CHAPTER 9

LEGAL

As a Yeoman (YN) you will become extensively involved with all aspects of nonjudicial punishment, commonly called either NJP or mast. In this chapter we discuss duties and procedures required before, during, and after NJP proceedings.

NONJUDICIAL PUNISHMENT

Although both commanding officers (COs) and officers in charge (OICs) can conduct mast, we will use only the abbreviation CO in this chapter. For a discussion on the differences between masts held by COs and OICs, see Article 15, *Uniform Code of Military Justice* (UCMJ), and part V of the *Manual for Courts-Martial* (MCM).

The term *nonjudicial punishment* and the abbreviation NJP are used interchangeably. They refer to certain limited punishments that can be awarded for minor disciplinary offenses by a CO to members of his or her command. NJP proceedings are called captain's mast or simply mast.

Article 15 of the UCMJ, part V of the MCM, 1984, and part B of chapter 1 of the *Manual of the Judge Advocate General* (JAGMAN) contain the basic laws about NJP procedures. The legal protection afforded an individual subject to NJP proceedings is more complete than is the case for nonpunitive measures, but, by design, is less extensive than for courts-martial. NJP is not administrative and is nonadversarial in nature. When punishment is imposed, it is not considered a conviction, and when a case is dismissed, it is not considered an acquittal.

The word *mast* also is used to describe three different types of proceedings: request mast, meritorious mast, and disciplinary mast. Request mast is a hearing before the CO, at the request of service personnel, for making requests, reports, statements, and for airing grievances. Meritorious mast is for the purpose of publicly and officially commending a member of the command for noteworthy performance of duty. This chapter discusses disciplinary mast. When we use the term *mast,* that is what is meant.

Mast is a procedure used by the CO to inquire into the facts surrounding minor offenses allegedly committed by a member of his or her command; to afford the accused a hearing as to the offense(s); and to dispose of such charges by dismissing the charges, imposing punishment, or referring the case to a court-martial.

NATURE AND REQUISITE OF NONJUDICIAL PUNISHMENT

NJP is a disciplinary measure more serious than administrative corrective measures, but less serious than trial by court-martial. 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.

AUTHORITY TO IMPOSE

Authority to impose NJP under Article 15, UCMJ, may be exercised by a CO, an OIC, or by certain officers to whom the power has been delegated by the Secretary of the Navy (SECNAV).

In the Navy and Marine Corps, billet designations by the Chief of Naval Personnel and Headquarters Marine Corps identify those persons who are COs. So the term *commanding officer* has a precise meaning and is not used arbitrarily.

The power to impose NJP is inherent in the office and not in the individual. Thus, the power may be exercised by a person acting as CO, such as when the CO is on leave and the executive officer (XO) succeeds to command.

OICs exist in the naval service. An OIC is a commissioned officer appointed as an OIC of a unit by departmental orders, tables of organization, manpower authorizations, orders of a flag or general officer in command, or orders of the senior officer present.

Ordinarily, the power to impose NJP cannot be delegated. One exception is that a flag or general officer in command may delegate all or a portion of his or her Article 15 powers to a principal assistant. A principal assistant is a senior officer on a flag or general officer's staff who is eligible to succeed to command. This delegation must be made with the express approval of the Chief of Naval Personnel or the Commandant of the Marine Corps.

Additionally, where members of the naval service are assigned to a multiservice command, the commander of such multiservice command may appoint one or more naval units and for each unit designate a commissioned officer of the naval service as CO for NJP purposes over the unit. A copy of such designation must be furnished to the Commander, Naval Military Personnel Command or the Commandant of the Marine Corps, as appropriate, and to the Judge Advocate General (JAG).

No officer may limit or withhold the exercise of any disciplinary authority under Article 15 by subordinate commanders without the specific authorization of SECNAV.

If a CO determines that his or her authority under Article 15 is not enough to make a proper disposition of the case, he or she may refer the case to a superior commander for appropriate disposition.

This situation could arise either when the CO's NJP powers are less extensive than those of his or her superior, or when the status of higher authority would add force to the punishment, as in the case of a letter of reprimand or admonition.

PERSONS ON WHOM NJP MAY BE IMPOSED

A CO may impose NJP on all military personnel of his or her command. An OIC may impose NJP only on enlisted members assigned to the unit that he or she is in charge of.

At the time punishment is imposed, the accused must be a member of the command of the CO (or of the unit of the OIC) who imposes the NJP. A person is of the command or unit if he or she is assigned or attached to it. This includes temporary additional duty (TEMADD) personnel. TEMADD personnel may be punished either by the CO of the unit that they are TEMADD to or by the CO of the duty station that they are permanently attached to. Note, however, that both COs cannot punish an individual under Article 15 for the same offense. In addition, a party to a *JAG Manual* investigation remains a member of the command or unit that he or she was attached to at the time of his or her designation as a party for the sole purpose of imposing a letter of admonition or reprimand as NJP.

Personnel of Another Armed Force

Under present agreements between the armed forces, a Navy CO should not exercise NJP jurisdiction on Army or Air Force personnel assigned or attached to a naval command. As a matter of policy, return these personnel to their parent-service unit for discipline. If this is impractical and the need to discipline is urgent, NJP may be

imposed, but a report to the Department of the Army or Department of the Air Force is required. See the *Naval Military Personnel Manual* (MILPERSMAN), Article 1860320.5a and 5b, for the procedures to follow.

Express agreements do not extend to Coast Guard personnel serving with a naval command, but other policy statements say that the naval command should not try to exercise NJP over such personnel assigned to its unit.

Because the Marine Corps is part of the Department of the Navy, no general restriction extends to the exercise of NJP by Navy commanders over Marine Corps personnel or by Marine Corps commanders over Navy personnel.

Imposition of NJP on Embarked Personnel

The CO or OIC of a unit attached to a ship for duty should, as a matter of policy, refrain from exercising his or her power to impose NJP and refer all such matters to the CO of the ship for disposition. This policy does not apply to Military Sealift Command (MSC) vessels operating under masters or to organized units embarked on a Navy ship for transportation only. Nevertheless, the CO of a ship may permit a CO or an OIC of a unit attached to that ship to exercise NJP authority.

Imposition of NJP on Reservists

Reservists on active duty for training or, under some circumstances, inactive duty for training, are subject to the UCMJ and, therefore, subject to the imposition of NJP.

The offense(s) that the CO or OIC seeks to punish at NJP must have occurred while the member was on active duty or inactive duty training. However, it is not necessary that NJP occurs (or the offense even be discovered) before the end of the active duty or inactive duty training period during which the alleged misconduct occurred. In that regard, the officer seeking to impose NJP has the following options:

- He or she may impose NJP during the active duty or inactive duty training when the misconduct occurred.

- He or she may impose NJP at a later period of active duty or inactive duty training (so long as this is within 2 years of the date of the offense).

- He or she may request from the regular component officer exercising general court-martial jurisdiction (OEGCMJ) over the accused an involuntary recall of the accused to active duty or inactive duty training to impose NJP.

- If the accused waives his or her right to be present at the NJP hearing, the CO or OIC may impose NJP after the period of active duty or inactive duty training of the accused has ended.

