



# DEPLOYING JUSTICE

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## A HANDBOOK

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### FOR THE

### CHIEF OF MILITARY JUSTICE

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OFFICE OF THE JUDGE ADVOCATE GENERAL – CRIMINAL LAW DIVISION

JUNE 2008

## FOREWORD TO "DEPLOYING JUSTICE"

"Adversity has the effect of eliciting talents, which in prosperous circumstances would have lain dormant."  
- Horace

As long as our Army has been in the field, we've taken military justice with us. Over the years, we have learned valuable lessons about deploying Justice. Those lessons are in this book. If you are a Chief of Military Justice you must read this handbook. Any supervisor connected to Military Justice must be familiar with it. Practitioners of military justice must absorb its lessons.

This handbook has been available online for almost two years. We now put it directly into your hands for a reason. I want you to understand it, use it, improve it and share its lessons. It will help you to continue to provide superb legal support to your commanders.

This handbook contains solutions to commonly encountered problems for the Chief of Military Justice of deploying units. It is heavy with real world examples of how military justice transitions in times of deployment. Covered areas include creating provisional units, transferring cases to different GCMCAs, and establishing new jurisdictional schemes. It provides step-by-step instructions, templates, and applicable references. It will help as-yet-undeployed Chiefs of Justice understand the process and avoid known pitfalls. It will also provide even the veteran Judge Advocate with insightful suggestions and helpful forms which can save valuable time.

As good as this handbook is – it can always be better. To keep this resource as current as possible, we need your suggestions and recent examples. Forward your comments to OTJAG-Criminal Law Division at DAJA-CL, 1777 North Kent Street, Rosslyn, VA 22209.

I urge you to read this handbook before you need it.

A handwritten signature in black ink that reads "SCOTT C. BLACK". Below the signature, there is a small, handwritten inscription that appears to read "Maj. Gen., U.S. Army".

2 JUN 2008

SCOTT C. BLACK  
Major General, U.S. Army  
The Judge Advocate General

## **CONTRIBUTORS**

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  - d. III Corps IP – Provisional Units and the Uniform Code of Military justice (**Enclosure 2**)
  - e. FORSCOM Withholding memorandum, 10 July 2003 (**Enclosure 3**)
  - f. FORSCOM Delegation Memorandum, 11 January 2007 (**Enclosure 3**)
  - g. Samples (**Enclosure 4, Tabs A – I**).

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*Preparing for Deployment*

## **Outline of Requirements**

- Step 1. Identify Available Sources of General Court-Martial Convening Authority**
  - a. Existing Authority Under Article 22, UCMJ
  - b. Methods to Determine Available Sources of UCMJ Authority
  - c. Creating New Authority Through the Use of Provisional Units
- Step 2. Determine optimal Convening Authority During Deployment**
  - a. Convening Authority Deploys and Retains Jurisdiction Over all Soldiers
  - b. Convening Authority Remains at Home Station
  - c. Convening Authority Deploys and Attaches Soldiers at Home Station to a Different Convening Authority
- Step 3. Establish a Jurisdictional Scheme for the Rear Provisional Unit**
  - a. Designate a Rear Convening Authority
  - b. Develop a Jurisdictional Scheme
  - c. Designate a SJA for the Rear Convening Authority
  - d. Build the Rear Provisional Unit
- Step 4. Select a New Court-martial Panel and Administrative Separation Board**
  - a. Select a New panel
  - b. Publish New Convening Orders
  - c. Select a New Standing Administrative Separation Board
- Step 5. Transfer Pending Courts-Martial Cases**
  - a. Determine Which Cases Must be Transferred to a New Convening Authority
  - b. Prepare Documents to Request Transfer
  - c. Use of Documentation
- Step 6. Actions on Redeployment**
  - a. Effective End Date of Provisional Units
  - b. Determine Status of Current Cases

## **Deploying Justice: A Six Step Framework for Analysis and Action**

This book provides a step by step template that helps to analyze the potential impact of a deploying unit on the military justice process, and outlines options to address cases at all levels of disposition. While this structure is an effective starting point, there are statutory, regulatory, and case authorities cited throughout this section. The Chief of Military Justice should review those references, and ensure the recommended course of action matches the specific needs, legal authority, and factual scenarios particular to the unit.

