pretrial confinement, they will reconsider your decision upon your request based upon any significant information not previously considered.

Co/Trp OFFICE SYMBOL
SUBJECT: Notification of Pretrial Confinement Rights Advisement

7. Upon referral of charges to trial, the military judge will review the decision to continue you pretrial confinement upon your motion for appropriate relief.

8. Should you have any questions concerning these offenses or your pretrial confinement, you should contact your detailed military defense counsel.

SIGNATURE BLOCK
CPT. AR
Commanding

I acknowledge receipt of this notification and I understand my pretrial confinement rights.

SIGNATURE BLOCK
Rank, USA
SS#

Appendix C
Procedures for Processing Court-Martial Charges.

C-1. General.

a. Prompt disposition of charges under the UCMJ is an important command responsibility. RCM 707 provides for the dismissal of court-martial charges in any case where the accused is not brought to trial within 120 days from the imposition of pretrial restraint, i.e., restriction, arrest, or pretrial confinement, or preferral of charges. The speedy disposition of offenses under the UCMJ also promotes good morale and discipline.

b. Commanders at any level can obtain advice on any military justice matter from the supporting trial counsel. Trial counsel assistance will be sought regarding the preparation of charges.

C-2. Action by the unit commander.

a. Preliminary inquiry. Upon receipt of information that a member of the command is accused or suspected of committing an offense triable by court-martial, the commander will order a preliminary inquiry as described by RCM 303. The purpose of the inquiry is to gather all reasonably available evidence bearing on guilt or innocence and any evidence relating to aggravation, extenuation, or mitigation so that the commander may make an informed decision regarding disposition of the alleged offense. The inquiry is informal and may be conducted by the commander personally or by members of the command. In most cases, and especially serious or complex cases, the commander should request the assistance of law enforcement personnel in conducting further investigation. The commander should seek the advice of the supporting trial counsel concerning such matters as following proper procedures for interrogations, searches and seizures, eyewitness identifications, preserving testimony of witnesses who may not be available for trial, as well as the spectrum of punitive and nonpunitive measures available.

b. Suspension of favorable personnel actions. If after the preliminary inquiry it appears that some type of disciplinary action may be taken against an accused, the unit commander will initiate a flagging action UP AR 600-8-2.

c. Preferral of charges. Following the preliminary inquiry, if trial by court-martial is deemed appropriate, the commander will coordinate with the supporting trial counsel regarding the appropriate charges to prefer given the available evidence.

Once this coordination is complete, the supporting trial counsel or unit legal specialist/civilian clerk will prepare the charges on DD Form 458. The trial counsel will review and initial each specification of each charge on the charge sheet. The charges must be sworn to before a commissioned officer on orders as an adjutant or assistant adjutant or before a judge advocate.

d. Advising the accused of the charges. The commander's signature or that of a designated person, at block 12 of the charge sheet means that the charges were read to the accused as they appear on the charge sheet. If the accused is placed in pretrial confinement before charges are preferred, the commander or designee must go to the Regional Corrections Facility after preferral to read the charges to the accused. When a commander or designee advises an accused of the charges that have been preferred, the commander or designee should not question the accused regarding the underlying offenses. If an accused who has already consulted with a defense counsel desires to discuss the offenses with the commander, notify the accused's defense counsel before proceeding. If the accused has not consulted with a defense counsel and desires to discuss the offenses advise the accused of the rights guaranteed under Article 31, UCMJ, and obtain appropriate waivers before asking any questions.

e. File contents. A courts-martial file will be initiated by the unit commander and will normally contain the following:

(1) Transmittal of Court/Martial Charges (see sample);

(2) DD Form 458;

(3) Statements of witnesses or summaries of expected testimony;

(4) Documentary evidence. Military Police or Criminal Investigation Division reports, DA Form 4187 (Personnel Action), etc. (All documents from personnel files will be authenticated by the custodian of those files);

(5) Copies of DA Form 2627 (if applicable);

(6) Copies of the accused's DA Forms 2A, 2-1, and extract of previous military convictions if applicable, with proper certification by the records custodian; and,

(7) The accused's local file.

f. Forwarding charges. The file will be forwarded through the chain of command to the officer exercising summary/special court martial jurisdiction (brigade/regimental

commander...see paragraph 1-5b) within 24 hours of preferral. Files will be forwarded in the following copies:

(1) Summary Court-Martial and Special Court-Martial. The original and two copies.

