BY THE U.S. GENERAL ACCOUNTING OFFICE

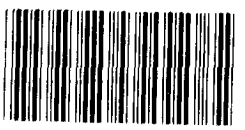
Report To The Secretary Of Defense

Better Administration Of The Military's Article 15 Punishments For Minor Offenses Is Needed

Article 15 is the most frequently used means of punishment for minor offenses in the military. It is an important tool that commanders can use to deter misconduct, maintain discipline, and encourage service members to improve their performance.

While effective most of the time, the services need to better administer and monitor the use of article 15 to maximize its potential benefits. GAO found that disparities in using article 15 can lead to low morale and job performance. Although intended as a minor disciplinary action, a record of article 15 punishments can stigmatize a service member's career and lead to an involuntary separation with a less than honorable discharge.

GAO makes several recommendations to the Secretary of Defense to provide more guidance on article 15 punishments and to limit their long-term consequences.



FPCD-80-19
SEPTEMBER 2, 1980

UNITED STATES GENERAL ACCOUNTING OFFICE
WASHINGTON, D.C. 20548

FEDERAL PERSONNEL AND
COMPENSATION DIVISION

B-199425

The Honorable Harold Brown
The Secretary of Defense

Dear Mr. Secretary:

This report discusses the services' administration of article 15 punishments authorized under the Uniform Code of Military Justice. Article 15 was intended to benefit both the service member and the services by providing a nonjudicial way to punish those committing minor offenses. But we found that the benefits possible are not being realized. We believe that you, in conjunction with the services, need to (1) provide more guidance on the uses of article 15 punishments, (2) monitor its use, and (3) minimize the unwarranted consequences associated with receiving article 15 punishments.

Our recommendations to you are on pages 26, 41, and 50. As you know, section 236 of the Legislative Reorganization Act of 1970 requires the head of a Federal agency to submit a written statement on actions taken on our recommendations to the Senate Committee on Governmental Affairs and the House Committee on Government Operations not later than 60 days after the date of the report and to the House and Senate Committees on Appropriations with the agency's first request for appropriations made more than 60 days after the date of the report.

We are sending copies of this report to the Director, Office of Management and Budget; the Chairmen, House and Senate Committees on Appropriations and Armed Services, House Committee on Government Operations, and Senate Committee on Governmental Affairs; Chairman, Subcommittee on Manpower and

Personnel, Senate Committee on Armed Services; Chairman, Subcommittee on Military Personnel, House Committee on Armed Services; and to the Secretaries of Transportation, the Army, the Navy, and the Air Force.

Sincerely yours,

H. L. Krieger
Director

GENERAL ACCOUNTING OFFICE
REPORT TO THE SECRETARY
OF DEFENSE

BETTER ADMINISTRATION OF THE MILITARY'S ARTICLE 15 PUNISHMENTS FOR MINOR OFFENSES IS NEEDED

D I G E S T

Article 15 of the Uniform Code of Military Justice is intended to give military commanders a swift, efficient, and easy way to

--punish those committing minor offenses,

--maintain discipline, and

--deter misconduct.

The punishments authorized for article 15 are limited and generally less severe than those that can be imposed by court-martial. Also, unlike a court-martial, an article 15 is not considered a conviction for a criminal offense. (See p. 1.)

But, article 15s can negatively affect service members' entire military careers. It becomes a permanent part of their personnel file and can lead to involuntary separation from the service with a less than honorable discharge, which can limit veterans' benefits and civilian employment opportunities. (See pp. 3 and 45.)

Additionally, GAO found problems with the use, implementation, and oversight of article 15 punishments. As a result, the maximum benefits possible from the use of article 15 are not being achieved. (See pp. 1, 6, and 10.)

Most of the enlisted service members GAO interviewed considered article 15s to be unfair and that work efficiency, morale, and career-mindedness are adversely affected by its use. Senior enlisted personnel (noncommissioned officers), however, generally

considered article 15s fair. GAO believes that while the current use of article 15 does not maximize its potential to deter offenses or correct behavior, it can still be useful and beneficial to the services and to service members. However, improvements are needed. (See pp. 6 and 10 to 25.)

COMMANDERS NEED MORE GUIDANCE ON USING ARTICLE 15

GAO believes that most commanders conscientiously attempt to make appropriate, fair, and effective decisions in imposing article 15s, based on the unique circumstances of each case. However, GAO found that wide disparities exist within and among the services with respect to how offenses are dealt with. Without sufficient guidance, the commander's past experiences, personality, moral values, prejudices, and state of mind are the dominant factors in (1) deciding whether an offense was committed and (2) the punishment to be imposed. (See pp. 3, 6 to 18, and 26.)

GAO believes that the punishment imposed, along with the use of leniency authority, may be the key to article 15 effectiveness. It is a difficult task, however, for the commander to use article 15 to maintain and promote discipline while still being fair and consistent and maintaining high levels of morale. Commanders need more guidance and information on administering article 15 and service members need better information on the potential advantages and disadvantages of accepting it. (See pp. 8, 9, and 34 to 38.)

SERVICE MEMBERS NEED MORE INFORMATION ON ARTICLE 15 SAFEGUARDS

The article 15 punishment process involves only a minimum of legal and procedural safeguards. Once a service member accepts it,

the commander imposing it has wide discretion in deciding what punishment to impose. Service members, however, are given certain administrative and procedural safeguards. Among others, they may

--refuse article 15 punishments and demand a trial by court-martial and

--appeal the punishment imposed.

Often, service members are also given the opportunity to consult with legal counsel before punishment is imposed. (See pp. 3 and 30.)

However, service members GAO interviewed infrequently used these safeguards because they were unaware of their availability, did not see the benefits to be derived, and/or feared reprisals. Some may be accepting article 15 punishments when it is not in their best interests to do so. Additionally, when counsel was used, it varied in quality, availability, and convenience. (See pp. 30 to 40.)

While inconsistent punishments are a major source of dissatisfaction with article 15 recipients GAO reviewed, few punishments are appealed. Service members doubted the integrity of the appeal process and saw little chance of success. In addition, they were concerned about possible reprisals. (See pp. 38 to 40.)

ARTICLE 15s STIGMATIZE SERVICE MEMBERS

Although not required by the code or the Manual for Courts-Martial, article 15 records are placed in personnel files as a standard practice by all services and are often used in a wide variety of personnel decisions, including work assignments, promotions, and reenlistment opportunities.

In addition, a history of article 15 punishments can lead to an involuntary discharge with an adverse characterization which can reduce veterans' benefits and limit civilian job opportunities. (See pp. 3, 45, and 47 to 50.)

The recording of article 15s in service members' personnel files has resulted in changing the character and potential effect of article 15. While intended as an informal way to quickly correct service members' behavior, article 15 records are being used by the services for a wide range of personnel and career management decisions. This has created the need for greater uniformity and fairness in the use of article 15 punishments since records of them can seriously affect a service member's career. (See pp. 1 and 45 to 47.)

RECOMMENDATIONS TO THE SECRETARY OF DEFENSE

To help maintain discipline; encourage positive behavioral change; improve morale, job performance, and career-mindedness; and increase the deterrent effect of article 15, the Secretary of Defense should:

--Establish clear goals and objectives of article 15 punishments. These should be stated in terms of measurable goals and be translated into specific standards of effectiveness.

--Improve guidance and information to commanders for imposing article 15.

--Direct the services to periodically evaluate the consistency and effectiveness of the quantity and type of punishments imposed to determine whether additional guidelines are needed.

--Consider greater involvement of the commander's staff judge advocate in deciding whether to impose article 15 and the appropriate punishment.

--Establish criteria which clearly state when it is appropriate to use mitigations, remissions, set-asides, and suspensions. Objectives, target groups, and expected results should be established, including a monitoring system to insure that these clemency alternatives are effective in achieving desired results. (See pp. 26 to 27.)

To help insure that service members can make an informed decision and to protect the members' administrative and procedural rights, the Secretary of Defense should direct the services to:

--Improve military justice training for enlisted personnel to insure their full understanding of the article 15 punishment process, including their procedural rights and the possible long-term consequences of accepting an article 15.

--Standardize the type and quality of counsel provided in article 15 cases. If the the opportunity to consult with counsel is provided, the advice given should go beyond a mere restatement of the right to refuse an article 15.

--Evaluate defense counsel staffing levels to determine whether they are adequate so that advice can be made available at reasonable times and locations. (See p. 41.)

GAO also recommends that the Secretary direct the services to develop uniform criteria on the recording and use of article 15 records. (See p. 50.)

Further, GAO recommends that the Secretary propose to the President the following changes to the Manual for Courts-Martial:

--Specify the service member's right to consult with independent counsel and define (1) "independent counsel" and (2) the extent of advice that will be provided service members.

--Make it clear that the service member's right to refuse article 15 does not expire until punishment is imposed. The Manual should specify that the service member be advised of this. (See p. 41.)

AGENCY COMMENTS

At GAO's request, DOD provided comments on a draft of this report. (See app. VI.) Overall, DOD agreed that the issues raised merited attention. DOD also concurred with the need for a fair and efficient system to administer article 15 punishments, but believed that most of GAO's recommendations would not promote that end.

After considering the comments, GAO has not significantly modified the positions taken in the report except to agree that article 15 records are necessary in certain instances. DOD's position is that certain personnel decisions require the complete disciplinary record of the individual. GAO has modified the recommendation accordingly. But the use of article 15 records should be strictly limited and controlled by the services. Most importantly, the service member should be made fully aware of the possible consequences of accepting article 15 punishment, including the possible use of these records in making future personnel decisions affecting the service member.

Contents

ABBREVIATIONS

DOD	Department of Defense
GAO	General Accounting Office
NCO	Noncommissioned officer

CHAPTER 1

INTRODUCTION

Article 15 of the Uniform Code of Military Justice (see app. I) is the most frequently used level of disposition for punishing minor offenses in the military service. Offenses punishable by article 15 are ordinarily limited to offenses which, if tried by court-martial, could not be punished by a dishonorable discharge or confinement for more than 1 year. In 1978 the services imposed article 15 punishments more than 315,000 times (about 16 times the number of courts-martial), primarily on young, male, first-term enlistees in the four lowest military grades.

Article 15 provides that any commanding officer may impose disciplinary punishments for minor offenses without the intervention of a court-martial. These disciplinary punishments may be either in addition to or in lieu of admonition or reprimand. Unless a service member is embarked on a vessel, article 15 punishment may not be imposed if the service member demands trial by court-martial.

Article 15 is intended to benefit both the military services and the service members. From the service members' perspective, article 15 punishments are limited and generally less severe than court-martial punishments. Also, unlike a special or general court-martial, article 15 is not considered a Federal conviction for a criminal offense. For the services, article 15 is intended to provide a swift, efficient, and easy way to (1) punish those committing minor offenses, (2) maintain discipline, and (3) deter future offenses by encouraging positive behavioral changes. Our review, however, revealed problems with the use, implementation, and oversight of article 15. As a result, the maximum benefits possible from its use are not being realized. More emphasis is needed on the services' administration of article 15.

EFFECTS OF ARTICLE 15 ON SERVICE MEMBERS

Article 15 is the most likely contact service members will have with the military justice system. The only limit to imposing article 15 punishments, other than certain offenses reserved for court-martial, is that the specific action must be an offense under the code. However, the service member's commander--a commissioned officer with authority to impose punishment--determines if the action is punishable

by article 15. As a result, service members may not know if they are acting in a manner which could result in article 15 punishment. Actions punishable under article 15 include

--failing to empty a wastebasket or to get a haircut,

--appearing for guard duty in a dirty uniform,

--being absent (unauthorized) anywhere from 5 minutes to 30 days,

--stealing, or

--assaulting another person.

Within maximum limits established by the code, the individual's commander also determines the severity of the punishment imposed. As a result, punishments are not always predictable. Article 15 punishment can involve an oral reprimand, a reduction in pay grade, a fine of up to one-half of a service member's pay for 2 months, restriction for 60 days, extra duty for up to 45 days, or some combination of these.

From 1973-78, article 15s were imposed at a rate of about 353,000 annually, or at a rate of 165 per 1,000 force strength. 1/ During this period, the Army imposed 48 percent of the article 15 punishments, the Navy 28 percent, the Marine Corps 16 percent, and the Air Force 8 percent.

Article 15 Imposition Rates

Year	Total	Rate per 1,000 force level
FY 1973	366,001	157.6
FY 1974	396,419	183.4
FY 1975	370,310	174.0
CY 1976	341,154	164.7
CY 1977	326,772	157.6
CY 1978	315,527	152.6

1/The article 15 ratio of 165 per 1,000 is based on average total force strength levels. However, 96 percent of all article 15s are imposed on personnel in the lowest pay grades (E-1 through E-4).

Once an individual is accused of wrongdoing, the commander must decide, based on the circumstances of the incident, whether to excuse the individual, refer the case to court-martial, or impose punishment under article 15. With the exception of service members "attached to or embarked" on a vessel, a commander cannot impose article 15 punishment if the service member refuses to accept it. If the article 15 is refused the commander may drop the matter or refer it to court-martial. If the service member accepts the article 15, it is not an admission of guilt but only that he/she is willing to accept punishment.

Because the article 15 process is nonjudicial, the commander imposing it is virtually unrestrained by legal process. For example, rules of evidence do not apply and providing defense counsel at the hearing is not mandatory.

Nevertheless, the accused does have some protection against the possible arbitrary and capricious use of article 15. In addition to the right to refuse article 15, the accused usually can consult with counsel to decide whether to accept the punishment. If the accused considers the punishment to be too harsh, he/she can appeal it.

A record of an article 15 becomes a permanent part of the service member's personnel file. It can affect the service member's entire military career. For example, article 15 records:

--Are used in a wide range of personnel decisions such as promotions, training, assignments, and reenlistment.

--Can be used in determining punishment in a subsequent court-martial.

--Can lead to involuntary separation from the service with a less than honorable discharge; which limits a service member's veterans' benefits and possible civilian employment opportunities.

The long-term consequences of accepting an article 15 punishment can be severe. However, on the basis of our interviews with service members and commanders we believe service personnel are not fully aware of these consequences.

OBJECTIVES, SCOPE, AND METHODOLOGY

The objectives of our work were to evaluate the effectiveness and equity of article 15. We specifically wanted

to determine if article 15 punishments: (1) aid in maintaining discipline and deterring misconduct and (2) are imposed fairly and consistently within and among the services. We also examined the administrative safeguards and protections given service members during article 15 proceedings.

We performed our review at the Department of Defense (DOD) and Air Force, Army, Navy, and Marine Corps headquarters locations in Washington, D.C., and at military installations nationwide. (See app. II.)

We reviewed article 15 requirements in the code, the Manual for Courts-Martial, the military services' regulations and implementing guidelines, reports, studies, and court cases. Because quantitive data on article 15s is limited, we selected 1,117 actual cases from 1977 and 1978 to assess whether the article 15 process is fairly and consistently applied. We attempted to avoid sample bias and minimize the chances of misrepresentation of our findings by selecting service locations and using control cases to verify our findings from the actual cases. (See app. III.) For these cases we obtained demographic and disciplinary data by examining article 15 records at local commands and master personnel records located at Washington, D.C.; Randolph Air Force Base, Texas; Fort Benjamin Harrison, Indiana; the U.S. Army Reserve Components Personnel and Administration Center, and the General Services Administration Military Personnel Records Center in St. Louis, Missouri; and Lowry Air Force Base, Colorado.