Punishment imposed upon persons who were involuntarily recalled for imposition of NJP may not include restraint unless SECNAV approves the recall.

Right of an Accused to Demand Trial by Court-Martial

Article 15a, UCMJ, and part V, par. 3, MCM, 1984, provide another limitation on the exercise of NJP. Except for a person attached to or embarked in a vessel, an accused may demand trial by court-martial in lieu of NJP.

This right to refuse NJP exists up until the time of imposition of NJP (that is, up until the CO announces the punishment). This right is not waived by the accused having previously signed a report chit showing that he or she would accept NJP.

The category of persons who may <u>not</u> refuse NJP includes those persons assigned or attached to a vessel who are on board for

passage or assigned or attached to an embarked staff, unit, detachment, squadron, team, air group, or other regularly organized body.

The key time factor in determining whether or not a person has the right to demand trial by court-martial is the time of the imposition of the NJP and not the time of the commission of the offense. There is no power for a CO or an OIC to impose NJP on a civilian.

OFFENSES PUNISHABLE UNDER ARTICLE 15, UCMJ

Article 15 gives a CO power to punish individuals for minor offenses. The term *minor offense* has been the cause of some concern in the administration of NJP.

Article 15, UCMJ, and part V, par. 1e, MCM, say that the term *minor offense* means misconduct normally not more serious than that usually handled at a summary court-martial (SCM) (where the maximum punishment is 30 days' confinement). These sources also say that the nature of the offense and the circumstances surrounding its commission are also factors that should be considered in determining whether an offense is minor in nature.

The term *minor offense* ordinarily does not include misconduct that, if tried by a general court-martial (GCM), could be punished by a dishonorable discharge (DD) or confinement for more than 1 year. The Navy and Marine Corps, however, have taken the position that the final determination of whether an offense is minor is within the sound discretion of the CO.

Cases Previously Tried in Civil Court

Sections 0108b and 0124c(2) of the JAGMAN permit the use of NJP to punish an accused for an offense that he or she has been (1) tried (whether acquitted or convicted) by a domestic or foreign civilian court, (2) diverted out of the regular criminal process for a probationary period, or (3) adjudicated by juvenile court authorities. This is true only if authority is obtained from the OEGCMJ (usually the general or flag officer in command over the command desiring to impose NJP).

NJP may not be imposed for an act tried by a court that derives its authority from the United States, such as a federal district court.

Cases in which a finding of guilt or innocence has been reached in a trial by court-martial cannot be taken to NJP.

Off-Base Offenses

COs and OICs may dispose of minor disciplinary infractions that occur on base or off base at NJP. Unless the off-base offense is a traffic offense or one previously adjudicated by civilian authorities, there is no limit on the authority of military commanders to resolve such offenses at NJP.

In areas not under military control, the responsibility for maintaining law and order rests with civil authority. The enforcement of traffic laws falls within the purview of this principle. Off-duty, off-installation driving offenses, however, show inability and lack of safety consciousness. Such driving performance does not prevent the use of nonpunitive measures that could include denial of on-installation driving privileges.

THE NJP PACKAGE

The NJP package, as we will refer to it, includes numerous documents and forms along with any evidence on the case. As we will discuss, strict compliance with filling out the forms is essential to a proper NJP proceeding.

REPORT AND DISPOSITION OF OFFENSE(S)

Your office may receive notification that an offense has been committed in a variety of ways. These ways can include a shore patrol report, a verbal complaint by a victim, or a local report chit. Except when serious crimes are involved, charges are reduced to writing on the Report and Disposition of Offense(s), NAVPERS 1626/7, and processed in the manner prescribed by the form itself.

The NAVPERS 1626/7 is a one-sheet (back and front) form. It is not a substitute for a charge sheet and it is not a substitute for the pretrial investigation required by Article 32, UCMJ. However, so long as the offense(s) remains in the group of cases to be handled by the CO at mast, this one form satisfies most paper work requirements of a mast proceeding. Among the functions the NAVPERS 1626/7 serves are the following:

- It reports the offense(s).
- It records that the accused has been advised of his or her rights under Article 31, UCMJ.
- It records any premast restraint.
- It serves as a preliminary inquiry report.
- It records the action of the XO at screening mast.
- It records that the accused has been advised of the right to refuse NJP (if that right exists under the circumstances of the case).
- It shows the action of the CO at mast.
- It records that appeal rights have been explained to the accused.
- It becomes a permanent record of the case in the Unit Punishment Book (UPB). No additional record is needed such as 3 x 5 cards or a mast logbook.

Remember, however, that the NAVPERS 1626/7 does not include all the required premast advice that must be given to the accused according to the JAGMAN, section 0109.

PREPARATION INSTRUCTIONS

Regardless of how the commission of a minor offense is brought to your attention, you will probably need to prepare the smooth NAVPERS 1626/7. Let's look at the information that you will place on this form.

In Section A, start with addressing the report to the OIC or CO of the accused. Fill in the date of the report. Type the name of the accused in last name, first name, middle initial order. Verify the social security number from the accused's service record and type it in. Type in the present rate of the accused and the branch and class of service. Designate the department or division that the accused is attached to. Fill in the place of the offense. If there is more than one place, list all applicable places of the offense(s). Show the date of the commission of the offense. If there is more than one date, show all dates.

In the section entitled Details of the Offense, it is not mandatory that you type the offenses in the manner that you would on a charge sheet. However, this is good practice. If you always prepare a specification in full detail, you will not have to change it in the event the charges are referred to a court-martial.

List military witnesses to the offense in order of seniority, followed by civilian witnesses, if any. If the witnesses are attached to the same command as the offender, it is only necessary to give the witness division or department. If the

witness is attached to another command, identify that command completely. If a witness is a civilian, give the complete address, business and home, if available. Finally, be sure to get the signature of the person placing the accused on report.

Section B shows the acknowledgement of the accused having been informed of the nature of the accusation(s) against him or her and his or her right not to answer any questions relating to the offense. After the accused is formally informed of the accusations against him or her, this section should be signed by the accused and the person informing the accused of his or her rights. If the accused refuses to sign this section, that fact must be witnessed by the person informing the accused of the accusations who will sign attesting to that fact.

Section C shows any premast restraint of the accused. If the accused is not being restricted, put the entry in the No Restrictions block. On the other hand, if the accused is placed on restriction or placed in confinement pending investigation of the charges, you will either mark the Pretrial Confinement block or the Restricted block. If the Restricted block is used, fill in the restricted to the limits of portion. Be sure to get the signature and title of the person who is imposing the restraint.

Section D shows information about the accused. Get the accused's service record before filling out this section to verify all the information. In the section Record of Previous Offense(s), list all NJPs and courts-martial during the accused's current enlistment.

PREMAST SCREENING

After you complete the front of the NAVPERS 1626/7, the case must touch two more bases before it is ready for hearing by the CO. The first step is to refer the report chit to an officer or a senior enlisted person for a preliminary inquiry that will later be screened by the XO.

PRELIMINARY INQUIRY

At small commands, refer the cases to division officers for the preliminary inquiry. At large commands, the discipline officer or the legal officer is delegated the authority to appoint the preliminary inquiry officer (PIO). You need to fill in the name of the PIO at the top of section E before referring it to the PIO for action.

