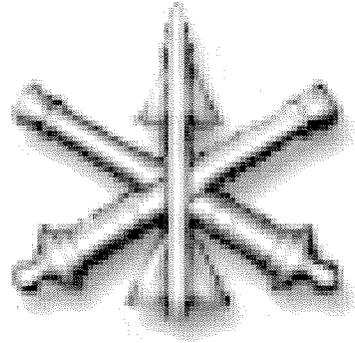
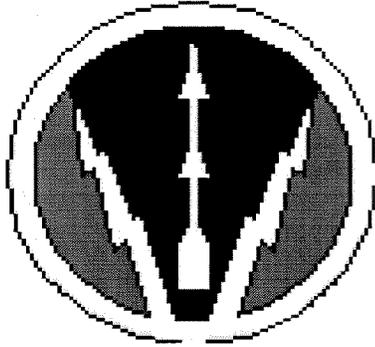


**U.S. Army
Air Defense Artillery Center
& Fort Bliss**



Commander's Guide
to
**Frequently Encountered
Legal Issues**



January 2003

Preface

January 2003

The Office of the Staff Judge Advocate (OSJA), Fort Bliss, Texas prepared this *Commander's Guide to Common Legal Issues* as a desktop legal reference for Commanders and their staffs.

The *Guide* begins with a chart showing the organization of the OSJA. Our office is organized into four major divisions. The *Criminal Law Division* conducts courts-martial, and provides legal advice to commanders and staffs on courts-martial, non-judicial punishment, administrative separation boards, searches, inspections, and other matters related to soldier misconduct. The *Civil and Administrative Law Division* provides legal advice to commanders and staffs on all installation issues (usually those not related to misconduct). The *Legal Assistance Division* helps soldiers, retirees, and family members with personal legal problems. The *Claims Division* provides a variety of claims services, including processing claims for damage to household goods and POVs shipped at government expense.

The bulk of this *Guide* consists of information papers grouped by subject matter, under the division in which they fall. For example, the preparation of wills is done by our Legal Assistance Division, and so the information paper about "Last Will and Testament/SGLI" is located in the Legal Assistance section (Section "D").

The information in these papers is only a guide. These information papers are only *summaries* of the law, and the law is subject to change. It is not appropriate to duplicate and distribute every one of these papers. Please discuss that with your trial counsel. These information papers are not a substitute for direct legal advice! Each information paper contains a point of contact. Please call that point of contact for specific guidance if you identify a problem in that area.

Karl M. Goetzke
Colonel, Judge Advocate General's Corps
Staff Judge Advocate

HANDY-REFERENCE PHONE LIST

Military Justice 568-4606 / 2612

Claims 568-5650

Trial Defense Service 568-5504

Civil and Administrative Law 568-5646

Legal Assistance 568-4704/7141

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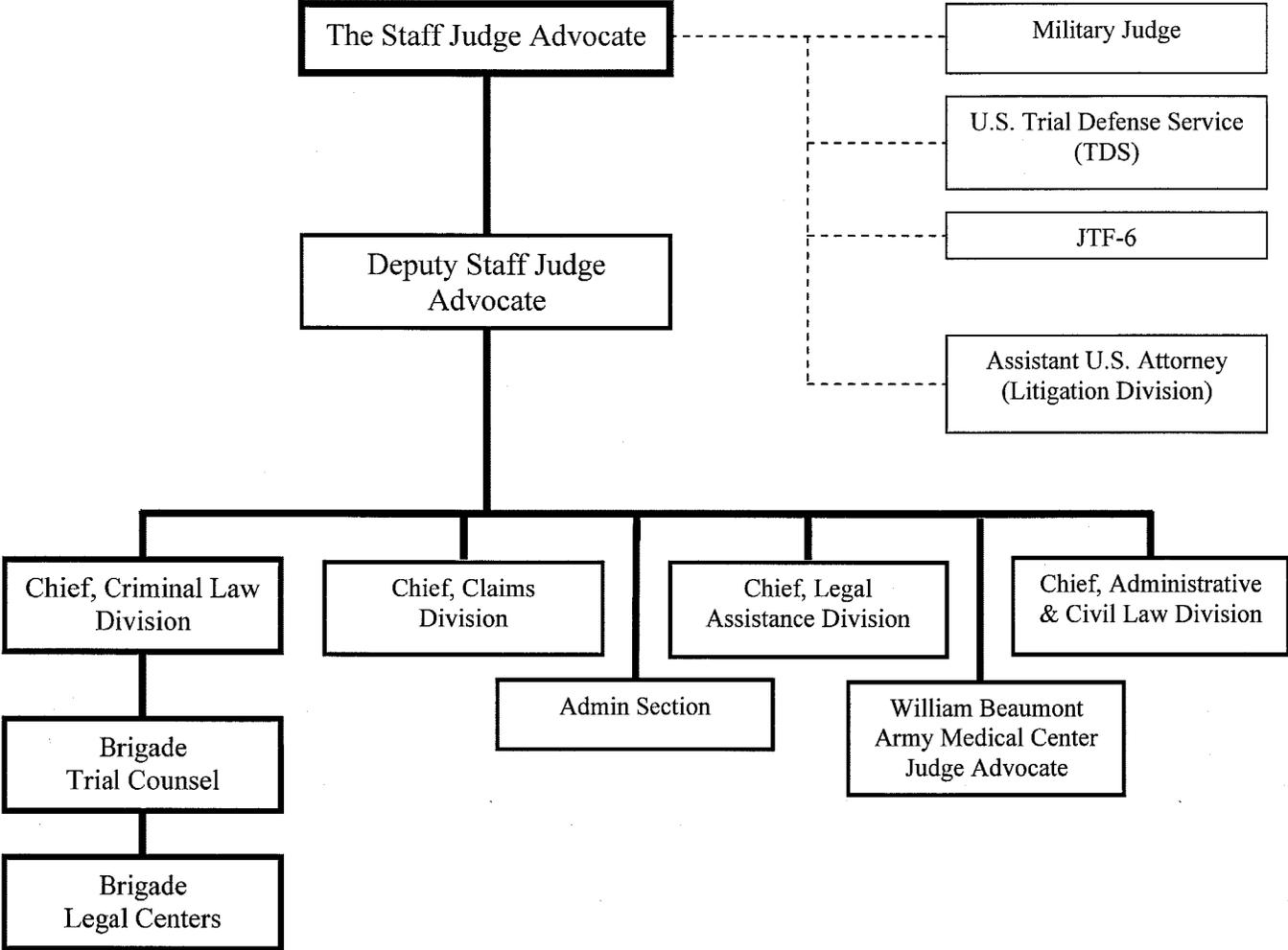
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OFFICE OF THE STAFF JUDGE ADVOCATE



Note: The dashed lines on the diagram indicate a coordinating relationship. The Fort Bliss Office of the Staff Judge Advocate does not exercise any type of supervision or control over the U.S. Army Trial Defense Service, the Assistant United States Attorney, the JTF-6 Legal Advisors, or the Military Judge.

SUBJECT: Administrative Alternatives to UCMJ Action

1. **Purpose.** To inform commanders about adverse administrative actions available to improve good order and discipline.

2. **Facts.**

a. A commander has a wide variety of actions available when a soldier commits a criminal offense or engages in inappropriate conduct. These remedies include UCMJ action. However, UCMJ action, ranging from the imposition of Article 15 punishment to preferral of court-martial charges, is not appropriate in all circumstances. AR 27-10 requires that commanders use non-punitive measures to the fullest extent possible before resorting to UCMJ action.

b. Adverse administrative actions that may be appropriate include the following:

(1) Counseling (AR 635-200)

(Note: Leaders must remember to always use the “magic language” of ¶ 1-16)

(2) Corrective Training (AR 600-20 and AR 27-10)

(Note: Commanders must ensure there is a direct relationship between the performance deficiency and the corrective training implemented. This is one of the most effective, yet least utilized tools a commander has.)

(3) Withholding pass and other privileges (AR 600-8-10)

(Note: This is not the same thing as restriction)

(4) Administrative Reprimands (AR 600-37)

(5) Adverse efficiency reports (AR 623-105 and AR 205)

(6) Revocation of Security Clearance (AR 604-5)

(7) MOS Reclassification (AR 600-200)

(8) Bar to Reenlistment (AR 601-280)

(9) Administrative Reduction (AR 600-8-19)

(10) Administrative Separation (AR 600-8-24 and 635-200)

3. **POC** is your Trial Counsel, Criminal Law Division, extension 4606/2612.

SUBJECT: Withholding of Article 15 and GOMOR Authority on Fort Bliss

1. **Purpose.** To inform commanders of limitations upon their authority by the Commanding General to impose punishment or initiate adverse administrative action.

2. **General:** The Commanding General has withheld Article 15 authority for misconduct by all officers, warrant officers, and senior NCOs in the grade of E9. He has also issued policies concerning who may impose Article 15s and General Officer Memoranda of Reprimand (GOMORs) for firearms, drugs, alcohol, spousal abuse, and routine traffic offenses. The CG's guidance is contained in Policy Memoranda F-2. Additional guidance is contained in Fort Bliss Regulation 27-10.

3. **Withheld Authority:**

a. **Officers and E9s.** The CG withholds Article 15 authority for all commissioned officers, warrant officers, and E9s (except that the JTF6 Commander is permitted to exercise Article 15 and GOMOR authority for JTF6 officers). Subordinate commanders must timely report allegations against and offenses by such individuals to the CG and submit their recommendations as to disposition. They may also request authority to handle the matter at their level.

b. **DWI and Firearm GOMORs.** The CG withholds authority to issue GOMORs in all drunk driving cases, on and off post. Commander, JTF-6 and 32d AAMDC also have the authority to issue DWI GOMORs. AR 190-5 requires issuance of a GOMOR for every soldier, corporal and above, who drives drunk or who refuses to consent to a blood, breath, or urine test to measure drug or alcohol content. The CG also withholds authority to issue GOMORs for firearm incidents on or off post.

c. **E8s and E7s.** Article 15 authority over NCOs in grades E7 and E8 is withheld to the Special Court-Martial Convening Authority (brigade commanders).

d. **Firearms.** Article 15 authority for firearm offenses is withheld to Special Court-Martial Convening Authority (brigade commanders).

e. **Drugs, Alcohol, and Second Offenses of Domestic Abuse.** Article 15 authority for any drug and/or alcohol-related offenses and second offenses of domestic abuse is withheld to the Summary Court-Martial Convening Authority (battalion commanders).

f. **Routine Traffic Offenses.** Commanders are prohibited from imposing punishment under Article 15, UCMJ for routine traffic offenses. Routine traffic offenses will be prosecuted in U.S. Magistrate's Court. Drunk and reckless driving offenses and those offenses involving military vehicles in maneuver areas are not routine traffic offenses.

4. **Subordinate Commanders.** Major subordinate commanders and battalion commanders may have additional policies regarding the withholding of authority to act in certain cases. The Office of the Staff Judge Advocate must review any such policy letter.

5. **POC** is your Trial Counsel, Criminal Law Division, extension 4606/2612.

SUBJECT: Unlawful Command Influence – “Ten Commandments”

1. **Purpose.** Inform commanders of the cardinal rules regarding unlawful command influence.
2. **Article 37, UCMJ.** No person subject to this chapter may attempt to coerce or, by any unauthorized means, influence the action of a court-martial or any other military tribunal or any member thereof, in reaching the findings or sentence in any case...[Note: Article 98, UCMJ, makes this a punitive provision.]
3. **Ten Commandments**
 - I:** If you want it done your way, do it yourself . . . the commander may not order a subordinate to dispose of a case in a certain way.
 - II:** The commander must not have an inflexible policy on disposition or punishment (e.g., stating “If you commit misconduct X, you’ll receive punishment Y”)
 - III:** The commander, if he is the accuser, may not dispose of the case.
 - IV:** The commander may not select or remove court members in order to obtain a particular result in a particular case.
 - V:** No outside pressures may be placed on the judge or court members to arrive at a particular decision.
 - VI:** Witnesses may not be intimidated or even discouraged from testifying.
 - VII:** The court decides punishment. An accused may not be punished before trial.
 - VII:** No person may invade the independent discretion of the military judge.
 - VIX:** The commander must have an open mind toward clemency.
 - X:** If a mistake is made, raise the issue immediately.
4. **Bottom-line:** These rules ensure that military justice remains fair. Violations have severe consequences.
5. **POC** is your Trial Counsel, Criminal Law Division, extension 4606/2612.

SUBJECT: Rights Warnings

1. **Purpose.** To inform commanders of their responsibility to comply with the Uniform Code of Military Justice (UCMJ), Article 31.

2. **General.** If a commander (or **any** other service member) **suspects** a soldier of committing an offense under the UCMJ, **prior to questioning the soldier**, he/she must advise the soldier of the soldier's rights under Article 31. It is best to use DA Form 3881, Rights Warning Procedure/Waiver Certificate when advising a soldier. The instructions are on the reverse side of the form and give the command evidence of the soldier's waiver or invocation of those rights. If the form is not available, use a Rights Warning Card.

3. **Issues**

a. As part of the advice of rights, the soldier must be informed of **the nature of the offense** of which he is suspected. It is **not** necessary, however, to list the exact UCMJ punitive article for the alleged offense. The soldier must merely know the "**nature**" of the offense.

b. If a soldier, **AT ANY TIME**, invokes the right to remain silent or requests a lawyer, stop the questioning.

c. The chain of command has an affirmative duty to ensure that no suspected soldier is questioned prior to a rights advisement. A failure to do so is a failure to comply with Article 31, and is punishable under the UCMJ.

4. **Practical Considerations.** Commanders should consult with their trial counsel prior to giving a rights warning or questioning a suspected soldier. Most crimes are best investigated by CID or the Military Police, and it may be best that the commander not question the soldier. Even if the crime is one that the commander should investigate, the trial counsel can assist with the proper advisement and questioning.

6. **POC** is your Trial Counsel, Criminal Law Division, extension 4606/2612.

SUBJECT: Drunk Driving Offenses

1. **Purpose.** To inform commanders about the handling of driving while intoxicated (DWI) offenses.
2. **Required General Officer Memorandum of Reprimand (GOMOR).** IAW AR 190-5, a GOMOR will be issued to all active duty soldiers for the following:
 - a. Driving on or off post with blood alcohol content of .08
 - b. Refusal to take a blood alcohol or drug test on or off post, when there is a reasonable belief that the soldier was DWI.
 - c. Driving on or off post under the influence of drugs.
 - d. Conviction for driving while intoxicated (DWI) (drugs or alcohol related) on or off post.
3. **Processing of GOMOR.**
 - a. The Commanding General, Commander, 32d AAMDC, or Commander, JTF-6 will issue all DWI GOMORs for soldiers under his command.
 - b. The GOMOR will be served on the soldier as soon as it is received at the unit. The soldier will have an opportunity to respond regarding the GOMOR and the filing determination.
 - c. The soldier's response and the command's recommendations must be received by the Office of the Staff Judge Advocate, Criminal Law Division NLT 14 days from the date the GOMOR is signed.
 - e. Each GOMOR is returned to the unit with a suspense-driven, detailed checklist. Ensure you comply with the requirements and suspenses on that checklist.
4. **Article 15 or Court-martial Punishment.**
 - a. **Overview:** The GOMOR requirement applies to DWI incidents that occur on or off post. It is an administrative action that is distinct from the criminal charges arising out of the incident.
 - b. **On-Post DWI.** If the offense occurred on-post, the following guidelines apply:
 - (1) The CG has withheld Article 15 authority for any drug and alcohol-related offenses to the Summary Court-Martial Convening Authority (e.g., battalion commanders). This withholding of authority applies to DWI offenses.
 - (2) Commanders may, subject to the withholding of Article 15 authority from battery/company commanders, dispose of on-post DWI just like other UCMJ violations.
 - d. **Off-post DWI:** Criminal charges will ordinarily be filed by the El Paso District Attorney (DA) if the incident occurred off-post. **This normally precludes (prohibits) a commander from taking UCMJ action.** Commanders who wish to take UCMJ action against a soldier for an off-post DWI offense must request jurisdiction release from the DA through their trial counsel. Release requests **must** be coordinated with and forwarded through the Office of the Staff Judge Advocate, Criminal Law Division.
5. **POC** is your Trial Counsel, extension 4606/2612.

SUBJECT: What To Do When A Soldier Comes up "Hot" (Positive Urinalysis)

1. **Overview:** Immediately get soldiers to CID upon receiving a report of a positive urinalysis. A commander's instant reaction to seeing a hot urinalysis report on a soldier is usually to call the soldier in and counsel him. Although appropriate, this action often hinders other law enforcement investigation. It is best to wait and counsel the soldier after CID has questioned him. Consult with trial counsel about every hot urinalysis.

2. **Procedures:** A commander receives a report that a soldier tested "hot" on a urinalysis.

a. **Immediately call CID** to set up an interview for the soldier. Both CID POC (Chief, Drug Suppression Team) and CID OIC are at 568-1700. *Commanders should not tell anyone about the result prior to the soldier meeting with CID, especially not the soldier.* The interview is much more effective if CID is the first to inform the soldier they came up "hot." Often CID obtains useful information from the soldier that assists them in their drug suppression mission. In the rare instance that CID is unavailable, the commander may interview the soldier. However, first consult with your trial counsel. Then read the soldier his Article 31b, UCMJ rights, using a DA Form 3881. Inform the soldier that he is suspected of using a controlled substance. If the soldier waives his rights, question him regarding the drugs used, the time and place where the soldier used drugs, and the source of the drugs. It is important to try and learn who are selling drugs to soldiers.

b. **Flag the soldier** pending investigation and disposition. See AR 600-8-2, para. 1-11.

c. **After** the soldier speaks with CID, **counsel the soldier.** See AR 635-200, para. 1-16, for the required ("magic") language concerning counseling with a view towards separation. Commanders may also consider pulling the soldier's pass privileges (as outlined in earlier information paper).

d. **Order the soldier to ASAP** as soon as possible for evaluation and treatment. See AR 600-85. Be sure to complete DA Form 2496 and indicate that the referral is commander-directed. Do not allow a "self-referral" at this stage. Remember your requirement to continue to test the soldier while he's enrolled in ASAP (using code RO for the urinalysis).

e. Call your trial counsel about disposition options, particularly for E5's and above. Remember, the CG has withheld the authority to act for drug offenses to the summary court-martial convening authority level (e.g., battalion commander).

3. **Disposition Options:** Remember CAV-U: consider the crime, accused (soldier), victims, and unit. Remember prohibitions against unlawful command influence and an inflexible predisposition towards punishment.

a. Administrative memorandum of reprimand (may be a General Officer Memorandum of Reprimand, a GOMOR, or one issued by a subordinate commander).

b. Revocation of the soldier's security clearance.

c. Field Grade Article 15 for a violation of Article 112a, UCMJ, wrongfully using a controlled substance. Due to CG withholding policy and the non-delegation of that authority, a company grade Article 15 will never be an option for a positive urinalysis.

d. Separation under AR 635-200, Chapter 14, para. 14-12c, for commission of a serious offense. Using a controlled substance is a serious offense. You **must** process for separation every soldier that comes up positive, regardless of rank or time in service. You may recommend separation or retention as you deem appropriate, but the action must be routed through to the approval authority.

e. Court-martial. This meets the requirements of AR 600-85 and 635-200 for processing a soldier for elimination.