### *Step 1. Identify Available Sources of General Court-Martial Convening Authority*

a. Existing Authority Under Article 22, UCMJ. Article 22 lists who may convene general courts-martial, unless that authority has specifically been withheld by a higher authority (for deploying Reserve Component units, consult US Army Reserve Command policy while at home station, *see also* AR 27-10, Chapter 21 and Appendix E). Most Army units will rely on either Article 22(a)(5) or Article 22(a)(8). Under Article 22(a)(5), a commander of an Army Corps, a division, or a separate brigade may convene courts-martial. Article 22(a)(8) is usually referred to as secretarial authority and provides the Secretary of each service the authority to designate any other commanding officer as a general courts-martial convening authority. The Chief of Military Justice should verify which source of authority the convening authority currently relies on and whether other sources of authority may also apply. Most CONUS installations have been designated by the Secretary of the Army as General Court Martial Convening Authorities (GCMCAs). At the same time, a Corps, or Division Commander located at the CONUS Installation may rely on their inherent authority as the unit commander, rather than the installation commander, in order to convene courts-martial.

b. Methods to Determine Available Sources of UCMJ Authority. There are several ways to determine the convening authority and it is possible that the unit has more than one GCMCA option available.

(1) First, check the order cited on the courts-martial convening orders. For a copy of the orders, the United States Army Publishing Directorate provides a list of all Department of the Army General Orders (DAGO). The website is <http://www.usapa.army.mil>. If the Chief of Military Justice cannot locate the appropriate DAGO on the website, OTJAG-Criminal Law Division maintains a comprehensive orders book for all Army GCMCAs.

(2) Next, review the Modified Table of Organization and Equipment (MTOE), the Table of Distribution and Allowances (TDA), or other authorization document. Most of the large CONUS installations have separate positions for the unit commanders and installation commanders. At Fort Lewis, for example, DAGO 10, dated 1981, designated the Commander, Fort Lewis, as a GCMCA. Commander, I Corps, also exercises his inherent authority as a Corps Commander and can convene general courts-martial pursuant to Article 22(a)(5).

(3) Finally, the Chief of Military Justice should review the deployment order. The commander may be authorized to convene courts-martial based on secretarial designation of

the deployed command position. For example, when the Commander of XVIII Airborne Corps deployed to Afghanistan in 2002, the Secretary of the Army designated the commander of the Army Task force element of CJTF-180 to be a GCMCA. Consulting individual Soldiers' activation orders is an especially useful tool to use for reservists who may come from several different units, or as individual replacements.

c. Creating New Authority Through the Use of Provisional Units.

(1) Authority for Active Component (AC) units: Since most AC commands will leave behind pending courts-martial cases and administrative separations, it is crucial that rear commanders have the proper authority to exercise military justice. Therefore, the unit may need to establish provisional units. A unit is only authorized one commander, so in order for the rear unit to have military justice authority, the unit must be a provisional unit properly designated in accordance with AR 220-5, paragraph 2-5a. The Chief of Military Justice should work with counterparts in G-1 and G-3/5/7 (Force Structure) to ensure that the rear unit has an activated unit identification code (UIC) and is reported to the Center of Military History (DAMH-FPO). Under the provisions of AR 220-5, paragraph 2-5a, the commander of an Army field command may establish provisional units.<sup>1</sup> See Enclosure 2. Joint Publication 1-02, 12 April 2001, as Amended Through 1 March 2007, defines **field army** as an "Administrative and Tactical organization composed of a headquarters, certain organic troops, service support Troops, a variable number of corps, and a variable number of divisions. See also **Army Corps**."<sup>2</sup> The GCMCA also has the authority to determine whether a command is separate and detached, and can serve as either a SPCMCA or SCMCA, pursuant to RCM 504(b)(2). AR 27-10, paragraph 5-2a(2), also recognizes the authority of the GCMCA to designate provisional units under AR 220-5. See Enclosure 4, Tabs G and H.