It is not the job of the PIO to develop a case against the accused. Rather, the PIO is to collect all available facts about the offense itself and about the background of the accused. You should have a standard form that the PIO prepares for submission to the CO.

The suspect's rights acknowledgement/ statement contains a suggested format that may be used by investigative personnel in cases in which criminal suspects desire to waive their rights on self-incrimination and to make statements. This format is designed as a guide and its use is not mandatory. However, you should provide the PIO with this form in case the accused desires to make a statement.

In addition to filling out a PIO's report, the PIO completes section E by doing the following:

- Inserting a short resume of the division officer's opinion of the accused
- Listing the names of the witnesses whose presence at mast is necessary to dispose of the case
- Recommending disposition of the case
- Summarizing the evidence that supports the recommendation

The recommendation of the PIO is not binding on the CO.

After the PIO has completed his or her inquiry report, all statements are sent to the CO for a determination of whether disposition by NJP is appropriate.

PREHEARING ADVICE

If, after the preliminary inquiry, the CO determines that disposition by NJP is appropriate, the CO must make sure the accused is given the advice outlined in part V, para. 4, MCM, 1984. The CO need not give the advice personally but may assign this responsibility to the legal officer, discipline officer, or other appropriate person. The advice that must be given includes the following:

- Contemplated action–This informs the accused that the CO is contemplating the imposition of NJP for the Offense(s).

- Suspected offense(s)–This describes the suspected offense(s) to the accused. The description should include the specific article(s) of the UCMJ that the accused is alleged to have violated.

- Government evidence–This advises the accused of the information that the allegations are based on. It also informs the accused that, upon request, he or she is allowed to examine all available statements and evidence.

- Right to refuse NJP–Unless the accused is attached to or embarked in a vessel (in which case he or she has no right to refuse NJP), this informs the accused of his or her right to demand trial by court-martial in lieu of NJP. The accused must also be informed (1) of the maximum punishment imposable at NJP, (2) that if he or she demands trial by court-martial, referral of the charges to trial by an SCM, an SPCM, or a GCM is possible, (3) that he or she cannot be tried by a special court-martial (SPCM) over his or her objection, and (4) that at an SPCM or a GCM he or she has the right to representation by counsel.

- Right to confer with independent counsel-Because an accused who is not attached to or embarked in a vessel has the right to refuse NJP, this informs the accused of his or her right to confer with independent counsel about his or her decision to accept or refuse the NJP. This advice must be given to make sure the record of that NJP is admissible in evidence against the accused should he or she ever be tried by court-martial. A failure to advise an accused properly of his or her right to confer with counsel, or a failure to provide counsel, will not, however, render the imposition of NJP invalid or make a ground for appeal. Therefore, if the command imposing the NJP desires that the record of the NJP be admissible for court-martial purposes, you must prepare the record of the NJP according to applicable service regulations and show that:

  1. the accused was advised of his or her right to confer with counsel;

  2. the accused either exercised his or her right to confer with counsel or made a knowing, intelligent, and voluntary waiver of this right; and

  3. the accused knowingly, intelligently, and voluntarily waived his or her right to refuse NJP. All such waivers must be in writing.

- Hearing rights–The accused is entitled to appear personally before the CO for the NJP hearing if he or she did not demand trial by court-martial or if the right to demand trial by court-martial is not applicable. At such a hearing the accused is entitled to:

  1. be informed of his or her rights under Article 31, UCMJ;

2. be accompanied by a spokesperson provided by, or arranged for, the member (the proceedings should not be unduly delayed to permit the presence of the spokesperson, nor is the spokesperson entitled to travel or similar expenses);

3. be informed of the evidence against him or her relating to the offense;

4. be allowed to examine all evidence that the CO will rely on in deciding whether and how much NJP to impose;

5. present matters in defense, extenuation, and mitigation, orally, in writing, or both;

6. have witnesses present. These witnesses may include those adverse to the accused, upon request, if (a) their statements will be relevant, (b) they are reasonably available, (c) the cost of their appearance will not require reimbursement by the government, (d) their appearance will not unduly delay the proceedings, or in the case of a military witness, (e) will not necessitate their being excused from other important duties; and

7. have the proceedings open to the public unless the CO determines that the proceedings should be closed.

FORMS

The form that you must use to record that the accused was informed of his or her prehearing rights will depend upon the status of the accused.

The accused's notification and election of rights as illustrated in appendixes A-1-b, A-1-c, and A-1-d of the JAGMAN, comply with the previous requirements of prehearing advice to the accused.

Use appendix A-1-b when the accused is attached to or embarked in a vessel.

Use appendix A-1-c when an accused is not attached to or embarked in a vessel and the command does not afford the accused the right to consult with a lawyer to assist the accused in deciding whether to accept or reject NJP. In this case the record of NJP will not be admissible for any purpose at any later court-martial.

Use appendix A-1-d when an accused is not attached to or embarked in a vessel and the command affords the accused the right to consult with a lawyer before deciding whether to accept or reject NJP.

The use and retention of the proper form is essential. Whatever form you use, attach it to the NAVPERS 1626/7 and retain it in the command's unit punishment book (UPB).

In the event punishment is imposed at captain's mast, and appendix A-1-d is used, or the accused is represented by a lawyer at the hearing, you will need to document the Booker rights advice on a page 13 of the member's service record book. This is necessary because appendix A-1-d stays in the command's UPB. If the member transfers out of the area and is later charged with offenses that are referred to a court-martial, the trial counsel (TC) can prove Booker rights advice was given with the page 13. As an example, the page 13 should state the following:

(Grade and name of accused) signed JAG Manual, appendix A-1-d, before his or her captain's mast which was held on (date of captain's mast). The accused [talked to a lawyer before deciding whether to demand trial by court-martial in lieu of captain's mast] [gave up his or her right to talk to a lawyer before deciding whether to demand trial by court-martial in lieu of captain's mast]. The accused was advised that acceptance of NJP does not preclude further administrative action. In completing the remainder of the form, the accused did not demand trial by court-martial in lieu of captain's mast.

If the accused is represented by a military or civilian lawyer as a personal representative at his or her captain's mast, the following example should be made on a page 13:

(Grade and name of accused) received punishment at captain's mast on date. The accused was represented by a lawyer.

If the member refuses to sign the forms, simply record that you advised the member of his or her rights but he or she declined to sign the forms. Note that the member must demand trial by court-martial and if he or she fails to make such a demand, the command may proceed with NJP. Once all prehearing advice is given, the accused is ready for the XOs screening.

EXECUTIVE OFFICER'S SCREENING

The XO may screen a case by holding an informal hearing or may merely review the record of the accused and the report chit. If the XO has been given the power by the CO, he or she may dismiss the case, but may never impose punishment.

At the XO's screening mast the accused is advised again of the right to refuse NJP and demand a trial by court-martial. At this point section G of NAVPERS 1626/7 can be signed by the accused if it was not signed before. Be sure to get the witness' signature in this section also.