4. **POC** is your Trial Counsel, extension 4606/2612.

SUBJECT: Procedures for Dealing with AWOL/Deserter Soldiers

1. **Issue.** Army AWOL / Deserter Reporting Procedures

2. **Purpose.** The purpose of this fact sheet is to give leaders guidelines to follow in the event that a soldier goes AWOL or deserts.

3. **AWOL.**

If you suspect a soldier assigned to your unit to be absent without leave (AWOL) take the following steps (IAW ¶ 2-2, AR 630-10):

- a. Report the soldier absent.
- b. Conduct an immediate inquiry to determine the soldier's location and possible reasons for the soldier's absence.
- c. Notify the Provost Marshall (PMO) within 24 hours of the soldier's absence.
- d. Record the results of the inquiry on a DA Form 4187.
- e. Notify the Next of Kin (NOK) of the soldier by a letter (sample in AR 630-10, figure 2-1) mailed on the 10th day of AWOL or when the soldier has sought political asylum or is voluntarily residing in a foreign country.
- f. Determine if the NOK is the spouse of the AWOL soldier. If the NOK is a spouse and the soldier is E-1 through E-4 with less than 4 years of service, the spouse is entitled to request BAH (for up to two months) if:
 - (1) The spouse is not living in government housing,
 - (2) The spouse is living in the AWOL soldier's residence, and
 - (3) There is no positive information that the spouse is currently residing with or has joined the absentee.

(AR 630-10, figures 2-1 and 2-3 provide contains more information and a sample BAH request letter for the spouse.)

4. **Desertion.**

a. The unit commander classifies the AWOL soldier as a dropped from rolls (DFR) when one or more of the following apply:

- (1) The soldier has been AWOL for 30 days.
- (2) The facts and circumstances of the absence, **without regard to the length of the absence**, indicate that the soldier may have committed the offense of desertion as defined under Article 85, UCMJ. Commanders must coordinate with their trial counsel prior to making this determination.
- (3) The soldier has, without authority, gone to and remains in a foreign country, and while in the foreign country has requested, applied for, or accepted any type of asylum or resident permit from the country, or any governmental agency.
- (4) The soldier returns to military control and goes AWOL again, **without regard to the length of either of the absences**, before any administrative or judicial action for a previous absence.
- (5) The soldier escapes from confinement.
- (6) The soldier is a special category absentee (this applies to soldiers who have had access to top secret information during the 12 months preceding the absence).

b. The AWOL soldier will **not** be classified as a deserter when:

(1) The soldier is under military control,

(2) The soldier is confined by civilian authorities, however the soldier may be a Dropped from the Rolls (DFR) on SIDPERs if confined for 6 months or longer,

(3) The soldier is receiving treatment in a civilian hospital, or

(4) The soldier dies before the desertion report is made.

c. When the soldier is a deserter, commanders must:

(1) Complete a DA Form 4187, reporting the soldier's change of duty status from AWOL to DFR.

(2) Complete DD Form 553. The suspected reasons for the absence and information on pending investigations, Article 15, or UCMJ action at the time of the soldier's absence are recorded in item 19.

(3) Send the completed DD Form 553 to the PMO. The PMO will add information to the DD 553 (other criminal charges that the soldier is facing), retain a copy of it, and will then return the updated original to the unit.

(4) File court-martial charges on DD 458. File the charges for desertion in addition to any charges for other offenses, as appropriate. Your brigade legal shop will draft the DD 458.

(5) Within 48 hours of the soldier becoming a deserter, forward the original copy of the deserter packet through the Personnel Service Center (PSC) to the Commander, USAEREC, ATTN: PCRE-RD, Fort Benjamin Harrison, IN 46249-5301.

5. **Reporting.** Once the deserter packet arrives at the USAEREC, the United States Army Deserter Information Point (USADIP) verifies the information on the DD 553 with permanent records at the USAEREC and then enters the soldier's name into the National Crime Information Center (NCIC). The USADIP also forwards a copy of the DD 553 to all Federal, State, and local law enforcement officials who may be involved in the apprehension process. They also forward a copy to the PMO nearest the deserter's home of record, and forward a copy to the United States Army Crime Records Center (USACRC). At this point, with the name entered into the NCIC, there is a federal warrant for the arrest of the deserter that appears whenever any law enforcement officer attempt to access the deserter's information on the NCIC.

6. **Apprehension.**

a. Commanders and NCOs are authorized to apprehend AWOL soldiers off post if the soldier is in a public place. They may NOT apprehend the soldier in a private place (his home or another's home) off post without a warrant and without the coordination and presence of local police authorities.

b. Once the soldier is apprehended, whether by civilian or military law enforcement, every effort must be made by military law enforcement officials to have the soldier returned to the unit for court martial or adverse administrative action.

7. **POC** is your Trial Counsel, extension 4606/2612.

SUBJECT: Commander's Responsibilities for Handling Allegations of Nonsupport

1. **Purpose.** To inform commanders of their responsibilities under AR 608-99.

2. **Background Facts.** Commanders have specific regulatory responsibilities, outlined in Chapter 3 of AR 608-99, FAMILY SUPPORT, CHILD CUSTODY, AND PATERNITY (dated 1 November 1994), once notified of allegations of nonsupport by a soldier under their command. The IG investigates failures by commanders to act; those failures can have a permanent negative impact on a commander's career.

3. **Specific Steps Commanders MUST Take.** Commanders must:

a. **Inform the soldier.** Upon receipt of an inquiry or allegation of nonsupport, the commander must inform the soldier about the nature of the inquiry or allegation. The commander should advise the soldier of his or her rights (using DA Form 3881) before questioning the soldier, as a violation of the financial support and child custody provisions of the regulation can result in charges under Article 92, UCMJ. Commanders should talk through the facts of each case with his supporting Trial Counsel.

b. **Gather relevant information.** The commander will gather information to determine whether the soldier has violated AR 608-99 or other applicable laws. (See AR 608-99, paragraph 3-4). Remember—if the commander determines that the soldier has failed to comply in the past or indicates any unwillingness to comply in the future, the commander MUST order compliance (¶ 3-6b(3)(a)).

c. **Counsel the soldier.** The commander must counsel the soldier (¶ 3-3). Do not delegate this responsibility; the commander must actually do the counseling. Commanders should also include the 'magic language' on the counseling statement (AR 635-200, ¶ 1-16), as the counseling statement (which will likely include an order specifying the methods by which to comply with the support requirements; see para 2, above) can form the basis for adverse administrative or UCMJ action if the soldier fails to follow the commander's order.

d. **Respond to the Complaining Party.** Within 14 days of receiving the inquiry or allegation of nonsupport, the commander must respond to those making the inquiry or allegations (family members or agencies representing family members) in writing, and the reply must include the following information (outlined in ¶¶ 3-5, 3-6, and 3-9, depending on the nature of the inquiry):

- The name, rank, and organization of the commander who counseled the soldier.
- The commander's mailing address and telephone number.
- Date(s) the soldier was counseled
- A statement as to whether or not the soldier has authorized the release outside the DOD of information obtained by the commander.
- A statement as to whether or not the soldier admits that he or she has a financial support obligation to the family member in question, and if not, why not.
- A statement as to whether or not the soldier admits that he or she failed to provide financial support as required by AR 608-99.

NOTE: If the soldier admits that he or she failed to provide financial support, the commander will provide a complete summary of the reasons and the immediate steps that the soldier will take to comply with AR 608-99 in the future.

- A complete summary of the soldier's recent actions to comply with AR 608-99. This includes: dates and amounts of personal checks or money orders sent; the date, amount, and payee address for a voluntary allotment; any other interim actions the soldier will take to meet his or her financial support obligations until the first military allotment check is received.

e. **Get the Soldier to the Legal Assistance.** Commanders should ensure ANY soldier who is the subject of a support inquiry is provided an opportunity to meet with a legal assistance attorney (phone # 568-7141).

f. Ordering compliance. If the commander determines that the soldier has failed to comply in the past or indicates any unwillingness to comply in the future, the commander must order soldiers to comply with the provisions of AR 608-99 and can provide specific guidance on how to accomplish that. Commanders should consult with trial counsel prior to making a decision about giving or not giving such an order. The order is then a lawful order, and a failure to comply can be punished under the UCMJ. (¶¶ 2-5 and 2-9 lay out the punitive aspects of the regulation regarding financial support and child custody)

4. Frequent Problem Areas.

a. Heirarchy of documents. Court orders trump the requirements of AR 608-99. If there is no court order, any written financial support agreement between the parties then controls. Absent both of those, the financial support provisions of paragraph 2-6 govern.

b. Releasing soldiers from their obligations. Battery / Company level commanders MAY NOT release soldiers from their obligations under AR 608-99. Period. Pursuant to AR 608-99, paragraph 2-11, battalion commanders, NOT company commanders, are the commanders authorized to release a soldier from the requirements of AR 608-99 based on the situations enumerated in that paragraph.

c. Legal Advice for Commanders. Commanders should direct their questions to their supporting Trial Counsel (phone # 568-4606)

5. Consequences for Commanders. Commanders should realize that if they do not make a good faith effort to follow through with their duties pursuant to AR 608-99, and the Inspector General makes a substantiated claim against them for failing to do so, this information will be recorded in the IG database, and could prevent commanders from being promoted or being selected to DA select positions like schools and command.

6. POC is your Trial Counsel, extension 4606/2612.

SUBJECT: Health and Welfare Inspections

1. **Purpose.** To provide commanders a basic overview of the law on health and welfare inspections.
2. **Health and Welfare Inspections defined.** A health and welfare inspection is an examination of the whole or part of a unit, organization, installation, training site, vessel, aircraft or vehicle, which is conducted as an incident of command. The primary purpose of the inspection must be to determine or ensure the security, military fitness, or good order and discipline within the unit. Orders to submit bodily fluids such as urine fit within the definition of an inspection.
3. **Subterfuge Rule.** An inspection may not be a subterfuge for a search. It cannot be primarily designed to obtain evidence for a criminal proceeding (including punishment under Article 15, UCMJ). Evidence obtained from such a search will likely be suppressed (and thus inadmissible, even at an Article 15) if:
 - a. An inspection is ordered immediately after a report of misconduct; or
 - b. Soldiers are subjected to substantially different intrusions during an inspection.
4. **Evidence that an examination is actually an inspection.** Evidence that an examination is a genuine inspection, and not a subterfuge, includes:
 - a. Documentation that the inspection was pre-planned;
 - b. The commander giving instructions on how to check common areas;
 - c. The commander defining what contraband is being sought, and
 - d. The commander emphasizing that all soldiers will be inspected equally.

Commanders should coordinate with their trial counsel prior to directing health and welfare inspections, particularly in unusual circumstances.

5. **Single Soldier Initiatives.** Single Soldier initiatives **do not affect the law concerning health and welfare inspections.** The commander remains responsible at all times for the health, welfare, and safety of soldiers. The commander retains the inherent authority and responsibility to conduct frequent and thorough inspections of soldiers and the barracks. To maintain the integrity of the inspection, **no one** can know the inspection is coming.
6. **POC** is your Trial Counsel, Extension 4606/2612.

SUBJECT: Inspections, Searches, and Consent Searches – Rules for the Big 3

1. **Purpose:** To discuss three tools for obtaining evidence – inspections, probable cause searches, and consent searches – and the rules for each.
2. **Background:** The Fourth Amendment balances individual rights to privacy against legitimate government interests such as military readiness. On one hand, the Fourth Amendment protects persons from unreasonable searches and requires probable cause for criminal searches; on the other hand, commanders have the power and responsibility to conduct inspections to ensure the readiness, fitness, and security of a unit or installation. The relationship between inspections and criminal searches is complex, so contact your trial counsel before you conduct such a search, or you risk that items discovered will be inadmissible for criminal prosecution. The specific facts of each case will dictate the result.
3. **Summary:**

Consider the target (unit or person), purpose (readiness or criminal), and standard.

a. An **inspection** targets a **unit**, its purpose is **military readiness**, and the standard is to **treat everyone the same**. Only commanders can authorize an inspection. *Always include* “contraband” as one of the purposes for the inspection. You may not use an inspection as a guise for an illegal search (that is *subterfuge*).

b. A **probable cause search** targets a **specific person and place**, its purpose is to find evidence of a **specific crime**, and the standard is **probable cause (specific facts – who, what, where, when - to make one believe that evidence is in a specific place)**. Only commanders, military magistrates, or judges can authorize a probable cause search. 1SGs, XO, or platoon leaders may **not** authorize a probable cause search. Commanders must consult their trial counsel before conducting a probable cause search.

c. A **consent search** can target **anyone**, its purpose is to find evidence of a **crime**, and the standard is **voluntariness** - so long as consent is freely given, and not coerced, the results are admissible. Anyone, officer, NCO, or military police, can obtain consent to search. Consent may be withdrawn at anytime and the search must immediately stop. *It is always best to have consent in writing before the search begins*. The soldier should be informed of his rights under Article 31, UCMJ.

4. **Inspections:**

a. Inspections are a routine and vitally important part of military tradition and discipline. Commanders may order inspections (health and welfare, urinalysis, accountability, gate inspections) for any administrative purpose -to determine a **unit’s readiness, fitness, security, and discipline**, which includes confiscating contraband items (drugs and weapons). Inspections may cover all or selected portions of a unit. Commanders may inspect as often as they wish, provided there is a military purpose. There is no notice requirement. Dogs are permitted. Cars may be inspected.

b. **Inspections Can Lead to Searches.** If inspectors find contraband, such as drugs, during a barracks inspection, this may constitute probable cause for a commander to authorize a probable cause criminal search and order a urinalysis test for each soldier in that room. Consult with your trial counsel if this situation arises.

c. **Subterfuge Rule.** When an inspection is directed immediately following the report of a specific offense involving drugs or weapons, or specific individuals are targeted for inspection, the commander must show by clear and convincing evidence that the primary purpose of the inspection was administrative and that the inspection was not a subterfuge for an illegal criminal search (for example, in a lost weapon lockdown, the primary purpose is to recover the weapon).

5. Probable Cause Searches:

a. **Freeze the situation.** If you encounter contraband (drugs or weapons) and are not sure what to do, freeze the situation and call your commander and trial counsel. Do not let anyone leave. Remove everyone from the important area (the room). Do not allow persons to talk among themselves, but keep them under observation. One person should hold or observe the contraband.

b. **Commanders may order searches** of a barracks room, vehicles, and persons under their control after they articulate that there is probable cause that the specific items sought are in the specific places to be searched. Consult with your trial counsel. If a commander is too involved with a case, use a military magistrate or higher commander to authorize the search. XOs and 1SGs may not authorize searches. The term “search authorization” means the same as a civilian “search warrant.” The critical difference is that a warrant must be in writing and an authorization may be oral (i.e., given over the telephone).

c. What is probable cause? **Probable cause consists of specific facts – who, what, where, when** – provided by persons with personal knowledge, not rumors. For example, a statement by a soldier, even a less-than-stellar soldier, that “I saw marijuana in plastic bags in SPC Jones’s car last night” would provide probable cause to order a search of SPC Jones’s car today (but maybe not a week from today). A statement that “I saw SPC Smith smoking marijuana in his room two days ago” would likely constitute probable cause to order a urinalysis of SPC Smith and a search of his room. Always ask questions to corroborate the information. Specific places (where) and timeliness (how old is the information) are crucial in determining probable cause. Make a memo of the specific information provided to you.

6. Consent Searches:

a. **Consent – the “great cure-all.”** If the accused soldier gives voluntary consent to a search, it does not matter if no probable cause existed or if an inspection was improper. All evidence is admissible if found in a consensual search. Always ask for consent before searching anyone, it cannot hurt, it is merely another legal grounds to permit seizure of evidence.

b. **Voluntariness.** Consent must be voluntary, based upon all the facts and circumstances. A commander cannot browbeat a subordinate for consent, nor should a commander threaten that he can search a room or order a urinalysis even without consent as a method of coercing consent. Informing a suspect of their Article 31 rights is one indication that consent was voluntary, but is not necessary in every case. Written consent is better than oral consent. Anyone, officers, NCOs, or CID, may seek consent.

c. **Consent can be withdrawn.** A person may consent and then withdraw consent; if so, the searcher must cease. Freeze the situation. If you can develop and articulate probable cause, you may be able to secure a search authorization from the appropriate commander and then continue the search. Immediately consult with your trial counsel.

7. **POC** is your Trial Counsel, extension 4606/2612.

SUBJECT: Pretrial Confinement

1. **Purpose.** To provide information on pretrial confinement.
2. **Circumstances Warranting Pretrial Confinement.** A soldier charged with an offense under the UCMJ may be confined prior to trial if the following three circumstances are present:
 - a. The soldier is a flight risk; or the soldier will engage in serious criminal misconduct;
 - b. The commander has probable cause to believe the soldier committed a crime under the UCMJ; and
 - c. Less severe forms of restraint are inadequate.
3. **Purpose of Pretrial Confinement.** Pretrial confinement is a tool to ensure the soldier's presence at trial or to prevent the soldier from committing serious criminal misconduct. Pretrial confinement is not a substitute for viable lesser forms of restraint.
4. **Procedure.** Before placing a soldier in pretrial confinement, the commander must contact the unit Trial Counsel. The PMO must also be alerted to the possibility that a soldier will be placed in the detention cell. A military magistrate must hold a probable cause hearing to determine the legality of pretrial confinement within 48 hours of a soldier being placed in confinement. Prior to the hearing, the unit commander must coordinate with the Trial Counsel to prepare a charge sheet, confinement order, and pretrial confinement checklist (DA Form 5112-R). Trial Defense Service will advise and represent the soldier. The military magistrate will determine if continued confinement is warranted.
5. **Detention Cell.** Use of the detention cell and transport to a Regional Confinement Facility (RCF) must be coordinated with the Civil Liaison AWOL Apprehension Section (CLAAS), Military Police Operations Division, Provost Marshall Office, 3-3309/2115. CLAAS will provide the unit with a checklist of uniform/equipment items, which must be brought with the soldier. The unit is responsible for guarding and escorting its soldiers who are confined in the detention cell. If further confinement at the RCF is ordered, the unit must provide escorts to deliver the soldier to the RCF. Guards and escorts must be NCOs **and** senior in rank to the confined soldier. Officer detainees require officer
6. **Treatment of Pretrial Confinees.** Soldiers in pretrial confinement must not be punished, maltreated, subjected to unreasonable discomfort, or disparaging publicity. It is a unit responsibility to guard the soldiers and to ensure the soldiers are provided with meals.
7. **References.** Applicable references include the Manual for Courts-Martial, Rule for Court-Martial 305, AR 27-10, and USAADACENFB Regulation 27-10.
8. **POC** is your Trial Counsel, extension 4606/2612.