(2) Authority for Reserve Component (RC) or Army National Guard (ARNG) units: Derivative Unit Identification Code (DUIC) for deploying RC or ARNG units. Most reserve units do not deploy with their own GCMCA. Typically, the activation order creates a DUIC, specifying dates on which to report to home station and mobilization station. These deploying RC units tend to be deployed in Brigade, Battalion, and even frequently down to the individual replacement level. Significantly, the unit's main UIC (normally ending in "AA") usually remains at home station with the rear detachment. The activation order will normally establish a DUIC, and no action on the part of the unit is usually necessary to create any DUIC. However, it should be understood that the commander of the forward unit will almost never continue to be the commander of the "rear detachment" after leaving home station (usually until after the conclusion of the deployment). The unit being deployed with a DUIC takes on a new existence, and a Commander cannot be in command of both the UIC and the DUIC once the derivative unit leaves home station, unless specifically authorized. The GCMCA needs to be established for the deploying unit at each stage of the unit's deployment: (a) home station

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<sup>1</sup> For units assigned to FORSCOM, the FORSCOM commander has withheld authority to create provisional units. See FORSCOM Withholding Memorandum and Delegation memorandum (Enclosure 3).

<sup>2</sup> Although AR 310-25 has been superseded by JP 1-02, it provides useful information in determining how to define field command. In accordance with AR 310-25, "Army field commands" consisting of "[a]ll Department of the Army exclusive of theta part defined as Headquarters, Department of the Army. Army field commands include all field headquarters, forces, [r]eserve components, installations, activities, and functions under the control or supervision of the Secretary of the Army."

preparation (see AR 27-10, Chapter 21 and Appendix E); (b) mobilization station training (includes time spent en route to mobilization station; GCMCA is usually the mobilization station Garrison Commander) and (c) forward deployment (should be established with the chain of command to which the unit is assigned or attached). Advance coordination with the local Chief of Military Justice at each stage is crucial. For ARNG unit's rear detachments, those in a Title 10 status will employ Chapter 21, AR 27-10; home state jurisdiction applies to those ARNG Soldiers in a Title 32 status.

*Step 2. Determine Optimal Convening Authority During Deployment.* There are usually three different options that an AC convening authority has for addressing military justice actions during a deployment.

a. **Convening Authority Deploys and Retains Jurisdiction Over All Soldiers.** Although this course of action may be appropriate for short deployments, or in situations where the convening authority returns to home station regularly to meet with key staff and review documents, this option is usually not appropriate in the current environment where units are typically deploying for 12-15 months.

b. **Convening Authority Remains at Home Station.** In some cases, smaller units will deploy from the installation while the convening authority remains at home station. The deploying units will usually be attached to other headquarters in the deployed location. Judge Advocates should review the deployment orders to help determine the military justice authority and to assist in the preparation of the new jurisdictional scheme for troops remaining at home station and those deploying.

c. **Convening Authority Deploys and Attaches Soldier at Home Station to a Different Convening Authority.** This is the most common for lengthy deployments involving the bulk of troops from a particular installation. It allows the commanders to focus on the combat mission, and provides clear UCMJ authority for units remaining at home station. The remaining checklist will focus on the required steps for this course of action. Some specific examples include:

(1) **Leaving the Flag Behind.** When XVIII Corps deployed to Afghanistan and served as the HQ for JTF-180, the Deputy Commander of XVIII Airborne Corps and Fort Bragg, assumed command of the Corps and Fort Bragg. Meanwhile, the Corps Commander, LTG McNeill, assumed command of JTF-180. Therefore the Deputy Commander became a successor in command, and many of the problems associated with transferring cases were avoided.

(2) **Taking the Flag Forward and Designating a Rear Provisional Unit.** When 10<sup>th</sup> Mountain Division deployed to Afghanistan, the Division Commander took the flag forward and asked the Secretary of the Army to designate the Commander, 10<sup>th</sup> Mountain Division and Fort Drum (Rear) (Provisional) as a GCMCA.

(3) **Splitting the Flag.** When the 3<sup>rd</sup> Infantry Division deployed, the installation commander served as the GCMCA for the Soldiers remaining at home station using the

installation flag and the Division Commander took the Division flag forward. 3ID normally convenes cases under the authority of Commander, 3ID and Fort Stewart. When 3ID deployed, the Division Commander took his GCMCA authority forward pursuant to Article 22(a) (5). The installation commander assumed command of Fort Stewart, and relied on the convening authority provided by secretarial designation pursuant to Article (a) (8) and DAGO 10, dated 9 April 1981.