Remember that Article 15, UCMJ, does not give the right to refuse NJP to persons attached to vessels. Also remember that an accused not attached to or embarked in a vessel may elect at any time before imposition of NJP to refuse it and demand a court-martial. It is, then, possible for an accused to elect not to demand trial by court-martial at the XO's screening but later at captain's mast demand it provided it is before any punishment is imposed.

Once the XO has conducted an inquiry, he or she has the option of referring the case to mast or dismissing it. The XO fills in section F, noting the action he or she has taken. If the case is referred to the CO for mast, a formal hearing is set up.

THE HEARING PROCEDURE

Captain's mast is held at the time and place decided on by the CO. The XO, legal officer, or discipline officer normally assists the CO. Additionally, a master-at-arms will be present to keep order and call the accused to mast. Your function will be to have the service record of the accused and other associated documents available for the CO.

While local practices will come into play as far as setting up the mast and the formalities required, appendix A-1-e of the JAGMAN is the official guide for the NJP proceedings.

HEARING REQUIREMENTS

Except as noted in the following paragraph, NJP cases must be handled at a hearing whereby the accused is allowed to exercise the foregoing rights. In addition, there are other technical requirements about the hearing and the exercise of the accused's rights.

Personal Appearance Waived

Part V, par. 4c(2), MCM, 1984, provides that if the accused waives his or her right to appear personally before the CO, he or she may submit written matters for consideration by the CO before the imposition of NJP. If the accused makes this election, inform the accused of his or her right to remain silent and that any matters submitted may be used against him or her at a trial by court-martial.

Notwithstanding the accused's expressed desire to waive his or her right to appear personally at the NJP hearing, he or she may

be ordered to attend the hearing if the officer imposing NJP desires his or her presence. If the accused waives his or her personal appearance and NJP is imposed, the CO must make sure the accused is informed of the punishment as soon as possible.

Hearing Officer

Normally, the officer who actually holds the NJP hearing is the CO of the accused. COs or OICs are allowed to delegate their authority to hold the hearing to another officer under extraordinary circumstances. These circumstances must be unusual and significant rather than matters of convenience to the commander. This delegation of authority should be in writing and the reasons for it detailed. This delegation, however, does not include the authority to impose punishment. At such a hearing, the officer delegated to hold the hearing will receive all evidence, prepare a summarized record of matters considered, and send the record to the officer having NJP authority.

Personal Representative

The burden of getting a representative is on the accused. As a practical matter, the accused is free to choose anyone he or she wants-lawyer or a nonlawyer, an officer or an enlisted person. This freedom of the accused to choose a representative does not compel the command to provide lawyer counsel, and current regulations do not create a right to lawyer counsel at NJP where such a right exists at court-martial.

Representation by any lawyer who is willing and able to appear at the hearing is available to the accused. While a lawyer's workload may prevent the lawyer from appearing, a blanket rule that no lawyers will be available to appear at Article 15 hearings would appear to contravene the spirit if not the letter of the law. It is likewise doubtful that a lawyer can lawfully be ordered to represent the accused. It is fair to say that the accused can have anyone who is able and willing to appear on his or her behalf without cost to the government. While a command does not have to provide a personal representative, it should help the accused get the representative he or she wants. In this connection, if the accused desires a personal representative, he or she should be allowed a reasonable time to get someone. Good judgment should be observed here, for such a period should be neither too short nor too long.

Witnesses

When the hearing involves controverted questions of fact about the alleged offenses, witnesses should be available to testify if they are present on the same ship or base or are otherwise available at no expense to the government. Thus, in a larceny case, if the accused denies that he or she took the money, the witnesses who can testify that the accused did take the money should be called to testify in person if they are available at no cost to the government. It should be noted, however, that no authority exists to subpoena civilian witnesses for an NJP proceeding.

Public Hearing

The accused is entitled to have the hearing open to the public unless the CO determines that the proceeding should be closed for good cause. The CO is not required to make any special arrangements to facilitate public access to the proceedings.

Publication of NJP Results

Authority to publish the results of NJP is granted by the JAG MAN, section 0115. You may publish the name, rate, offense(s), and disposition of the offender in the plan of the day (POD). Publish the results not later than 1 month after the imposition of NJP. If the NJP is appealed, publish the results not later than 1 month after the date the appeal is denied. If the POD is distributed to military

personnel only, you may include all the details stated previously. If the POD is distributed to other than military personnel, NJP results may be published without the name of the accused.

POSSIBLE ACTIONS BY THE CO AT MAST

Dismissal with or without warning–This action is taken if the CO is not convinced by the evidence that the accused is guilty of an offense or decides that no punishment is appropriate in light of the accused's record and other circumstances. Dismissal, whether with or without a warning, is not considered NJP, nor is it considered an acquittal.

Referral to an SCM, SPCM, or a pretrial investigation under Article 32. UCMJ–The CO may, at his or her sole discretion, refer the charge(s) to an SCM, an SPCM or an Article 32 investigation. This will, of course, depend upon the severity of the charges.

Postponement of action–The CO may postpone any action on the NJP pending further investigation or for other good cause, such as a pending trial by civil authorities for the same offense.

Imposition of NJP–The CO may impose NJP and award any of the authorized punishments outlined in part V, par. 5, MCM.

AUTHORIZED PUNISHMENTS

If the CO is convinced by the evidence that the accused is guilty of the offense(s) and he or she deems punishment is proper, the CO has wide latitude to impose punishment. There are, however, limitations that are placed on the CO based upon his or her rank and the status of the accused.

LIMITATIONS

The maximum imposable punishment in any Article 15, UCMJ, case is limited by several factors that include the following:

- The grade of the imposing officer–COs in grades O-4 to O-6 have greater punishment powers than officers in grades O-1 to O-3. Flag officers, general officers, and OEGCMJs have greater punishment authority than COs in grades O-4 to O-6.

- The status of the imposing officer-Regardless of the rank of an OIC, his or her punishment power is limited to that of a CO in grades O-1 to O-3. The punishment powers of a CO are commensurate with his or her permanent grade.

- The status of the accused–Punishment authority is also limited by the status of the accused. Is the accused an officer or an enlisted person attached to or embarked in a vessel?

Maximum punishment limitations apply to each NJP action and not to each offense. Note that there is a policy that all known offenses that the accused is suspected of should ordinarily be considered at a single Article 15 hearing.

MAXIMUM LIMITS-SPECIFIC

There are specific maximum limits on punishment that may be imposed on an individual. Depending upon whether the accused is an officer, a warrant officer, or an enlisted person will depend on the type of punishment that may be imposed. Also the rank of the official imposing the punishment is a limiting factor on the amount and type of punishment that may be awarded. A flow chart demonstrating this follows:

1. Upon commissioned officers and warrant officers

a. Imposed by an OEGCMJ, an officer of general or flag rank in command, or designated principal assistant:

(1) Punitive admonition or reprimand.

(2) Arrest in quarters for not more than 30 consecutive days.

(3) Restriction to specified limits, with or without suspension from duty, for not more than 60 consecutive days.

(4) Forfeiture of not more than 1/2 of 1 month's pay per month for 2 months.

b. Imposed by any CO:

(1) Admonition or reprimand.

(2) Restriction to specified limits, with or without suspension from duty for more than 30 consecutive days.

c. Imposed by an OIC: OICs do not have the authority to impose NJP upon officers.