(2) Special Court-Martial empowered to adjudge a Bad Conduct Discharge (BCDSPCM) and General Court-Martial (GCM). The original and four copies.

(3) The complete file will be hand-carried during transmittal. When the file is transmitted to the OSJA, the accused's local file will be attached or arrangements will be made to have it delivered to the Criminal Law Division.

(4) Forwarding of the file will not be delayed due to missing paperwork. If a particular document cannot be attached to the file for forwarding, the file will be forwarded and the missing documents will be added to the file when found.

g. Legal advice to the accused. Soldiers pending action under the UCMJ will be promptly referred to a military defense counsel under the following circumstances:

(1) When a soldier, who is suspected or accused of committing an offense, is read his/her Article 31(b) rights and does not waive the right to consult with a military defense counsel.

(2) When court-martial charges have been preferred against the soldier.

(3) When the commander notifies the soldier of commencement of formal Article 15 proceedings and the accused demands trial by court-martial prior to consulting with a military defense counsel. The commander should arrange for the accused to meet with a military defense counsel prior to proceeding with the preferral of court-martial charges as the soldiers may, after meeting with a defense attorney, decide that an Article 15 is in their best interest.

(4) When a soldier is placed in pretrial confinement. The supporting trial counsel will notify the Senior Defense Counsel immediately upon a soldier's entry into pretrial confinement. A military defense counsel will meet with the soldier as soon as practical and a review or hearing should be held by a neutral detached officer or military magistrate within 48 hours of entry into pretrial confinement.

C-3. Action by intermediate commanders is not authorized to convene courts.

a. Each commander in the chain of command will personally review the case and make a recommendation as to appropriate disposition, i.e., dismissal, return to forwarding commander for action, administrative action, nonjudicial action, or trial by court-martial.

b. Forwarding endorsements will be personally signed by each forwarding commander.

C-4. Action by intermediate commanders authorized to convene special courts-martial.

a. The commander will personally review each case and make a determination as to appropriate disposition. Charges may not be brought to trial by summary court-martial over the accused's objection. If trial by summary court-martial is declined by an accused, the commander will coordinate with the supporting trial counsel regarding the appropriate disposition of the charge(s). Only the GCMCA is authorized to convene a BCDSPCM. Before forwarding a recommendation for trial by GCM, the SPCMCA will appoint an IO to conduct a pretrial investigation of the charges UP Article 31, UCMJ, and RCM 405. In the majority of cases, the pretrial investigation is completed within seven days of the IO being appointed, excluding delays. If after reviewing the IO's report, the SPCMCA determines that a BCDSPCM or GCM is warranted, they will prepare a forwarding endorsement recommending a specific level of court and forward the IO's report along with the remainder of the file through the SJA to the GCMCA. The SPCMCA should forward his endorsement within 24 hours of receiving the IO's report of investigation.

b. Each commander in the chain will personally sign the forwarding endorsement.

Sample Transmittal Memorandum for Court-Martial Charges.

(Co/Trp OFFICE SYMBOL) (27) (DATE)

MEMORANDUM THRU Commander, (Squadron or Battalion), Fort Knox, Kentucky 40121

FOR Commander, (Brigade, Regiment, or Garrison), Fort Knox, Kentucky 40121 **(if recommending trial by SCM or SPCM)**

OR

MEMORANDUM THRU

Commander, (Squadron of Battalion), Fort Knox, Kentucky 40121

Commander, (Brigade, Regiment or Garrison), Fort Knox, Kentucky 40121

FOR Commander, USAARMC and Ft. Knox, Fort, Knox, Kentucky 40121-5000 **(If recommending trial by BCDSPCM or GCM)**

SUBJECT: Transmittal of Court-Martial Charges

1. IAW RCM 401, MCM 1998, forwarded herewith are court-martial charges pertaining to (NAME), (SS#), (UNIT), Fort Knox, Kentucky 40121.