SUBJECT: Restriction and Withdrawal of Pass Privileges

1. **Purpose.** To delineate commanders' authority to withdraw pass privileges and impose restriction.
2. **Overview.** Although both withdrawal of privileges and imposition of restriction limit a soldier's freedom of movement, very different legal standards govern them. Commanders should always seek the advice of their trial counsel prior to imposing restriction or withdrawing pass privileges. Trial counsel can provide recommended forms and language for the commander's use.
3. **Facts.** Every soldier must receive permission to leave post. Ordinarily, soldiers are given a blanket pass privilege, which allows them to leave post when their duties do not require them to be on post. A withdrawal of pass privileges revokes this blanket pass and requires the soldier to remain on post unless he receives specific permission to leave. A soldier whose pass privileges have been withdrawn may go anywhere on post when he is not required by his duties to be somewhere. A restriction goes one step further. It limits a soldier's movement to only certain places on post.

Restriction and Withdrawal of Pass Privileges Explained		
	Withdrawal of Pass	Restriction
Definition	<ul style="list-style-type: none"> ▪ When a pass (an authorized absence from post or place of duty) privilege is withdrawn from a soldier for a <u>specified</u> time period. ▪ Soldier can go anywhere on post. 	<ul style="list-style-type: none"> ▪ The moral or physical restraint of a person imposed by an order directing the person to remain within specified limits. ▪ Can limit soldier to certain places on post (e.g. Unit area, mess hall, place of worship).
When it May Be Imposed	<ul style="list-style-type: none"> ▪ When used as a corrective training tool to correct poor duty performance, appearance, etc. ▪ When a soldier demonstrates that they have not earned pass privileges. ▪ For operational necessity / security. ▪ When a soldier is pending court-martial. 	<ul style="list-style-type: none"> ▪ As punishment under Art. 15, UCMJ. ▪ As punishment imposed by court-martial. ▪ When a soldier is pending court-martial. ▪ It must be coordinated with the unit's Trial Counsel.
Special Considerations	<ul style="list-style-type: none"> ▪ Commanders should detail withdrawal of pass privileges in writing. ▪ Commanders must periodically review and assess the continued necessity. 	<ul style="list-style-type: none"> ▪ Restriction imposed on a soldier pending court-martial must be required by the circumstances and cannot be used as punishment. ▪ Commanders must contact their trial counsel prior to imposing restriction pending court-martial. ▪ Commanders must periodically review and assess the continued necessity.

4. **POC** is your Trial Counsel, extension 4606/2612.

SUBJECT: Extra Training or Instruction (Corrective Training)

1. **Purpose.** To outline guidelines for implementing commanders' implementation of corrective training measures.

2. **Facts.**

a. Prior and in addition to taking UCMJ action, commanders have many non-punitive measures they can utilize when a soldier commits an offense or has demonstrated sub-standard performance. **One of the most effective but under-utilized non-punitive measures** that may be taken is Extra Training or Instruction, commonly referred to as **Corrective Training**.

b. IAW with AR 600-20, ¶ 4-6 and AR 27-10, ¶ 3-3(c), the training, instruction, or correction given to a soldier to correct deficiencies **must be directly related to the deficiency and must be oriented to improving the soldier's performance in his or her problem area**. Although corrective training may be accomplished after normal duty hours, the measures must be training or instructive in nature, not punishment. Corrective training should continue only until the training deficiency is overcome.

c. Soldiers who are facing court-martial, administrative separation, or proceedings under Article 15, UCMJ, may be required to conduct corrective training prior to their case being adjudicated or their separation approved. Commanders wishing to do so should always consult with their trial counsel to ensure the corrective training does not amount to unlawful pretrial punishment under Article 13, UCMJ. Soldiers found to have been punished prior to trial may, among other things, have an adjudged sentence reduced at trial.

d. Remember, **corrective training is not punishment**. Punishment takes the form of extra duty given under Article 15 or hard labor without confinement adjudged at a court-martial. While punishment does not have to be related to the underlying misconduct, corrective training must be related to the substandard performance. If the corrective training publicly stigmatizes or humiliates the soldier, it is inappropriate.

3. **Examples.**

a. Examples of appropriate corrective training include, but are not limited to, the following:

(1) SPC Doe continuously reports to formation late and in the incorrect uniform. Corrective training for SPC Doe may be to report to the CQ every hour in a different, but specified, uniform for a limited duration (e.g., 8 hours on a non-duty day). SPC Doe may also be required to report to his place of duty 30 minutes prior than everyone else for one week. In both instances, the corrective training is aimed at remedying the substandard behavior—reporting for formation on time and in the proper uniform.

(2) SPC Doe fails to obey the orders given to him by a NCO. SPC Doe may be required to write a two-page essay explaining NCO authority and military discipline.

(3) SPC Doe fails to maintain accountability of his weapon during a field exercise. SPC Doe may be required to inventory a section's equipment or assist in the monthly sensitive items inventory, even if it is not his routinely assigned extra duty.

b. Examples of corrective training **DO NOT** include the following and are considered unlawful punishment:

(1) SPC Doe fails to stand at parade rest when talking to a NCO. It is not proper to make SPC Doe sign in with the CQ every hour, nor is it proper to pull SPC Doe's off post pass privileges.

(2) SPC Doe fails to salute an officer outdoors. It is not proper to make SPC Doe clean the orderly room or pull police call outside the barracks.

(3) SPC Doe gets multiple speeding tickets on post. SPC Doe cannot be made to stand outside the Post Exchange wearing a large sign warning people against the hazards of speeding. Such actions publicly stigmatize or humiliate the soldier. The Command General, Fort Bliss has also reserved authority to handle routine traffic violations to Magistrate's Court.

4. **General Rules.**

a. Actions which tend to stigmatize or humiliate the soldier are forbidden.

b. Pretrial punishment is unlawful and may have severe repercussions for the chain of command at court-martial. And corrective training for soldiers facing courts-martial should be coordinate in advance with the unit's trial counsel.

c. Duties routinely assigned to soldiers serving extra duty punishment for Article 15s are inappropriate for corrective training.

3. **POC** is your Trial Counsel, Criminal Law Division, extension 3-4606/2612.

SUBJECT: Illegal Pretrial Punishment

1. **Purpose.** To advise commanders of prohibition against pretrial punishment.

2. **Facts.**

a. Commanders must avoid taking actions against soldiers pending court-martial, Article 15 punishment, or civilian criminal action where those actions tend to stigmatize or humiliate the soldier. As a general rule, soldiers should continue normal duty assignments pending trial. When this is not practical, before reassignment is made, commanders should call their trial counsel for advice.

b. The Uniform Code of Military Justice, Article 13, prohibits the pretrial punishment of any soldier pending disposition of charges at a court-martial. Restriction, arrest, and pretrial confinement (using proper procedures and in consultation with the unit's trial counsel) are permissible measures, which may be ordered to ensure a soldier's presence at trial or to prevent future misconduct. Conversely, punitive action against a soldier pending court-martial is illegal; **the soldier is innocent until proven guilty and must be treated so.**

PAST EXAMPLES OF ACTIONS THAT CONSTITUTE ILLEGAL PRETRIAL PUNISHMENT	
Example 1	A commander required a soldier who received a traffic ticket to carry a large sign near the entrance to the PX "warning" everyone of the dangers of failing to comply with local traffic laws.
Example 2	In a case from a unit in Germany, the MSC Commander called soldiers to the front and center of a unit formation of over 1,000 soldiers, denounced them as "criminals" and "bastards," labeled them the "Peyote Platoon," stripped them of their unit crests in front of formation, and had them searched, handcuffed, and taken to CID for questioning. After the soldiers returned from CID, they were billeted separately from the rest of the unit until charges were preferred.
Example 3	A commander required a soldier to sleep in a pup tent outside the billets.
Example 4	An Executive Officer posted a Serious Incident Report (SIR) on a bulletin board prior to trial. The SIR identified a unit soldier by name as the perpetrator of the crime and included additional derogatory information of a private nature.
Example 5	A commander asked a soldier to stand up at a soldier "sensing session;" explain his criminal acts, and apologize for them.
Example 6	The command segregated a soldier from the unit by working him exclusively on details, excluding the soldier from unit PT, meetings and formations, and allowing the chain of command to refer to the soldier as "thief" and "dirtbag."
Example 7	The commander of a soldier who was pending court-martial for larceny chastised him in front of the formation, during details, and in his work area. The commander's remarks included: "Don't go out stealing any car stereos this weekend;" "Watch your stuff on your desk, Stamper's here;" and "Getting any five finger discounts lately, Stamper?"

c. Unit commanders have an affirmative duty to deter illegal pretrial punishment. Illegal pretrial punishment results in (1) embarrassment to the command, (2) credit towards the sentence adjudged, if the accused is convicted, and (3) possible punitive action against the individual responsible for the illegal punishment.

3. **POC** is your Trial Counsel, Criminal Law Division, extension 4606/2612.

SUBJECT: What To Do When A Soldier Fails To Maintain A Family Care Plan.

1. **Background:** AR 600-20, paragraph 5-5 mandates that soldiers will have a Family Care Plan (FCP) (DA Form 5305-R) to provide for the care of their family members when military duties prevent the soldier from doing so. AR 600-20 also lists the minimum requirements for a FCP. Because AR 600-20 is not a punitive regulation, failure to maintain a FCP, by itself, is not punishable under the UCMJ. However, AR 635-200, paragraph 5-8, (Involuntary Separation due to Parenthood) mandates that soldiers will be considered for involuntary separation when parental obligations interfere with fulfillment of military responsibilities. Soldiers administratively separated under this provision normally receive an honorable discharge, although a general discharge may also be warranted in certain situations. With an honorable discharge being the norm, soldiers may feign the inability to maintain a family care plan to shirk their service obligation. In many of these situations, commanders may feel that an honorable discharge under paragraph 5-8 is inappropriate. This information sheet addresses other alternatives.

2. **Suggested Plan Of Attack:**

a. The commander should identify soldiers requiring a family care plan (single parents, dual military couples, non-military spouses with significant medical issues precluding appropriate care of the child, etc.). The commander should counsel those soldiers on their obligation to provide an FCP (utilize DA 5304-R Family Care Plan Counseling Checklist).

b. The commander should then order the soldier in writing to make every effort to create a FCP, and order the soldier to report back weekly (to the 1SG, or other designated leader), and discuss what steps the soldier has taken to create a FCP. The command should require the soldier to keep a log of the soldier's efforts to create an FCP, and identify, by name and telephone number, any persons the soldier contacted. This initial order should be written on the counseling form with the following language included: "This is a lawful order, failure to comply may result in administrative action, or punitive action under the UCMJ." The commander should also ensure that the soldier is counseled in writing on the possibility of separation if his or her parental obligations interfere with military responsibilities (normal AR 635-200, para.1-16's "magic language").

c. If at subsequent meetings the soldier can not show what steps he or she took, or that soldier took no steps to create a Family Care Plan, and the commander believes that the soldier is not making a good faith effort to comply with the order, the commander may consider adverse action, including nonjudicial punishment for failure to obey the order. A separation under AR 635-200, Chapters 5-8 or 14 may be appropriate. Additionally, be aware that the soldier may fabricate his efforts in violation of Article 107, UCMJ.

3. **Conclusion:** By requiring soldiers to make good faith efforts to comply with the FCP requirements, commanders help prevent soldiers from using the lack of a family care plan to avoid their military obligations.

4. **POC** is your Trial Counsel, extension 4606/2612.

SUBJECT: Homosexual Conduct Policy

1. **Purpose.** This information paper outlines the DoD's homosexual conduct policy and provides procedures to use when a soldier initiates a conversation or other means of communication to tell you they are a homosexual. There is no way to anticipate every possible scenario and every case is unique on its facts, so this is general guidance. The most important thing to do before ever speaking with the soldier is to notify your trial counsel and your immediate commander. Your trial counsel will advise you on appropriate and inappropriate questions, the sufficiency of the soldier's statement, and possible actions.

2. **DOD Homosexual Conduct Policy.** A soldier may be discharged from the Army for doing any of the following:

- a. Making a **statement** demonstrating a propensity to engage in a homosexual act;
- b. Committing a homosexual **act**; or,
- c. Entering, or attempting to enter, into a homosexual **marriage**.

3. **Inquiries.** Commanders are the only individuals who may initiate inquiries into homosexual conduct, and **all** inquiries **must** be based upon credible information and coordinated with the Office of the Staff Judge Advocate prior to initiation. Credible information does NOT include a mere suspicion, rumors about a soldier, evidence that a soldier reads or possesses homosexual publications, or evidence that the soldier goes to a "gay bar" or other "homosexual" establishment.

4. **When the Soldier Comes to Commander.** If a soldier makes it clear that he or she wants to talk about homosexual conduct or their sexual orientation, you should do the following **in sequential order**:

- Take the soldier into your office with one witness (preferably the 1SG) in order to ensure the soldier's privacy and physical safety.
- Tell the soldier not to talk at this point in time.
- Explain the Army's homosexual conduct policy. This can be as simple as saying "The Army [and federal law] view homosexual conduct as incompatible with military service. Soldiers who engage in homosexual conduct, or who have a desire or intent to engage in homosexual conduct, will be separated from the Army."
- Advise the soldier of their right to remain silent. Let the soldier know they do not have to say anything to you about their sexual orientation or sexual conduct.
- If they do tell you they are homosexual (or words to that effect), or that they have engaged in homosexual acts, or that they have married or intend to marry a person of their same gender, inform them that the Army will initiate separation action.
- Advise the soldier of their right to seek legal advice. Inform them of their right to discuss these matters with a trial defense counsel, a legal assistance attorney, or a chaplain before continuing this conversation. *(See paragraph 5, below)*
- If the soldier still wants to talk, immediately call your trial counsel before proceeding any further. *(See paragraph 6, below)*
- Keep your commander informed!

5. **Rights Warning.** If the soldier elects to continue the conversation, be aware that he or she may start discussing homosexual conduct that is misconduct under the UCMJ. [This applies in an “acts” case but not in a pure “statement” case.] Any time a soldier starts discussing misconduct he or she may have committed, whether you question the soldier, or the soldier initiates the conversation, you must advise the soldier of his Article 31 rights (basic rights to counsel and to not make any statements). Use a DA Form 3881. Follow this procedure for soldiers who say, from the outset, that they have engaged in homosexual acts. The soldier may seek counsel from the Trial Defense Service prior to making any initial or additional statements. Soldiers may also speak with a chaplain or legal assistance attorney before making a statement to the commander. Chaplains and legal assistance attorneys are both able to explain the policy to soldiers and advise them of the consequences of coming forward. Both are permitted to form a confidential relationship with a soldier, thus protecting the soldier’s interests.

6. **Actual Conversation.** After a soldier has an opportunity to speak with counsel, or declines to do so, and you’ve spoken with a trial counsel and advised your chain of command, you may begin the conversation. Simply allow the soldier to make their statement. The trial counsel will discuss appropriate follow-up questions, if any. Follow-up during the conversation as necessary. Generally, you may ask these follow-up questions: “What do you mean by that?” “Why are you telling me this?” and “What are your intentions?” If the soldier volunteers his or her sexual orientation, make note of what they say; you can use the follow up questions just given. If the soldier confines his or her statements to homosexual conduct, you may not ask about orientation. The bottom line is that you should never ask questions without first consulting your trial counsel and you should not ask questions designed to explore areas of misconduct not raised by the soldier. For example, if a soldier makes a statement only that he or she is homosexual, you may not ask the soldier to describe specific acts of misconduct.

7. **Next Step.** After the conversation, you will need to consider separation proceedings. You may want to speak with other soldiers named in the statement, or seek permission to conduct a “substantial investigation.” Discuss these options with your trial counsel before taking any action. It requires Department of the Army-level approval to conduct a substantial investigation. If the soldier made a statement that he or she is homosexual, in most cases you may immediately initiate separation. If the soldier implicates other soldiers as being homosexual, those soldiers’ commanders may call in those named soldiers and hold a similar conversation (after consulting with trial counsel). Follow the procedures above. Your initial purpose is simply to allow the named soldiers to respond and then take appropriate action. Any further investigation amounts to a “substantial investigation,” and requires prior DA approval. Your trial counsel will discuss substantial investigations and facilitate the approval process when necessary.

8. **Separation.** In most cases, when a soldier states that he or she is homosexual, you will initiate separation proceedings UP AR 635-200, Chapter 15. Your Brigade’s legal shop will need either a written statement from the soldier, or a written statement from the commander repeating the soldier’s statement. You should process the action as expeditiously and discreetly as possible. Individuals outside of the immediate chain of command do not need to know about the action. Carefully consider whom you choose to escort the soldier throughout the separation and clearing process. Keep in mind your obligation to respect the soldier’s privacy and prevent any type of harassment throughout this process.

9. **Caution.** This outlines a basic approach to handling these situations. Keep your chain of command informed and consult regularly with your trial counsel.

10. **POC** is your Trial Counsel, extension 4606/2612.

SUBJECT: Extremist Activities

1. **PURPOSE:** To provide information on the actions available to a commander when soldiers become involved in extremist activities.

2. **DISCUSSION:**

a. The activities of extremist organizations are inconsistent with military service. Military personnel have sworn to uphold the Constitution and **must reject participation in organizations that:**

- (1) espouse supremacist causes;
- (2) attempt to create discrimination based on race, creed, color, sex, religion, or national origin; or
- (3) advocate the use of force, violence, or other means to deprive individuals of their civil rights.

b. Soldiers are specifically prohibited from active participation in extremist organizations, such as organizing or leading a group, fundraising, recruiting, or publicly demonstrating or rallying. In addition, active participation also involves attending a meeting, in uniform or while on duty, with knowledge that the meeting is in support of an extremist cause.

c. Commanders may order soldiers not to participate in an event sponsored by an extremist group when there is a likelihood that participation will result in illegal activities or will be prejudicial to good order and discipline. The Commanding General may also impose off-limits restrictions on facilities that pose a threat to the discipline, good health, morale, safety, or welfare of soldiers. Activities in the barracks that would adversely affect morale and discipline, such as the display of offensive flags or posters, may also be prohibited.

d. Actions that may be available to commanders when soldiers actively participate in extremist activities include: UCMJ action, separation from the Army, bar to reenlistment, reclassification, removal of security clearances, and counseling.

e. Action may also be taken with regard to soldiers who participate in extremist activities, but whose participation does not rise to the level of "active" participation. If the soldier's conduct has, or might have, a negative impact on the unit, the soldier should be counseled about the conduct. The soldier may be ordered to cease and desist the harmful conduct, and may be told that continuation of such activity could be reflected negatively in future evaluation reports and duty assignments. Consult your trial counsel in specific situations.