2. Upon enlisted accused

a. If imposed by COs of the grade of lieutenant commander or above or a principal assistant:

(1) Admonition or reprimand.

(2) If imposed upon a person attached to or embarked in a vessel, confinement on bread and water or diminished rations for not more than 3 consecutive days. Accused must be in the paygrade of E-3 or below.

(3) Correctional custody for not more than 30 consecutive days and only on grades E-3 and below.

(4) Forfeiture of not more than 1/2 of 1 month's pay per month for 2 months.

(5) Reduction of one paygrade for members in paygrades E-6 and below. Reduction is not imposable on E-7 and above (Navy) or on E-6 and above (Marine Corps).

(6) Extra duties for not more than 45 consecutive days.

(7) Restriction to specified limits for not more than 60 consecutive days.

b. Imposed by COs in grades O-3 and below or any commissioned OIC:

(1) Admonition or reprimand.

(2) Confinement on bread and water or diminished rations for not more than 3 consecutive days and only on grade E-3 and below attached to or embarked in a vessel.

(3) Correctional custody for not more than 7 consecutive days and only on grades E-3 and below.

(4) Forfeiture of not more than 7 days' pay.

(5) Reduction to the next inferior paygrade, if the grade from which demoted is within the promotion authority of the officer imposing the reduction. Reduction is not imposable on E-7 and above (Navy) and E-6 and above (Marine Corps).

(6) Extra duties for not more than 14 consecutive days.

(7) Restriction for not more than 14 consecutive days.

NATURE OF THE PUNISHMENT

There are eight specific types of punishment that may, under proper circumstances, be imposed as NJP. They are admonition and reprimand, arrest in quarters, restriction, forfeiture, extra duty, reduction in grade, correctional custody, and confinement on bread and water or diminished rations. Remember, there are limitations that are based upon the CO's rank and the status of the offender.

Admonition and Reprimand

Admonition and reprimand are two forms of censure intended to express adverse reflection upon or criticism of a person's conduct. A reprimand is a more severe form of censure than an admonition. When imposed as NJP, the admonition or reprimand is considered to be punitive, unlike the nonpunitive admonition and reprimand. Punitive censure for officers must be in writing, although it may be either oral or written for enlisted personnel. Procedures for issuing punitive letters are detailed in the JAGMAN, section 0114. A sample punitive letter of reprimand is shown in the JAGMAN, appendix A-1-g.

Arrest in Quarters

This punishment is imposable only on officers. It is a moral restraint, as opposed to a physical restraint. It is similar to restriction, but has much narrower limits. The limits of arrest are set by the officer imposing the punishment and may extend beyond quarters. The term *quarters* includes military and private residences. The officer may be required to perform his or her regular duties as long as they do not involve the exercise of authority over subordinates.

Restriction

Restriction is the least severe form of deprivation of liberty. Restriction involves moral rather than physical restraint. The severity of this type of restraint depends on its duration and the geographical limits specified when the punishment is imposed. A person undergoing restriction may be required to report to a designated place at specified times if reasonably necessary to make sure the punishment is being properly executed.

Restriction ashore means that an accused will be restricted to the limits of the command except, of course, at larger shore stations where the use of recreational facilities might be further restricted. Restriction and arrest in quarters are normally imposed by a written order detailing the limits thereof and usually requires the accused to log in at certain specified times during the restraint. Article 1103 of *U.S. Navy Regulations, 1990,* provides that an officer placed in the status of arrest or restriction will not be confined to his or her room unless the safety or the discipline of the ship requires such action.

Forfeiture

Forfeiture means a permanent loss of entitlement to the pay forfeited. A forfeiture applies to basic pay and to sea or foreign duty pay, but not to incentive pay or allowances for subsistence or quarters. The amount of forfeiture of pay is expressed in whole dollar amounts, not in fractions, and shows the number of months affected. An example of a properly stated forfeiture is to forfeit $50 pay per month for 2 months.

If the punishment includes both reduction, whether or not suspended, and forfeiture of pay, the forfeiture must be based on the grade the accused is reduced to. Forfeitures are effective on the date imposed unless suspended or deferred. Where a previous forfeiture is being executed, that forfeiture will be completed before any newly imposed forfeiture will be executed.

Extra Duty

Extra duties involve the performance of duties in addition to those normally assigned to the person undergoing the punishment. Various types of duties may be assigned, including fatigue duties. The MCM prohibits extra duties that are a known safety or health hazard, those that are cruel and unusual, or those that are not sanctioned by the customs of the service involved.

When extra duties are imposed upon a petty or noncommissioned officer, the duties cannot be demeaning to his or her rank or position. The immediate CO of the accused normally designates the amount and character of extra duty. Such duties normally should not extend beyond 2 hours per day. Guard duty may not be assigned as extra duty. Extra duty is not performed on Sunday although Sundays count as if such duty was performed.

Reduction in Grade

Reduction in paygrade is limited to one grade only for members in paygrades E-1 through E-6. E-7 through E-9 personnel cannot be reduced in grade at NJP. The grade from which reduced must be within the promotional authority of the CO imposing the reduction. See also the NAVMILPERSMAN, Article 3420140.2, for additional information on reduction.

Correctional Custody

Correctional custody is a form of physical restraint of a person during either duty or nonduty hours, or both, and may include hard labor, extra duties, or fatigue duties. Awardees may perform military duty but not watches and cannot bear arms or exercise authority over subordinates. Specific regulations for administering correctional custody can be found in *Instructions for Administering Correctional Custody,* OPNAVINST 1640.7.

Time spent in correctional custody is not lost time. Correctional custody may not be imposed on paygrades E-4 and above. To assist commanders in imposing correctional custody, correctional custody units (CCUs) have been established at major shore installations. The local operating procedures for the nearest CCU should be checked before correctional custody is imposed.

Confinement on Bread and Water or Diminished Rations

These punishments can only be awarded to E-3s and below if they are attached to or embarked in a vessel. These punishments involve physical confinement and are equivalent to solitary confinement because contact is allowed only with authorized personnel.

A medical officer must first certify in writing that the accused will suffer no serious injury and that the place of confinement will not harm the accused. Diminished rations is a restricted diet of 2,100 calories per day, and instructions for its use are detailed in SECNAVINST 1640.9.

APPEAL FROM NJP

A member who is awarded NJP and who believes the punishment unjust or disproportionate to the offense has the right to appeal the award to higher authority.

PROCEDURE

If punishment is imposed at NJP, the CO is required to make sure the accused is fully advised of his or her right to appeal. Refer to part V, par. 4c(4)(B)(iii), MCM, 1984, and the JAGMAN, section 0110e. An accused's acknowledgment of appeal rights should be signed by the accused and witnessed to prove that the accused was informed of his or her appeal rights. File this along with all the other papers in the accused's case file in the UPB.

A person punished under Article 15 may appeal the imposition of such punishment through proper channels to the appropriate appeal authority. If, however, the offender is transferred to a new command before filing his or her appeal, the immediate CO of the offender at the time the appeal is filed should send the appeal directly to the officer who imposed the punishment.