While our sample of 1,117 actual article 15 cases was not designed to provide projectable data for all of the military services, it does provide a good perspective of how article 15 punishments are being administered. To gain a greater understanding of the article 15 process and its effects, we also interviewed 290 commissioned officers, noncommissioned officers (NCOs), and enlisted personnel.

AGENCY COMMENTS

We requested DOD comments on a draft of this report (see app. VI) which were considered in the final preparation. Overall, DOD agreed that the issues merited attention but did not believe a majority of our recommendations would promote a fair and efficient system for administering article 15 punishments. It also noted that the sample of actual cases we used represented only .17 percent of the article 15s imposed by all the services during the 2 years of the study period, inferring that the number of cases selected was not representative.

After considering the comments, we did not significantly modify the positions taken except to agree that article 15 records are necessary in certain instances. Also, as noted above, the sample was not designed to provide projectable data for the services. In selecting service locations to visit and the sample size, we consulted with DOD officials at the outset of our review. They agreed that our methodology (described in app. III) would provide a good representation of article 15 impositions and practices among the services.

CHAPTER 2

CHANGES ARE NEEDED TO ACHIEVE GREATER BENEFITS FROM ARTICLE 15

Commanders use article 15 punishments to punish those who commit minor offenses, promote and maintain discipline, improve morale, and/or deter future offenses. Though meeting many of the commander's needs, our review showed that present article 15 punishment practices are not achieving the benefits to the extent possible. However, the purposes and objectives of article 15 punishments are vaguely defined, standards have not been established to measure success or effectiveness, and evaluations are difficult to perform because quantitative data on article 15s is limited. We found that:

--Article 15 punishments do not appear to be very effective in achieving desired behavioral changes. Recidivism among article 15 recipients in our sample was high (ranging up to 48% in one service).

--Many of the service members we interviewed thought article 15 punishments were unfair and stated that these perceptions of unfairness can lower morale and adversely affect job performance. Over half of the 76 enlisted personnel interviewed who had received an article 15 stated that they were treated unfairly in their last encounter and considered the punishment unfair. Eighty percent stated the punishment had a bad effect on their morale, and 38 percent said their article 15 experience adversely affected their job performance.

--Some service members who had decided not to make the service their career said article 15 experiences influenced this decision.

--Behavioral incentives did not appear to be effectively used by commanders; remissions, mitigations, and set-asides were rarely used; and suspensions were used almost indiscriminately.

ARTICLE 15 GOALS AND OBJECTIVES ARE NOT CLEAR

The code does not define the purpose of article 15 punishments, and the Manual for Courts-Martial states only that article 15 enables commanders to impose punishment for minor

offenses and maintain discipline within their commands. Service regulations expand only to a limited degree on the purpose of article 15.

--The Army's regulation, Military Justice Legal Services, identifies article 15 as a means to correct, educate, and reform offenders; preserve offenders' records of service by avoiding a court-martial conviction; and further military efficiency by disposing of minor offenses more effectively.

--The Air Force Judge Advocate General Manual cites article 15 as primarily corrective in nature and reiterates the Army's point that it can be used to effectively dispose of minor offenses.

The Navy's Manual of the Judge Advocate General, used also for the Marine Corps, does not state the purpose of article 15.

We asked 93 officers, including staff judge advocates, what they thought the purpose of article 15 punishments is. As shown, many believe rehabilitation is the primary purpose.

	Commanders	Staff judge advocates
	(percent)	
Punishment/retribution	12	7
Deterrence	13	21
Rehabilitation	45	45
Other reasons	30	27

Some respondents were not specific and gave responses such as "to maintain discipline" or "swift justice." Some officers said they used article 15 punishments as a training or teaching device to get the service member's attention. An August 1978 DOD report on discharges noted that "individuals may receive frequent nonjudicial punishments [article 15s] during recruit training as a teaching or training device."1/ Considering the possible consequences of an article 15 on a service member's career, we question whether recording article 15s used as "training devices" is appropriate.

1/Report of the Joint-Service Administrative Discharge Study Group (1977-78), DOD, August 1978.

SERVICES DO NOT MONITOR OR EVALUATE ARTICLE 15 EFFECTIVENESS

The services do not routinely evaluate the use and effectiveness of article 15 punishments. But comprehensive data is needed to effectively administer and monitor the use of article 15 punishments. With the exception of the Air Force, quantitative data on article 15s is limited.

The Air Force Automated Military Justice Analysis and Management System maintains information on each case, including a demographic profile of the accused, punishment imposed, specifications of the charge, and prior disciplinary history. In addition to monthly statistical reports, the Air Force also prepares special studies when it believes trends are developing which indicate changing offense patterns. For example, a recent increase in the Air Force's use of article 15 punishments prompted a study to determine the cause. The Air Force was still analyzing the results of the study at the time of our review. We believe the capability to perform this type of analysis should be available DOD-wide.

COMMANDERS LACK GUIDANCE ON DETERMINING PUNISHMENTS

Little guidance is provided to commanders on how to determine appropriate punishments and how to properly and effectively use leniency authority. The code provides maximum punishment limits while allowing for leniency authority through the use of remissions (excusing the offender from unexecuted portions of a punishment), mitigations (lessening the severity of the punishment), set-asides (cancelling a punishment in whole or in part and restoring all rights, privileges, and property), and suspensions (postponing imposition of the punishment for a specified probationary period of time).

We believe that the punishment imposed, along with the use of leniency authority, may be the key to article 15 effectiveness. Without adequate guidance, however, it is difficult for the commander to use article 15 to maintain and promote discipline while still being fair and consistent and maintaining high levels of morale.

In 1974, the Army Judge Advocate General summed up the dilemma the commander faces by observing: 1/

1/A presentation by Major General George S. Prugh on "Evolving Military Law," the American Bar Association meeting, Honolulu, Hawaii, Aug. 13, 1974.

"Sentencers are told what they must consider but not how various facts fit together; not told what the purpose of the sentence is, they are not told what their goals should be; they are given several means of punishment to use but left to their own devices to select the proper ones."

Seventy percent of the commanders we interviewed felt that service guidelines on the use of article 15 punishments were at best only moderately useful. Commanders told us they rely on their immediate superiors, colleagues, and staff judge advocates as their most useful sources of information.

When assuming a new command, commanders are not always briefed on disciplinary patterns at the post or the unit they have been assigned to command. Twenty-four percent of the commanders we interviewed were not briefed by the outgoing commander. Yet, most commanders who were briefed found them useful.

Fifty-one percent of the commanders we interviewed wanted additional information and training on article 15. They asked for periodic formal and informal classroom training and basic refresher courses. Many stated that refresher training should be given each time a commander assumes a new command. Some said they liked the control case method we used and felt this type of training would be useful. About 48 percent of the staff judge advocates we interviewed said commanders could use more article 15 training.

When asked to describe the types of information that would be most helpful, commanders overwhelmingly asked for specific nonprocedural information on:

--Offenses commonly treated by article 15.

--Punishments imposed for specific offenses.

--Techniques related to article 15 and used by commanders that have been successful in dealing with minor offenses.

--Case studies, guidelines, and standards.

ARTICLE 15s DO NOT APPEAR TO DETER OFFENSES AND ARE VIEWED AS UNFAIR

While the use of article 15 punishments is intended to help deter offenses and to encourage good behavior, we found that recidivism among its recipients was high. In our sample, 32 percent of the service members who received article 15s later received another or were referred to court-martial. Recidivism rates averaged 13 percent for the Air Force, 32 percent for the Marine Corps, 38 percent for the Army, and 48 percent for the Navy. In addition, we found that if a service member received more than one article 15, he would probably receive three or more during his enlistment.

As shown below, many of the enlisted personnel we interviewed believed the article 15 process is unfair. Enlisted personnel, commissioned officers, and NCOs told us that morale, job performance, and career mindedness were affected by these perceptions of unfairness. Of the 76 enlisted personnel we interviewed who had received an article 15, 59 had decided against making the service their career. They said that their experience with article 15s influenced that decision. Eighty percent said it also affected their job performance.

In contrast, however, NCOs who seldom receive article 15s but in many cases recommend to the commander that article 15s be imposed, generally considered them fair.

How often is article 15 fairly administered?	Enlisted personnel with prior article 15s	Enlisted personnel with no prior article 15s	NCOs
	(percent)		
Always	1	4	61
Most of the time	27	48	37
Sometimes	43	38	2
Hardly ever	22	10	0
Never	7	0	0

DISPARITIES IN HOW SIMILAR OFFENSES ARE TREATED AND THE PUNISHMENTS IMPOSED

Many of the enlisted personnel who considered article 15s to be generally unfair based their assessments on punishment disparities. Commanders' decisions to impose article 15 punishments are predicated on the circumstances of the offense, but they can be affected by the commander's past experiences, personality, moral values, prejudices, and state of mind. Some punishment disparities appear unwarranted and could be minimized by issuing more guidance to commanders.

In two recent reports, we cited how punishment disparities can reduce the deterrent effect of punishment. For example, in our absent without leave (AWOL) report 1/ we concluded that wide variance in the way the services punished similar AWOL offenses contributed to high AWOL recidivism rates. We noted

> "* * * present [punishment] practices have not been effective in deterring people from repeating the offense. * * * people who go AWOL once have a high probability of going again."

Recently we commented on the sentencing practices in the Federal court system 2/ by noting:

> "While differences in crimes and in defendant characteristics necessitate different treatment and are justified, other types of disparities are questionable and raise doubts about the fairness of the system."
>
> * * * * *
>
> "* * * Undesirable disparities run counter to notions of equal treatment in the system and potentially lead to disrespect for the judicial process and the law itself."

1/"AWOL in the Military: A Serious and Costly Problem" (FPCD-78-52, Mar. 30, 1979).

2/"Reducing Federal Judicial Sentencing and Prosecuting Disparities: A System Wide Approach Needed" (GGD-78-112, Mar. 19, 1979).

A review of the Senate Committee on Armed Services' hearings 1/ on military justice reveals that the Committee did not believe that there should be wide disparity in punishments for similar offenses. While punishments for offenses must be determined on an individual basis considering the circumstances and nature of the crime, the Committee concluded that "due and sincere attention to the preservation of the rights" of each accused should not result in obvious and vast disparity in punishments for similar offenses.

Similarly, the 1972 DOD Task Force on the Administration of Military Justice in the Armed Forces 2/ noted recurring complaints from service members that commanders do not fit the punishment to the offenders and the offense. The task force recommended standardizing punishment procedures when practical.

We examined the punishments imposed for the 4 most frequently committed offenses in the 1,117 cases we analyzed--unauthorized absence, disrespect, failure to obey an order, and possession or use of drugs. As shown in the chart on the next page commanders in our sample differed widely on how to punish these offenses. 3/

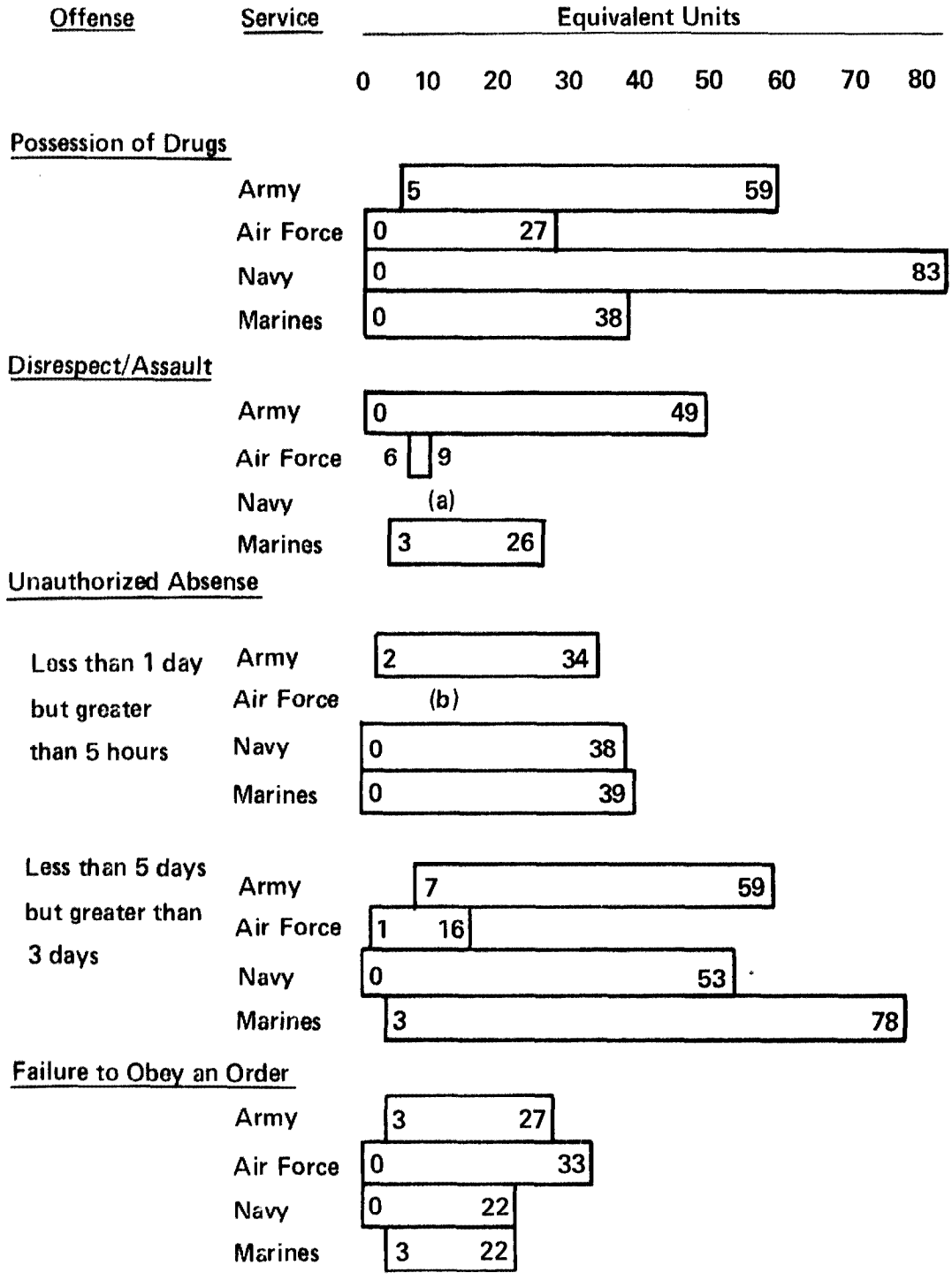
The significance of these punishment ranges is evident by looking at how Navy commanders treated the possession of drugs--mainly marihuana. The punishments ranged from 0-83 equivalent units. One extreme, 0 equivalent units, represents no punishment, whereas the punishment of 83 equivalent units represented a forfeiture of $417 combined with 45 days' restriction and 45 days' extra duty. We examined the case files of the two individuals involved and found no extenuating or mitigating circumstances to justify these differences.

1/Hearings before the Subcommittee on Treatment of Deserters from Military Service, Senate Committee on Armed Services (90th Cong., 2d Sess., May 21 and 22, 1968).

2/Commissioned by the Secretary of Defense on Apr. 5, 1972. The report to the Secretary was issued on Nov. 30, 1972.

3/To determine the extent of punishment disparities among the services, we used a system of equivalent units to compare different types of punishments and punishment combinations. (See app. V.)

SEVERITY OF PUNISHMENTS IMPOSED FOR ACTUAL CASES AND CERTAIN OFFENSES



(a) Only one case.

(b) No disparity between the two cases in the sample.