4. **POC** is your Trial Counsel, extension 4606/2612.

SUBJECT: Barring Entry onto Fort Bliss

1. **PURPOSE:** To describe the procedures for barring entry onto Fort Bliss.
2. **REFERENCES:** Entering Military, Naval, or Coast Guard property, 18 U.S.C. sec. 1382 (2000).

1. **DISCUSSION:**

a. The Commanding General's authority to deny entry onto a military installation is an inherent right and does not depend upon statute or legislative jurisdiction. The Supreme Court has recognized the broad power of a military commander to exclude individuals from a military reservation. Cafeteria & Restaurant Workers Union v. McElroy, 367 U.S. 886 (1961).

b. However, we also have statutory authority (18 U. S.C. § 1382) to exclude persons and make post regulations criminally enforceable against trespassers. Under that statute, individuals who reenter a military reservation after being ordered not to reenter by any "officer or person in command or charge thereof" may be fined and imprisoned up to six months. The advantage of this statute is that reentry for any purpose after having been removed or after being ordered not to reenter may be criminally prosecuted.

c. The Commanding General must personally issue an order not to reenter. The order should be in writing and should be personally served on the individual or otherwise delivered in a way that will guarantee proof of receipt. The Provost Marshal is responsible for the procedure of preparing and presenting the bar order.

d. Bar orders must be reasonable and not arbitrary and capricious. The Commanding General has broad discretion in determining what offenses or infractions should warrant a bar from the installation. However, he should be consistent in application of this harsh measure. Also, bar letters should not be issued when they would infringe on an individual's constitutional rights. To bar an individual because he participated in an anti-Army demonstration off post, for instance, would be improper.

4. **POC** is your Trial Counsel, extension 4606/2612.

SUBJECT: Trial Defense Services (TDS)

1. **PURPOSE:** To describe services provided by the U.S. Army's Trial Defense Services (TDS).

2.

SUBJECT: Combined Federal Campaign (CFC) Support

1. **PURPOSE:** To provide Department of Defense (DoD) and Department of the Army (DA) guidelines for CFC Fundraising.

2. **REFERENCES:** Department of Defense Directive 5035.1, CFC Fundraising (7 May 1999); Department of Defense Directive 5500.7-R, Joint Ethics Regulation (31 August 1993); Army Regulation 600-29, Fundraising within the Department of the Army (20 March 1992).

3. **DISCUSSION:**

a. **Background.** CFC is the only authorized program to solicit soldiers and employees on behalf of charitable organizations. CFC reduces workplace disruption by consolidating all approved charitable solicitations into one officially sponsored campaign. Each soldier and civilian employee should be encouraged, through on-the-job solicitations, to designate his or her voluntary contributions to specific CFC organizations. Official time and resources may be used to support CFC. See AR 600-29, chapter 3.

b. **Permissible Activities.** Soldiers and civilian employees, as citizens and members of the community, share the responsibility for supporting charitable activities as well as enjoying their benefits.

(1) Each soldier and civilian employee will be given the opportunity, through on-the-job solicitation, to contribute voluntarily to CFC. Solicitation should be during duty hours.

(2) Commanders at all echelons will give strong support to the CFC campaign and ensure compliance with these guidelines. Commanders are encouraged to support campaign kickoffs and endorse the campaign through memoranda, newsletters, and routine communications. However, commanders or supervisors should not be the person who actually solicits individual soldiers and employees, this should be done by the unit CFC keyworker. Keyworkers are the linchpins for CFC.

(3) Keyworkers may follow up on a solicitation when an individual has not made a final decision about contributing. However, once an individual makes a final decision, keyworkers or supervisors should not harass or continue to solicit that person.

(4) Keyworkers may use lists to record who has been contacted, and for collection and forwarding of contributions, but not to publicize contributors or non-contributors.

(5) Car washes, bake sales, raffles, and other activities are authorized for CFC (DoDD 5035.1).

c. **Voluntary Giving.** True voluntary giving is the hallmark of the CFC. Each soldier or civilian employee has the following rights:

(1) To give or not give as the individual chooses.

(2) To disclose any contribution or make it confidential as the individual chooses.

(3) To make contributions by cash, check, payroll deduction, or not at all.

(4) To designate or not designate which agencies will receive contributions,

d. Prohibited Activities. Due to past abuses, DA has prohibited certain activities:

(1) Setting 100% participation goals; 100% contact of all individuals in a unit is permissible.

(2) Offering special passes or favors for contributors, or punishing non-contributors. (Does not apply to awards and rewards for exceptional campaign workers.)

(3) Harassing or counseling an individual after he or she has stated a decision not to contribute.

(4) Developing or distributing lists of non-contributors.

4. POC: POC is the Chief of Civil and Administrative Law at 568-5646/0759.

SUBJECT: Creation of Informal Funds

1. **PURPOSE:** To provide information on how informal funds may be created and how to use them to raise funds.

2. **REFERENCES:** DoDI 1000.15, Private Organizations on DoD Installations (23 October 1997); DoDD 5500.7-R, Joint Ethics Regulation (30 August 1993); AR 600-20, Army Command Policy (15 July 1999); AR 600-29, Fund-Raising within the Department of the Army (20 March 1992).

3. **DISCUSSION:**

a. **Background.** An informal fund is a private organization, authorized by the commander, whose activities, membership, and funds are limited in scope. Examples are office coffee funds, cup and flower funds, and annual picnic funds. These funds are subject to the following guidelines:

(1) Use is limited to expenses consistent with the purpose and function of the fund.

(2) Only one individual is to be responsible for fund custody, accounting, and documentation. Annually, this individual's supervisor is advised of the fund's financial status.

(3) Operation of the fund will be consistent with Army values and DoDD 5500.7-R, Joint Ethics Regulation.

Informal funds are not required to have a constitution and bylaws. Due to tax laws, however, an informal fund cannot gain tax exempt status unless it has a constitution or similar organizing document. A sample constitution and bylaws is at the Appendix.

b. **Fundraising.** The unit must submit requests to engage in fund-raising such as car washes, bake sales, etc. to the MWR Marketing and Services Division (MSD), ATTN: JoAnn Ramos, Bldg. 11, Pershing Road, Fort Bliss, Texas 79916 (fax: 915-568-2961) DCA, ATTN: FMSD, for approval. No fund-raising may occur on-the-job. In addition, fund-raising activities must comply with the Standard Operating Procedures for Private Organization Operations and Fundraising of the Directorate of Community Activities.

4. **POC:** POC is the Chief of Civil and Administrative Law at 568-5646/0759.

APPENDIX

SAMPLE - INFORMAL FUND CONSTITUTION AND BY-LAWS

CONSTITUTION

(ORGANIZATION TITLE)

ARTICLE I NAME AND PURPOSE

Section 1. The name of this informal fund will be hereinafter FUND.

Section 2. The purpose of the organization is . (Example: Raise funds and conduct activities for the morale of the soldiers and civilian employees assigned or attached to (unit's name).

ARTICLE II GENERAL PROVISIONS

Section 1. The FUND is more limited in scope than a formal private organization. It operates and exists on Fort Bliss only with the approval of the installation commander, acting through his/her designee, the Director of Community Activities (DCA).

Section 2. The FUND will comply with all Federal, state, and local laws, including tax laws. The FUND must seek private counsel or contact proper tax officials to ensure its compliance with all tax laws.

Section 3. All members will totally understand that they may be held personally liable if the assets of the Fund are not sufficient to discharge all liabilities in the event of bankruptcy, insolvency or dissolution. Liability will be determined in accordance with the laws of the applicable jurisdiction. The Department of the Army will not be responsible for any liability incurred by the FUND, or by any member or members acting in its behalf.

(SELECT EITHER)

All FUND obligations incurred by an agent of the FUND, acting in an official capacity as the FUND's representative, which cannot be satisfied by the FUND's assets, will be paid by equal contributions from all FUND members regardless of when the liability was incurred.

(OR)

All FUND obligations incurred by an agent of the FUND, acting in an official capacity as the FUND's representative, which cannot be satisfied by the FUND's assets, will be paid by equal contributions from all FUND members at the time the obligation was incurred.

ARTICLE III OFFICERS AND GOVERNING BODY

Section 1. The FUND Manager will be elected by a majority of the FUND membership at its annual meeting.

Section 2. The FUND Manager will be responsible for the FUND's custody, accounting, and documentation.

Section 3. Duties of the FUND Manager are also expressed in the Bylaws.

ARTICLE IV MEMBERSHIP

Section 1. Membership is restricted to soldiers and DoD civilian employees actually assigned or attached to (Unit Name). Membership is voluntary and is effective upon verbal or written request. Thereafter membership shall continue until and will automatically terminate upon departure, reassignment, retirement, or resignation from the unit, or death.

Section 2. The FUND fully supports the government's policy on equal opportunity. There will be no membership discrimination based on age, race, color, sex, national origin, or religion.

Section 3. Members will read the constitution and bylaws as a condition of membership.

ARTICLE V ADMINISTRATION

The FUND shall be administered in accordance with the provisions of the constitution and its bylaws, Army governing regulations, and such directives as may be issued by the Installation Commander.

ARTICLE VI METHOD OF FINANCING

Section 1. The FUND is considered a self-sustaining, non-Federal entity. Its income will be obtained primarily through dues, contributions, service charges, or fundraising activities.

Section 2. All fundraising activities will receive prior written approval from the Garrison Commander through the Directorate of Community Activities after written application.

ARTICLE VII ACTIVITIES

Activities of the FUND will be consistent with its stated purpose. Such activities may include but are not limited to:

- a. Promote unit cohesion by sponsoring planned social activities.
- b. Provide a source of funds to assist employees, soldiers and family members during times of tragedy.

ARTICLE VIII MEETINGS AND QUORUMS

Section 1. Meetings will be held (state when).

Section 2. An annual meeting of the general membership shall be held for the election of the FUND Manager. This annual meeting may coincide with a monthly meeting during the month of _____ provided there is a quorum of members present. In the event a quorum is not present, a special meeting will be scheduled within 30 days from that date to effect election.

Section 3. Special meetings may be called, as required, by the FUND Manager. The FUND Manager will send out notices in advance of said meeting.

ARTICLE IX
BYLAWS

Section 1. The FUND shall establish by-laws from time to time as is necessary for the efficient operation of the organization.

Section 2. Bylaws shall be conditionally effective upon approval by the FUND Manager and finally effective when adopted by a majority vote taken in an active membership meeting. Amendments to the bylaws are subject to the same procedure as stated in Article X.

ARTICLE X
ADOPTION AND AMENDMENT

Section 1. This constitution is adopted subject to the approval of a majority vote of the general membership of the FUND and subject to final approval by the Installation Commander.

Section 2. This constitution may be amended by a two-thirds vote of the general membership.

ARTICLE XI
DISSOLUTION

Section 1. Upon receipt of notification from the Installation Commander or upon agreement of three fourths of the membership, the FUND shall be dissolved.

Section 2. All funds contained in the treasury at the time of dissolution will be used to meet any outstanding debts, liabilities, or obligations. All organizational obligations incurred by the FUND Manager which cannot be satisfied by the FUND's assets will be paid by equal contributions from all FUND members at the time the obligation was incurred.

ARTICLE XII
ADOPTION

This constitution was adopted by a majority vote of the active membership on

(Signature of FUND Manager)

BYLAWS

(ORGANIZATION TITLE)

ARTICLE I ADOPTION OF BYLAWS

These bylaws are adopted and may be amended in accordance with Article X, Constitution.

ARTICLE II

Duties of the FUND Manager:

- a. Responsible for fund custody, accounting and documentation.
- b. Report annually to his or her military rater or, civilian supervisor concerning the fund's existence and purpose, financial status, or upon occurrence or suspicion of irregularities associated with the fund. A copy of this report will be provided to the Directorate of Community Activities.

ARTICLE III MEMBERSHIP APPLICATIONS AND RESIGNATIONS

Section 1. Prospective members may apply by submitting their name and address (orally or in writing) to the FUND Manager.

Section 2. Resignations will be accepted at any time after a member has settled all outstanding financial obligations to the FUND.

ARTICLE IV ELECTIONS AND VOTING

Section 1. Elections shall take place annually in accordance with Article VIII, Section 2 - Constitution.

- a. The FUND Manager will be elected for a period of 1 year.
- b. The FUND Manager shall be elected by secret ballot.

Section 2. Voting:

- a. Each member shall have one vote. Voting will not be permitted by proxy.
- b. At all meetings, except for the election of the FUND Manager, all votes shall be by voice.

ARTICLE V DUES AND FEES

Section 1. There will be no initial fee or dues required to become a member of the FUND. However, the FUND may levy upon the general membership such dues and fees as deemed necessary for the business of the FUND. A majority of the membership must approve this action prior to its initiation.

Section 2. Nonpayment of dues shall be grounds for expulsion from the FUND. However, the member must receive notice of the delinquency and 30 days from the date of notice to remedy the situation.

SUBJECT: Confidential Financial Disclosure Reports (OGE 450)

1. **PURPOSE:** To provide information on filing OGE 450.

2. **REFERENCE:** DoD 5500.7-R, Joint Ethics Regulation (30 August 1993).

3. **DISCUSSION:**

a. Who Must File.

(1) Commanding officers, heads, deputy heads and executive officers of all Army installations.

(2) Civilian employees at GS-15 and below (or comparable pay level) and military members below grade 0-7 when they participate, **personally and substantially**, through decisions or exercise of **significant judgment**, in taking official action for contracting or procurement; administering or monitoring grants, subsidies, licenses, or other Federal benefits; regulating or auditing any non-Federal entity; or other activities in which the final decision may have a **direct and substantial economic impact** on the interests of any non-Federal activity. Civilian employees and military members must also file when their supervisor determines that filing is necessary to avoid an apparent or actual conflict of interest.

b. Who Is Excluded from Filing.

(1) Personnel in positions excluded from filing by the DoD component head because the duties are such that:

(a) the possibility that the employee will be involved in a real or apparent conflict of interest is remote, or

(b) there is a substantial degree of supervision and review, or the effect of any potential conflict on the integrity of the Government is inconsequential.

(2) Personnel not employed in contracting or procurement who are IMPAC credit card holders and who make annual purchases totaling less than the small purchase threshold, as defined in the Federal Acquisition Regulation (currently \$100,000).

c. Other Matters.

(1) The requirement to file an OGE 450 should be annotated on the job description, job announcement and posting for civilian employees, and on the OER (NCOER) support form for military members.

(2) New Entrants must file reports NLT 30 days after assuming duties in an OGE 450 designated position. Other personnel must forward annual reports through their immediate supervisor in time to reach the Ethics Counselor by 31 October of the filing year. NOTE: Reports must be current as of 30 Sep of the filing year and include all reportable assets held during the previous 12 months.

(3) The supervisor's signature on the form means that she or he has ensured that it is complete and there is no conflict of interest or other violation of the standards of conduct.

(4) Instructions are included on the form. Filers should remember to list the underlying individual stocks within stockbroker accounts or Individual Retirement Accounts and list the full name of each mutual fund account (i.e., Fidelity Magellan, not just Fidelity). Finally, filers must not overlook the investments and employment of their spouse and dependent children. Both the employer and the nature of the business must be identified.

4. **POC:** The POC for this information is the Chief of Civil and Administrative Law at 568-2821/0759.

SUBJECT: Use of Government Vehicles

1. **PURPOSE:** To provide commanders with guidance on a variety of issues related to the use of government transportation.

2. **REFERENCES:** AR 58-1, Management, Acquisition, and Use of Motor Vehicles (28 January 2000).

3. **DISCUSSION:**

a. In general, Government vehicles (GOV) are for official use only. This means the use must be essential for the successful completion of a DA function, action, or operation. Furthermore, any use must be consistent with the purpose for which the GOV was purchased; *e.g.*, it is inappropriate to use a tactical vehicle for transporting children to and from a command-sponsored recreational event. As examples, official use does not include the following:

(1) Transportation for personal business, *e.g.*, transporting a soldier's furniture and other personal property.

(2) Transportation to social functions that are not command-sponsored.

(3) Transporting family members, unless they are participants in a command-sponsored program or riding space is available on scheduled routes.

(4) Deviating from the route necessary to accomplish the mission.

b. Authorized Use of Government Vehicles: Official use may include the following:

(1) Transportation for command-sponsored activities; *e.g.*, change of command ceremonies and other social functions if the soldier has been invited to attend in an official capacity.

(2) Transportation for morale, welfare and recreation activities; *e.g.*, athletic teams which officially represent Fort Bliss in scheduled competitive events.

(3) Government personnel on TDY.

4. **POC:** POC is the Chief of Civil and Administrative Law at 568-5646/0759.

SUBJECT: Use of Government Vehicles for Home to Duty Transportation

1. **PURPOSE:** To provide commanders with guidance on the use of Government Vehicles for home-to duty transportation.

2. **REFERENCES:** 31 U.S.C. Section 1344; AR 58-1, Management, Acquisition, and Use of Motor Vehicles (28 January 2000).

3. **DISCUSSION:**

a. As a general rule, home to duty transportation is not considered to be an official purpose. The only persons in the Army authorized to use Government vehicles (GOVs) between home and duty on a regular basis are the Secretary of the Army and the Army Chief of Staff. No other personnel may use GOVs between home and duty unless they have the express permission of the Secretary of the Army. This includes transportation to after-hours meetings or functions. Personnel using GOVs to after-hours functions must first travel to their duty site and then take transportation from there. This rule applies even when the duty site is further away than the site of the function. The Secretary of the Army may approve home to duty transportation for the following circumstances:

(1) Personnel engaged in intelligence, counterintelligence, protective services, or criminal law enforcement duties (reviewed biannually).

(2) Approval may be granted when a clear and present danger exists, e.g., highly unusual circumstances exist which present a real and immediate threat to the safety of the employee for which Government transportation will provide protection not otherwise available.

(3) Approval may also be granted for fieldwork, duty which requires the employee's presence at various locations that are at a distance from the employee's place of duty.

(4) Finally, approval may be granted when compelling operational circumstances exist, e.g., use of Government transportation is essential to accomplish the agency's mission.

b. The approval authority of the Secretary of the Army for these situations is non-delegable. Approval is only for a 15-day period and may be extended in 90-day increments, if conditions persist.

4. **POC:** POC is the Chief of Civil and Administrative Law at 568-5646/0759.

SUBJECT: Travel by DA Officials and Spousal Travel

1. **PURPOSE:** To provide commanders with guidance on the policy for travel by DA officials and spousal travel.

2. **REFERENCES:** Policy for Travel for the Department of the Army with Supplemental Guidance for Army Personnel Located in the National Capital Region, 5 November 2001.

3. **DISCUSSION:**

a. A memorandum from the Secretary of the Army, dated 5 November 2001, provides the most current travel policy for DA officials. All military travel requests from senior Federal officials (Brigadier General and higher) must be reviewed by a designated authorizing official. Listed below are some of the restrictions placed upon DA officials and spousal travel.