When the officer who imposed the punishment is in the Navy chain of command, the appeal will normally be sent to the area coordinator authorized to convene general courts-martial. A GCM authority superior to the officer imposing punishment may, however, set up an alternate route for appeals.

When the area coordinator is not superior in rank or command to the officer imposing punishment, or when the area coordinator is the officer imposing punishment, the appeal will be sent to the GCM authority next superior in the chain of command to the officer who imposed the punishment. An immediate or delegated area coordinator who has authority to convene GCMs may take action instead of an area coordinator if he or she is superior in rank or command to the officer who imposed the punishment.

For mobile units, the area coordinator for the previous purposes is the area coordinator most accessible to the unit at the time of sending the appeal.

When the officer who imposed the punishment is in the chain of command of the Commandant of the Marine Corps, the appeal will be made to the officer next superior in the chain of command to the officer who imposed the punishment.

When the officer who imposed the punishment has been designated a CO for naval personnel of a multiservice command, the appeal will be made according to the JAGMAN.

A flag or general officer in command may, with the express prior approval of the Chief of Naval Personnel or the Commandant of the Marine Corps, delegate authority to act on appeals to a principal assistant. An officer who has delegated his or her NJP power to a principal assistant may not act on an appeal from punishment imposed by that assistant.

TIME

Appeals must be submitted in writing within 5 days of the imposition of NJP or the right to appeal is waived in the absence of good cause shown. The appeal period runs from the date the accused is informed of his or her appeal rights. Normally, this is the day NJP is imposed. With an appeal submitted more than 5 days after the imposition of NJP (less any mailing delays), the officer acting on the appeal determines whether good cause was shown for the delay in the appeal.

If it appears to the accused that good cause may exist that would make it impossible or extremely difficult to prepare and submit the appeal within the 5-day period, the accused should immediately advise the officer who imposed the punishment of the problems and request an extension of time. The officer imposing NJP determines whether good cause was shown and advises the accused whether an extension of time is permitted.

UNIT PUNISHMENT BOOK

The UPB contains a record of all NJP hearings conducted by a command, not just those in which punishment was awarded, and is required by the MILPERSMAN. The form that is used to record NJP hearings is the NAVPERS 1626/7. When all actions have been completed on a particular NJP hearing, the space provided in the final administrative action portion of the NAVPERS 1626/7 (see section J) that indicates when the case record is filed in the UPB should be filled out. Although there is no requirement to do so, it is good administrative practice to attach all

relevant documents on that particular case to the NAVPERS 1626/7.

There are no specific instructions as to what manner these cases should be filed in the UPB; however, the suggested procedure is to file cases in alphabetical order, chronological order by date, or a combination of both.

LOG ENTRIES

The *Standard Organization and Regulations of the U.S. Navy,* (SORM), OPNAVINST 3120.32, prescribes the log entry for mast results afloat. Such an entry should be substantially in the format for the POD entry, and you should provide this information to the officer of the deck (OOD) for inclusion in the deck log. Although there is no Navywide requirement for logbooks ashore, you will find that logs are kept ashore pursuant to local instructions. Unless these local instructions require a different format, you should provide information about the mast results to the OOD in the same format that is used afloat.

SUMMARY

NJP is the lowest form of discipline available to COs to aid them in maintaining good order and discipline within the Navy. It is important for you as a YN to keep abreast of all requirements and procedures associated with the proper administration of NJP because of its effect upon individuals as well as its effect upon the Navy.

ADMINISTRATIVE INVESTIGATIONS (FACT-FINDING BODIES)

Almost every YN will have contact with an administrative fact-finding body, commonly called a JAGMAN investigation. The regulations that govern these investigations are contained in the *Manual of the Judge Advocate General* (JAGMAN) and JAGINST 5830.1. The primary purpose of an administrative fact-finding body is to provide the convening authority (CA) and reviewing authorities with adequate information upon which to base decisions. In so providing the CA, an administrative fact-finding body searches out, develops, assembles, analyzes, and records all available information about the matter under investigation. As the name indicates, these investigations are purely administrative in nature, not judicial. The investigation is advisory only; the opinions are not final determinations or legal judgments, nor are the recommendations made by the investigating officer (IO) binding upon the convening or reviewing authorities.

TYPES OF INVESTIGATIONS

There are three types of administrative fact-finding bodies: courts of inquiry, fact-finding bodies required to conduct a hearing, and fact-finding bodies not required to conduct a hearing. However, for purposes of procedures, there are only two types of fact-finding bodies.

- Fact-finding bodies required to conduct a hearing. These include courts of inquiry and investigations required to conduct a hearing. A court of inquiry consists of at least three commissioned officers and appointed legal counsel for the court. It is convened by written appointing order, takes all testimony under oath, and records all proceedings verbatim. A court of inquiry has the power to subpoena civilian witnesses. A fact-finding body required to conduct a hearing consists of one or more commissioned officers and should have appointed legal counsel for the proceedings. It is convened by a written appointing order. The appointing order should direct that all testimony be taken under oath and/or all proceedings recorded verbatim. A collateral function of a court of inquiry and a fact-finding body required to conduct a hearing is to provide a hearing to individuals who have been designated as parties to the investigation.

- Fact-finding bodies not required to conduct a hearing. This category includes only the investigation not requiring a hearing. It is normally composed of a single investigator who obtains statements, rather than taking testimony, and who is not authorized to designate parties.

The importance of an administrative fact-finding body cannot be stressed enough. It is not only an efficient management tool, but also can be used in a wide variety of situations ranging from the proper disposition of claims to the timely and accurate reply to public inquiry. Various directives establish requirements for conducting of inquiries into specific matters. The JAGMAN, however, is the most inclusive. Some incidents involve conducting an inquiry for several different purposes that can be handled by one investigation; others may not. A CA must be careful to determine why an investigation is being conducted, who is supposed to conduct it, and whether it will satisfy all requirements or only a portion of them. The following situations are examples of the various different types of investigations:

- Aircraft accidents
- Vehicle accidents
- Explosions
- Stranding of a ship of the Navy
- Collisions
- Accidental or intentional flooding of a ship
- Fires
- Loss or excess of government funds or property
- Claims for or against the government
- Reservists (an investigation is required if a reservist is injured or killed while performing active duty or training for 30 days or less, or inactive-duty training)
- Admiralty matters
- Firearm accidents
- Pollution incidents
- Combined investigations of maritime incidents
- Security violations
- Postal violations
- Injuries and diseases incurred by service members
- Quality of medical care reasonably in issue
- Redress of damage to property
- Death cases

A fact-finding body must be convened in the following death cases: (1) when the death of a member of the naval service occurred, while on active duty, from other than a previously known medical condition; (2) when civilians or other nonnaval personnel are found dead on a naval installation under peculiar or doubtful circumstances, unless the incident is one that the Naval Investigative Service (NIS) has exclusive jurisdiction; and (3) when death or permanent disability occurs in which the adequacy of medical care is reasonably in issue.

You do not have to send a report to the Judge Advocate General (JAG) when death occurs as a result of enemy action. A fact-finding body should be convened and the record forwarded in any case when it is unclear if enemy action caused the death.