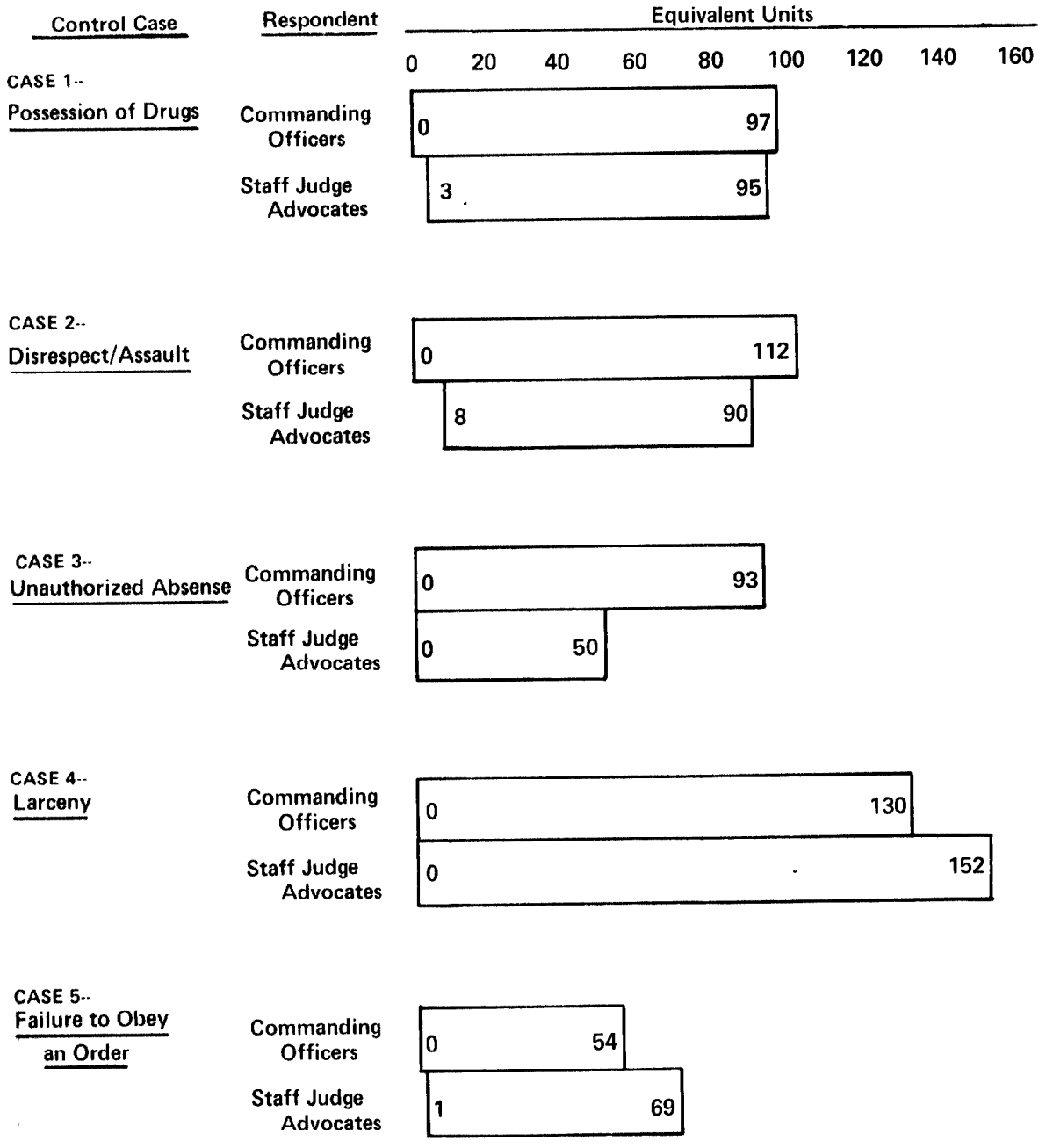
The Air Force generally had the least disparity in punishment imposed for similar offenses. Its regulations require that the staff judge advocate be involved in deciding article 15 punishments, which may account for the smaller degree of variance.

We also submitted 5 control cases to 93 commanders and staff judge advocates to determine how offenses are treated on the basis of case circumstances versus an officer's discretion. Any differences in the way the five control cases were treated would be due to the officer deciding the case because mitigating circumstances were identical. As shown, wide disparities existed among the officers in how to treat identical offenses:

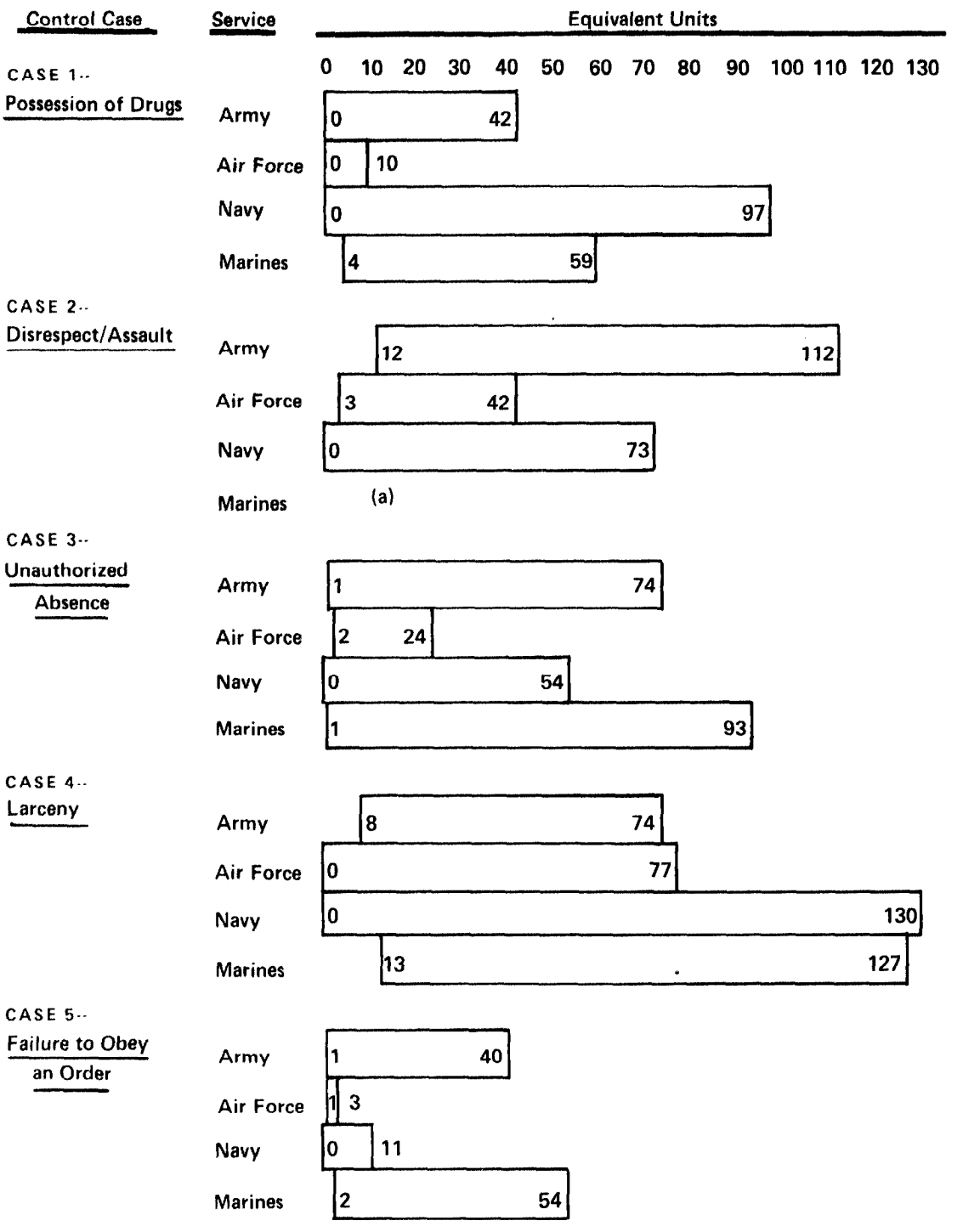
Control cases	Method chosen to treat the offense	Frequency				
		All responses	Army	Air Force	Navy	Marine Corps
		(percent)				
Case 1--possession of drugs	Nonpunitive	4	3	20	-	-
	Article 15	93	97	80	100	87
	Court-martial	3	-	-	-	13
	Discharge	-	-	-	-	-
Case 2--disrespect/ assault	Nonpunitive	-	-	-	-	-
	Article 15	42	40	70	67	13
	Court-martial	57	57	30	33	87
	Discharge	1	3	-	-	-
Case 3--unauthorized absence	Nonpunitive	22	29	20	11	13
	Article 15	78	71	80	89	87
	Court-martial	-	-	-	-	-
	Discharge	-	-	-	-	-
Case 4--larceny	Nonpunitive	1	3	-	-	-
	Article 15	70	83	100	78	13
	Court-martial	29	14	-	22	87
	Discharge	-	-	-	-	-
Case 5--failure to obey an order	Nonpunitive	10	9	20	25	-
	Article 15	88	91	70	75	100
	Court-martial	2	-	10	-	-
	Discharge	-	-	-	-	-

We also asked the 93 officers to choose the appropriate punishment under article 15 for the five control cases. Wide disparities surfaced again:

SEVERITY OF PUNISHMENTS IMPOSED FOR CONTROL CASES BY RESPONDENT



SEVERITY OF PUNISHMENTS IMPOSED FOR CONTROL CASES BY SERVICE



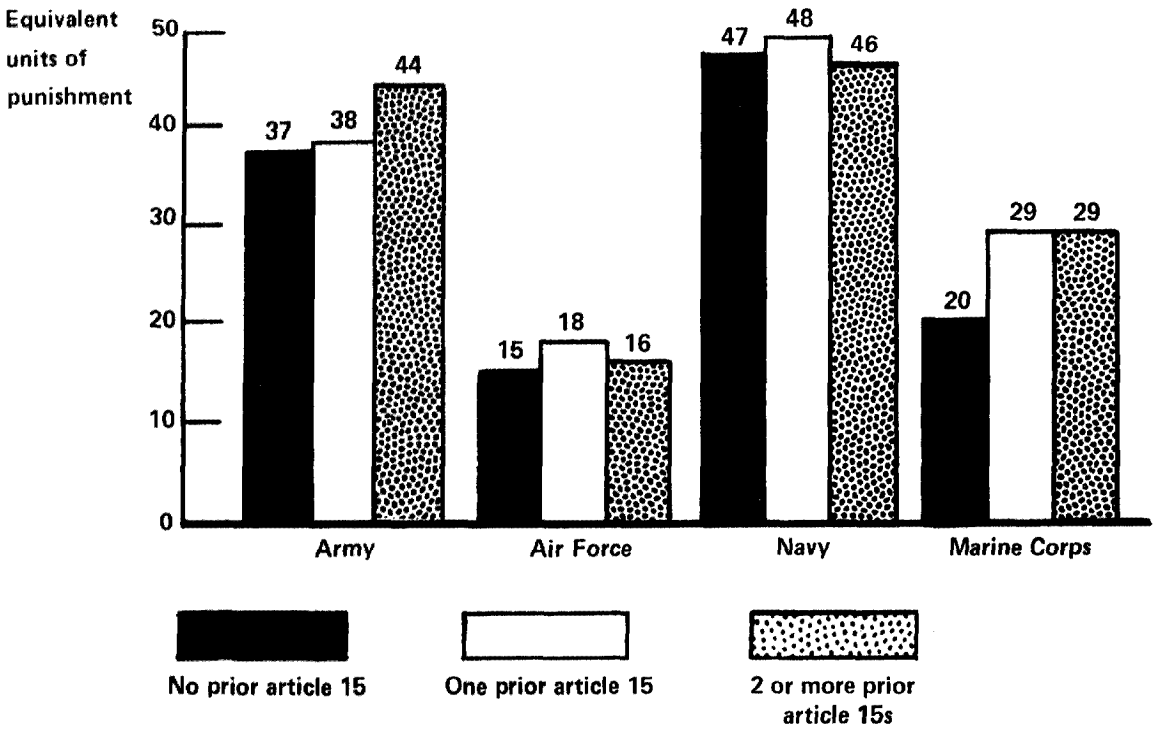
(a) No disparity. All respondents suggested punishments equaling 16 equivalent units.

When the officers' responses are analyzed on a service-by-service basis, punishment quantities differed among and within the services for the control cases. The chart on page 16 shows that the Air Force officers, on the average, punished the offender less severely than officers in the other services. Also, in four cases, the Air Force officers exhibited the smallest disparity in punishment severities. This may be the result of experience gained from the Air Force's policy that commanders must consult with staff judge advocates before imposing punishment.

Since these officers were reacting to identical case situations and facts, the wide punishment ranges indicate that more guidance on punishment is needed to promote consistency. Not only does an officer's discretionary judgment result in a variety of means in dealing with an offense, but it can lead to disparate punishment even in those cases where the officers agreed on a particular way of dealing with an offense.

Our analysis of the actual article 15 cases also showed that punishment severity was not necessarily based on an offender's prior article 15 disciplinary history. The chart on page 16 illustrates that diverse punishment severity practices exist among the services. The differences in punishment severity are negligible with respect to the Air Force's and the Navy's treatment of prior offenders. For example, the Air Force punished first-time offenders an average of 15 equivalent units; persons with 1 prior article 15 punishment, an average of 18 equivalent units; and those with 2 or more prior article 15s, an average of 16 equivalent units.

AVERAGE PUNISHMENTS IMPOSED FOR SAMPLE OF ACTUAL CASES



USE OF PUNISHMENT SUSPENSIONS CAN BE IMPROVED

The code authorizes commanders to suspend all or part of the punishment imposed under article 15. Once punishment has been imposed, the commander must consider if the case circumstances warrant suspension of all or part of the punishment for a probationary period. The commander determines the length of the probationary period, but it cannot be over 6 months. If the offender commits an act of misconduct during the probationary period, the suspension can, but need not be, rescinded.

We found that suspensions were being widely used by commanders but did not appear to be achieving the purposes for which they were intended. Inappropriate use of suspensions can result in making article 15 punishments less effective in maintaining and correcting behavior. The Manual for Courts-Martial encourages the use of suspensions as a behavioral incentive and suggests that:

> "In determining an appropriate punishment, commanders should consider the desirability of suspending probationally all or a portion of the punishment selected. Probational suspension of punishment normally is warranted in the case of first offenders or when persuasive extenuating or mitigating matters are present. Suspension not only provides a behavioral incentive

to the offender but also affords the commander an excellent opportunity to evaluate the offender during the period of suspension." (Underscoring added.)

Air Force regulations go further and state that:

"Rehabilitation of the offender is the primary objective of nonjudicial punishment [article 15]. A commander's powers to suspend, mitigate, or remit punishment are his principal means for realizing this objective. Complete understanding and generous and timely use of these powers are essential to a successful nonjudicial punishment [article 15] program. These keys to the offender's rehabilitation should be considered by the commander as he determines the appropriate punishment. Normally, their use enhances his position as a commander and has a favorable and lasting effect on the offender."

In the absence of more specific criteria, we believe that the criteria established in the Manual should be the rule and deviations from it should be the exception. That is, suspensions should be awarded normally in the case of first offenders or when persuasive extenuating or mitigating matters are present.