*Step 3. Establish a Jurisdictional Scheme for the AC Rear Provisional Unit.*

- a. Designate a Rear Convening Authority. Once a command decides to attach those Soldiers remaining at home station to a different convening authority, the next decision is who will serve as that convening authority. There are two main options. The first course of action is to utilize an existing convening authority at home station that will not be a part of the deployment that was identified in Step 1. The second option relies on the installation command itself. For example, if the Commander of 101<sup>st</sup> Airborne Division (Air Assault) deploys and takes his convening authority under Article 22(a) (5) as a division commander forward, the convening authority of the Commander of Fort Campbell (the installation) still remains intact under the secretarial designation under Article 22(a)(8). The Commander, Fort Campbell assumes military justice authority for Soldiers remaining behind at home station.<sup>3</sup> However, the rear convening authority may not be a combination of the divisional and installation authority, such as 101<sup>st</sup> Airborne Division (Air Assault) and Fort Campbell.
- b. Develop a Jurisdictional Scheme. The Office of the Staff Judge Advocate should work with the staff and command to develop a jurisdictional scheme that best supports good order and discipline and mirrors the existing structure as closely as possible. *See* Enclosure 4, Tabs B, C, and D. However, commands should limit the number of rear units to ease the administration of military justice. Normally, Soldiers should be aligned with a convening authority who exercises administrative control (ADCON) over the Soldiers. G-1 should create orders that capture the jurisdictional structure and attach Soldiers as needed for ADCON and purposes of UCMJ. *See* Enclosure 4, Tabs G and H.
- c. Designate SJA for Rear Convening Authority. Article 69(b), UCMJ provides that convening authorities must communicate with their SJAs on matters pertaining to the administration of military justice. Article 60(d) and RCM 1106(a) require the convening authority to obtain a recommendation from the assigned SJA or legal officer prior to taking initial action in most courts-martial cases.<sup>4</sup> The TJAG specifically designates all SJAs, and the SJA must be attached, assigned, or detailed for duty as an SJA in that general courts-martial jurisdiction. Therefore, if the entire OSJA deploys with the command, TJAG must approve a designation of an alternate SJA or appoint and SJA from an activated LSO team to advise the rear convening authority.

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<sup>3</sup> If a different general officer will assume duties of the regularly assigned commander, AR 600-20, requires Coordination with the appropriate ACOM and the General Officer Management Office. *See* AR 600-20, paras. 2-5f. and 2-8d.

<sup>4</sup> Required for all general courts-martial or any special courts-martial case that includes a bad-conduct discharge or confinement for one year. *See* Article 60(d), R.C.M. 1106(a); *see also* U.S. v. Barry, 57 M.J. 799, 802 (A.C.C.A. 2002); U.S. v. Gavitt, 37 M.J. 761, 763 (A.C.M.R. 1993).

d. Build the Rear Provisional Unit. Once the command has decided on a GCMCA and assigned a responsible SJA, the next step is to work with the staff to assemble the rear provisional unit. First, organize and delineate all rear provisional units by applying the jurisdictional scheme and publishing unit rear provisional orders.<sup>5</sup> After a rear provisional unit commander has been assigned, the unit should publish assumption of command orders for each position.<sup>6</sup> Finally, the command should attach all remaining Soldiers to the rear provisional units in accordance with the jurisdictional structure. *See Enclosure 4, Tabs C, G, and H.* In order to be successful, the Chief of Military Justice will need to work closely with members of the staff, specifically G-1 and G-3/5/7 (Force Structure), to ensure that the provisional units have activated UICs and that the unit orders are properly published.<sup>7</sup>