(1) Use of Commercial and Military Aircraft: Commercial air travel will be coach-class unless there are exceptional circumstances; the Secretary of the Army retains the authority to approve the use of all first-class travel. The use of military aircraft, fixed and rotary wing, for official travel must be justified and based on one or more of the following criteria:

(a) The air travel must be the most economical mode of transportation consistent with accomplishing the military mission;

(b) The particular aircraft to be used must be the least costly one capable of satisfying the transportation requirements. Larger aircraft will be used only for safety, security, or economic feasibility;

(c) An emergency situation exists whereby the military mission could not be completed without the use of military aircraft; or

(d) The use of commercial aircraft causes significant scheduling delays over several legs of a multi-stop mission.

b. Military Aircraft and Training Missions: Aircraft will not be scheduled for training missions where the principal purpose would be to accommodate the travel of senior Army officials, either military or civilian. When scheduling military aircraft, every effort will be made to avoid:

(1) Trips between major U.S. cities;

(2) Trips whose purpose is to deliver "speeches"; especially when the aircraft appears to be filled with personal staff members to make the trip cost effective;

(3) Trips requested to accommodate competing requirements, especially when the events are social. Therefore, maximum advance planning is emphasized so that scheduling conflicts do not dictate the use of military aircraft.

c. Rotary Wing Military Aircraft: These aircraft may be used for official travel to give speeches, attend conferences or meetings, make routine site visits, or other similar uses only when the cost is favorable as compared to ground transportation, or when the use of ground transportation would have a significant adverse impact on the ability of the senior official to effectively accomplish the purpose of the travel. This policy does not apply to operational mission use of rotary wing aircraft, or to mission required use such as transport of troops and/or equipment, training, evacuation (including medical evacuation), intelligence and counter-narcotics activities, search and rescue, transportation of prisoners, use of defense attached-controlled aircraft, aeronautical research and space and science applications.

d. Other travel prohibitions: Travel which requires a service stop in an intermediate city area which is served by commercial air should not be approved, nor should travel to events which can be accomplished by VTC or combined with other events or activities. Finally, travel must comply with the provisions of other regulations and policy, i.e., travel to conferences and ceremonial events and domicile to duty.

e. Frequent-Flyer Mileage: The National Defense Authorization Act for Fiscal Year 2002, Section 1116 permits Federal military or civilian employees to accept promotional items such as frequent flyer miles earned when traveling in an official capacity. The statute has been implemented by the Joint Federal Travel Regulation and the Joint Travel Regulation. Therefore, you may now use frequent flyer miles earned while on official business for personal travel.

f. Spousal Travel: As a general rule, spouses or other family members may not accompany Army personnel, either military or civilian, on official business at Government expense. An exception to policy for accompanying spouse travel is found at Appendix E, Part 1, paragraph A13 of the JTR. For an exception to policy, spouses must meet at least one of the following conditions: (1) The spouse will actually participate in an official capacity at an unquestionably official function (spouse's participation must be documented in a written agenda); (2) The spouse's presence at an official function is deemed to be in the national interest because of a diplomatic benefit to the United States; or (3) The spouse's presence at an official function is deemed to be in the national interest because of a public relations benefit to the United States. Spouses traveling in an accompanying spouse status are not permitted per diem. Further information on approval authorities and documentation required may be found in the Policy Memorandum of 5 November 2001.

g. Non-interference (reimbursable) Travel: This is travel by a spouse, dependent, or other non-Federal traveler not on official business in the company of a senior DoD official (normally Code 1, 2 and 3 civilians and Code 2 and 3 General Officers) who is traveling on official business on a military aircraft. This is not space available travel. The spouse, dependent, or other non-Federal traveler must reimburse the Government at *the full* commercial coach class fare rate or equivalent.

(1) Non-interference travel is not authorized on military aircraft unless all of the following are met:

- (a) The military aircraft is already scheduled for an official purpose;
- (b) The non-interference use does not require a larger aircraft than is needed for the official purpose;
- (c) Official travelers are not displaced;
- (d) The travel results in negligible additional cost to the Government; and
- (e) The Government is reimbursed at the full commercial coach class fare rate or equivalent.

(2) This type of travel will be approved in advance and in writing after legal review. The senior DoD official will attach to his travel voucher a personal check made payable to the Treasurer of the United States and include a travel office printout that reflects the full commercial fare. Approval will be through the senior traveler's normal approval chain.

4. POC: POC is the Chief of Civil and Administrative Law at 568-5646/0759.

SUBJECT: Gifts between Employees and to Superiors

1. **PURPOSE:** To provide information about the general rules regarding gifts between employees, including gifts from subordinates to their superiors.

2. **REFERENCE:** DoD 5500.7-R, Joint Ethics Regulation (30 August 1993).

3. **DISCUSSION:**

a. In general, an employee may not either give a gift or solicit a contribution for a gift for an official superior or accept a gift from a lower-paid, lower-ranking, or subordinate employee. Nevertheless, gifts may be given and accepted in accordance with the following exceptions:

(1) Unsolicited gifts on an occasional basis (not routine), including traditional gift-giving occasions, such as birthdays and holidays. This includes:

- (a) Items (no cash) with a combined value of \$10 or less per occasion;
- (b) Items such as food and refreshments that will be consumed at the office;
- (c) Personal hospitality (e.g., meals) at someone's home (of a type and value customarily provided to personal friends);
- (d) Items in connection with the receipt of personal hospitality (of a type and value customarily provided to personal friends.)

(2) A subordinate may also give or donate toward a gift to a superior and a superior may accept a gift on a **special infrequent occasion** such as:

- (a) An infrequent event of personal significance such as marriage, illness, or birth of a child;
- (b) An occasion that terminates the superior subordinate relationship such as PCS, resignation, or retirement.
- (c) Gifts on special infrequent occasions are limited to \$300 in value per donating group (JER 2-300).

(1) A donating group consists of all contributors to that group gift.

(2) If one employee contributes to two donating groups, then the value of the gifts from groups with a common contributor is combined for the purposes of the \$300 limit (JER 2-203(a)).

(3) Solicitations for gifts to a superior may not exceed \$10 (although employees are free to give more than \$10) and must be completely voluntary (JER 2-302b). (To avoid improper pressure, no one should keep a list of contributors, and preferably, the collection should be handled by a junior-ranking person in the organization.)

(4) Aggregation of smaller gifts to produce a gift of greater value (e.g., gifts of individual golf clubs to create an expensive set of clubs) may not be used to circumvent the JER rules. Similarly, a gift which exceeds the \$300 limit may not be donated to the superior's spouse to circumvent the rules. A gift to the superior's spouse is considered a gift to the superior; therefore, the combined value of the gifts to the superior and spouse from one donor group ordinarily may not exceed \$300.

(5) There is no specific guidance about the size of the unit or group giving the gift. Such decisions, however, should be based on common sense and good judgment. As a general rule, it would be prudent to limit gifts to brigade commanders to one per battalion, and battalion commanders to one gift per company.

4. **POC:** POC is the Chief of Civil and Administrative Law at 568-5646/0759.

SUBJECT: Gifts from Outside Sources

1. **PURPOSE:** To provide general rules regarding Army employees accepting gifts from DoD sources. (Because different rules exist, this paper does not address gifts from foreign governments or gifts to an Army procurement official from a contractor.)

2. **REFERENCES:** DoDD 5500.7-R, Joint Ethics Regulation (30 August 1993).

3. **DISCUSSION:**

a. **General Rule.** An Army employee may not solicit or accept a gift given by a "prohibited source" or given because of the employee's official position. To determine if the gift is offered because of the employee's position, the criteria is whether the gift would have been offered had the employee had not held his/her duty position.

b. Definitions.

(1) **gift:** Includes any gratuity, favor, discount, entertainment, hospitality, loan, forbearance or other item having monetary value. It includes services as well as gifts of training, transportation, local travel, lodgings and meals. The following are some items not considered gifts: modest items of food and refreshment (soda, coffee, doughnuts, etc.) offered other than as part of a meal; greeting cards; plaques, certificates, or trophies intended solely for presentation; and opportunities and benefits, including favorable rates, if available to the general public or to a class of all Government employees or uniformed personnel.

(2) **prohibited source:** Includes any person or entity who is seeking official action by the Army, doing business or seeking to do business with the Army, or conducting activities regulated by the Army. Generally, any entity having an interest in the performance of official Army missions is a prohibited source.

c. Exceptions to General Rule Even if the item satisfies the above definition of a gift, the employee may accept the item when:

(1) the value of the gift is \$20 or less per source per occasion (however, the employee cannot receive a total of \$50 worth of gifts from one source per year);

(2) the item is being given based purely on a personal relationship;

(3) the outside source provides free attendance (e.g., waiver of conference fees, cost of conference materials, and food which is furnished to all attendees as an integral part of the event) when the employee is assigned to participate as a speaker or participant on behalf of the Army. (This acceptance of free attendance only applies for the day(s) in which the employee is actually assigned to speak or participate as a part of a panel discussion. It does not include the cost of travel, lodging, food, or entertainment collateral to the event.)

(4) other less common exceptions may be found at 5 C.F.R. 2635.204.

d. Caution: Even if the gift falls within a permissible exception, the employee may not accept the gift if it is given in exchange for being influenced; or the gift was solicited or coerced; or the frequency of the gifts from the same or other sources would lead a reasonable person to believe that the employee is using public office for private gain.

e. Reporting Requirement. If the value of gifts from a single source for food, lodging, transportation, and entertainment is \$250 or more during a calendar year, or is \$100 or more for other gifts, then the employee must report this on the employee's annual financial disclosure report (SF 278 or OGE 450). If an outside source provides \$250 or more in travel expenses for any trip, a separate report must reach DA within 30 days of the travel.

f. Disclaimer. The above information is a brief summary of applicable rules; however, not all rules or exceptions could be included. The area of gifts from non-DoD sources is very complex. Employees should seek guidance from their Ethics Counselor concerning specific factual scenarios. If the employee is placed in the position of accepting a gift about which she or he has questions, the employee should respond by thanking the giver and stating something along the lines of "I hope my ethics counselor permits me to accept your gift." The employee should then seek an opinion about the legality of accepting the gift.

4. POC: POC is the Chief of Civil and Administrative Law at 568-5646/0759.

SUBJECT: Driving Privileges Suspension or Revocation

1. **PURPOSE:** To explain the procedures for suspension and revocation of post driving privileges.

2. **REFERENCES:** AR 190-5, Motor Vehicle Traffic Supervision (8 July 1988).

3. **DISCUSSION:**

a. Army Regulation (AR) 190-5, Chapters 2 and 5 govern suspension (because revocation of driving privileges is substantially the same concept as suspension, the two are not distinguished) of installation driving privileges.

b. Under the provisions of AR 190-5, para. 2-5, the installation commander or designee may, for cause, suspend the installation driving privileges of anyone -- soldier or civilian. For military personnel and family members, retirees, and DoD employees, suspension is authorized regardless of where the incident occurred. For non-DoD affiliated civilians, only on-post incidents will be considered. The Chief of Staff is the installation commander's designee for making the initial determination whether to suspend driving privileges.

c. Causes for suspension of driving privileges include: driving while under the influence of alcohol or drugs; refusal to submit to a lawfully requested test for alcohol or drugs; failure to provide legally required documentation (e.g., driver's license, proof of insurance, proof of registration, etc.) when requested by an MP; failure to appear in traffic court; or accumulation of points under the point system established by Chapter 5, AR 190-5.

d. When an individual's driving privileges are suspended, the individual may request a hearing within ten days of receipt of notice of the suspension. If a hearing is not requested within ten days of receipt of the letter, suspension becomes effective. Once the individual applies for a hearing, the suspension is stayed for 10 days.

e. A hearing will be held as soon as possible after receiving the request. The hearing officer -- one of the Civil and Administrative Law Division attorneys -- will review all available evidence, including evidence presented by the alleged offender. The hearing officer will make a recommendation to the installation commander as to whether the individual's driving privileges should be revoked or restored.

f. Upon receipt of the hearing officer's recommendation, the installation commander will make the final decision. The individual will be informed by the Provost Marshal's Office of the commander's final decision.

4. **POC:** The POC for this information is the Chief of Civil and Administrative Law at 568-0759.

SUBJECT: Mental Health Evaluations of Members of the Armed Forces

1. **PURPOSE:** To inform commanders regarding the DoD policy for command directed mental health evaluations of soldiers.

2. **REFERENCES:** Department of Defense Directive 6490.1, Mental Health Evaluations of Members of the Armed Forces (01 Oct 1997).

3. **DISCUSSION:**

a. **Evaluation Referrals.** Evaluations that are not conducted on an emergency basis may only be conducted after the soldier's commander consults with a mental health professional and provides written notice to the soldier. Written notice must include:

(1) The date and time of the scheduled evaluation;

(2) A brief factual description of the behaviors or verbal expressions that help form the basis for the commander's determination that an evaluation is necessary;

(3) The name of the mental health professional consulted by the commander. If consultation is not possible, then a statement of the reason it was not possible;

(4) The positions and telephone numbers of authorities who can assist a member who questions his or her referral (e.g., IG, JAG and Chaplain);

(5) A copy of the soldier's rights under the policy; and

(6) The signature of the soldier attesting to having received notice or a statement by the soldier's commander that the soldier refused to sign.

b. **Soldiers' Rights.** Referred Soldiers, except in emergency situations, have the following rights:

(1) To be given two business days before the scheduled evaluation to meet with an attorney, IG, chaplain, or other appropriate party;

(2) To communicate with an IG, attorney, member of Congress, or others about the referral;

(3) To have his or her allegation investigated by the DoD IG when he or she alleges to an IG that his or her referral was made in violation of DoD 6490.1;

(4) To be advised by a JAG or a DoD employed attorney regarding redress he or she may seek; and

(5) To be evaluated by a DoD employed mental health professional of his or her choice if reasonably available. Alternatively, a mental health professional not employed by DoD may provide an evaluation at the soldier's expense. Any such evaluation, including an evaluation by a mental health professional who is not an employee of DoD, shall be conducted within a reasonable period of time after the soldier is referred for an evaluation.

c. Policy limitations. The protections for the soldier created by the referral policy do not apply in the following circumstances:

- (1) Self referrals;
- (2) Routine diagnostic procedures conducted by healthcare professionals not assigned to the soldier's command;
- (3) Referrals to the Family Advocacy Program;
- (4) Referrals to drug and alcohol rehabilitation programs;
- (5) Referrals to mental health professionals for routine actions as required by other DA regulations (e.g., enlisted administrative separations);
- (6) Referrals related to responsibility and competence inquiries conducted pursuant to rules for courts-martial (e.g., sanity boards); and
- (7) Referrals required for certain duties (e.g., security clearance).

d. Military duties preventing compliance. If the soldier's military duties prevent compliance with certain provisions of the referral policy, then the soldier's commander must include an explanation in the written request for consultation.

e. Violation of UCMJ. The policy makes it a violation of the UCMJ to:

- (1) Refer a soldier for a mental health evaluation as a reprisal in certain circumstances; or
- (2) Restrict a soldier from lawfully communicating with others about the soldier's referral for a mental health evaluation.

4. POC: POC is the Chief of Civil and Administrative Law at 568-5646/0759.

SUBJECT: Involuntary Allotment of Military Pay to Satisfy Judgment Creditors

1. **PURPOSE:** To inform commanders of their obligations upon receipt of applications for involuntary allotment of military pay to satisfy judgment creditors.

2. **REFERENCES:** Department of Defense Form 2654, Involuntary Allotment Notice and Processing.

3. **DISCUSSION:**

a. **Involuntary Allotments.** Federal law allows creditors who obtain a civil court judgment on a soldier's indebtedness to collect on the judgment by applying for an involuntary allotment, or garnishment, of military pay. This new law ends the historical protection of soldiers from garnishment actions and puts soldiers on the same playing field as civilians who have long been subject to such garnishment actions.

b. **Procedures:**

(1) The creditor must send the application for involuntary allotment to the Defense Finance and Accounting Service (DFAS). If the creditor sends the application directly to the commander, the commander should return the application to the creditor along with a letter stating that the application should be sent to the following address:

Defense Finance and Accounting Service
Cleveland Center (DFAS-CL), Code L
P.O. Box 998002
Cleveland, OH 44199-8002

(2) DFAS-CL will conduct an initial review of the application to ensure that the application is complete and in compliance with applicable laws and regulations. If the application is complete, DFAS-CL will complete Section I of DD Form 2654 (Involuntary Allotment Notice and Processing). DFAS-CL will then mail one copy of the involuntary allotment package to the soldier and two copies of the involuntary allotment package, along with DD Form 2654, to the soldier's commander. A response is due from the commander 90 days from the date the involuntary allotment package is mailed to the commander and soldier. If no response or request for extension is received at DFAS-CL on or before the due date, the involuntary allotment application will automatically be processed for payment.

(3) Within five calendar days of receipt of an involuntary allotment package from DFAS-CL, the commander will determine if the soldier identified on the DD Form 2654 is assigned or attached to the unit. If the soldier is not assigned or attached to the unit, the commander will promptly complete Section II, Item 3 of DD Form 2654, and attach appropriate documentation supporting that determination, if applicable. If the soldier is assigned or attached but not available for counseling or unable to respond, the commander will promptly complete Section II, Items 4 and 5, of DD Form 2654. In both instances the commander must immediately mail the involuntary allotment package and DD Form 2654 to DFAS-CL.

(4) If the soldier is assigned or attached to the unit and available to respond, the commander will, within five calendar days of receipt of the involuntary allotment package, counsel the soldier regarding Section III, Items 7A through 7G of DD Form 2654. After counseling, the commander will complete Section III, Item 8 of DD Form 2654, acknowledging in writing that the soldier has been notified, advised, and counseled. The commander will then make and retain one copy of the completed form and provide the soldier with the signed original and advise the soldier that he or she has 15 calendar days to complete Section IV, Item 10 of the form.

(5) The commander may, for good cause, grant a soldier an extension of reasonable time (not normally more than 30 calendar days) to complete Section IV of DD Form 2654 (either Item 10A, consenting to the allotment, or 10B, contesting the allotment for one or more of the reasons listed). During time of war, national emergency, deployment, assignment outside the United States, hospitalization, or other similar situations that prevent the soldier from obtaining necessary evidence or responding in a timely manner, the commander may grant an extension exceeding 30 days. If an extension is authorized that will cause the soldier's response to arrive after the 90-day response deadline, then the commander will immediately complete Section II, Item 4 of DD Form 2654, make a copy of Sections I and II, and promptly mail the copy to DFAS-CL.