In our sample, commanders suspended all or part of the punishment in 478 of the 1,117 cases, or about 43 percent of the time. As shown in the following chart, the Army and the Air Force suspended punishments more often than the Navy and the Marine Corps.

Frequency of Suspensions Used by Services

Action	Army		Air Force		Navy		Marine Corps	
	Number	Percent	Number	Percent	Number	Percent	Number	Percent
Full suspension	5	2	19	6	20	7	23	10
Partial suspension	126	45	122	41	95	31	68	29
Total suspensions	131	47	141	47	115	38	91	39
No suspensions	146	53	157	53	189	62	145	61
Total cases	277	100	298	100	a/ 304	100	a/ 236	100

a/Does not add to total sample because information for one case was not available.

Many service members who received suspended sentences in our sample went on to commit other offenses. We found no significant statistical difference between those who received suspensions and those who did not as to their likelihood of committing other offenses. For example, in our sample, 35 percent of those service members who did not receive suspended sentences committed other offenses, while 29 percent of those who received suspended sentences committed other offenses. For the Marine Corps, a higher rate of recidivism was registered for those who received suspensions than those who did not.

On the basis of our sample, we believe that commanders missed prime target groups (i.e., first offenders and cases where extenuating or mitigating circumstances exist) when awarding suspensions. Our analysis showed that persons with prior histories of misconduct received a suspended sentence almost as often as first offenders. For example, the Army awarded suspended sentences to 57 percent of all first offenders and to 46 percent of all recidivists. Depending on the service, 31 to 46 percent of all prior offenders received a suspended sentence. The Navy gave the lowest percentage of suspensions to recidivists in our sample--31 percent.

In examining suspension practices of individual commanders, we found that some used suspensions regardless of the offense or the prior disciplinary history of the accused. For example, one Army commander had nine article 15 cases (shown in the chart below) and awarded a suspension in each case. Each suspension disclosed wide differences in case circumstances. These nine cases involved five different offenses or offense categories. Also, five of the cases had no prior article 15s, two had two prior article 15s (one also had a court-martial), one had four prior article 15s, and one had six prior article 15s.

Service	Commander	Article 15s the commander imposed in the sample	Suspensions awarded by the commander in the sample		Different offenses or offense-combinations involved
Army	#1	6	6	100%	5
	#2	10	9	90%	8
	#3	9	9	100%	5
	#4	5	5	100%	4
Air Force	#1	11	10	91%	6
	#2	12	11	92%	6
	#3	8	7	88%	4

Overall, in our sample, 60 percent of the Army commanders and 75 percent of the Air Force commanders used suspensions over 50 percent of the time. By comparison, 25 percent of the Navy commanders and 18 percent of the Marine Corps commanders did so.

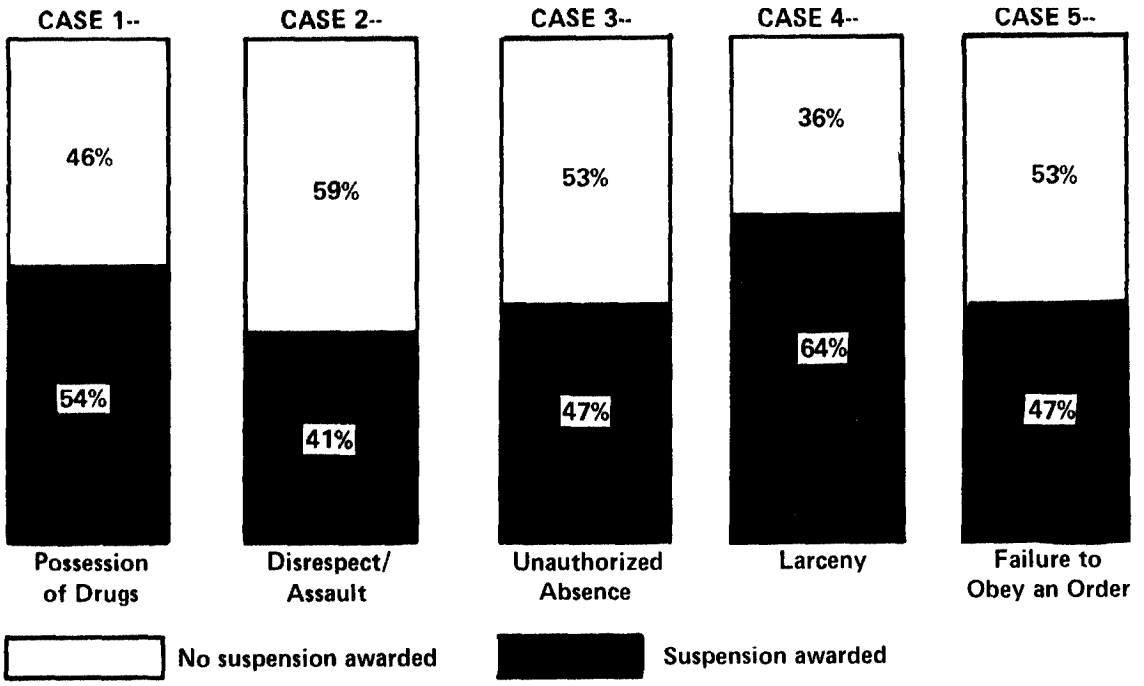
Since our sample showed that many recidivists received suspensions, we analyzed suspension cases to determine if they were justified due to mitigating and extenuating circumstances. Many suspensions did not appear justified because mitigating and extenuating circumstances were not evident. For example:

--A service member had received seven article 15s for such offenses as unauthorized absence, disrespect, dereliction of duty, and failure to obey orders before receiving this suspension. In four of the seven prior article 15s, the offender received suspended punishments and committed another offense during the suspension's probationary period. The commander awarded a fifth suspended sentence even though the offender's past history demonstrated that suspensions were not effective in encouraging improved behavior.

--A service member who received a suspended sentence had six prior article 15s for such offenses as breaking restriction, unauthorized absence, disrespect to an NCO and failure to obey an order. The commander awarded a suspension in four of the six prior incidents, and the service member committed another offense during the suspension's probationary period in two of these cases.

In our five control cases, the suspension decisions of 70 commanders showed that identical case circumstances did not receive consistent treatment. The following chart demonstrates that a service member has about a 50-50 chance to get all or part of an article 15 punishment suspended.

USE OF SUPENSIONS IN 5 CONTROL CASES



We believe much of the variance in awarding suspensions may be unwarranted and a product of commanders' subjective decisionmaking. Again, the commanders' prior experience, personality, prejudices, moral values, and state of mind appeared to influence their decisions. More guidance on when to use suspensions is needed.

Probationary periods are not consistent with case circumstances

If offenders conduct themselves properly for the suspension's specified probationary period, commanders have the authority to forgive the suspended portion of the punishment. If misconduct occurs during the probationary period, the suspension may be revoked. However, we believe commanders are not provided sufficient guidance on what the length of a probationary period should be in order to obtain desired results.

Our analysis of suspensions granted in our sample of actual cases showed that the severity of the offense and mitigating circumstances did not necessarily determine the probationary period. As shown, the Air Force usually assigned a 6-month probationary period; the Army and Marine Corps, 3 months or less; and the Navy, 3 or 6 months.

Length of Probationary Period for Actual Cases

	1 mo.	2 mos.	3 mos.	4 mos.	5 mos.	6 mos.
	(percent)					
Army	29	32	30	2	2	5
Air Force	6	7	5	4	11	67
Navy	0	2	42	1	0	55
Marine Corps	20	20	40	5	0	15

Further analysis of suspension practices in the 1,117 sample cases showed that first offenders received probationary periods about the same as those with prior article 15s. The Navy was the only service where probationary periods significantly related to the number of specifications (individual acts of misconduct) in the current article 15 charge.

We also asked 70 commanders to indicate when suspensions were appropriate and how long the probationary period should be for the 5 control cases. While the case circumstances were identical, the suggested probationary periods generally followed the services' patterns identified in our analysis of actual cases.

Length of Probationary Period
for Control Cases

	1 mo.	2 mos.	3 mos.	4 mos.	5 mos.	6 mos.
	(percent)					
Army	15	35	35	1	0	14
Air Force	0	0	7	0	0	93
Navy	0	0	7	13	0	80
Marine Corps	0	6	63	0	0	31

Further analysis shows that for each control case the commanders suggested a wide range of probationary periods with the heaviest concentrations on 2, 3, and 6 months.

The responses to the control cases again illustrate the differences among the services and individual commanders in treating similar cases. Probationary periods were not consistent with case circumstances.

Personnel violating probation should be punished

The Manual authorizes the commander to revoke the suspension if the offender commits an act of misconduct during the probation. However, commanders are not required to do so. Our sample shows that commanders generally do not revoke suspensions when misconduct occurs during probation.

We found that 23 percent of those who received suspensions went on to commit other offenses during probation, but only one-third of this group had their suspension revoked. Most of those who had their suspension revoked were not given additional punishment. Thus, the service member committed two separate acts of misconduct but received only one punishment.

In one of the five control cases, we were able to evaluate the commanders' consistency in revoking suspensions during probation. (See app. V, case #5.) Commanders' responses varied significantly. Only 7 percent revoked the suspended sentence and added additional punishment for the second offense. Of the remaining commanders,

--39 percent handled the case nonpunitively, nonjudicially (article 15), or by court-martial, but did not revoke the suspension;

--29 percent punished the second offense, suspended a portion of the new punishment, but did not revoke the existing suspension;

--15 percent revoked the suspension but did not add punishment--a "two-for-one" situation; and

--10 percent revoked the suspension, punished the offender again, and suspended a portion of this second punishment.

The consequences of violating probation should be probable and predictable. If there is no consequence to violating the suspension's probationary conditions the incentive for future proper conduct is lessened.

COMMANDERS RARELY USE OTHER CLEMENCY POWERS

Remissions, mitigations, and set-asides are other clemency alternatives intended to encourage positive behavioral changes. Yet, they were used only 18 times in the 1,117 article 15 cases we reviewed. In most of these cases they were used to correct mistakes, not to encourage positive behavior.

Criteria in the Manual for Courts-Martial on using remissions, mitigations, and set-asides are limited mainly to procedural aspects. Very little attention is given to human factors, circumstances, and other considerations which should be examined before deciding whether to grant clemency.

Service regulations provide little additional guidance. For example, Army regulations are limited to instructing that mitigations and remissions are appropriate when (1) the offender has, by good conduct merited a reduction in the severity of punishment or (2) the punishment imposed was disproportionate to the offense. Set-asides are appropriate when the punishment has resulted in a clear injustice. Air Force regulations state, even more generally, that "complete understanding and generous and timely use of these powers are essential to a successful * * * program." Navy regulations (applicable also to the Marine Corps) refer only to provisions of the Manual and the code.

We believe remissions, set-asides, and mitigations are used infrequently because commanders lack guidance on how and when to use them. We believe that these alternatives can be effective in encouraging positive behavioral changes

and removing unnecessary stigmas that affect a person's career. Particularly for career motivated individuals, the prospect of having evidence of an article 15 punishment set-aside may be enough to change behavior. For example, an Air Force defense counsel told us that set-asides provide a good rehabilitative device by giving "positive strokes" to individuals. He felt that set-asides should be used even in cases where there is no injustice and that regulations on when to set aside punishments should be changed to remove time limits within which the set-aside must occur. Currently, set-asides are permitted only within 4 months of completing punishment.

CONCLUSIONS

Commanders use article 15 punishments for many purposes, including to punish minor offenses, promote and maintain discipline, improve morale, and deter future offenses. While the effectiveness of article 15 is not measured by the services, data from our sample of 1,117 actual cases indicates that the current uses and administration of article 15 punishments can be improved.

While the code provides the authority to impose article 15 punishments and the Manual and service regulations provide some procedural instructions, little guidance is provided to commanders on how to administer article 15. While we believe that commanders conscientiously attempt to make fair and effective decisions, our review of article 15 cases showed that wide disparities existed with respect to how offenses are dealt with and the punishments imposed. Recidivism rates in our sample were high; the article 15 process was perceived by some as unfair and inconsistently applied; and morale, job performance, and career mindedness were cited by some as being adversely affected.

The military services do not routinely evaluate the effectiveness of article 15 punishments. Standards of effectiveness are nonexistent and not enough data is collected to monitor and assess effectiveness.

We believe that with better administration and more guidance, article 15 can become more useful to the services and a benefit to service members.

RECOMMENDATIONS TO THE SECRETARY OF DEFENSE

We recommend that the Secretary of Defense:

--Establish clear goals and objectives of article 15 punishment. These should be stated in terms of measurable goals and translated into specific standards of effectiveness.

--Improve guidance and information to commanders for imposing article 15s. Consideration should be given to providing benchmark guidance on how to dispose of an offense, suggesting punishments or punishment norms for specific offense categories, and specifying conditions under which leniency should be used to encourage positive behavioral changes. Educational training programs on the judgmental aspects of administering article 15 should be considered.

--Direct the services to periodically evaluate the consistency and effectiveness of the quantity and type of article 15 punishments imposed to determine whether additional guidelines are needed. The services may need to develop integrated information systems to collect adequate data for making informed policy judgments on the overall uses of article 15 punishments.

--Consider greater involvement by the commander's staff judge advocate in deciding whether to impose article 15 and the appropriate punishment.

--Establish criteria which clearly state when it is appropriate to use mitigations, remissions, set-asides, and suspensions. Objectives, target groups, and expected results should be established including a monitoring system to insure that these clemency alternatives are effective in achieving desired results.

If implemented, these recommendations should help reduce unwarranted punishment disparities; encourage positive behavioral change; improve morale, job performance, and career mindedness; and increase the deterrent effect of article 15 punishments.

AGENCY COMMENTS AND OUR EVALUATION

Establish clear goals and objectives and provide more guidance for article 15 punishments

DOD agrees with the intent of these recommendations and says it fully recognizes the value of achieving greater uniformity in article 15 cases. However, DOD believes the

diversity in missions and needs of each service would make it difficult to establish specific goals and objectives. Any such guidance, according to DOD, would be so general that it would add little to the guidance already in the code and the Manual for Courts-Martial. Detailed guidance would still have to be established by each service.

DOD emphasized that a commander's discretion and consideration of personal factors which cannot be discretely defined are essential to good disciplinary decisions and effective leadership. Establishing a system that would supplant this concept is neither feasible nor desirable.

Presently, DOD and the services have little or no guidance on the use of article 15 punishments. We agree that the commander's use of discretion was intended by the code. But, we did not recommend nor intend that punishments for specific offenses be pro forma or predetermined as DOD suggests would be the case. We believe providing punishments and clemency guidance and establishing goals for article 15 punishments does not have to limit a commander's discretion. Rather, such guidance should help the commander and the service member better understand the article 15 process; what it is intended to achieve; and what punishments, in combination with clemency actions, have been successful in the past. Achieving greater uniformity in the disposition of minor offenses should improve the credibility of the article 15 process and help rather than hinder the commander in maintaining good discipline and providing effective leadership.

Consider greater involvement by the commander's staff judge advocate in the article 15 process

DOD stated that it is the policy of the services to encourage commanders to consult their staff judge advocates on all legal matters, including the imposition of article 15 punishments. DOD said the evidence did not support the conclusion that commanders should be required to seek legal advice in all article 15 cases and cites the comparisons of views we make between judge advocates and commanders as being similar.

Our recommendation suggests greater involvement by the staff judge advocate because we found greater consistency in the treatment of similar offenses when they advised the commander on the punishments imposed. In the cases we reviewed among the services, the Air Force generally had the least

disparity in punishments imposed for similar offenses. Unlike the other services, its regulations require that the staff judge advocate be involved in deciding article 15 punishments. DOD does not address this point in its comments. As stated in the report, we believe the staff judge advocate's involvement may account for the smaller degree of variance. We urge DOD to reconsider this recommendation.