*Step 4. Select a New Court-martial Panel and Administrative Separation Board*

- a. Select a New Panel if Applicable. If the command chooses to create a new GCMCA , the convening authority is not a successor in command IAW RCM 601(b). Therefore, the convening authority will have to select a new panel, rather than adopting the panel of the previous GCMCA. The Chief of Military Justice should keep in mind that in the event of a large deployment, the number of remaining personnel eligible for service on the panel will likely be much smaller than normal and the average rank of those remaining behind tends to be lower. Regardless of the personnel available to serve as panel members, convening authorities should strictly adhere to the requirements of Article 25 and RCM 502, but may have to use different selection processes. For example, the commander may have to select one panel instead of two or three, or rely on alpha rosters and record briefs rather than the nominative process to narrow the field of potential panel members. The Chief of Military Justice must carefully monitor the timeline to ensure that the rear convening authority has assumed command prior to selecting a new panel.
- b. Publish New Convening Orders. Once the GCMCA has selected a new panel, the next step is to publish the convening orders for each GCM and SPCM as soon as practicable. After the orders are published, the convening authority can begin referring cases to courts-martial.
- c. Select a New Standing Administrative Separation Board. Once a new rear GCMCA has been established, orders have been published, and Soldiers have been re-assigned in accordance with the jurisdictional scheme, the new convening authority should select a new

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<sup>5</sup> Per AR 220-5, para 2-5, provisional units will be organized for limited periods, not to exceed 2 years. In order to facilitate rapidly changing deployment and redeployment timelines, recommend that provisional unit orders be effective for a period not to exceed 2 years or until a fixed event, whichever is sooner. The triggering mechanism is often the return of the original unit commander to home station. However, since units tend to start block leave soon after redeployment, Chief of Military Justice should consider an alternate terminating event, such as, “60 days after redeployment of the unit commander.” This will allow the home station OSJA to complete ongoing cases or prepare cases to be re-transferred back to the original unit.

<sup>6</sup> It is not necessary to create provisional unit for each level of command, and provisional units are usually limited to the battalion level or brigade level. There is no required rank for provisional commanders, but leaders should usually be of a rank that will allow them to execute other administrative actions, for example, administrative separations.

<sup>7</sup> Please note that FORSCOM units must have permission from FORSCOM to create provisional units. This is a lengthy process, and should be initiated at least 120 days in advance of deployment. *See FORSCOM Withholding Memorandum and Delegation Memorandum at Enclosure 3 and samples provided at Enclosure 4, Tab A.*

standing administrative separation board from the population of personnel remaining at home station.

*Step 5. Transfer Pending Courts-Martial Cases.*

- a. Determine which Cases Must be Transferred into a New Convening Authority. If possible, commands should work to resolve cases prior to deployment, or delay referring cases pending the designation of the GCMCA and the subsequent new panel selection. However, if operational realities and complexities of a case do not allow for this, the command has two main options. First, they can choose to take the case forward with the existing GCMCA. Although not favored in most situations, this course of action may be suitable for cases where all of the witnesses are deploying and cannot be returned to home station in the foreseeable future to testify in motions and in the case in chief. The second option is the more common and typically involves leaving the accused and the case at home station. Deploying commanders should understand that once a case is transferred, the receiving GCMCA will decide the disposition of the case, and could even choose to withdraw and dismiss the charges entirely.<sup>8</sup> Deploying commanders should also understand that some of their soldiers may have to return to home station to act as witnesses in the courts-martial. Finally, deploying trial counsels should leave behind an organized case folder including a detailed prosecution memorandum identifying key witnesses and evidence to assist the home station trial counsel in pursuing the case.
- b. Prepare Documents to Request Transfer. The OTJAG Information Paper on transferring Court-martial cases provides detailed information and sample templates for the losing command to request transfer of cases, both pre- and post-trial, to the new convening authority (Enclosure 1). The other samples provided at Enclosure 4, Tabs E and F use a similar method, but list all cases for transfer on one memorandum, rather than providing different documents for each case. Regardless of the method, the losing commander should withdraw any referred cases pursuant RCM 604. The losing commander should then request that the gaining commander accept the cases. The documents should make the transfer transparent for the SJA remaining at home station, as well as for the appellate courts. The documents should clearly delineate between pre and post-trial cases. Once a case is referred, ordinarily it cannot be transferred to another GCMCA. However, in certain situations, the charges may be withdrawn and transferred to another GCMCA.<sup>9</sup> The documents should also include a brief discussion of the reasons and timing of the transfer, as well as the authority upon which it is based. Transfer of cases should be completed no later than 30 days prior to deployment of the unit to facilitate case administration.