Because some commercial life insurance policies contain certain restrictions and/or certain types of double-indemnity provisions, it is desirable to make sure the essential facts are recorded while witnesses are known and available. When feasible, the facts reported should permit determinations as to whether death resulted from accidental causes, natural causes, or enemy action.

Progress status reports are required on all death investigations from all command and reviewing activities every 14 days. Send a message to the Chief of Naval Personnel, with JAG and all intermediate commands/reviewing authorities as information addressees. The requirement for the status report ceases once the investigation has been sent to the next higher level of command/reviewing authority.

The next of kin should be advised that they may request copies of the death investigation from JAG (Code 33). It is most important, therefore, that mature, experienced officers complete these investigations in an accurate, professional, and expeditious manner. An advance copy of each death investigation, with the GCM CA's endorsement, should be sent to JAG. If it would unduly delay submission of the investigation to await a final autopsy report, autopsy protocols, death certificates, or similar documents, an initial report should be promptly submitted upon completion of the investigation. A supplemental report should be submitted via the review chain, with an advance copy to JAG, once the autopsy has been completed. The advance report is usually released to the requesting next of kin by JAG (after exclusion of material protected by the exemptions to the Freedom of Information/Privacy Act), unless JAG has been alerted that subsequent reviewers may significantly alter findings, opinions, or recommendations; in which case, release is withheld until the investigative report is finally reviewed.

INVESTIGATIONS REQUIRED BY OTHER REGULATIONS

If an investigation is required under the JAGMAN, it must be conducted in addition to any other investigation required by other regulations. Situations in which two investigations may be required are listed in JAGMAN Article 0208a.

A JAGMAN investigation is not required if there is no reason for the investigation other than possible disciplinary action. To avoid interference, a JAGMAN investigation should not normally proceed at the same time as a law-enforcement type of investigation by the Federal Bureau of Investigations (FBI), NIS, or local civilian law-enforcement units.

If an investigation is required for other than disciplinary action, the IO should communicate with the law-enforcement personnel, explaining the need for the JAGMAN investigation, and request that the police investigators keep him or her informed of what information is obtained.

Other types of investigations that have additional instructions and guidance include the following:

- Safety investigations. OPNAVINST 5100.14
- Aircraft accident reports and aircraft mishap investigations. OPNAVINST 3750.6
- Accidental injury to personnel. OPNAVINST 5100.12
- Admiralty. JAGINST 5880.1
- Felonies involving both naval and civilian personnel. SECNAVINST 5820.1
- Crimes involving exclusive NIS jurisdiction. SECNAVINST 5520.3 and OPNAVINST 5450.97

- Security violations. OPNAVINST 5510.1

- Stolen government property. SECNAVINST 5500.4

- Claims for or against the government. JAGINST 5830.1

- Postal violations. OPNAVINST 5112.6

INVESTIGATIONS NOT REQUIRING A HEARING

The type of fact-finding body to be convened is determined by the purpose(s) of the inquiry, the seriousness of the issues involved, the time allotted for completion of the investigation, and the nature and extent of the powers required to conduct a thorough investigation. This section will concentrate on the most common administrative fact-finding body, the investigation not requiring a hearing. Courts of inquiry and investigations requiring a hearing will be discussed later in this chapter. Keep in mind, however, that many of the basic rules and principles discussed in this section also apply to other types of investigations. As is the case with any fact-finding body, the primary function of an investigation not requiring a hearing is to gather information. A fact-finding body not requiring a hearing does not have the power to designate parties and, therefore, does not have the collateral function of providing a hearing to a party.

Any officer in command may order an investigation not requiring a hearing. For purposes of the JAGMAN, officer in command means an officer authorized to convene any type of court-martial or authorized to impose disciplinary punishment under Article 15, *Uniform Code of Military Justice* (UCMJ). This also includes officers in charge (OICs).

An officer in command is responsible for initiating investigations of incidents occurring within his or her command or involving his or her personnel. If an officer in command feels that investigation of an incident by the command is impractical, another command can be requested to conduct the investigation.

If an incident requiring the convening of an investigation occurs at a place geographically distant from the command, or the command deploys before an investigation can be completed, another command can be requested to conduct the investigation. This request should be made to the area coordinator in whose geographical area of responsibility the incident occurred.

A single investigation should be conducted into an incident involving more than one command, convened by an officer in command of any of the activities involved. If difficulties arise concerning who should convene the investigation, the common superior of all commands involved will determine who will convene it. If the conduct or performance of one of the officers in command may be subject to inquiry (as in the case of a collision between ships), the common superior of all the officers involved will convene the investigation.

THE INVESTIGATORY BODY

An investigation not requiring a hearing may be composed of a single investigator or a board consisting of two or more members. The most common is the one-officer investigation. The IO should normally be a commissioned officer, but may be a warrant officer, senior enlisted, or a civilian employee, when appropriate. IOs must be those individuals who are best qualified for the duty by reason of age, education, training, experience, length of service, and temperament. Unless impractical, the IO should be senior to any person whose conduct or performance of duty will be subject to inquiry. An expert may participate as IO or for the limited purpose of using his or her special experience. The report should make

clear any participation by an expert. Ordinarily, counsel is not appointed for an investigation not requiring a hearing, although a judge advocate is often made available to help the IO with any legal problems or questions that may arise.

APPOINTING ORDER

An investigation not requiring a hearing is convened by a written order called an appointing order. An officer in command is responsible for initiating investigations of incidents occurring within his or her command or involving his or her personnel.

An appointing order must be in official letter form, addressed to the IO of the one-officer investigation. When circumstances warrant, an investigation may be convened by an oral or message order. The IO must include the signed, written confirmation of oral or message orders in the investigative report.

The appointing order serves several purposes. They recite the specific purpose(s) of the investigation, give explicit instructions as to the scope of the inquiry, and direct the IO to the required witness warnings.

These instructions help the IO accomplish all the objects of the investigation, not just the CA's immediate objectives. For example, the following case of a vehicle accident involving a member of the naval service may give rise to various concerns that include (1) the CA who orders the investigation may be concerned whether local procedures regarding the use of government vehicles should be changed and whether disciplinary action may be warranted; (2) JAG may be concerned with a line of duty/misconduct determination; and (3) the cognizant naval legal service office (NLSO) claims officer will be concerned with potential claims for or against the government. A properly completed investigation requires the IO to satisfy the special requirements for each of these different determinations.

All fact-finding bodies are required to make findings of fact. In the typical investigation not requiring a hearing, the appointing order directs the IO to conduct a thorough investigation into all the circumstances connected with the subject incident and to report findings of facts, opinions, and recommendations concerning the following:

- The resulting damage
- The injuries to members of the naval service and their line of duty and misconduct status
- The circumstances attending the death of members of the naval service
- The responsibility for the incident under investigation, including any recommended administrative or disciplinary action
- Claims for and against the government
- Any other specific investigative requirements that are relevant, such as those contained in the JAGMAN

During the course of the investigation, on advice of the investigative body or on his or her own initiative, the CA may broaden or narrow the scope of the inquiry by issuing supplemental directions amending the appointing order.

Unless specifically directed by the appointing order, opinions or recommendations are not made. The CA may require recommendations in general, or in limited subject areas.