Establish centralized data systems to monitor and evaluate the use and effectiveness of article 15

DOD concurs with the desirability of collecting and analyzing article 15 data to determine the need for appropriate command attention. However, DOD feels the services' present systems provide a broad overview of developing trends and potential problems. Also, because of the considerably larger number of article 15 punishments and decentralized organizations in the Army and the Navy, DOD felt that adopting an automated system (such as the Air Force has) would not be feasible.

No matter how the data is collected, the services should periodically evaluate the consistency and effectiveness of the quantity and type of punishments imposed. Even in the Air Force, which collects the necessary data on a centralized basis, such analyses were on an "ad hoc" basis. We do not believe that a command or base-level analysis is sufficient to identify servicewide trends and potential problems. Since article 15 punishment is routinely recorded in a service member's personnel file, a servicewide centralized collection of this same data does not need to be an administrative burden. Periodic analysis of servicewide military justice data should help commanders more effectively carry out their responsibilities for administering the military justice system.

CHAPTER 3

FEW SERVICE MEMBERS USE AVAILABLE SAFEGUARDS

The code, the Manual for Courts-Martial, and service regulations provide service members with certain procedural and administrative safeguards against possible abuse during the article 15 process. After service members have been notified of the commander's intent to impose article 15 punishment and received an explanation of the charges, service members have the right to

--submit evidence and present witnesses in defense,

--hear and inspect evidence presented against them,

--demand a hearing and have someone speak on their behalf,

--refuse the article 15 punishment, except if they are "attached to or embarked" on a vessel, and

--appeal article 15 punishments considered unjust or disproportionate to the offense.

Army and Air Force regulations also allow all service members to consult with counsel before they decide whether to accept an article 15 punishment. The Navy and Marine Corps provided counsel in some instances, but their regulations do not currently provide for counsel.

We did not evaluate the extent service members use all the above safeguards. But from information provided by the services and through interviews with service members we found that few consult with counsel, refuse the article 15 punishment, or appeal the punishment imposed. Service members may also be accepting article 15 punishment without being fully informed of the process and the possible long-term consequences.

COUNSEL IS USED INFREQUENTLY

After analyzing article 15 cases and interviewing service members with article 15 experience, we found that many did not consult with counsel. In the 1,117 article 15 cases we reviewed, information in the files made available to us indicated that 206 individuals received legal advice (170 of these were Air Force personnel). Of the 76 article 15 punishment recipients we interviewed, 45 told us they did not seek counsel for the following reasons:

--Twenty-seven stated they were guilty and that counsel would do no good.

--Five were either not aware of the counsel availability or did not know what services could be provided.

--Thirteen had a variety of reasons, including fear of reprisals, advice from a superior not to use such services, and a desire to get the proceeding over with and to avoid the hassle. Some also said they considered the whole incident as minor or were intentionally trying to get out of the service by establishing a poor disciplinary pattern through a record of article 15s.

Of the 31 service members that had met with counsel, 17 were dissatisfied with the services received. They considered it a waste of time mainly because they felt the counsel was too busy to discuss the case, didn't want to look into the case, or just didn't care. Some complained that the total time with the counsel was insufficient--between 2 and 15 minutes. Others said the counsel simply pushed them into accepting the article 15.

The opportunity to consult with counsel is important

In a 1977 decision 1/ the U.S. Court of Military Appeals held that an article 15 record cannot be used in determining punishment in a subsequent court-martial unless the accused was provided the opportunity to consult with counsel before deciding to accept the article 15 punishment:

> "* * * Clearly the legal ramifications of the decision to choose the criminal adversary proceeding as opposed to a disciplinary hearing can indeed be great, especially in terms of substantive and procedural rights at the given hearing, punishment limitations, and potential uses of the imposition of discipline through such proceedings in a later criminal prosecution. The advice of a legally trained person is required to meaningfully explain these ramifications and thus permit the individual to make an informed decision."

1/ United States vs. Booker, 5 M.J. 238 (CMA 1977).

* * * * *

"The consequences of a decision to accept either an Article 15 or a summary court-martial disciplinary action under Article 20 involve due process considerations. Believing as we do that only a legally trained person can supply the requisite quantum of information necessary for an informed decision, we believe it mandatory that the individual to be disciplined must be told of his right to confer with an independent counsel before he opts for disposition of the question at either of the above levels. Absent compliance with this proviso, evidence of the imposition of discipline under either is inadmissible in any subsequent trial by court-martial. A waiver of the statutory right * * * must be in writing."

"Independent counsel" was not defined in the court's decision. Also absent was guidance on the extent of counseling to be provided. As a result the qualifications of persons providing advice and the nature of the advice given varied considerably.

The Army and Air Force require the person providing legal advice on article 15 matters to be a qualified lawyer. The Navy, depending on the command, uses either legal officers or petty officers to advise the accused. In the Navy we found an instance where one petty officer was assigned this function as a collateral duty. At the time of our visit he had been on the job 1 month and had received no training on providing legal advice. He also had to acquire his own copy of the code, the Manual, and various regulations.

The services also differed as to how involved the counsel will become in a case. Because of limited DOD and service guidance, some service members are only advised by counsel of the right to refuse article 15, while others are advised about the specific charges against them and whether to refuse the punishment.

--At one Marine base, accused offenders are advised of their right to refuse article 15, but not whether to refuse it in the specific case under consideration. At another Marine base, accused offenders are advised, in a group, of their right to request individual consultation on whether to refuse article 15 and the type of defense to present.

--Legal advice at one naval base was provided by paralegal personnel, who advised the accused only of the right to refuse article 15 and maximum punishments to expect from a court-martial. Paralegal specialists told us they were left largely on their own to learn about article 15 and what advice to provide. They told us that they needed more definitive guidelines on the advice that should be given.

--Contrasting the assistance provided by the Navy's paralegals, an Air Force legal defense officer at one location said he carefully checks out the facts of a case, advises the accused of all rights, assesses the evidence to determine if an offense has been committed, determines any mitigating or extenuating circumstances, tells the person what can happen, advises whether to accept the article 15 punishment or demand a court-martial, assesses the odds of receiving punishment, but leaves the final decision to the accused.

Availability of counsel may be a problem

Service members we interviewed also did not seek legal advice when it was not readily available or when it appeared to be inconvenient. At one Marine Corps base, accused offenders were initially advised, in groups, of their rights and provided individual counsel only after normal duty hours to insure that they were sincere enough to seek legal counsel on their own time. The Navy's practice of using paralegal petty officers as a firstline screening device may have the effect of denying the individual the opportunity to consult with independent counsel. These petty officers are charged with the responsibility of satisfying as many people as possible to reduce the number who may feel they need to see the legal officer. One petty officer told us that in his unit, job performance was assessed by the number of people they were able to deter from requesting to see a legal officer.

In a previous report, 1/ we cited problems with imbalanced workloads, poor facilities, and inadequate staff as factors limiting the effectiveness and availability of defense counsel throughout the military justice system. This review also showed that the number of counsel available may be inadequate to provide informative and useful advice. For example:

1/"Fundamental Changes Needed to Improve the Independence and Efficiency of the Military Justice System" (FPCD-78-16, Oct. 31, 1978).

--At Camp Pendleton, a Marine Corps base, over 7,000 article 15s were awarded in 1977 with only 1 lawyer assigned to provide legal advice. If the command encouraged all service members to seek legal advice, this 1 individual would have to assist over 130 persons a week.

--At the Norfolk Naval Base, the defense counsel's office has 1 lawyer and 1 petty officer to provide legal advice to over 60,000 service personnel in 250 naval commands. In 1978 they provided advice on about 1,000 article 15 cases. This high volume of requests and small legal staff was the reason this command used a paralegal petty officer to respond to article 15 legal counsel requests.

--At Fort Ord, an Army post, only 1 lawyer worked on article 15s at any one time to provide advice on 4,450 cases in 1978.

SERVICE MEMBERS ARE NOT ADEQUATELY INFORMED OF THE ARTICLE 15 PROCESS

The service members we interviewed were generally not well aware of the consequences of an article 15 record, when the decision to accept or refuse punishment has to be made, and other aspects of the article 15 process. Most of the enlisted personnel we interviewed said they received only a minimal amount of information about the article 15 process during their basic training. More education, guidance, and staff judge advocate involvement in the article 15 process may help alleviate this problem.

A service member has the right to refuse an article 15 punishment and demand that his or her case be tried by court-martial. The code authorizes the accused to delay making this decision up to the point that punishment is imposed:

> "* * * except in the case of a member attached to or embarked on a vessel, punishment may not be imposed upon any member of the armed forces under this article if the member has, before the imposition of such punishment, demanded trial by court-martial in lieu of such punishment." (Underscoring added.)

In actual practice commanders ask the accused to make this decision well in advance of the time authorized by the

code--most often at the time the accused is advised of the commander's intent to impose article 15--and almost without exception, the accused will decide at this time.

While the accused is not forced by code or regulation to make a decision until punishment is imposed, most service members we interviewed feel they must and are unaware that the decision can be delayed until after the article 15 hearing and immediately before the punishment is announced. In addition, when commanders advise personnel of the alternatives, their advice centers on the negative consequences of a court-martial with little or no emphasis placed on the ramifications of an article 15.

We believe the intent of the code is to offer a reasonable opportunity for the accused to determine the fairness of the article 15 proceeding and to decide whether to accept punishment. To the extent provided, the accused is allowed to participate in a hearing before the commander, hear testimony, and examine evidence; present mitigating and extenuating circumstances or present witnesses; and have a personal representative speak in his or her behalf before choosing whether to accept punishment.

Many service members we interviewed believed that the commander predetermines their guilt and punishment and that a hearing is of little or no value. In essence, they do not view the article 15 proceeding as a means to present their side of the story and influence the commander's decision on whether to impose punishment. This attitude toward the decision to accept or to reject article 15 punishment and the article 15 process in general may discourage the accused from fully defending themselves.

The Manual and service regulations require that the accused be advised of the right to refuse article 15. Most enlisted personnel we interviewed knew they had this right, but rarely knew when the decision had to be made. We asked 76 enlisted service members who had received an article 15, "During an article 15 proceeding, when is your last chance to ask for a court-martial instead of the article 15?" They responded as follows:

--Nine didn't know.

--Thirty-one said within 72 hours after being notified that the commanding officer was going to impose it (before the hearing).

--Fifteen said when they sign the article 15 forms (before the hearing).

--Ten said after talking with legal counsel.

--Four said after being told the commanding officer found you guilty but before hearing your punishment. (The right answer.)

--Two said after hearing your punishment.

--Five responded otherwise.

We asked this same question of 77 enlisted service members who had not received an article 15, and 3 answered correctly. But over 85 percent of this group were aware of their right to refuse, even though they had never experienced an article 15.

We also learned that many service members did not know the potential long-term consequences of an article 15 on their careers. Of those we interviewed,

--25 percent were unaware that an article 15 punishment becomes a part of their personnel record,

--17 percent were unaware that a record of article 15s could be the reason for a discharge from the service,

--41 percent were unaware that an article 15 could hurt their career, and

--32 percent were unaware that an article 15 from an earlier enlistment could hurt after reenlistment.

About 44 percent of the officers we interviewed were unaware that a record of the article 15 punishment would be maintained in the service member's personnel file and would follow the service member throughout his or her career.

According to service members interviewed, the advice the accused receives from commanders, NCOs, legal counsel, and other service members tends to center on the negative consequences of a court-martial. In commenting on the decision to accept or reject an article 15, the Army's "Legal Guide for the Soldier," stresses the negative aspects of the court-martial. The following statement cites the impact of a court-martial on the individual, but it does not mention the importance of the decision relative to the ramifications of receiving an article 15:

"* * * the right to demand trial by court-martial. This is of particular importance to a soldier and should only be done after consultation with a lawyer because of the impact of a court-martial sentence and the stigma of a federal court conviction."

Consequently the service member is left with a fear of a court-martial and a limited understanding of article 15. Service members are made aware that a court-martial may result in

--a Federal conviction,

--periods of confinement extending beyond 30 days,

--hard labor, and/or

--a punitive discharge.

The consequences of a court-martial are serious and warrant special consideration, but other issues may be just as important. A fact not well known among service members is that there is no requirement that a refused article 15 be referred to a court-martial. In fact, if the evidence to convict the accused is questionable or insufficient, or if the offense charged is trivial, the case may not be referred to a court-martial.

The Army is the only service that maintains information on how many service members refused article 15, how many went to court-martial, and how many were convicted. As shown in the following chart, less than 1 percent refused to accept an article 15 during the period 1976-78. Of those who refused, over 53 percent were not tried by court-martial. Of those who were tried, 67 percent were convicted.

Year	Article 15 offered	Article 15 refused		Refused and not tried by court-martial		Refused and tried by court-martial		Refused, tried, and convicted by court-marital	
		Number	Percent	Number	Percent	Number	Percent	Number	Percent
1976	168,791	1,453	.9	780	54	673	46	468	70
1977	165,501	1,273	.8	628	49	645	51	378	59
1978	153,334	1,392	.9	760	55	632	45	467	74
3-yr. average	162,542	1,373	.8	723	53	650	47	438	67

Army staff judge advocate officials are involved in the decision on whether to refer the refused article 15 to court-martial but usually not in the original decision on whether to impose it. The high incidence of cases that were not referred to court-martial may be the result of their lack of involvement in the decision on whether the article 15 should have been imposed initially.

Air Force regulations cite the adequacy of the evidence as a significant factor in the commander's decision to impose article 15 and use this as a reason why staff judge advocate officials are consulted before imposing an article 15. While the Air Force does not maintain data on the number of persons who refuse article 15, we were told that because of the close involvement of the staff judge advocates in the original decision, it was unlikely that many which are refused do not go to court-martial.

WHILE MANY SERVICE MEMBERS COMPLAIN ABOUT PUNISHMENTS, FEW APPEAL

Military personnel said a major source of dissatisfaction with article 15 centers on the commanders' punishment practices. A service member may appeal article 15 punishment if the individual considers it too harsh or disproportionate to the offense. 1/ A record of article 15 punishment can also be corrected or changed upon application to the services' Boards for Correction of Military or Naval Records, but we did not determine how often this happens.

Many service members did not appeal their punishment but, to a large degree, they considered their punishments unfair. Of those article 15 recipients we interviewed,

--49 percent stated their punishment was more severe than they had expected,

--56 percent felt that their punishment was unfair considering their offense, and

--33 percent felt their punishment was about the same as others had received for the same offense.

1/After appealing punishment under the provisions of article 15, the Army Judge Advocate General has determined that punishments may also be appealed under article 138, "Complaints of wrongs." However, the other services' regulations specifically exclude article 15 recipients from seeking this additional redress.

The 1972 DOD Task Force on the Administration of Military Justice in the Armed Forces similarly concluded that service members infrequently use appeals. The task force attributed this to service members' (1) view of appeals as useless, (2) fear of commanders, and (3) knowledge that they must undergo punishment while appeals are in process. Our review disclosed that, while some relief to the third factor has been granted, a lack of confidence and a fear of reprisal, still play a dominant role in why appeals are not filed.

Seven percent of the service members included in our sample of 1,117 article 15 cases appealed their punishment. Less than one-third had any success. The following chart summarizes, by service, the number of appeals and success rates for our sample.