(6) After the soldier completes Section IV of DD Form 2654, the commander must complete Section V, Item 13A, on the original DD Form 2654, and promptly mail the completed form, including any evidence or other matters submitted by the soldier, to DFAS-CL. If the soldier fails to complete Section IV of DD Form 2654 within 15 calendar days (or by the later date established by the commander), the commander must complete Section V, Item 13B of DD Form 2654 and promptly mail the completed form to DFAS-CL. The commander must provide the soldier a copy of the completed DD Form 2654 within five calendar days after mailing it to DFAS-CL.

(7) In the absence of an approved extension, DFAS-CL will authorize automatic processing of the involuntary allotment on the response date, even in the absence of a response by the soldier or the commander, regardless of the reason. If DFAS-CL receives notice of an extension approved by the commander, DFAS-CL will not authorize automatic processing until the 15th calendar day following the approved extension date.

c. Commander's Responsibilities: The commander's responsibilities in reviewing soldiers' responses on the DD Form 2654 are as follows:

(1) When a soldier asserts that "exigencies of military duty" caused his or her absence from the judicial proceedings forming the basis for the judgment for which the involuntary allotment is sought, the soldier's present commander will review the available facts and indicate his or her determination in Section V, Item 14 of DD Form 2654. The commander may obtain legal advice from the Civil and Administrative Law Division, Office of the Staff Judge Advocate, before making this determination. The commander will briefly state the basis for any determination in favor of the soldier in Item 15 of the form, complete Items 16 and 17, and promptly forward the completed form to DFAS-CL.

(2) The soldier's present commander must make the military exigency determination even when the circumstances in question were performed by the soldier under a different commander. The military exigency determination should be based on the applicable definitions, the evidence provided by the soldier, and any other reasonably available evidence (i.e., the soldier's military personnel records, unit or soldier training records). The issue to be determined is whether the military duties in question were of such importance that they prevented the soldier from attending the judicial proceedings, or rendered the soldier unable to respond in a timely manner to process motions, pleadings or orders of the court. Assignment outside the United States, or within a state different from the one in which the judgment was entered, does not automatically qualify as an exigency of military duty. The commander must examine all the circumstances involved. Similarly, assignment within the state where the judgment was entered does not automatically prevent a soldier from successfully asserting that exigencies of military duty prevented him from appearing before or responding to the court.

(3) DFAS-CL is bound by a commander's military exigency determination and will disapprove an involuntary allotment application based on this determination alone. A military exigency determination against the judgment creditor must be signed by the commander.

(4) If the commander makes a military exigency determination in favor of the soldier, the commander will indicate on DD Form 2654, Section 5, Item 16, the title and full address of the appellate authority, i.e., the Commanding General, Fort Bliss.

4. POC: POC is the Chief of Civil and Administrative Law at 568-5646/0759.

SUBJECT: Legal Restrictions on Web Pages

1. **PURPOSE:** To provide commanders with guidance regarding certain legal issues associated with web pages.

2. **REFERENCE:** DoD 5500.7-R, Joint Ethics Regulation (30 August 1993); TRADOC Command Guidance, Noble Eagle #02-019, 13 March 2002..

3. **DISCUSSION:**

a. The Joint Ethics Regulation (JER) prohibits endorsement (express or implied) of non-Federal entities, such as local or nationwide businesses. A linkage to the business on a web page implies an endorsement as does a simple reference on the web page. However, by doing the following you may use a linkage and still avoid violating the JER.

(1) First, state a reason for the linkage, such as relocation assistance or unit morale.

(2) Second, attach a general disclaimer that the linkage or reference to the business is not an endorsement. A single disclaimer placed prominently at the top of the web page will suffice. A suggested disclaimer is: "All links or references to non-U.S. Government web sites, services, and businesses are provided solely for your convenience. Such links or references do not constitute an endorsement or warranty of any services or products."

b. Do not place copyrighted material on the web page. For example, the use of a "Tasmanian Devil" or "Bugs Bunny" icon on the web page is prohibited.

c. All Privacy Act restrictions apply to the web page. An organization's web page may not disclose any personally identifying information on any web pages that are publicly accessible. This restriction also applies to web pages that are restricted only by its domain (i.e. .mil sites). Social security numbers will not be listed on the web page. Before individual names are posted, coordination must be made with the installation Freedom of Information officer and should be done in a manner consistent with this policy. The installation commander has the discretion to place individual names on web pages. This policy applies to military as well as civilian personnel.

d. The Public Affairs Office (3-4505) must pre-approve the content of all web pages maintained or created by Fort Bliss organizations.

4. **POC:** POC is the Chief of Civil and Administrative Law at 568-5646/0759.

SUBJECT: Local Bars to Reenlistment

1. **PURPOSE:** To Describe the Reasons for, and Procedures for Implementing Local Bars to Reenlistment

2. **REFERENCES:** Army Regulation 601-280, Total Army Retention Program (1997), Department of Army Form 4126-R (Bar to Reenlistment Certificate).

3. **DISCUSSION:**

a. AR 601-280, paragraph 6-4d, lists 21 infractions or reasons for imposing a bar to reenlistment against a soldier. The purpose of the listed infractions or reasons is to identify which soldiers are untrainable or unsuitable for continued military service. In addition, commanders are required to initiate bars to reenlistment or separation proceedings against soldiers who;

(1) Fail to make satisfactory progress in the Army weight program;

(2) Fail two consecutive PT tests (without medical excuse);

(3) Are removed for cause from NCOES courses.

b. IAW AR 601-280, paragraph 6-3c, bars to reenlistment must not be used in lieu of courts-martial, non-judicial punishment, or other administrative action. Bars to reenlistment should only be used when administrative discharge is unwarranted.

c. Bar to reenlistment procedures normally should not be initiated against a soldier assigned to a unit fewer than 90 days (see AR 601-280, paragraph 6-5a(1)). Any commander in a soldier's chain-of-command may initiate a bar to reenlistment (see AR 601-280, paragraph 6-5b). The bar is initiated using DA Form 4126-R.

d. The bar to reenlistment must be based on specific incidents substantiated by official remarks made at the time of each occurrence (see AR 601-280, paragraph 6-5a(2)). The soldier must be given a copy of the DA Form 4126-R and afforded an opportunity to respond.

e. Bars to reenlistment for soldiers with fewer than 10 years of service may be approved by a Lieutenant Colonel or above. Bars for soldiers who have served from 10 to 18 years must be approved by the General Court-Martial Convening Authority. Bars for soldiers who have served more than 18 years must be approved by HQDA.

f. DA has indefinitely suspended voluntary separations under provisions of AR 635-200, paragraph 16-5b, based on a perceived inability to overcome a local bar.

4. **POC:** POC is the Chief of Civil and Administrative Law at 568-5646/0759.

SUBJECT: MOS Reclassification

1. **PURPOSE:** To Describe How and When MOS Reclassification is Conducted.
2. **REFERENCES:** Army Regulation 600-200, Enlisted Personnel Management System (1997)
3. **DISCUSSION:**
 - a. IAW AR 600-200, paragraph 2-31c, soldiers must be reclassified under the following circumstances:
 - (1) If awarded an MOS erroneously;
 - (2) If disciplinary action adversely affects the ability to perform MOS duties;
 - (3) If MOS qualification is lost;
 - (4) If personnel Reliability Program qualification is lost by soldiers involved in Nuclear Security activities;
 - (5) If a security clearance is required and lost;
 - (6) If promoted to or reduced to a rank that is not in line with the MOS;
 - (7) If directed by the CG, PERSCOM.
 - b. Reclassification authorities may reclassify a soldier without a reclassification board. However, the reclassification authority may provide a board upon a soldier's request. Soldiers may also submit voluntary requests for reclassification.
 - c. Reclassification authority for soldiers in grades E-6 and above is the CG, PERSCOM regardless of MOS. For other soldiers, reclassification authorities include commanders of U.S. Army Forces Command (FORSCOM), U.S. Army Training and Doctrine Command (TRADOC), and activities having personnel requisitioning authority.
 - d. Needs of the Army are the most important factor in reclassification actions.
4. **POC:** POC is the Chief of Civil and Administrative Law at 568-5646/0759.

SUBJECT: Reports of Survey

1. **PURPOSE:** To provide a general overview of the report of survey process.
2. **REFERENCES:** Army Regulation 735-5, *Policies and Procedures for Property Accountability* (date of issue: 31 Jan 98), Department of Army Form 4697 (date of issue: Sept 81).

3. **DISCUSSION:**

a. An individual will be held liable for lost or damaged government property only if his negligence or willful misconduct was the proximate cause of the damage or loss with no intervening cause. That is, the person's acts or omissions were the cause that, in a natural and continuous sequence, unbroken by a new cause, produced the loss or damage.

b. All individuals recommended for financial liability must be provided with a memorandum of their rights, outlined in Army Regulation 735-5, para 13-34. In addition, blocks 30-32 of Department of Army Form 4697 must indicate that the individual has been apprised of the proposed liability and either does or does not wish to submit matters in rebuttal. If an individual has departed the installation and cannot be reached, notice must be sent via registered mail, and the receipt should be included in the packet.

c. The survey officer must be senior in rank to the individual to be held liable. The only exception is military exigency (e.g., war is declared and every senior officer is unavailable).

d. Amounts charged to individuals must be computed according to the procedures at Appendix B, Army Regulation 735-5. The surveying officer must indicate how the amount charged was computed.

e. The following list summarizes common errors, which could be avoided if investigating officers would consult their legal advisors:

- (1) Lack of documentation in investigations with findings of fault, no fault, no loss, or no wrongdoing.
- (2) Findings do not cite the exhibits that support them.
- (3) Privacy Act statements are not obtained from individuals being interviewed when required.
- (4) Recommendations are not supported by the findings.
- (5) The investigation fails to address all the issues raised by the appointing authority.
- (6) When additional allegations or issues arise, the investigating officer does not investigate them.
- (7) The investigating officer applies the wrong standard of proof in making findings.

4. **POC:** The POC for this information is the Chief of Civil and Administrative Law at 568-0759.

SUBJECT: Accommodation of Religious Practices

1. **PURPOSE:** To explain the procedures for processing a soldier's request to wear items of religious apparel while in uniform and requests for accommodation of worship, dietary requirements, and medical practices.

2. **REFERENCES:** Department of Defense Directive 1300.17, Accommodation Of Religious Practices Within the Military Services (03 Feb 1988); Army Regulation 600-20, Army Command Policy (15 July 1999); Army Regulation 670-1, Wear and Appearance of Army Uniforms and Insignia (01 Sep 1992).

3. **DISCUSSION:**

a. **Policy.** DoD policy is to approve requests for accommodation of religious practices when it will not have an adverse impact on readiness, safety, discipline, or duty performance.

b. **Commander's Action.** The commander may approve or deny the request after applying the standards at paragraph 5-6 h(4) of AR 600-20 and the uniform standards in AR 670-1. These standards require that the apparel or articles be neat, conservative, discrete, subdued and nonpermanent. The commander's response must be in writing.

(1) If the commander approves the request, the written approval must make it clear to the soldier that the accommodation is only valid for that unit and that commander, and if either change, the soldier must submit a new request. If circumstances (*e.g.*, the mission) change, the commander may revoke the prior approval.

(2) If the commander disapproves the request, the soldier must comply with the commander's decision. The soldier may request that the commander forward the request through command channels to the DCSPER. Any commander in the chain of command, may approve the request for accommodation, thereby eliminating the need for review by the DCSP. These procedures are set forth in AR 600-20, para. 5-6(h)(5).

(3) A commander may honor special dietary requirements by allowing personal supplemental field rations in a field or combat environment.

(4) For medical practices, the Army will make no accommodations in life-threatening situations. However, in less serious situations, a medical board, on a case by case basis, will consider the individual's request.

(5) Worship requirements that conflict with normal availability for duty will be accommodated unless precluded by military necessity.

4. **POC:** POC is the Chief of Civil and Administrative Law at 568-5646/0759.

SUBJECT: Off-limits Restrictions for Off-post Establishments

1. **PURPOSE:** To explain the procedure for placing an off-limits restriction on an off-post establishment.
2. **REFERENCES:** AR 190-24, Armed Forces Disciplinary Control Boards and Off-Installation Liaison and Operations (30 June 1993); USAADACENFB Suppl. 1 to AR 190-24 (14 May 1996).

3. **DISCUSSION:**

a. Army Regulation 190-24 governs off-limits restrictions. Only establishments whose activities adversely affect the health, safety, welfare, morale, and/or morals of Armed Forces personnel may be placed off-limits. The Armed Forces Disciplinary Control Board (AFDCB) has the responsibility to place a business off-limits. Unless there is an emergency situation (explained below at paragraph 7), a unit commander cannot unilaterally declare an establishment off-limits.

b. The AFDCB holds meetings quarterly and as required. The AFDCB is comprised of the Provost Marshal (PMO), the William Beaumont Army Medical Center, Staff Judge Advocate, Director of Community Activities, Staff Chaplain Office, Army Substance Abuse Program, Inspector General, and Public Affairs Office.

c. Upon receiving substantive information that an establishment is adversely affecting personnel, a commander should inform the proper department sponsored on the AFDCB. For drug related problems, inform Army Substance Abuse Program; for criminal matters, inform PMO. The department will conduct an investigation and then inform the PMO, who will in turn inform the AFDCB.

d. Once the PMO is informed of the situation, the AFDCB will begin its own investigation, which may or may not lead to an off-limits restriction. However, at no time will the AFDCB declare an establishment off-limits until:

(1) A letter of notification is sent to the owner or manager of the establishment informing him or her of the impending action if the standards of the establishment are not raised by a specified date;

(2) The proprietor of the establishment is offered an opportunity to appear before the AFDCB;

(3) Further investigation indicates that improvements have not been made;

(4) The recommendation of the AFDCB is sent to the Commanding General (CG);

(5) The CG approves and forwards the decision to the PMO; and,

(6) The PMO sends a letter to the establishment informing the proprietor that off-limits restriction has been imposed.

e. In an emergency situation, unit commanders have discretion to temporarily declare establishments off-limits to service members subject to their control. However, use of this emergency provision is only appropriate when:

(1) There is an immediate, identifiable danger to the health or safety of military personnel;

(2) The circumstances underlying the emergency action are reported immediately to the Commanding General; *and*

(3) A detailed justification is given by the commander. The emergency action is forwarded to the AFDCB for further deliberations.

f. Commanders who take unilateral "emergency" action, without complying with the above provisions are going beyond their authority. Failure to follow the correct procedures risks the possibility of legal action (e.g., tortious interference with business) against the Commanding General, Fort Bliss. *Coordinate with the OSJA, Civil and Administrative Law Division, before taking any emergency action.*

g. Once an establishment is placed off limits, the AFDCB and appropriate commanders will use command and media resources to publish a list of off-limits establishments. Military authorities may not, however, post signs indicating "off-limits" at the affected establishment.

4. POC: POC is the Chief of Civil and Administrative Law at 568-5646/0759.

SUBJECT: Investigations

1. **PURPOSE:** To inform commanders of the various types of investigations available.

2. **REFERENCES:** Army Regulation 15-6, Procedures for Investigating Officers and Boards of Officers (30 Sep 96), Manual for Courts-Martial (2002 ed.); Army Regulation 195-2, Criminal Investigation Activities (30 Oct 85).

3. **DISCUSSION:**

a. **Background.** Depending on the purpose of the inquiry and the seriousness of the subject matter, the following types of investigations may be utilized by the command:

(1) **Commander's Inquiry.** An informal proceeding in which the immediate commander investigates or designates someone to inquire into the noncriminal conduct or performance of a particular individual. A commander's inquiry may be used when a detailed investigation is not necessary.

(2) **Preliminary Inquiry (Rule for Courts-Martial 303).** Similar to a commander's inquiry, this is an informal Commander's proceeding used to determine the basis for an alleged violation of the Uniform Code of Military Justice. However, for criminal allegations that clearly fall within the CID or MPI area of responsibility (e.g., rape, robbery, murder), the command should not initiate a preliminary inquiry but rather refer the matter to CID or MPI.

(3) **Inspector General Investigation.** This is a fact-finding examination by an Inspector General into allegations of violation of policy, regulation, law, mismanagement, unethical behavior, or misconduct. If the impropriety is criminal misconduct, the Inspector General will refer the case to CID or MPI and close its inquiry.

(4) **Army Regulation 15-6 Investigation.** An informal 15-6 investigation usually has a single investigating officer who conducts interviews, collects evidence, and makes findings and recommendations to the appointing authority. A formal 15-6 investigation is a proceeding that involves a hearing for a designated respondent before a board of officers. The respondent is entitled to extensive due process rights: a president with voting members, recorder, notice to respondent with right to counsel, challenges for cause, entitlement to be present at all open sessions, presentation of evidence, cross-examination of witnesses, and argument. Most 15-6 investigations are informal.

(5) **MPI or CID Investigation.** Certain criminal activity falls within CID's or MPI's investigative responsibility and must be reported to them for investigation. These offenses include all felonies (offenses punishable by death or confinement over one year), property-related offenses, drug offenses, aggravated assaults, and non-felony misconduct allegedly committed by senior officers (general officers, SES, or Executive Schedule personnel) if the "sensitivity of the incident or complexity of the matter so dictates." Army Regulation 195-2, para. 3-3a (9). Army Regulation 195-2, para. 3-3 and Appendix B provide a more comprehensive list of offenses within CID or MPI investigative responsibility.

b. **Standard of Proof.** Since an investigation is not a criminal proceeding, there is no requirement that the findings be proven beyond a reasonable doubt. Instead, the findings must be based on evidence which, after considering all evidence presented, points to a particular conclusion as being more credible and probable than any other conclusion, unless another directive establishes a different standard of proof.

c. **Use of AR 15-6 Investigations.** 15-6 investigations should be used for any investigation which requires detailed gathering and analysis of facts, and the making of recommendations based on those facts. Commanders should consult with the Fort Bliss Staff Judge Advocate prior to initiating any 15-6

investigation. Also, most 15-6 investigations require review before the appointing authority takes final action. The decision to use informal v. formal procedures is based upon the following factors:

- (1) Purpose of the inquiry.
- (2) Seriousness of the subject matter.
- (3) Complexity of issues involved.
- (4) Need for documentation.
- (5) Desirability of providing a comprehensive hearing for persons whose conduct or performance of duty is being investigated.

d. Appointing Authority (AR 15-6). The authority to appoint an investigating officer depends upon the type of investigation conducted. The following persons may appoint investigating officers for:

- (1) Formal investigations.
 - (a) Any general court-martial convening authority or special court-martial convening authority, including those who exercise that authority for administrative purposes only.
 - (b) Any general officer.
 - (c) Any commander or principal staff officer in the grade of colonel or above at the installation, activity, or unit level.
 - (d) Any state adjutant general.
 - (e) Any DA civilian supervisor paid under the Executive Schedule, SES, or General Schedule/General Management Level 14 or above, provided the supervisor is the head of an agency or activity or the Chief of a division or department.

(2) Informal Investigations.