- c. Use of Documentation. Finally, the Chief of Military justice should collect all pertinent documents, to include the provisional unit orders, the jurisdictional scheme, and the transfer of cases, and compile one packet of information. This packet should be provided to the defense,

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<sup>8</sup> Unlawful Command Influence (UCI) can be a problem with deploying units. Therefore, trial counsel and brigade judge advocates should warn deploying commanders that once cases are transferred to rear provisional units, they may not attempt to influence the military justice decisions of rear provisional unit commanders in any way.

<sup>9</sup> See OTJAG IP – Rules Governing Transfer of Court-Martial Cases upon Deployment; *See also* RCM 601, 604. consistent with U.S. v. Hardy, 4 M.J. 20 (C.M.A. 1977), the memorandum should include the convening authority's reasons for the re-referral on the record.

and must be included in each record of trial affected by the transfer, regardless of what stage of the proceeding the transfer is made. Consistent with *United States v. Hardy*, in cases where charges were actually withdrawn and re-referred, trial counsel should include the reason for withdrawal and re-referral of cases on the record, and ask that the document packet be inserted in the record of trial (Enclosure 1). In cases where the transfer was especially complicated, SJAs should consider adding a brief discussion of the history of the case and the reasons for the transfer on the Staff Judge Advocate Recommendation (SJAR).<sup>10</sup> The Chief of Military Justice should take care to ensure that all indicia of the new convening authority are consistent throughout all pre and post trial documents. For example, the letterhead and the office symbol should be changed to reflect the new GCMCA.

#### *Step 6. Actions on Redeployment*

- a. Effective End Date of Provisional Units. The provisional unit orders should clearly delineate the effective end date of the provisional unit. As previously noted, in addition to the 2 year limitation, the Chief of Military Justice should consider adding another triggering event that provides some definitive action that terminates the provisional unit, but still allows the redeploying unit some flexibility. If a triggering event is not used, then the Chief of Military Justice will have to create documentation to terminate the provisional unit. As with the start up phase of the provisional unit, during the termination period, all indicia of the unit change should be consistent. Therefore, the letterhead, UIC, office symbol, and charge sheets should accurately reflect that cases are being initiated by the redeploying unit.
- b. Determine Status of Current Cases. The Chief of Justice must determine which cases initiated by the rear provisional unit will not be completed when the main unit redeloys to home station. The SJA will then have to make a recommendation to the command as to what action to take with regard to the outstanding cases. If the rear GCMCA has continuing convening authority, the redeploying command has the option to leave cases in progress with that authority until action.<sup>11</sup> If the rear GCMCA will dissolve or be reabsorbed into the redeploying command, then cases will have to be transferred to that command using the same steps used at the time of the original deployment.<sup>12</sup> See Enclosure 4, Tab I. It is very important that a documentation packet that chronicles the history of the case, as well as the provisional unit orders that provide respective authority of each GCMCA and their SJAs, be added to each record of trial.

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<sup>10</sup> For a detailed review of some of the pitfalls associated with transferring cases between the rear provisional GCMCA and the division commander, see generally U.S. v. Barry, 57 M.J. 799 (A.C.C.A. 2002); U.S. v. Newlove, 59 M.J. 540 (A.C.C.A. 2003).

<sup>11</sup> In situations where the GCMCA has both inherent authority as a Division or Corps Commander and secretarial authority as the installation commander, the returning GCMCA may be a successor in command and be able to assume authority for a case that was convened by the installation commander during the redeployment. For example, if the Commander of 3ID redeloys to Fort Stewart and a case that was convened by the Commander, Fort Stewart, is still ongoing, he may be deemed a successor in command. However, he would have to assume GCMCA authority for the case in his capacity as the Commander of Fort Stewart and not in his capacity as the Commander of 3ID and Fort Stewart.

<sup>12</sup> See generally U.S. v. Barry, 57 M.J. 799 (A.C.C.A. 2002); U.S. v. Newlove, 59 M.J. 540 (A.C.C.A. 2003), for some complications arising out of the 10<sup>th</sup> Mountain redeployment to Fort Drum; see also Enclosure 4, Tab I for sample documenting the transfer of cases upon redeployment.