	Army	USAF	Navy	USMC	Total	Percent
Appeals:						
Denied	30	13	6	6	55	5
Partially successful (note a)	14	8	0	2	24	2
Completely successful (note b)	0	2	0	0	2	-
Total	44	23	6	8	81	7
No appeal	232	272	296	227	1,027	92
Information not available	1	3	3	2	9	1
Total	277	298	305	237	1,117	100

a/Partial reduction in the punishment.

b/Total punishment set-aside.

About one-third of the service members we interviewed with prior article 15 experience told us that they did not appeal because they were afraid of reprisals or felt that there was little chance for success. As with the decision on whether to accept article 15, fear appears to be a dominant factor in many article 15 decisions. Other responses included:

--They erroneously thought punishment could be increased if the appeal was lost.

--They expressed a lack of confidence that their appeal would be objectively considered.

--They just did not want the "hassle" involved.

Many of the enlisted personnel who expressed doubt that their appeal would be objectively considered felt that way because the appeals are decided by the commander's immediate superior. They expected him to support the commander and therefore considered the appeals process as a futile gesture. While we do not know the extent to which this unnecessarily deters service members from appealing punishments they feel are unfair, a more independent appeals process could add more credibility to the process.

CONCLUSIONS

Service members have certain administrative rights and procedural protections in the article 15 process. Of the three we examined--the opportunity to consult with counsel before accepting or rejecting an article 15, the right to refuse an article 15, and the right to appeal--none are used frequently.

Many of the service members we interviewed did not consult with counsel before deciding whether to accept an article 15 because they were unaware of its availability and did not see the benefits to be derived from counsel. Other reasons included fear of reprisals, advice from superiors, and a desire to avoid a hassle. Depending on the service installation, legal services varied widely; availability and convenience differed; and the person giving the advice was not necessarily a legal officer. When legal services were used by service members in our sample, most were dissatisfied with the services received.

On the basis of our interviews, we believe service members may accept article 15 punishment when it is not in their best interests to do so. Advice to service members on the decision to accept or refuse an article 15 is sometimes misleading and may not be very informative. Because of the services' emphasis on the negative consequences of a court-martial, service members may be afraid to refuse an article 15. In addition, service members we interviewed often made this choice before it was necessary by law, thereby denying themselves the chance to consider all the information available to them before punishment was imposed.

RECOMMENDATIONS TO THE SECRETARY OF DEFENSE

We recommend that the Secretary propose to the President the following changes to the Manual for Courts-Martial:

--Specify the service members' right to consult with independent counsel. Also, the Manual should specifically define (1) "independent counsel" and (2) the extent of advice service members will receive.

--Clearly state that the service member's right to refuse article 15 punishment does not expire until punishment is imposed. The Manual should also specify that the service member be advised of this.

To help insure that service members can make an informed decision and are fully aware of their administrative and procedural safeguards, the Secretary of Defense should direct the services to:

--Improve military justice training for enlisted personnel to insure their full understanding of the article 15 punishment process, including their procedural rights and the possible long-term consequences of accepting an article 15 punishment.

--Standardize the type and quality of counsel provided in article 15 cases. If the opportunity to consult with counsel is provided, the advice should go beyond a mere restatement of the right to refuse an article 15. Advice should be provided concerning the probability of the offense being referred to a court-martial, the sufficiency of the evidence to convict if referred to a court-martial, and advice on whether to demand a court-martial. At a minimum, the accused member's case should be reviewed by counsel.

--Evaluate counsel staffing levels to determine whether they are adequate so that advice can be made available at reasonable times and locations.

AGENCY COMMENTS AND OUR EVALUATION

Give service members the opportunity to consult with counsel before accepting or refusing article 15

DOD questioned our statistics that service members infrequently use legal counsel because of lack of knowledge of its availability or benefits, or fear of reprisal if it is

used. DOD provided data from the Army that shows service members consult with counsel more often than our sample statistics indicated.

The Army statistics are based on logs kept by the Army Trial Defense Service. They do not indicate whether the individual eventually received an article 15 or what advice was given. Assuming the Army statistics are accurate, we believe that a closer examination of the type and quality of legal service provided would be appropriate. For example, at Fort Ord we found that only 1 lawyer was available at any one time to provide advice on 4,450 article 15 cases during 1978. The caseload appears inordinate and impossible to assure that the counseling sessions were meaningful or informative.

DOD also stated that it is the practice of the Army and Air Force to provide counsel to service members concerning article 15s. In the other services, access to counsel is limited because of varying missions and organizational structures. The effect of the Court of Military Appeals decision (Booker) was to limit introduction of an article 15 record as evidence in a court-martial if counsel was not offered prior to accepting punishment, therefore, an opportunity to seek counsel is not necessary if the article 15 is not going to be used in a court-martial.

We agree with DOD that article 15 was intended to be a swift, simplified and nonadversary procedure for commanders to deal with minor offenses without the intervention of a court-martial. Offering the service member an opportunity to consult with counsel before accepting an article 15 may delay this process--but the Army and Air Force already do so. Regardless of whether an article 15 record is used in a subsequent court-martial, it is used in a number of decisions which affect a service member's career, such as separation, efficiency ratings, promotions, job assignments, and training.

We believe that the possible use of an article 15 record in decisions that affect a service member's career should be clearly and specifically spelled out before the individual accepts the article 15 punishment. Consulting with counsel would be a convenient opportunity to remind the member of the seriousness of accepting an article 15.

Since the Army and Air Force already provide counsel, we urge them to make the sessions meaningful and informative. We also believe the Navy and Marine Corps should consider greater use of counsel before imposing article 15 punishment.

We recognize this is not always possible because of deployment to a ship or other logistical problems. When counsel is not available, however, the Navy and Marine Corps should develop means to fully inform service members of their rights and the possible negative consequences of accepting an article 15 punishment.

Clarify the right to refuse article 15 punishment up to the time punishment is imposed

DOD stated that the right to refuse punishment and demand trial by court-martial up to the time punishment is imposed is made clear in the code and the Manual for Courts-Martial. DOD does not agree that any further emphasis is necessary or warranted.

On the basis of our interviews with 153 enlisted personnel, only 7 knew when the decision to accept punishment had to be made. We believe more information should be provided to the service member being considered for article 15 punishment. The decision to accept punishment is an important one and should be made from an informed position.

We believe that this and other rights available to service members should be fully explained to them. If possible this should be done in a session with counsel, but at least service members should be notified in writing of their rights and options under article 15 punishment. Such a procedure should not be time consuming nor more expensive than the present processes.

Evaluate defense counsel staffing levels with regard to providing adequate advice on article 15

DOD did not specifically comment on this recommendation. However, we found that the caseload at several service locations appeared inordinate and impossible to assure that the counseling sessions were meaningful or informative.

In another report we cited imbalanced workloads, poor facilities, and inadequate staff as factors limiting the effectiveness and availability of defense counsel throughout the military justice system. In this instance, the priority should be to insure that service members are fully informed of their rights and options under the article 15 punishment process. Our sample statistics and interviews lead us to believe that not enough is being done to inform affected service members.

Improve article 15 training to enlisted personnel

DOD says the services are stressing awareness in article 15 matters through military justice training programs. For example, according to DOD, the Army is developing a film to supplement military justice orientation which will cover all aspects of nonjudicial punishment "in a manner which will enable the general enlisted audience to comprehend the material presented." If the Army program is successful, we encourage the other services to consider adopting it.

CHAPTER 4

THE STIGMA OF ARTICLE 15 PUNISHMENTS IS UNWARRANTED

An article 15 record may stigmatize a service member's entire military career. Records of article 15 punishments are placed in personnel files as a standard practice by all the services. A record of an article 15 can be used in a wide variety of personnel decisions, including work assignments, promotions, and reenlistment opportunities. In addition, a record of article 15s can lead to an involuntary discharge which can limit veterans' benefits and post-service civilian job opportunities. Maintaining a permanent record of an article 15 is not required by the code or the Manual for Courts-Martial. However, the code authorizes service secretaries to prescribe recordkeeping systems for article 15s.

The services need to have a sound basis for making certain critical personnel decisions, such as work assignments dealing with nuclear material or police work. A complete picture of a person's disciplinary history (including article 15s) may assist such decisions. It is, however, unjustified that a permanent record of article 15 be maintained and used in decisions where the article 15 incident has no direct bearing on the decision being made. A more reasonable approach toward the use of article 15 in personnel decisions is needed.

ARTICLE 15 PUNISHMENTS CAN STIGMATIZE A SERVICE MEMBER'S CAREER

In 1963, article 15 of the code was amended to provide increased punishment authority for commanders so that they could more adequately deal with minor offenses without resorting to a court-martial. In their report, the Senate Committee on Armed Services 1/ expressed the need for the legislation as follows:

> "The limited nonjudicial punishment authority has proved unsatisfactory to commanders in the field. The alternative solution has been to impose a trial by summary or special court-martial. In most cases, a court-martial results in a serious impairment of the services of an officer or enlisted man. Such

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1/Senate Report No. 1911, Aug. 23, 1962.

> a conviction stigmatizes a person with a criminal conviction on his record, which not only remains throughout his military career, but follows him into civilian life. * * * The bill, by providing increased authority for nonjudicial punishment, will enable commanders to deal promptly and efficiently with problems of discipline. At the same time, the increased nonjudicial authority should permit the services to reduce substantially the number of courts-martial for minor offenses, which result in stigmatizing and impairing the efficiency and morale of the person concerned." (Underscoring added.)

In increasing the punishment authority for article 15 punishments, the Congress intended that minor offenses, except in exceptional instances, not be referred to a court-martial and its possible stigma.

However, the stigma of an article 15 is also well documented. A 1959 study commissioned by the Secretary of the Army commented on the negative effect of an officer receiving an article 15. 1/

> "More and more the attitude is that an officer who has one record of an Article 15 imposed upon him might as well make his plans to get out of the service. This, of course, defeats the theory of punishment as a corrective measure."

The 1972 DOD Task Force on the Administration of Military Justice in the Armed Forces resurfaced a serious concern about the continuing stigma of an article 15. The report stated:

> "The question of how long the evidence on nonjudicial punishment [article 15] should remain in a person's record is one of decided concern to the individual. It is a question, however, that is treated differently by the several services. Because of the serious impact that retention of the nonjudicial punishment may have on the individual serviceman, the Task Force

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1/The report was issued by the "Committee on the Uniform Code of Military Justice, Good Order, and Discipline in the Army." (Known as the Powell Report.)

believes that the services should reexamine their current policies with a view toward minimizing this adverse effect. The services should, to the extent practical, adopt a uniform policy in this regard." (Underscoring added.)

The services have taken limited action on this recommendation. An August 1978 Army personnel memorandum cited a need to reexamine the Army's practice of permanently filing records of article 15 punishments. In describing present Army policy in this regard, the memorandum stated that

"* * * current policy causes concern that minor infractions will have lasting detrimental effects. Commanders may hesitate to use the article 15 (as it was designated--for minor offenses) for fear of damaging an individual's career over the long run. In today's highly competitive Army, the perception is (especially within the officer corps) that an Article 15 does cause permanent damage. Such a perception undoubtedly adversely affects the retention of fine young soldiers with excellent potential for future development. In addition, the current policy infers that commanders are incapable of making important personnel decisions." (Underscoring added.)

In October 1978, the Assistant Secretary of the Army questioned the Director of the Army staff on the current article 15 recordkeeping policy:

"The entire purpose of nonjudicial punishment [article 15] appears to have been undermined by the policy of recordkeeping. The objective of imposing immediate corrective punishment for minor offenses without creating a permanent offense record no longer exists. An Article 15 appears to have the same impact on an individual's military career as a court-martial conviction since the filing of the results is permanent." (Underscoring added.)

ALTERNATIVES TO CURRENT RECORDKEEPING POLICIES

The services contend that article 15 punishments are part of a person's record and are justifiably used as discriminators in a wide range of personnel and other decisions, including those on:

--Assignments. Some of these include overseas assignments, security assignments, and assignments associated with nuclear weapons.

--Promotions. This includes using such a record to determine the most qualified candidates and also as a discriminator to reduce the number of "most qualified candidates" to fit the available number of slots. The article 15 incident involved may not be relevant to stated promotion qualifications.

--Training. A disciplinary record can diminish chances to attend certain service schools.

--Sentencing in a subsequent court-martial. While prohibited from introduction during court proceedings, article 15 records can be used by the court to determine appropriate punishment.

--Receiving service awards, such as a good conduct medal, and reenlistment.

--Justifying an involuntary separation from the service for misconduct, unsuitability, or as a marginal performer. This could result in a less than fully honorable discharge which can limit veterans' benefits and civilian job opportunities.

Service officials told us they justify current practices on the "total man" concept. They claim that an article 15 is part of a person's record and should be used in determining the best qualified for a position or assignment. However, decisionmakers receive limited quidelines and criteria on how to consider a record of article 15.

Notwithstanding possible inequitable and inconsistent decisions, an article 15 record enters into personnel decisions that may have no relevance to the offense for which the article 15 was imposed. A prime example is the consideration of article 15 punishments that were received during basic or recruit training. According to DOD, individuals may receive frequent article 15 punishments during recruit training as a teaching or training device. We find it inappropriate that such records remain in a service member's personnel file for an indefinite time and can be considered in important personnel decisions years later.

Service officials involved in setting promotion policy tend to minimize the effect of an article 15 record by stating that its significance wanes as time goes on. One official told us, however, that while it is "time-sensitive," it is not ignored in the promotion decision since the candidates out number promotions. A paradox, therefore, exists because as the record of an article 15 becomes "older" its significance may increase because it is used as a discriminator in promotions as well as in other personnel decisions.

While the negative effects of using article 15 records have been criticized in the past, little has been achieved to correct the situation. Effective August 15, 1979, the Army changed the manner that it records article 15s in a service member's personnel file by creating a restricted microfiche file. Other changes include:

--Upon approval of a change in status from enlisted to officer or warrant officer, article 15s received while in enlisted status will be filed in a restricted file.

--Wholly set-aside article 15s will be filed in the restricted files of officers, warrant officers, and enlisted members.

--When only a minor punishment 1/ is administered for an offense, commanders will have the prerogative of filing the article 15 offense in only the unit records rather than filing it in the service member's official personnel file.

--Commanders exercising special court-martial convening authority will determine filing in cases of enlisted personnel in grades E-1 through E-5.

--Commanders exercising general court-martial convening authority will determine filing in cases of enlisted personnel in grades E-6 through E-9, warrant officers, and officers.

--Upon an individual's request records of article 15s that were received by officers or warrant officers

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1/Minor punishment is defined as restriction or extra duty for 14 days or less, detention, or forfeiture to be applied for not more than 1 month, correctional custody for 7 days or less, admonition, reprimand, or any combination of these.

while serving in a prior enlisted status, or article 15s that were wholly set-aside, can be transferred to the restricted file.

While the Army's efforts improve its recordkeeping policy, it falls short of eliminating the unnecessary stigma associated with receiving an article 15 punishment.

CONCLUSIONS

Despite widespread criticism, the services continue to use article 15 records for a wide range of personnel decisions--many of which have little or no relationship to the offense for which the article 15 punishment was imposed. As a result, article 15s can have very serious long-term consequences for service members.

The recording of article 15s in service members' personnel files has resulted in changing the character and impact of article 15. While intended as an informal way to quickly punish service members, article 15 records are being used for a wide range of personnel and career management decisions. This has created the need for greater uniformity and fairness in imposing article 15 punishments since it can have serious effects on a service member's career.