- (a) Any individual authorized to appoint a formal investigation.
- (b) A commander at any level.
- (c) A principal staff officer or supervisor in the grade of major or above.

(3) Only a general court martial convening authority may appoint an investigating officer for incidents resulting in property damage of \$1,000,000 or more, the loss or destruction of an Army aircraft or missile, an injury or illness resulting in, or likely to result in permanent total disability, or the death of one or more persons.

e. Qualifications of the AR 15-6 Investigating Officer. Only commissioned officers, warrant officers, or DA civilian employees paid under the General Schedule, Level 13 (GS 13) or above, may be investigating officers under AR 15-6 procedures. The investigating officer must also be senior to any person that is part of the investigation if the investigating officer might make adverse findings or recommendations against that person. Since the results of any investigation may have a significant impact on policies, procedures, or careers of government personnel, the appointing authority should select the best qualified person for the duty based on their education, training, experience, length of service, and temperament.

f. Most Common AR 15-6 Errors. The following list summarizes common errors, which could be avoided if investigating officers would consult their legal advisors:

- (1) Lack of documentation in investigations with findings of fault, no fault, no loss, or no wrongdoing.
- (2) Findings do not cite the exhibits that support them.
- (3) Privacy Act statements are not obtained from individuals being interviewed when required.
- (4) Recommendations are not supported by the findings.
- (5) The investigation fails to address all the issues raised by the appointing authority.
- (6) When additional allegations or issues arise, the investigating officer does not investigate them.
- (7) The investigating officer applies the wrong standard of proof in making findings.

4. POC: POC is the Chief of Civil and Administrative Law at 568-5646/0759.

SUBJECT: Consultation with Unions

1. **PURPOSE.** To aid Commanders in avoiding an Unfair Labor Practice (ULP) Charge

2. **REFERENCES:** Title 5 U.S.C. 7116(a), Collective Bargaining Agreements between USADACENFB and NAGE Locals R14-89 (GS), R14-22 (WG), NFFE Local 39 (Dental Activity), AFGE Local 2516 (William Beaumont Army Medical Center).

3. **DISCUSSION:**

a. Unfair Labor Practice - Refusing to consult, confer, or negotiate with a labor organization as required by this information paper will constitute an unfair labor practice.

b. Collective Bargaining Unit - The power of the union employee is derived from the union's ability to bargain collectively with the agency. The collective bargaining unit (CBU) is the exclusive representative of the employee. Elected and appointed union officials of the various recognized unions at Fort Bliss and WBAMC meet with agency representatives to consult and bargain in a good faith effort to reach agreements with respect to the conditions of employment affecting its members. The Federal Labor Relations Authority (FLRA) certifies the CBU and determines the composition of the unit. Contained within each collective bargaining agreement (CBA) is a written description of the included and excluded members of the given CBU.

c. The following employees are excluded from all CBUs.

- (1) Supervisors;
- (2) Management Officials;
- (3) Confidential Employees;
- (4) Employees engaged in national security work.

d. There are 4 recognized unions that operate on Fort Bliss and WBAMC. Each of their respective CBAs is available, for review at the Directorate of Civilian Personnel (DCP). The following is a list of the 4 unions and the employees each union represents on Fort Bliss and WBAMC.

(1) National Association of Government Employees (NAGE), Local R14-89- Represents all full time non-supervisory General Schedule employees. This union represents the non-supervisory "white collar" government employees. The current acting president is Frank Schoch.

(2) National Association of Government Employees (NAGE), Local R14-22- Represents all non-supervisory Wage Grade employees. This union represents the non-supervisory "blue collar" government employees. The current president is Joe Saavedra.

(3) American Federation of Government Employees (AFGE), Local 2516- Represents all non-supervisory, non-professional and non-dentistry employees at WBAMC. This union bargains for both the "white collar" and the "blue collar" employees at WBAMC. The current president is Gus Abeyta.

(4) National Federation of Federal Employees (NFFE), Local 39- Represents all non-professional employees in the U.S. Army Dental Activity. The current president is Ed Villalobos.

e. Obligation to Negotiate - Negotiations with the above referenced bargaining units are required under the following circumstances.

(1) When an occurrence takes place, which under the specific terms of the collective bargaining agreement requires negotiations; and

(2) Whenever there is a change in the conditions of employment. A condition of employment includes personnel policies, practices, or matters affecting the working conditions of bargaining unit employees.

f. No Obligation to Negotiate - Negotiations are not required under the following circumstances:

(1) When the terms of the collective bargaining agreement specify that an issue is non-negotiable;

(2) When a union proposal interferes with a federal statute or government-wide regulation;

(3) When a union proposal conflicts with an agency regulation that the FLRA has determined there is a compelling need for; and,

(4) When a union proposal interferes with a management right. These rights include internal security, assignment of work, budget, mission, etc.

g. Permissive Negotiations- Negotiations are not required, but are encouraged when management seeks to alter staff patterns, or to change the technology, methods, and/or means by which work is accomplished.

h. Union Representation- Bargaining unit employees have a right to union representation under the following circumstances:

(1) When a supervisor holds a meeting with one or more bargaining unit members to discuss:

(a) Any grievance;

(b) Personnel policies and practices that affect employees;

(c) Any condition of employment that affects bargaining unit employees.

(2) When an examination is undertaken that may result in disciplinary action against the employee being questioned. In these circumstances the **employee can invoke** his "Weingarten" rights. These rights require that the union be informed of the investigation, and allow for a union representative to be present before the employee answers any questions. The Weingarten rights are not a right to remain silent, they are only a right to have union representation during questioning. Further, management is under no obligation to inform the employee of his or her Weingarten rights.

i. The union itself claims the right of "exclusive representative" whenever management calls for a "formal discussion" between one or more members of the bargaining unit. The union must be granted advanced notice to a formal discussion and an opportunity to be present regardless of the wishes of the individual bargaining group member. Formal discussions occur when a representative of management meets with one or more members of a bargaining unit to discuss either of the following:

- (1) Personnel policies and practices affecting *general* working conditions; or
- (2) General grievances.

j. It is imperative that you seek guidance from the Civilian Personnel Activity Center and the Office of Staff Judge Advocate whenever considering disciplinary action against any employee.

4. **POC:** POC is the Chief of Civil and Administrative Law at 568-5646/0759.

SUBJECT: Line Of Duty Investigations

1. **PURPOSE:** To describe the reason for, and procedures of conducting, a line of duty determination.
2. **REFERENCES:** Army Regulation 600-8-1, Army Casualty and Memorial Affairs and Line of Duty Investigations, chapters 37-41 (18 Sep 1986)(this is an older version of the current regulation); Department of Defense Form 261, *Investigation and Report of Line of Duty Misconduct and Status*.

3. **DISCUSSION:**

a. A line of duty (LOD) determination is a two-step process:

- (1) Status: Was the soldier where he/she was supposed to be or authorized to be? and,
- (2) Conduct: Was the soldier's misconduct the cause?

b. Findings:

- (1) A soldier found to be in the Line of Duty (LOD) may be entitled to:
 - (a) Army Disability, Retirement or Separation Compensation;
 - (b) VA Compensation and Hospitalization Benefits; or
 - (c) Incapacitation Pay (ARNG/USAR).
- (2) If a soldier is found to be Not in the Line of Duty, Not Due to Own Misconduct (NLD-NDOM):
 - (a) If on active duty, denies disability retirement or separation compensation.
 - (b) If disabled after leaving AD, may deny VA disability or hospitalization benefits.
 - (c) May deny civil service preference.
 - (d) ARNG/USAR may be denied incapacitation pay.
- (3) If found to be Not in the Line of Duty, Due to Own Misconduct (NLD-DOM):
 - (a) Days lost under 1 day: added to service obligation for every day of work lost;
 - (b) Days lost over 1 day: may be excluded from computations for pay and allowances;
 - (c) May result in loss of pay where disease (not injury) immediately follows intemperate use of drugs (includes alcohol).

c. Appointing Authority: The LOD Appointing Authority is the Commander who exercises Special Court Martial Convening Authority (SPCMCA) over the soldier involved.

d. Procedures.

- (1) The process begins with an LOD presumption:
 - (a) Unless substantial evidence shows otherwise.
 - (b) Burden is "evidence that is of greater weight than supports any different conclusion."

e. An informal investigation is conducted by the unit commander when:

- (1) No misconduct is suspected, note that simple negligence is not misconduct.
- (2) No negligence is suspected.
- (3) A formal investigation is not required.
- (4) An informal investigation can only result in a LOD determination.

f. Use a formal investigation by an Appointed Investigating Officer when:

- (1) Unusual or doubtful circumstances exist;
- (2) Case complexity warrants;
- (3) Injury or disease apparently due to misconduct or willful negligence;
- (4) Self-inflicted injuries or suicide;
- (5) AWOL Status;
- (6) USAR/ARNG travel to or from duty; or
- (7) Death Cases: Do investigation but make no LOD determination.

g. Due Process:

- (1) No requirement for soldier to make a statement against interest.
- (2) Unwarned or involuntary statement invalid for making the LOD determination.
- (3) If an adverse finding is anticipated, soldier gets notice and opportunity to respond in writing.
- (4) If Approval Authority makes adverse finding, soldier gets notice of the determination.

h. Form 261 when conducting a LOD investigation.

4. POC: POC is the Chief of Civil and Administrative Law at 568-5646/0759.

SUBJECT: Human Immunodeficiency Virus (HIV) Positive Soldiers

1. **PURPOSE:** To educate commanders regarding the proper treatment of soldiers who are medically diagnosed as HIV positive.

2. **REFERENCES:** Department of Defense Directive 6485.1, Human Immunodeficiency Virus-1 (HIV - 1) (19 Mar 1991); Army Regulation 600-110 (01 Jun 1996); Army Regulation 600-8 (01 Oct 1989); Army Regulation 635-200 (01 Nov 2000).

3. **DISCUSSION:**

a. **Identification and Testing Requirement.**

- (1) All soldiers are required to be tested for the presence of HIV antibodies at least biennially.
- (2) A SIDPERS data field is the basic method of monitoring compliance with the periodic testing.
- (3) Birth month screening for HIV testing is on the list of required personnel action notifications sent to unit commanders by the servicing PSC.

b. **Notification and counseling.**

- (1) Information on HIV positive soldiers will be handled in a sensitive manner.
- (2) Commanders will be notified of any duty limitations of personnel by DA Form 3349 (Physical Profile) issued by the medical facility commander or other profiling authority.
- (3) A physician will notify the soldier that he or she has tested positive by Western Blot, that the meaning of the test is unknown at the time, but that it may mean that the soldier is infected by HIV and that he or she is being referred to a medical center for further evaluation.
- (4) Soldiers will receive preventative medicine counseling by medical department personnel on the relationship between HIV, the blood tests, and AIDS; the risk of disease transmission to close personal contacts and family members; methods of prevention; and the fact that HIV positive soldiers are not eligible to donate blood.
- (5) Commanders must formally counsel soldiers immediately after, but not before, the post-diagnosis preventative medicine counseling performed by medical department personnel. Counseling by commanders must include the following direct orders to the soldier:
 - (a) that the soldier verbally advise any sexual partners of the soldier's infection prior to engaging in intimate sexual behavior;
 - (b) to use condoms when engaging in sexual intercourse (this can include sexual intercourse with spouses—talk to your attorney first);
 - (c) to not donate blood, sperm, tissues, or other organs; and
 - (d) to inform all health care workers of the soldier's infection if the soldier seeks medical or dental treatment.

(6) The validity of a "safe sex" order is well established in military law. Several courts have addressed the issue and all agree that a compelling interest exists in the military service and society at large to ensure that those who defend the nation remain healthy and capable of performing their duty. This interest warrants the issuance of such an order. It is a public duty of the highest order to prevent the spread of the HIV virus. Soldiers who willfully disobey this order may be considered for disciplinary action for violation of a lawful order.

(7) Commanders must use DA Form 4856, found at Figure 2-2, AR 600-110, and ensure that all topics are addressed. Commanders must also ensure that completed counseling forms are maintained in a manner that protects the confidentiality of the information. Completed counseling forms will be maintained in the unit personnel files as long as the soldier is assigned to that unit. Upon reassignment, the commander will forward the commander's copy in a sealed envelope to the gaining commander following the procedures presented in AR 600-110, para 2-17.

c. Future Military Service.

(1) HIV positive soldiers with evidence of HIV infection will be referred for medical evaluation to determine their fitness for continued service in the same manner as personnel with other progressive illnesses. Soldiers who meet medical retention standards may reenlist, if otherwise eligible. Personnel who show no evidence of clinical illness or other indications of immunologic, or neurological impairment related to HIV infection will not be separated solely on the basis of testing positive for the HIV antibody.

(2) Soldiers who are infected with HIV and who are unfit for further duty will be retired or medically separated. Officers who are confirmed HIV positive within 180 days of their original appointment, or who report for initial entry training in an active duty status (other than ADT) and are confirmed HIV positive within 180 days of reporting to AD, will be processed for discharge under the provisions of AR 600-8-24. Enlisted soldiers who are confirmed to be HIV positive within 180 days of initial entry on AD will be separated for the convenience of the government for failure to meet procurement medical fitness standards under the provisions of AR 635-200, para 5-11. Any HIV positive soldiers may request separation from the service for the convenience of the government.

(3) Soldiers who are infected with HIV and who are fit for further duty will not be deployed OCONUS. Soldiers confirmed to be HIV positive while stationed OCONUS will be reassigned to CONUS as soon as possible, regardless of normal PCS procedures.

(4) HIV positive soldiers will not be assigned to Ranger, SOCOM or COHORT units scheduled for overseas rotation. HIV positive soldiers may be assigned to HEPS, ROTC, or recruiting duties on a case-by-case basis. Commanders are not authorized to close any of their units to HIV positive soldiers.

4. **POC:** The POC for this information is the Chief of Civil and Administrative Law at 568-0759.

SUBJECT: Services the Claims Office Provides

1. **PURPOSE:** To provide information on the services the Claims Office provides.
2. **Location and Hours of Operation:** The Fort Bliss Claims Office is located in building 113, telephone 568-5650/5197. We provide services on a walk-in basis on Monday, Tuesday, Wednesday, and Friday from 0900-1645 and on Thursday from 1230-1430. Individual appointments are available for claimants who cannot take advantage of our service during normal hours.
3. **Services the Claims Office Provides:** The office receives and processes all Chapter 11, AR 27-20 claims. These claims include damage and loss of household goods, hold baggage, and private automobiles shipped pursuant to PCS moves. Claimants may also file for losses resulting from thefts and vandalism at barracks or quarters, and other incident to service losses arising from unusual occurrences on the installation. The Claims Office also receives and adjudicates claims filed against the U.S. Government under AR 27-20, Chapters 3 and 4. These normally arise when a government vehicle causes damage to a POV. Finally, the claims office processes Article 139 claims. (See Information Paper-Claims Between Soldiers).
4. **POC:** The POC for this information is Chief, Claims Division, extension 5650/5197.

SUBJECT: Claims Between Soldiers (Article 139 Claims)

1. **PURPOSE:** To provide a summary of Article 139 Claims.
2. **What is Article 139?** Article 139, UCMJ provides a means of redress to any person, military or civilian, who believes that a member of the Armed Forces of the United States has willfully damaged, or wrongfully taken his or her property. An Article 139 claim is a complaint made to the brigade level commander (Special Court-martial Convening Authority, SPCMA) of the offender. The commander orders an investigation to determine if the soldier is at fault. If the preponderance of the evidence establishes fault, the commander directs finance to take money out of the offender's pay, and give it to the injured party.
3. **When does Article 139 apply?** The key words in Article 139 are "willfully damaged" or "wrongfully taken," which essentially mean vandalism or theft. An investigating officer ("IO") must find that the offender intended the act causing the loss, or exercised conduct showing a reckless or wanton disregard of the claimant's property rights. An Article 139 claim is appropriate if it is shown, for example, that a particular soldier stole personal property, such as a stereo, camera, or cash, and the property is not recoverable. An Article 139 claim is also appropriate if a soldier intentionally vandalizes an automobile or willfully destroys or damages a claimant's personal property during an argument.
4. **When does an Article 139 NOT apply?** Article 139 does not apply to claims for property damage resulting from negligence, such as most fender-bender traffic accidents, or for death or personal injury. Article 139 does not apply to disputes over debts, contracts, or over ownership of property, unless the dispute is merely a cloak for an intent to steal. Article 139 also does not include claims for remote or consequential damages. For example, if Private A has to rent a car because Private B wrecked Private A's car, Private A can recover only the reasonable value of the damage to the car.
5. **How does one file an Article 139 claim?** An Article 139 claim is a signed written claim for a definite amount submitted against a soldier through that soldier's brigade level commander. Absent good cause, the claimant must submit the complaint within 90 days of the incident giving rise to the claim. Although the claimant may submit the complaint to any commander in the offender's or claimant's chain of command, or to the Claims Office, the recipient must forward it to the SPCMA of the offender within two working days. The SPCMA then must appoint an IO within four days of the receipt of the claim. The IO completes the investigation within 10 days of receipt of the claim, and submits the report to the SPCMA who refers the report to the claims office for legal review. The Brigade S1 is responsible for monitoring the progress of the investigation. After review, the claim is returned to the SPCMA for approval or disapproval. If the SPCMA approves the claim, he directs the Finance and Accounting Office to withhold the amount approved from the pay of the offending soldier, and pay it directly to the claimant. The Commander, U.S. Army Claims Service must approve any amount above \$5,000.00.
6. **What does the Claims Office do?** Claims personnel can help the claimant file the claim and ensure the claim is delivered to the appropriate commander. The claims office will brief and advise the IO upon request, monitor the progress of the claim, and review the IO's report for legal sufficiency. They will also forward any claim over \$5,000.00 to the U.S. Army Claims Service.
7. **Conclusion:** Article 139 claims provide an opportunity unique in the military to force the wrongdoer to directly compensate victims for property damage or destruction. Command emphasis is required to ensure that these investigations are completed quickly. Many of the offenders are pending elimination or court-martial, and speedy processing of the Article 139 claim is essential to ensure the claimant is paid. Once the offender is no longer receiving military pay, the claimant may have no other remedy for his loss.
8. **POC:** The POC for this information is Chief, Claims Division, extension 5650/5197.

INFORMATION PAPER

SUBJECT: Claims for Power Surge Damage to Electrical Appliances

1. **PURPOSE:** To provide information on the payment of claims for lightning or power surge damage.
2. **DISCUSSION:**

The Fort Bliss/Biggs Army Airfield geographic area experiences occasional thunderstorm activity and lightning strikes near residences. However, the damage caused by such incidents is normally not compensable under Army claims regulations. Although paragraph 11-4, AR 27-20 authorizes compensation for a loss in government quarters resulting from unusual occurrences, paragraph 2-24, DA PAM 27-162 specifically excludes power surges or outages from unusual occurrences. Claims for lightning damage to electrical appliances located in post housing are only compensable in two situations. First, if lightning actually strikes the claimant's government quarters or the transformer box outside the quarters. The Directorate of Public Works and Logistics must verify the lightning strike. Second, if the power company records, or similar evidence shows that a particular residence or groups of residences were subject to unusually intense power surges. Compensating for lightning damage to off-post quarters is not authorized under any circumstances.