The appointing order may direct that testimony or statements of some or all witnesses be taken under oath and may direct that testimony of some or all witnesses be recorded verbatim. When a fact-finding body not requiring a hearing takes testimony or

statements of witnesses under oath, it should use the oaths prescribed in JAGMAN 0212b.

The Privacy Act requires that a Privacy Act statement be given to anyone who is requested to supply personal information in the course of a JAGMAN investigation when that information will be included in a system of records. Note that witnesses will rarely provide personal information that will be retrievable by a witness' name or other personal identifier. Since such retrievability is the cornerstone of the definition of system of records, in most cases the Privacy Act will not require warning anyone unless the investigation may eventually be filed under that individual's name.

Social security numbers should not be included in JAGMAN investigation reports unless they are necessary to precisely identify the individuals involved, such as in death or serious injury cases. If a service member or civilian employee is asked to voluntarily provide their social security number for the investigation, a Privacy Act statement must be provided. If the number is obtained from other sources, the individual does not need to be provided with a Privacy Act statement. The fact that social security numbers were obtained from other sources should be noted in the preliminary statement of the investigation.

If prosecution for a suspected offense under the UCMJ appears likely, the witness suspected of the offense should be warned under Article 31(b), UCMJ, and JAGMAN 0170. Appendix A-1-m of the JAGMAN shows the proper form to be used. The IO should collect all relevant information from all sources-other than from those persons suspected of offenses, misconduct, or improper performance of duty–before interviewing the suspect.

A member of the armed forces, before being asked to provide any statement relating to the origin, incurrence, or aggravation of any disease or injury suffered, should be advised of the statutory right not to make such a statement. Appendix A-2-f of the JAGMAN contains a proper warning format and without this warning the statements are invalid.

The appointing order directs completion of the IO's report within 30 days of the date of the appointing order. JAGMAN 0202c established the following time limits for processing JAGMAN investigations:

- The CA prescribes the time limit the fact-finding body has to submit its investigation. This period should not normally exceed 30 days from the date of the appointing order; however, this period may be extended for good cause. Always include requests and authorizations for extension as enclosures to the investigation.

- The CA and each subsequent reviewer have 30 days (20 days in death cases) to review the investigation. Reasons for exceeding these time limits must be documented by the responsible endorser, and deviations must be requested and approved in advance by the immediate senior in command who will next review the investigation.

INVESTIGATIVE REPORT

The investigative report, submitted in letter form, consists of the following items:

- A preliminary statement
- Findings of fact
- Opinions
- Recommendations
- Enclosures

Preliminary Statement

The purpose of the preliminary statement is to inform the convening and reviewing authorities that all reasonably available evidence was collected and that the directives of the CA have been met. The preliminary statement should refer to the appointing order and set forth the following information:

- The nature of the investigation

- Any limited participation by a member and/or the name of any individual who assisted and the name and organization of any judge advocate general who assisted

- Any difficulties encountered in the investigation and the reasons for any delay

- If the evidence in the enclosures is in any way contradictory, a factual determination in the findings of fact section along with an explanation of the basis for that determination (this explanation should be reserved for material facts)

- Any failure to advise individuals of their rights

- The fact that all social security numbers were obtained from official sources

- An attorney work product statement when a claim, or litigation by or against the United States, is reasonably possible

- Any other information necessary for a complete understanding of the case

Do not include a synopsis of facts, recommendations, or opinions in the preliminary statement. These should appear in the pertinent sections of the investigative report. It is not necessary for the IO to provide an outline of the method used to obtain the evidence contained in the report. A preliminary statement does not eliminate the necessity for making findings of fact. Even though the subject line and preliminary statement may talk about the death of a person in a car accident, findings of fact must describe the car, time, place of accident, identity of person, and other relevant information.

Findings of Fact

Findings of fact must be as specific as possible as to times, places, persons, and events. Each fact is made a separate finding. Each fact must be supported by testimony of a witness, statement of the IO, documentary evidence, or real evidence attached to the investigative report as an enclosure. Also, each enclosure on which the fact is based must be referenced. For example, the IO may not state: "The car ran over Seaman Doe's foot," without a supporting enclosure. He or she may, however, have Doe execute a statement such as "The car ran over my foot." Include this statement as an enclosure and, in the findings of fact, state: "The car ran over Seaman Doe's foot," referencing enclosure (X). When read together, the findings of fact should tell the whole story of the incident without requiring reference back to the enclosures.

Opinions

Opinions are reasonable evaluations, inferences, or conclusions based on the facts. Each opinion must reference the findings of fact supporting it. In certain types of investigations, the CA will require the IO to make certain opinions.

Recommendations

Recommendations are proposals derived from the opinions expressed, made when directed by the CA, and may be specific or general in nature. If corrective action is recommended, the recommendation should be as specific as possible.

Enclosures

The first enclosure is either the signed written appointing order and any modifications or the signed written confirmation of an oral or message appointing order. Include any requests for extensions of time as enclosures, in addition to letters granting or denying such requests.

JAGMAN 0229a requires the IO to properly identify all persons involved in the incident under investigation with complete name, grade or title, service or occupation, and station or residence. The list of enclosures is a suggested place for ensuring compliance with that section.

Enclosures are listed in the order referenced in the investigative report. Separately number and completely identify each enclosure. Make each statement, affidavit, transcript of testimony, photograph, map, chart, document, or other exhibit a separate enclosure. If the IO's personal observations provide the basis for any finding of fact, a signed memorandum detailing those observations should be attached as an enclosure. Enclose a Privacy Act statement for each party or witness from whom personal information was obtained as an attachment to the individual's statement. The signature of the IO on the investigative report serves to authenticate all the enclosures.

Classification of Report

Because of the wide circulation of JAGMAN investigative reports, classified information should be omitted unless inclusion is essential. When included, however, the investigative report is assigned the classification of the highest subject matter contained in it. Encrypted versions of messages are not included or attached to investigative reports where the content or substance of such message is divulged. To assist in the processing of requests for release of investigations and to simplify handling and storage, declassify enclosures whenever possible. If the information in question cannot be declassified, but contributes nothing to the report, consider removing the enclosure from the investigation with notification in the forwarding endorsement.

ACTION BY THE CONVENING AND REVIEWING AUTHORITIES

The IO submits the JAGMAN investigative report to the CA who reviews it and transmits it by endorsement to the appropriate superior officer. The endorsement will accomplish one of the following actions:

- Return the report for further inquiry or corrective action noting any incomplete, ambiguous, or erroneous action of the IO.

- Forward the record, setting forth appropriate comments, recording approval or disapproval, in whole or in part, of the proceedings, findings, opinions, and recommendations.

In line of duty/misconduct investigation, the CA is required to specifically approve or disapprove the line of duty/misconduct opinion.

SUMMARY

Your knowledge of the proper procedures involved with the conduct and preparation of the various types of JAGMAN investigations is an important aspect of your duties as a YN. Additional information concerning these investigations can be found in chapter II of the *Manual of the Judge Advocate General* and JAGINST 5890.1. Whenever you are involved with working on a JAGMAN investigation, you should take the time to review the applicable sections of the JAGMAN and JAGINST 5890.1 to make sure all procedures and any special requirements are followed.