Alternatives to current recordkeeping policies are available. A better balance must be reached to meet the needs of the services and the individual, while minimizing the unwarranted and potentially serious consequences of an article 15 punishment.

RECOMMENDATIONS TO THE SECRETARY OF DEFENSE

We recommend that the Secretary direct the services to develop uniform criteria on the recording and use of article 15 records. To minimize the unwarranted effects of using article 15 records in a variety of personnel decisions, the services should:

--Determine what personnel decisions are critically dependent on the full disclosure of an individual's complete disciplinary record. The selection should be made on a "critical need" rather than a "nice to have" basis. Existing "active" personnel files should be conformed to the new criteria.

--Inform service members when article 15 records will be used in personnel decisions.

AGENCY COMMENTS AND OUR EVALUATION

In its comments on a draft of this report, DOD disagreed with our proposal to discontinue the practice of keeping article 15 records in personnel files. DOD cited several reasons for keeping these records:

--Reasons for reductions in grade and forfeitures of pay must be recorded (44 U.S.C. 3101).

--Records of offenses are necessary for personnel management.

--Records are needed to respond to later complaints, legal actions, or similar steps initiated by the individual--such as corrective action through the Boards for Correction of Military or Naval Records.

We agree and stated in the report that the services need to have a sound basis for making certain critical personnel decisions, such as work assignments of a sensitive nature. A complete picture of a person's disciplinary history (including article 15s) may assist in making such decisions. But, using a record of article 15 in such decisions, where the article 15 incident has no direct bearing on the decision being made, is unjustified.

While steps have been taken and others are being considered by the services to minimize the long-term consequences of an article 15 record, more must be done. We believe that DOD and the services must develop a sound approach which permits serious offenses to be considered in personnel-related decisions but discounts minor offenses. Minor offenses which merit a low-level article 15 punishment for correction (such as article 15s received as "training devices" during recruit training) should not be considered in these matters.

***§ 815. Art. 15. Commanding officer's nonjudicial punishment**

(a) Under such regulations as the President may prescribe, and under such additional regulations as may be prescribed by the Secretary concerned, limitations may be placed on the powers granted by this article with respect to the kind and amount of punishment authorized, the categories of commanding officers and warrant officers exercising command authorized to exercise those powers, the applicability of this article to an accused who demands trial by court-martial, and the kinds of courts-martial to which the case may be referred upon such a demand. However, except in the case of a member attached to or embarked in a vessel, punishment may not be imposed upon any member of the armed forces under this article if the member has, before the imposition of such punishment, demanded trial by court-martial in lieu of such punishment. Under similar regulations, rules may be prescribed with respect to the suspension of punishments authorized hereunder. If authorized by regulations of the Secretary concerned, a commanding officer exercising general court-martial jurisdiction or an officer of general or flag rank in command may delegate his powers under this article to a principal assistant.

(b) Subject to subsection (a) of this section, any commanding officer may, in addition to or in lieu of admonition or reprimand, impose one or more of the following disciplinary punishments for minor offenses without the intervention of a court-martial—

(1) upon officers of his command—

(A) restriction to certain specified limits, with or without suspension from duty, for not more than 30 consecutive days;

(B) if imposed by an officer exercising general court-martial jurisdiction or an officer of general or flag rank in command—

(i) arrest in quarters for not more than 30 consecutive days;

(ii) forfeiture of not more than one-half of one month's pay per month for two months;

(iii) restriction to certain specified limits, with or without suspension from duty, for not more than 60 consecutive days;

(iv) detention of not more than one-half of one month's pay per month for three months;

(2) upon other personnel of his command—

(A) if imposed upon a person attached to or embarked in a vessel, confinement on bread and water or diminished rations for not more than three consecutive days;

(B) correctional custody for not more than seven consecutive days;

(C) forfeiture of not more than seven days' pay;

(D) reduction to the next inferior pay grade, if the grade from which demoted is within the promotion authority of the officer imposing the reduction or any officer subordinate to the one who imposes the reduction;

(E) extra duties, including fatigue or other duties, for not more than 14 consecutive days;

(F) restriction to certain specified limits, with or without suspension from duty, for not more than 14 consecutive days;

(G) detention of not more than 14 days' pay;

(H) if imposed by an officer of the grade of major or lieutenant commander, or above—

(i) the punishment authorized under subsection (b)(2)(A);

(ii) correctional custody for not more than 30 consecutive days;

(iii) forfeiture of not more than one-half of one month's pay per month for two months;

(iv) reduction to the lowest or any intermediate pay grade, if the grade from which demoted is within the promotion authority of the officer imposing the reduction or any officer subordinate to the one who imposes the reduction, but an enlisted member in a pay grade above E–4 may not be reduced more than two pay grades;

(v) extra duties, including fatigue or other duties, for not more than 45 consecutive days;

(vi) restrictions to certain specified limits, with or without suspension from duty, for not more than 60 consecutive days;

(vii) detention of not more than one-half of one month's pay per month for three months.

Detention of pay shall be for a stated period of not more than one year but if the offender's term of service expires earlier, the detention shall terminate upon that expiration. No two or more of the punishments of arrest in quarters, confinement on bread and water or diminished rations, correctional custody, extra duties, and restriction may be combined to run consecutively in the maximum amount imposable for each. Whenever any of those punishments are combined to run consecutively, there must be an apportionment. In addition, forfeiture of pay may not be combined with detention of pay without an apportionment. For the purposes of this subsection, 'correctional custody' is the physical restraint of a person during duty or nonduty hours and may include extra duties, fatigue duties, or hard labor. If practicable, correctional custody will not be served in immediate association with persons awaiting trial or held in confinement pursuant to trial by court-martial.

(c) An officer in charge may impose upon enlisted members assigned to the unit of which he is in charge such of the punishments authorized under subsection (b)(2) (A)-(G) as the Secretary concerned may specifically prescribe by regulation.

(d) The officer who imposes the punishment authorized in subsection (b), or his successor in command, may, at any time, suspend probationally any part or amount of the unexecuted punishment imposed and may suspend probationally a reduction in grade or a forfeiture imposed under subsection (b), whether or not executed. In addition, he may, at any time, remit or mitigate any part or amount of the unexecuted punishment imposed and may set aside in whole or in part the punishment, whether executed or unexecuted, and restore all rights, privileges, and property affected. He may also mitigate reduction in grade to forfeiture or detention of pay. When mitigating—

(1) arrest in quarters to restriction;

(2) confinement on bread and water or diminished rations to correctional custody;

(3) correctional custody or confinement on bread and water or diminished rations to extra duties or restriction, or both; or

(4) extra duties to restriction;

the mitigated punishment shall not be for a greater period than the punishment mitigated. When mitigating forfeiture of pay to detention of pay, the amount of the detention shall not be greater than the amount of the forfeiture. When mitigating reduction in grade to forfeiture or detention of pay, the amount of the forfeiture or detention shall not be greater than the amount that could have been imposed initially under this article by the officer who imposed the punishment mitigated.

(e) A person punished under this article who considers his punishment unjust or disproportionate to the offense may, through the proper channel, appeal to the next superior authority. The appeal shall be promptly forwarded and decided, but the person punished may in the meantime be required to undergo the punishment adjudged. The superior authority may exercise the same powers with respect to the punishment imposed as may be exercised under subsection (d) by the officer who imposed the punishment. Before acting on an appeal from a punishment of—

(1) arrest in quarters for more than seven days;

(2) correctional custody for more than seven days;

(3) forfeiture of more than seven days' pay;

(4) reduction of one or more pay grades from the fourth or a higher pay grade;

(5) extra duties for more than 14 days;

(6) restriction for more than 14 days; or

(7) detention of more than 14 days' pay;

the authority who is to act on the appeal shall refer the case to a judge advocate of the Army, Navy, Air Force, or Marine Corps, or a law specialist or lawyer of the Marine Corps, Coast Guard, or Treasury Department for consideration and advice, and may so refer the case upon appeal from any punishment imposed under subsection (b).

APPENDIX I

(f) The imposition and enforcement of disciplinary punishment under this article for any act or omission is not a bar to trial by court-martial for a serious crime or offense growing out of the same act or omission, and not properly punishable under this article; but the fact that a disciplinary punishment has been enforced may be shown by the accused upon trial, and when so shown shall be considered in determining the measure of punishment to be adjudged in the event of a finding of guilty.

(g) The Secretary concerned may, by regulation, prescribe the form of records to be kept of proceedings under this article and may also prescribe that certain categories of those proceedings shall be in writing.

APPENDIX II

LOCATIONS VISITED

DEPARTMENT OF DEFENSE:
- Office of the Assistant Secretary of Defense (Manpower, Reserve Affairs and Logistics), Washington, D.C.

AIR FORCE:
- Headquarters, Washington, D.C.
- Air Reserve Personnel Center, Lowry AFB, Denver, Colorado
- Beale AFB, California
- Lackland AFB, San Antonio, Texas
- Mather AFB, California
- Randolph AFB, Texas
- Travis AFB, California

ARMY:
- Headquarters, Washington, D.C.
- Fort Ord, California
- Fort Hood, Texas
- Army Reserve Components Personnel and Administration Center, St. Louis, Missouri
- Army Enlisted Records and Evaluation Center, Fort Benjamin Harrison, Indiana

MARINE CORPS:
- Headquarters, Washington, D.C.
- Camp Pendleton, California
- Camp Lejeune, North Carolina
- Marine Corps Recruit Depot, San Diego, California

NAVY:
- Headquarters, Washington, D.C.
- San Diego Naval Station, California
- Norfolk Naval Base, Norfolk, Virginia

GENERAL SERVICES ADMINISTRATION:
- Military Personnel Records Center, St. Louis, Missouri

HOW OUR SAMPLE OF ARTICLE 15 CASES WAS DEVELOPED

Before initiating our work, we met with headquarters representatives of the four services. We explained our need to obtain qualitative and quantitative information about article 15 punishments and asked for their advice on how to avoid sample bias and minimize chances for misrepresenting our findings. After reviewing our job design, these officials agreed that our methodology would provide a good representation of article 15 impositions and practices among the services.

Selecting article 15 cases

We selected a representative cross section of major military installations and identified the major commands at each installation for the Army, Navy, and Marine Corps. Eleven commands were chosen to provide a cross section of military units. We selected three Air Force installations, rather than major commands, because of the low number of article 15 punishments imposed by the Air Force.

Within each of the 14 major commands/installations, we identified the individual units. For the Army, the Marine Corps, and shore-based Navy units, we randomly selected those units from which we would select individual article 15 cases. For Navy units assigned to vessels, we chose vessels based on their size and availability.

Once the units were selected, we randomly selected individual article 15 cases from unit records. We limited our sample to 80 individual cases per major command or installation because of resource limitations. Of the 1,120 cases selected, 1,117 were valid article 15 cases and are used as our data base throughout the report.

Personnel for interview

To obtain qualitative information on article 15 punishments imposed, we interviewed a sample of military personnel. A total of 290 personnel were interviewed--70 commanders, 23 staff judge advocates, 44 NCOs, and 153 enlisted personnel. Of the enlisted personnel, 76 had received an article 15.

At the 14 major commands/installations used to develop our sample, we randomly selected units for interview purposes. At each unit we interviewed the commander and randomly selected NCOs and enlisted personnel for interviews.

APPENDIX III

We also interviewed all the staff judge advocates available at these commands. Structured interviews were used and each person was asked the same questions.

Description of 1,117 actual article 15 cases analyzed

Breakdown by recipients grade level:

	Army	USAF	Navy	USMC	Total	Percent
E1	37	86	49	98	270	24.2
E2	70	51	143	38	302	27.0
E3	86	91	69	86	332	29.7
E4	72	56	31	13	172	15.4
E5	7	10	9	2	28	2.5
E6	3	1	1	0	5	.4
E7	0	0	1	0	1	.1
W1	1	0	0	0	1	.1
W2	1	0	0	0	1	.1
01	0	1	0	0	1	.1
03	0	2	0	0	2	.2
Unknown	0	0	2	0	2	.2
Total	277	298	305	237	1,117	100.0
Percent	24.8	26.7	27.3	21.2	100.0	

Breakdown by grade of imposing officer:

Officer grade	Army	USAF	Navy	USMC	Total	Percent
01	1	6	0	0	7	0.6
02	16	1	0	71	88	7.9
03	191	59	0	119	369	33.0
04	10	124	0	11	145	13.0
05	50	87	92	36	265	23.7
06	9	12	213	0	234	21.0
07	0	1	0	0	1	.1
Unknown	0	8	0	0	8	.7
Total	277	298	305	237	1,117	100.0

APPENDIX III

Summary of article 15 cases sampled by location

Installations and commands	Number of units	Total cases
Air Force (note a)		
Beale AFB, California	1	
Lackland AFB, Texas	1	
Mather AFB, California	1	
Total	3	298
Army		
Fort Ord, California		
7th Infantry Division	7	
Combat Developments Experimentation Command	7	
Fort Hood, Texas		
1st Cavalry Division	5	
2d Armored Division	5	
Total	24	277
Navy		
San Diego Naval Station, California		
Surface Forces, Pacific		
Ships	6	
Shore units	3	
Norfolk Naval Base Air Forces, Atlantic Carriers	2	
Total	11	305
Marine Corps		
Camp LeJeune, North Carolina		
2d Marine Division	5	
Camp Pendleton, California		
1st Marine Division	6	
Marine Corps Recruit Depot, Recruit Training Regiment, San Diego, California	5	
Total	16	237
Total	54	1,117

a/Our sample of Air Force article 15 cases was selected from among all units on each of the bases because individual units had an insufficient number of cases to sample.

GAO PUNISHMENT INDEX

In order to compare the article 15 punishments imposed in specific cases, we converted the various punishments to a common base. This was necessary due to the variety of punishments currently in use. Use of punishment equivalent units enabled us to compare the relative severity of punishment imposed by the same officer for various offenses or by different officers for the same offense.

We used the Manual for Courts-Martial, the Army Military Judges Guide, and discussions with military representatives as a basis for establishing equivalent units. The Manual contains a table of equivalent punishments for substituting one form of punishment for another, but it does not contain equivalents for punishments that can not be substituted. For those, we determined approximate equivalencies, which are described in the footnotes to the following table. This table lists the amount of each type of punishment considered equal to another; for example, one-half day of confinement equals 2 days' restriction.

Type of punishment	Amount (days) equivalent to 1 unit
Confinement on diminished rations	1/2
Correctional custody	1
Forfeiture of pay	1
Arrest in quarters (note a)	1
Reprimand/admonition	1
Extra duties	1-1/2
Detention of pay	1-1/2
Restriction	2
Reduction in grade	(d)
Other (note c)	1

a/Considered to be the same as correctional custody, i.e., one punishment unit per day.

b/We determined the minimum time that would be needed to attain the prior grade held, computed the total pay that would be lost during this period, and converted this amount to the number of days of pay lost, with each day equivalent to one unit of punishment. The resulting numbers of days' pay lost vary by service and initial pay grade.

c/Refers to additional punishment suggested for the five control cases. Most were judged to be of the severity of a reprimand or admonition and therefore were assigned a value of one punishment unit.

ARTICLE 15 CONTROL CASES

To separate justifiable disparity from unwarranted disparity, we submitted 5 control cases to 93 commissioned officers. We asked each officer to decide:

1. How the offenses should be treated--nonpunitively, article 15, court-martial, or administrative discharge.

2. If punishment is imposed, how severe should it be and should leniency be used.

The responses were tabulated and used throughout this report to corroborate and substantiate findings from our analysis of 1,117 actual article 15 cases. The 5 control cases are shown below.