3. **POC:** The POC for this information is Chief, Claims Division, extension 5650/5197.

SUBJECT: Claims for Damage to Privately Owned Vehicles

1. **PURPOSE:** To provide information on the payment of claims for damages to privately owned vehicles.

2. **DISCUSSION:**

a. Many soldiers are under the impression that the Claims Office is equivalent to an insurance company. The Claims Office, however is bound by Army Regulations, and many claims payable by insurance companies may not be payable under Army Regulations.

b. Army Regulation 27-20, Chapter 11 and DA PAM 26-162, implementing 31 USC § 3721 specify circumstances in which vehicle losses and / or damages may be paid. Vehicles include automobiles, motorcycles, mopeds, utility trailers, camping trailers, trucks with mounted camper bodies, motor homes, boats, boat trailers, bicycles, and aircraft.

c. The above statute provides for payment of certain losses incident to military service, but is not intended to replace insurance coverage. This statute does not permit payment of claims for damages or losses to vehicles which are not located at quarters, or in an area where the command has assumed responsibility for, and provided security for the vehicle unless the losses or damages occur on a military installation, and are caused by theft, vandalism, fire, flood, hurricane, or other unusual occurrence.

d. An example is a soldier parking his or her car in the EDRE lot while on deployment. When the soldier return from the deployment, the soldier discovers that someone has scratched his or her car. The claim is most likely payable because the car was located in an area where the command had assumed responsibility for its security. It is important to note, that each incident is handled on a case by case basis.

e. Even if the vehicle is located at quarters or an authorized place, the claimant must prove that the loss or damage occurred while the vehicle was located at an authorized place. In short, the claimant bears the burden of proof, and the lesson to be gleaned from this is quite simple, the best assurance for protection against loss or damage is private insurance.

3. **POC:** The POC for this information is Chief, Claims Division, extension 5650/5197.

SUBJECT: Claims for Stolen Bicycles

1. **PURPOSE:** To provide information on the payment of claims for stolen bicycles.

2. **DISCUSSION:**

a. Army Regulation 27-20, Chapter 11 and DA PAM 26-162, implementing 31 USC § 3721 specify circumstances in which vehicle losses and / or damages may be paid. Vehicles include bicycles.

b. The above statute provides for payment of certain losses incident to military service, but is not intended to replace insurance coverage. This statute does not permit payment of claims for damages or losses to vehicles which are not located at quarters, or in an area where the command has assumed responsibility for, and provided security for the vehicle unless the losses or damages occur on a military installation, and are caused by theft, vandalism, fire, flood, hurricane, or other unusual occurrence.

c. An example of the above statutes in action is the case of a bike stolen from the bike rack in front of the PX. The claim is likely not compensable because the PX does not fall into the quarters category, and is not an area where the command has assumed responsibility for the security of the bike.

d. Another examples is a bike stolen from the bike rack in front of the barracks. This claim would likely be payable because the barracks falls into the quarters category.

e. Personnel assigned to Fort Bliss are required to register bicycles and similar vehicles at the Provost Marshal's Office. A failure to do so may result in denial of the claim.

3. **POC:** The POC for this information is Chief, Claims Division, extension 5650/5197.

SUBJECT: Legal Assistance Services, Bldg 113, Pershing Road

1. Purpose. To inform commanders of legal assistance services available at Fort Bliss Legal Assistance Office, Bldg. 113.

2. Facts.

a. All active duty and retired personnel (and their family members who hold military ID cards) and all officers of the commissioned corps of the Public Health Service on active duty or retired with pay (and their family members) may obtain services from Legal Assistance.

b. Assistance is available on personal civil legal matters, including the below listed matters, by appointment, 0900-1645, Monday, Wednesday, and Friday, and by appointment on Thursday from 1230-1430.

- (1) Family Law (divorce, child support, paternity, etc.)
- (2) Landlord-Tenant Matters
- (3) Real Estate Purchase/Sales Questions
- (4) Consumer Problems
- (5) Debt Collection Problems
- (6) Insurance Problems
- (7) Rebuttals to Letters of Reprimand
- (8) Reports of Survey
- (9) Bars to Reenlistment
- (10) Evaluation Appeals
- (11) General Advice on Civilian Criminal Matters
- (12) Estate/Probate Matters

c. The following are available by appointment on Tuesday:

- (1) Will preparation (0900 - 1200 and 1300 - 1430)
- (2) Will executions (1430 - 1630)

d. Power of attorney services are available from 1500-1615, Monday, Wednesday and Friday, and also Tuesday and Thursday depending on office resources.

e. Notarization of non-in-house prepared documents is available 0900-1200, Monday through Friday.

f. Notarization of in-house prepared documents (other than powers of attorney) such as living wills or affidavits will generally be by appointment later that day or the next, depending on available resources.

3. **POC.** The POC for this information is the Chief, Legal Assistance at 568-6513/7141.

SUBJECT: Deployment Readiness

1. Purpose. To inform commanders of legal issues relating to deployment.

2. Facts.

a. Soldiers in the U.S. Army must be ready to deploy at all times. Part of soldier readiness is ensuring that soldiers' families are prepared to conduct affairs and business while service members are deployed. Another part of that same readiness is affording every deploying soldier the opportunity to execute a testamentary document before deployment.

b. In furtherance of this readiness effort, the Legal Assistance Office (Bldg 113) prepares powers of attorney (POA's), and Last Will and Testaments as part of its regular function. The Legal Assistance Office also participates in Soldier Readiness Processing (SRP) sessions.

(1) Soldiers arriving at Fort Bliss inprocess the post during their initial period at this duty station. Commanders should encourage new soldiers to visit the Legal Assistance Office during their inprocessing periods to talk to an attorney about their personal readiness.

(2) An opportunity to process at an SRP is available to most units at various times throughout the year. Legal Assistance Office attorneys and legal clerks are on hand at SRP's to discuss wills, POA's, and Servicemen's Group Life Insurance (SGLI) elections.

(3) Soldiers and their family members may also obtain POA's from the Legal Assistance Office. The Legal Assistance Office staff also prepares wills by appointment each Tuesday.

3. POC. The POC for this information is the Chief, Legal Assistance at 568-6513/7141.

SUBJECT: Powers of Attorney

1. Purpose. To inform commanders about powers of attorney.

2. Facts.

a. A power of attorney (POA) is one of the strongest legal documents that an individual can give to another person. A POA is a document that enables a designated person to act on another's behalf. This person is called an agent or attorney-in-fact. One might give another person a POA when he knows that he is not going to be able to personally attend to his or her affairs. Acts performed by the agent are legally binding on grantor of the power. For this reason, one should only use a POA when absolutely necessary. The agent, the individual receiving the power, should be mature, intelligent, and able to exercise good judgment on the grantor's behalf. Please note that third parties (banks, businesses, etc.) are not required to accept a POA. Check with the particular bank or business before using a POA to be sure the institution will accept it. Additionally, some businesses have their own POA forms.

b. General Power of Attorney (GPOA). A GPOA authorizes an agent to act for the grantor in almost all matters. This allows access to banking accounts, checking accounts, safety deposit boxes, and other financial accounts. It also authorizes an agent to borrow money in the grantor's name, complete wire transfers, sell or mortgage real property, use credit lines, and sign most kinds of contracts in the grantor's name. A GPOA is rarely needed, and not recommended because an agent can easily abuse his power, and such abuse can be devastating to the grantor. The GPOA gives an agent the power to make almost any decision on the grantor's behalf. A GPOA should only be used when the grantor anticipates a prolonged absence, and actions to protect the grantor's family and property are apt to arise. Spouses with joint accounts or jointly titled personal property do not need GPOAs. In addition, a soldier should never grant a GPOA when a special POA will suffice.

c. Special Power of Attorney (SPOA). SPOAs allow an agent to perform only those actions specified with the document itself. Because SPOAs convey only limited power, they are preferable to GPOAs. Businesses, doctors, and hospitals are normally more willing to accept a SPOA. The Legal Assistance Office has SPOAs for automobile transactions, real property transactions, family and medical care, household goods, and others. A SPOA minimizes potential abuse by an agent.

d. Safeguarding a POA. Soldiers should never grant a POA unless they are sure the power is needed. POAs should always have an expiration date. Fort Bliss policy limits POAs to eighteen (18) months in most cases.

e. Revoking a POA. The death of either the grantor or the agent revokes the POA. Passage of a POA's expiration date also works to cancel the POA. Finally, a grantor may execute a document revoking a POA.

3. POC. The POC for this information is the Chief, Legal Assistance at 568-6513/7141.

SUBJECT: The Soldiers' and Sailors' Civil Relief Act

1. **Purpose.** To provide commanders with information regarding the Soldiers' and Sailors' Civil Relief Act (SSCRA).
2. **Facts.** Congress enacted the SSCRA in 1940 to protect military personnel fulfilling the requirements of national defense. Congress recognized that military service can interfere with a soldier's ability to protect his or her legal rights or to meet certain financial obligations.
 - a. **General.**
 - (1) The SSCRA's protections usually begin when an individual enters active duty, whether voluntarily or involuntarily.
 - (2) The protections of the SSCRA are based on the concept that a soldier's military service may "materially affect" his ability to protect his legal rights or to fulfill legal obligations. As an example, entry into active duty may result in a marked decrease in pay. One might argue that this "materially affects" a service member's ability to pay his pre-service debts. A possible remedy could be postponing or reducing his pre-service debt payments.
 - (3) Additionally, a soldier's geographical location may "materially affect" his ability attend and participate in a court proceeding in another location. The SSCRA may allow the soldier to postpone any court proceedings until he can attend and participate proceedings. This is especially helpful when soldiers are overseas.
 - b. **Stay of Proceedings.**
 - (1) A court proceeding may be stayed. A "stay" is a court order stopping or delaying a lawsuit for some period of time. A soldier who is sued in a civil court can ask the court, pursuant to the SSCRA, not to proceed with a case if the soldier's ability to participate is "materially affected" by military service. Requirements such as a deployment, stationing overseas, required training, TDY, etc., will normally suffice to show that a soldier's military service is preventing his attendance to the court matter and allow for a stay.
 - (2) Most courts also require a showing that the soldier requested leave to attend to the court matter and that this was turned down due to military needs. Affidavits from the soldier and the commanding officer will generally satisfy this requirement.
 - (3) Courts that do proceed without the soldier, generally, must appoint an attorney to protect the soldier's interest.
 - c. **Interest Rates.**
 - (1) The SSCRA allows a service member to reduce the level of his interest rate on pre-service debts, if entry onto active duty has had a "material affect" on his ability to pay. For example, a pre-service charge card debt carrying interest at 18% per annum may be reduced to 6% per annum, if entry onto active duty has "materially affected" the soldier's ability to pay the debt. Generally, the soldier must only show that his income has been reduced by entry onto active duty.
 - (2) This SSCRA benefit does not apply to debts a soldier acquires after entry onto active duty.

d. Lease Termination. A soldier may terminate a lease agreement he entered into prior to active duty. The soldier must provide at least 30 days written notice to take advantage of this provision. The SSCRA does not permit a soldier to terminate a lease executed into after entry onto active duty. The "military clause" sometimes included in a lease is not a part of the SSCRA. Some states, however, have enacted statutes to assist soldiers who must break a lease for reasons of deployment.

e. Installment Contracts, Mortgages, Trust Deeds or Liens.

(1) Some protections of the SSCRA apply to installment contracts, mortgages, trust deeds, or liens. Payment must have started before entry onto active duty. Because of his military service, a soldier may now be unable to make monthly payments, allowing a creditor to foreclose or repossess the property.

(2) Under the SSCRA, a creditor cannot repossess or foreclose his interest on the property without first obtaining permission from a court. This SSCRA provision applies even though the contract may provide for repossession or foreclosure without court approval.

(3) These protections do not apply to contracts, mortgages, trust deeds, or liens given or acquired after entry onto active duty. Further, refinancing a pre-service debt will transfer the debt into a post-service debt and therefore outside the SSCRA protections.

f. Default Judgment Protection. A court may not grant a default judgment (i.e., a judgment when a party fails to appear in court) against a soldier unless the initiating party follows specific procedures designed to protect the soldier's interest. A failure to follow these procedures allows the soldier to request the case be reopened. A soldier who is discharged from the service has 90 days after discharge to request reopening based on the protections of the SSCRA. This protection applies only in civil cases.

g. Home Evictions. If a soldier is renting a dwelling for \$1,200 or less per month, neither the soldier nor the soldier's family may be evicted without a court order. The court may stay the eviction for up to three months if it finds that military service has had a "material affect" on the soldier's ability to pay rent. This protection applies whether the dwelling was rented before or after entering active duty.

h. Taxation. Under the SSCRA, only a soldier's state of legal domicile may tax military pay. The SSCRA does not exempt non-military income derived from sources within a state where the soldier is stationed. Real property taxes are subject to local taxes. The SSCRA also allows soldiers to keep home state registration on their motor vehicles if properly licensed in home states.

i. Powers of Attorneys. Powers of attorney executed by service members who are subsequently in a "missing status" are automatically extended for the period the person is missing in action.

j. Other protections available under the act include professional liability insurance, statutes of limitation, and life insurance.

3. POC. The POC for this information is the Chief, Legal Assistance at 568-6513/7141.

SUBJECT: Last Will and Testament/SGLI

1. **Purpose.** To inform commanders on obtaining wills and the importance of the Servicemen's Group Life Insurance (SGLI) election.

2. Wills.

a. A will is a legal document that tells the survivors what the testator (the person who's will it is) wants done with his or her property if he or she dies. It can also express who the testator wants to care for any minor children if he dies.

b. It is imperative that a will be the voluntary act of the individual. A will obtained by a soldier, resulting from being ordered to obtain a will, is invalid.

c. Not all soldiers require wills. Factors such as marital status, financial worth, existence of minor children, and the soldier's desires as to who takes the property upon death must be considered.

3. SGLI.

When soldiers consider creating wills and consult a legal assistance attorney, the attorney will counsel the soldier on the Servicemen's Group Life Insurance (SGLI) election.

a. An eligible beneficiary is any person or legal entity designated by the soldier.

b. If a service member makes no designation, the government will pay proceeds according to federal statute.

c. Soldiers should receive counseling so that they clearly and specifically identify by name the person or persons they wish to designate as beneficiaries. Titles such as "parents," "sisters," "brothers," "siblings," and "children" are not desirable because they are not specific.

d. Soldiers must keep the beneficiary designation current. A change in marital status does not negate a spousal designation.

e. A soldier who desires to name minor children as designated beneficiaries should consider naming a Trustee or a custodian as the designated beneficiary rather than the minor children.

4. **POC.** The POC for this information is the Chief, Legal Assistance at 568-6513/7141.

SUBJECT: Common Fort Bliss Scams

1. **Purpose.** To inform commanders of common consumer scams operating around Fort Bliss.

2. **Facts.**

a. Numerous businesses market products and services at soldiers. A few of these companies use deceptive practices as a means to make a sale. Those deceptive sales create legal and financial problems for soldiers.

b. Scams in this area fall into one of three categories:

(1) Door-to-door sales;

(2) Telephone solicitations; and,

(3) Car repair rip-offs.

While there are other scams locally, they are generally directed to permanent residents of El Paso (home repairs, pools, spas, etc.).

3. **General.**

a. The most common strain amongst all scams is that they convince the purchaser he is getting something of great value for almost nothing in return.

b. Often, sales representatives will state that a particular offer is only good for that moment and will expire the next day.

4. **Door-to-Door Sales.** Most often, books, film, educational services, and discount certificates are offered at a price of approximately \$2,000 and financed at higher than prevailing interest rates. Almost always, these products and services are available locally for considerably less cost. Many times, a salesman will mislead a soldier into believing the quality of the product is much better than what the purchaser actually receives.

a. Federal law allows a purchaser to cancel a door-to-door sale within three business days of signing the contract by simply notifying the seller in writing of the cancellation. The law requires door-to-door sales contracts to contain the purchaser's right of cancellation within the contract itself. Sometimes a soldier will call to cancel a contract, but this is not sufficient. The purchaser must mail the notice of cancellation in order to take advantage of this protection.

b. The right to cancel within three business days is a soldier's best protection in a door-to-door sale transaction.

c. Door-to-Door salesmen may not contact Fort Bliss soldiers during duty hours at their places of duty. Contact with soldiers living in barracks can only occur after duty hours.

d. To solicit from soldiers in government quarters, a salesman must be invited by the soldier or soldier's family. Salesmen must acquire a post permit to solicit on Fort Bliss.

5. **Telephone Solicitations.** Unscrupulous salesmen have used the telephone to obtain soldiers' social security account numbers (SSAN's), bank personal identification numbers (PIN's), charge card numbers or other potentially powerful information. Salesmen also create large long distance telephone bills, sell products with little or no value at extremely high costs, and obtain donations to entities using false or misleading names. Soldiers should never give a caller their SSAN, PIN, or charge card number without being absolutely sure the caller is legitimate. The best protection against phone scam artists is to delay any decision for a few days. During this time, the soldier can check out the offer. Most often, unsavory callers will not accept any delay.

6. **Car Repair Rip-Offs.**

a. Low car repair estimates that seem to be too good to be true usually are. A really low estimate generally results in a very high repair bill later. Once the shop has the vehicle and starts work, a dishonest repair shop may tell a soldier that additional repairs are needed and a new estimate is given, much higher than the original low estimate. If the soldier balks at the new, much higher estimate, the repair shop will submit a new bill for the work already done. If the soldier agrees to the new, much higher estimate, the shop goes ahead and does the work, collecting the higher cost.

b. The repair shop has forced the service member into paying a much higher cost than he originally anticipated. Soldiers can minimize the risk of these scams by using reputable repair shops. Shops with nationally advertised and recognized names may give estimates that are generally higher originally, but the final bill is pretty close to the estimate given.

7. **POC.** The POC for this information is the Chief, Legal Assistance at 568-6513/7141.

SUBJECT: Tax Preparation Services on Fort Bliss

1. Purpose. To inform commanders of tax preparation services offered on Fort Bliss.

2. Facts.

a. The Fort Bliss Tax Assistance Program provides free federal income tax return assistance to the local military community.

b. The Tax Center is located in Building 50 on Fort Bliss, behind Building 13.

c. The Tax Center operates from mid-January through April 15 of each year, Monday through Saturday.

d. Tax Advisors comprised of active duty soldiers assigned to Fort Bliss and civilian volunteers who have been trained by the Internal Revenue Service assist taxpayers in preparing their annual returns. Electronic filing is available.

3. POC. The POC for this information is the Chief, Legal Assistance at 568-6513/714.