2. Documentary evidence upon which the charges are based is attached.

3. To the best of my knowledge, all material witnesses will be available in the event of trial.

4. There is no evidence of previous conviction or punishment under Article 15.

5. I recommend the accused be tried by:

Summary Court-Martial ( )

Special Court-Martial ( )

Co/Trp OFFICE SYMBOL
SUBJECT: Transmittal of Court-Martial Charges

BCD Special Court-Martial ( )

General Court-Martial ( )

SIGNATURE BLOCK
CPT, AR
Commanding

Encls
as

(Each superior commander in the chain of command personally signs a forwarding endorsement with recommendation as to disposition)

Sample Report of Officer Misconduct.

Co/Trp OFFICE SYMBOL (27) (DATE)

MEMORANDUM THRU

Commander, (Squadron or Battalion), Fort Knox, Kentucky 40121

Commander, (Brigade, Regiment or Garrison), Fort Knox, Kentucky 40121

FOR Commander, USAARMC and Fort Knox, Fort Knox, Kentucky 40121-5000

SUBJECT: Report of Officer Misconduct - (NAME)

1. IAW paragraph 2-3, USAARMC 27-10, Military Justice, the following report of officer misconduct involving (NAME), (SS#), (UNIT), Fort Knox, Kentucky 40121, is forwarded for your information and action.

2. **Provide a brief factual summary of the alleged misconduct and attach any supporting documentation.**

3. I recommend that this allegation of misconduct be resolved by: **(Complete by choosing one of the options listed below)**

_____ Offering (NAME) a general officer Article 15

_____ Having the general officer show cause authority (GOSCA) require (NAME) to show cause for retention on active duty UP AR 600-8-24, paragraphs _____ based on _____. I recommend he be separated with (an under other than honorable conditions discharge)(a general discharge under honorable conditions (an honorable discharge).

_____Issuing (NAME) a general officer letter of reprimand

_____Returning the matter to _____ for disposition.

SIGNATURE BLOCK
CPT, AR
Commanding

(Each superior commander in the chain of command personally signs a forwarding endorsement with recommendation as to disposition)

Appendix D
Sample Endorsement of Request for Discharge in Lieu of Trial by Court-Martial.

Co/Trp OFFICE SYMBOL (TDS OFFICE SYMBOL/Date) (635-200a) 1st End
SUBJECT: Request for Discharge in Lieu of Trial by Court-Martial - (NAME)

Commander, (Co/Trp), Fort Knox, Kentucky 40121

THRU

Commander, (Squadron or Battalion), Fort Knox, Kentucky 40121

Commander, (Brigade, Regiment, or Garrison), Fort Knox, Kentucky 40121

FOR Commander, USAARMC and Fort Knox, Fort Knox, Kentucky 40121-5000

I have reviewed (NAME)'s request for discharge in lieu of trial by court-martial and recommend that it be:

( ) Disapproved.

( ) Approved with the issuance of an under other than honorable conditions (OTH) discharge. I further understand that (NAME) will be reduced to the grade of E1 by operation of law as a result of the issuance of an OTH discharge.

( ) Approved with the issuance of a general discharge under honorable conditions.

Encls

SIGNATURE BLOCK
CPT, AR
Commanding

(Each superior commander in the chain of command will sign an endorsement to the request and make an independent recommendation as to disposition. If the commander is unable to sign a memorandum, the supporting trial counsel will receive a VOCO from the commander and the SJA will notify the Commander, USAARMC, of same.)

Appendix E
Sample Service Member Notification of Commanding Officer Referral for Mental Health Evaluation.