CASE STUDIES

Case 1--Possession of drugs

Background--James Smith, E-2, has been in your command for 2 months. He is 18 years old and single with no dependents. Smith has been assigned to the motor pool as a driver. His work performance has been judged as "satisfactory" by his immediate supervisor.

Disciplinary history--He has no other prior article 15s or drug-related problems. His record does show two counselings, one for being late, and one for not properly maintaining his barracks room.

Current offense--Smith was found in possession of approximately 1.5 grams of marihuana during a search in his barracks room. The search resulted when William Nelson, E-3, another resident of the barracks, notified the base military police that Smith had approached him earlier that night in the barracks lounge and had offered to sell him marihuana. Chemical analysis confirmed that the substance taken from Smith was marihuana.

In discussing the incident, Smith denied trying to sell any marihuana to Nelson. He maintained that Nelson and he did not get along and that Nelson wanted to get him in trouble. Smith said the marihuana was for his own use and would not reveal his source.

Case 2--Disrespect/assualt

Background--Robert Brown, E-4, has been in your command for 10 months. He is 22 years old and married with no dependents other than his wife. Brown is currently assigned as a clerk-typist. His work performance has been characterized as "less than satisfactory" by his immediate supervisor.

Disciplinary history--On 5 June 1978 Brown was drunk and disorderly at the service club. He was given an article 15 with a 2-month restriction on his use of the club. He was evaluated by the mental health unit and not found to have an alcohol problem and not in need of mental health treatment.

Current offense--Brown was reported by his supervisor, Edward Clark, E-7, for verbally abusing him as well as pushing and striking him on the side of the head. The incident occurred at Brown's work station in the presence of several co-workers. Clark's charges were corroborated in interviews with two individuals present at the time.

Brown admitted assaulting Clark, stating that over the last month his supervisor had been making disparaging comments about the quality of his job performance to co-workers. Brown stated that he had been drinking beer at lunch on the day of the assault and lost his temper when upon returning to his desk, he overheard Clark making negative comments to a co-worker about some work Brown had done that morning.

Case 3--Unauthorized absence

Background--Steven Jones, E-5, has been in your command for 15 months. He is 24 years old and single with no dependents. His current assignment is with the installation military police. Other than sometimes being late for work, his work performance has been described as "highly effective" by his supervisor.

Disciplinary history--Jones' records show two previous incidents. On 12 August 1978 he was two hours late for duty. He was counseled by his immediate supervisor.

On 23 September 1978 Jones was cited by military authorities for reckless driving. He was restricted from driving on base for 1 month.

Current offense--Jones is charged with leaving his place of duty at noon and failing to return during his normal shift which ended at 6 p.m. that evening.

He stated that he needed the afternoon off to meet his girlfriend who was arriving from out of town. Jones said that he had requested leave the previous day from his supervisor, who said that 1 day's notice was not enough time to rearrange schedules to accommodate Jones' request. He said that in spite of this disapproval, he decided to take the time off anyway.

Case 4--Larceny

Background--Jane Davis, E-6, has been in your command for 24 months. She is 30 years old and married to another service member at the same command. Davis is currently assigned as a computer programer. Her work performance has been characterized as "satisfactory" by her immediate supervisor.

Disciplinary history--Her record shows no previous disciplinary incidents.

Current offense--Davis is charged with shoplifting. She was observed acting in a suspicious manner in the camera section of the base exchange by security personnel. After paying for a carton of cigarettes and leaving the exchange, she was approached by security personnel. Various camera supplies such as a wide angle lens, filters, and several boxes of film were found in Davis' possession. Total value of the stolen items was determined to be $165.00.

She admitted stealing the items from the exchange and could offer no explanation for her behavior. She denied ever having shoplifted before the incident in question, and after evaluation by mental health officials, was not found to need mental health care.

Case 5--Failure to obey an order

Background--Paul Johnson, E-3, has been in your command for 6 months. He is 19 years old and single with no dependents. Johnson is currently assigned as a clerk-typist. His work performance has been characterized by his immediate supervisor as "above average."

Disciplinary history--Johnson has a prior article 15 for unauthorized absence from duty for being late to work on 11 September 1978. He received a 6-month suspended fine for that offense.

Current offense--On 27 December 1978, Johnson's supervisor, Ed Rogers, E-8, ordered him to get a haircut by the following week. As of this date, Johnson has not yet complied with that order.

Rogers stated that in early December he first noticed Johnson's hair length exceeded that allowed by regulation. At that time, he unofficially "suggested" on several occasions that Johnson needed a haircut. When this tactic proved unsuccessful, Rogers ordered Johnson to get a haircut and informed him that failure to comply would make him subject to disciplinary action.

In discussing the matter, Johnson stated that it was his belief that current service policy was to be tolerant of contemporary grooming standards. Therefore, he did not feel that a supervisor's order to get a haircut would be upheld at higher levels.

APPENDIX VI

ASSISTANT SECRETARY OF DEFENSE

WASHINGTON, D.C. 20301

MANPOWER
RESERVE AFFAIRS
AND LOGISTICS

19 JUN 1980

Mr. H. L. Krieger
Director, Federal Personnel
and Compensation Division
U.S. General Accounting Office
Washington, D. C. 20548

Dear Mr. Krieger:

This is in reply to your letter to the Secretary of Defense regarding the GAO draft report of May 5, 1980 on "Changes Are Needed to Achieve Greater Benefits from the Use of Article 15 in Maintaining Military Discipline and Improving Members' Performance," OSD Case #5430, FPCD-80-19.

This report raises issues that merit our attention because Article 15 is an important disciplinary tool that commanders have in dealing with minor offenses without the intervention of a court-martial. However, as the report is based upon a random sampling of 1,117 cases, its findings and conclusions are questionable in some material respects. As you may be aware, the sample used represents only .17% of the Article 15's imposed by all the Services during the two years of the GAO study. Further, while we agree with the underlying theme of the report on the need for a fair and efficient system in administering nonjudicial punishments, we do not believe a majority of your recommendations would promote that end.

Attached are our comments regarding both the accuracy and substance of your observations. We trust that these comments would prove useful in formulating your final report.

Thank you for the opportunity to respond to your draft report.

Sincerely,

Richard Danzig

Richard Danzig
Principal Deputy Assistant
Secretary of Defense (MRA&L)

DoD Comments on GAO Proposed
Changes in Use of Article 15, UCMJ

GAO Recommendation: DoD establish clear goals and objectives of Article 15 punishment, and provide benchmark guidance on selected offenses for nonjudicial punishment, norms of punishment, and conditions concerning the use of clemency.

Comment: We agree with the intention of this recommendation and fully recognize the value of achieving greater uniformity in disposition of Article 15's. However, given the diversity in missions and needs of each of the Services, it is no easy task for DoD to establish specific goals and objectives of nonjudicial punishment. Any such pronouncement would need to be so general that it would provide little, if any, guidance not already set forth in the Uniform Code of Military Justice (UCMJ) and the Manual for Courts-Martial (MCM). Detailed guidance would still have to be established by each of the Services.

The concept of adopting a blueprint for Article 15 that would supplant a commander's discretion and be applicable to all situations is neither feasible nor desirable. The application of this concept would mean the loss of consideration of personal factors which cannot be discretely defined and which are essential to good disciplinary decisions and effective leadership. This truism is expressly recognized in paragraph 129a of the MCM which provides: "(N)o policy may be established whereby certain categories of offenses must be disposed of under Article 15 regardless of the circumstances, or predetermined kinds or amounts of punishments must be composed for certain classifications of offenses that are proper for disposition under Article 15."

GAO Recommendation: Consider greater involvement of the commander's staff judge advocate in the Article 15 process.

Comment: It is the policy of the Services to encourage commanders to consult their judge advocates on all legal matters, including the imposition of Article 15 punishments. There is no credible evidence to support the conclusion that commanders should be required to seek legal advice in all Article 15 cases. In fact, a comparison of the views of judge advocates and commanders contained in the draft GAO report does not reflect major disagreement in either disposition or punishment. A requirement for legal review prior to imposition of Article 15 punishment in every case would therefore not alleviate the perceived problem.

GAO Recommendation: Establish centralized data systems to monitor and evaluate the use and effectiveness of Article 15.

Comment: We concur with the desirability of collecting and analyzing Article 15 data to determine the need for appropriate command attention. The adoption of this recommendation, however, must be weighed against the paramount need to avoid placing additional strain on an already administratively burdened military justice operation. Efforts to adopt the Air Force system (AMJAMS) referred to on page 8 of the draft report would not be feasible, considering the considerably larger number of Article 15 punishments and decentralized organizations of the Army and the Navy. Moreover, Article 15 data for these Services are forwarded to their respective Judge Advocate Generals on a regular basis from field activities. Though not as sophisticated as the Air Force system, this practice provides a

broad overview of developing trends and potential problems. In addition, major commanders monitor the effectiveness of Article 15 throughout their commands during regularly scheduled command inspections, at which time unit punishment books are reviewed and evaluated.

GAO Recommendation: Seek changes to MCM specifying the right to a lawyer prior to accepting or refusing Article 15 punishment and clarifying the right to refuse it up to the time punishment is imposed.

Comment: It is the practice of the Army and Air Force to provide a lawyer for Article 15 advice in all instances. While the opportunity for obtaining such advice is limited in other Services, this difference is largely a result of their varying missions, organizational structures, and accessibility to legal services.

Article 15 punishment was intended to be a swift, simplified and nonadversarial procedure for commanders to deal with minor offenses without the intervention of a court-martial. Therefore, there is no requirement in the UCMJ for legal advice in Article 15 proceedings. Contrary to the suggestion made in the draft report, the decision in United States v. Booker, 5 M.J. 238 (C.M.A. 1977), did not create a substantive right to legal advice in Article 15 cases; it merely adopted an evidentiary rule that excludes the admission into evidence of any Article 15 record unless the individual was afforded an opportunity to obtain counsel prior to accepting punishment. Omission of this opportunity does not affect the validity of that Article 15; it simply cannot be used against the member in a subsequent court-martial.

The draft report expresses concern that some service members may not be aware that the right to demand trial by court-martial continues up to the time punishment is imposed. This concern is not supported by the collective experience of the Services. Because this procedural right is made clear in Article 15(b), UCMJ and paragraph 132, MCM, its emphasis by DoD does not appear to be warranted.

There is no credible statistical basis for the GAO's conclusion that service members infrequently use legal counsel because of lack of knowledge of its availability or benefits, or fear of reprisal if it is used. The GAO sampling of 1,117 cases (all Services) indicates only 18% received legal advice. This is in sharp contrast to the Army statistics. In the calendar quarter of January through March 1980, for example, 37,209 Article 15's were imposed Army-wide. Statistics maintained by the U.S. Army Trial Defense Service, which has the mission of representing Army members at trial and giving advice to those offered an Article 15 punishment, show they had provided 23,046 service members, or 62%, with Article 15 advice during the same period.

GAO Recommendation: Improve training of enlisted personnel to insure their full understanding of their procedural rights and the possible negative long-term consequences of accepting an Article 15.

Comment: Awareness in Article 15 matters is being stressed by the Services through military justice training programs. For example, the Army is developing a commercially prepared film on Article 15, which will be used to supplement military justice orientation during basic training and after arrival at a permanent duty station. This film will cover all aspects of nonjudicial punishment in a manner which will enable the general enlisted audience to comprehend the material presented.

APPENDIX VI

GAO Recommendation: Eliminate the practice of maintaining Article 15 records in permanent personnel files, and clear existing "active" permanent personnel files of Article 15 records.

Comment: We disagree with this recommendation. There are a number of compelling reasons for keeping Article 15 records in the permanent personnel files:

a. As to reductions in grade and forfeitures. These types of punishment affect the offenders' entitlement to pay and the financial rights of the Government. While it is not necessary that they be made available for any particular personnel action or decision, it is essential that they be retained as a matter of record. (See 44 U.S. Code 3101.)

b. A record of offenses is necessary for personnel management. This does not mean that every offense must be revisited each time that an individual is being considered for some form of personnel action, regardless of its significance. However, as service members move from unit to unit and base to base, the general level of their performance must be available to permit decisions relating to assignments, advancement and retention. It would be possible to record these independently of the fact of punishment, but this would require duplication of effort. In addition, the fact that corrective action has been taken under Article 15 is itself valuable information in deciding personnel actions. This is not to say that all minor punishments need be so used.

c. A record is needed to respond to later complaints, legal actions and similar steps initiated by an individual. The Services receive many requests for corrective action, through the Board for Correction of Military Records and by other means. In those cases, it is essential that the Services have a record of what actually occurred; the facts stated by the claimants are sometimes in error. At least for those punishments affecting pay or grade, a historical record must be available to protect the Government's interest.

GAO REPORTS ON THE MILITARY JUSTICE SYSTEM

Addressee	Report title, number, and issue date
The Secretary of Defense	"Faster Processing of Discharges for Adverse Reasons Could Save Millions of Dollars" (FPCD-80-57, July 3, 1980)
The Congress	"Military Discharge Policies and Practices Result in Wide Disparities: Congressional Review Is Needed" (FPCD-80-13, Jan. 15, 1980)
The Secretary of Defense	"Military Confinement and Correctional Facilities, Policies, and Practices" (FPCD-80-28, Jan. 10, 1980)
The Congress	"Some Criminal Offenses Committee Overseas by DOD Civilians Are Not Being Prosecuted: Legislation Is Needed" (FPCD-79-45, Sept. 11, 1979)
The Congress	"AWOL in the Military: A Serious and Costly Problem" (FPCD-78-52, Mar. 30, 1979)
The Congress	"Fundamental Changes Needed to Improve the Independence and Efficiency of the Military Justice System" (FPCD-78-16, Oct. 31, 1978)
The Congress	"Eliminate Administrative Discharges in Lieu of Court-Martial: Guidance for Plea Agreements in Military Courts is Needed" (FPCD-77-47, Apr. 18, 1978)
The Congress	"Military Jury System Needs Safeguards Found in Civilian Federal Courts" (FPCD-76-48, June 6, 1977)
The Secretary of Defense	"Millions Being Spent to Apprehend Military Deserters Most of Whom Are Discharged As Unqualified for Retention" (FPCD-77-16, Jan. 31, 1977)
The Congress	"The Clemency Program of 1974" (FPCD-76-64, Jan. 7, 1977)

Addressee	Report title, number, and issue date
The Secretary of Defense	"People Get Different Discharges in Apparently Similar Circumstances" (FPCD-76-46, Apr. 1, 1976)
The Secretary of Defense	"More Effective Criteria and Procedures Needed for Pretrial Confinement" (FPCD-76-3, July 30, 1975)
The Congress	"Uniform Treatment of Prisoners Under the Military Correctional Facilities Act Currently Not Being Achieved" (FPCD-75-125, May 30, 1975)
The Secretary of Defense	"Urgent Need for a Department of Defense Marginal Performer Discharge Program" (FPCD-75-152, Apr. 23, 1975)
Senate Committee on Armed Services	"Need for and Uses of Data Recorded on DD Form 214 Report of Separation From Active Duty" (FPCD-75-126, Jan. 23, 1975)
The Congress	"Improving Outreach and Effectiveness of DOD Reviews of Discharges Given Service Members Because of Drug Involvement" (B-173688, Nov. 30, 1973)

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* U.S. GOVERNMENT PRINTING OFFICE : 1980-620-386/291

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