(OFFICE SYMBOL) (DATE)

MEMORANDUM FOR (RANK) (NAME) (SS#)

SUBJECT: Notification of Commanding Officer Referral for Mental Health Evaluation (Non-Emergency)

1. References:

a. DoD Directive 6490.1, 1 October 1997, Mental Health Evaluations of Members of the Armed Forces.

b. DoD Instruction 6490.4, 28 August 1997, Requirements for Mental Health Evaluations of Members of the Armed Forces.

c. Section 546 of Public Law 102-484, October 1992, National Defense Authorization Act for Fiscal Year 1993.

d. DoD Directive 7050.6, 12 August 1995, Military Whistleblower Protection.

2. In accordance with references a through d above, this memorandum is to inform you that I am referring you for a mental health evaluation.

3. The following is a description of your behaviors and/or verbal expressions that I considered in determining the need for a mental health evaluation: (Provide dates and a brief factual description of the soldier's actions of concern.).

4. Before making this referral, I consulted with the following mental health care provider(s) about your recent actions: (list rank, name, branch of each provider consulted) at (name of MTF or clinic) on (date(s)). (Rank(s) and name(s) of mental healthcare provider(s)) concur(s) that this evaluation is warranted and is appropriate.

OR

4. Consultation with a mental healthcare provider prior to this referral is (was) not possible because (give reasons; e.g., geographic location from available mental healthcare provider, etc.).

5. Per references (a) and (b), you are entitled to the rights listed below:

a. The right, upon your request, to speak with an attorney who is a member of the Armed Forces or is employed by the Department of Defense who is available for the purpose of advising you of the ways in which you may seek redress should you question this referral.

b. The right to submit to the Office of the Inspector General, Fort Knox, or the DoD IG for investigation an allegation that your mental health evaluation referral was a reprisal for making or attempting to make a lawful communication to a Member of Congress, an appropriate authority in your chain of command, an IG, or a member of a DoD audit, inspection, investigation, or law enforcement organization or in violation of (reference(a)), DoD Instruction (reference (b)) and/or any applicable service regulations.

c. The right to obtain a second opinion and be evaluated by a mental healthcare provider of your won choosing, at your own expense, if reasonably available. Such an evaluation by an independent mental healthcare provider shall be conducted within a reasonable period of time, usually within 10 business days, and shall not delay nor substitute for an evaluation performed by a DoD mental healthcare provider.

d. The right to communicate without restriction with an IG, attorney, Member of Congress, or others about your referral for a mental health evaluation. This provision does not apply to a communication that is unlawful.

e. The right, except in emergencies, to have at least two business days before the scheduled mental health evaluation to meet with an attorney, IG, chaplain or other appropriate party. If I believe your situation constitutes an emergency or that your condition appears potentially harmful to your well being and I judge that it is not in your best interest to delay your mental health evaluation for two business days, I shall state my reasons in writing as part of the request for the mental health evaluation.

f. If you are assigned to a naval vessel, deployed or otherwise geographically isolated because of circumstances related to military duties that make compliance with any of the procedures in paragraphs (3) and (4) , above, impractical, I shall prepare and give you a copy of the memorandum setting forth the reasons for my inability to comply with these procedures.

6. You are scheduled to meet with (name and rank of the mental healthcare provider) at (name of MTF) on (date) at (time).

7. The following authorities can assist you if you wish to question this referral:

a. Military Attorney: (Provide rank, name, telephone number and available hours.).

b. Inspector General: (Provide rank/title, name, address, telephone number and available hours for service. The phone number of DoD IG is 1-800-424-9098.)

c. Other available resources: (Provide rank, name, corps/title of chaplains or other resources available to counsel and assist the Service member.).

SIGNATURE BLOCK
CPT, AR
Commanding

I have read the memorandum above and have been provided a copy.

Service member's signature:_____ Date:_____

OR

The Service member declined to sign this memorandum which includes the Service member's Statement of Rights because (give reasons and/or quote Service member).

Witness's signature:_____ Date:_____

Witness's rank and name:_____ Date:_____

(Provide a copy of this memorandum to the Service member.)