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*—Enclosure 1*

Transfer of Court-Martial Cases Upon Deployment

## INFORMATION PAPER

DAJA-CL  
20 June 2007

SUBJECT: Rules Governing Transfer of Court-Martial Cases upon Deployment

1. Purpose: To inform judge advocates in the field regarding the transfer of pending courts-martial to another commander exercising GCMCA upon deployment of the parent unit.
2. Conclusion: Court-martial cases may be transferred to another commander exercising GCMCA when the parent unit deploys in support of military contingency operations. Different legal considerations apply depending on the stage of the court-martial proceedings being transferred. These legal considerations must be weighed in evaluating whether transfer of the case is possible or practical.
3. General Discussion on the Three Stages of Proceedings.
  - a. Pre-Referral Stage of Proceedings. In pre-referral cases, a convening authority who receives a case by transfer from another convening authority can simply refer the preferred charges and specifications to a court-martial he selects. When the receiving convening authority is a commander of a provisional unit, he may not adopt any court-martial panels selected by the commander of the parent unit; rather, he should select his own panel. The provisional commander is not a successor in command under R.C.M. 601(b) because there is no predecessor in command for the provisional unit.
  - b. After Referral.
    - (1) Ordinarily once a case has been referred, the fact that that the convening authority has deployed does not deprive the court-martial of jurisdiction to try the accused. The accused could be tried at the home station after deployment of the parent unit or at the deployed location. Several issues may arise, though, that could affect the proceedings:
      - (a) Typically, the command will try the accused at home station due to the location of witnesses and other administrative issues. Members and substitute members originally detailed to the CM may no longer be available at the home station in sufficient numbers, due to the deployment, to meet the requirements of R.C.M. 501. Members would then have to be returned for the trial or new members would have to be detailed.
      - (b) There are several post-referral trial issues that require the approval of "the" convening authority such as pre-trial agreements<sup>1</sup> and the employment of expert witnesses.<sup>2</sup> These requests would have to be forwarded to the parent unit commander for his disposition.
    - (2) If deployment, or imminent deployment, make it impossible or impracticable to continue the accused's court-martial as referred, it may be possible to withdraw and transfer the case to a different court-martial convening authority that exercises court-martial convening

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<sup>1</sup> R.C.M. 705

<sup>2</sup> R.C.M. 703(d)

authority over the accused at the home station. In this situation, the deploying court-martial convening authority withdraws the already referred charges under R.C.M. 604 and transfers them by agreement to the new commander under R.C.M. 601(b) and its discussion. The new convening authority may, in his discretion, promptly re-refer them to a new court-martial panel he has previously selected.

c. After Trial - Cases Pending Action. R.C.M. 1107 allows the parent unit commander to transfer these cases to another commander for action if it would be impracticable for him to take action. The discussion to R.C.M. 1107 specifically addresses the deployment situation as one in which it would be impracticable for the original convening authority to take action. The deploying unit should request that the rear command take action, and the rear command should accept those cases and document the transfer in a memorandum.

#### 4. How to Withdraw Cases and Re-refer with a New Convening Authority.

a. Withdrawal Generally. Under R.C.M. 604, the convening authority may withdraw charges or specifications from a court-martial for any reason at any time before findings are announced. Re-referral of the charges to another court-martial, though, is more complicated. The reasons for the withdrawal and re-referral should be put on the record.<sup>3</sup> As discussed below, the ability to re-refer is dependent on the stage the proceedings were at when the charges or specifications were withdrawn and the convening authority's underlying reasons for the withdrawal.

##### b. Withdrawal and Re-referral.

(1) Before arraignment the convening authority can withdraw and re-refer a case to another court-martial unless the withdrawal was arbitrary or unfair to the accused, or was for an improper reason.<sup>4</sup> Some of the proper, and improper, reasons for withdrawal and referral are listed in the discussion to R.C.M. 604(b). One of the proper reasons listed is the routine duty rotation of the personnel constituting the court-martial. The loss of court-martial personnel due to an operational deployment closely parallels this reason and may provide the basis for a pre-arraignment withdrawal and re-referral. The Koke case, discussed below, provides additional support for this. Even though that case involved a withdrawal and re-referral after arraignment, the operational exigency factor discussed therein would also provide very strong support in a pre-arraignment case.

(2) After arraignment it becomes more difficult to withdraw and re-refer a case from court-martial, particularly if the court has been assembled and evidence taken on the merits.

(a) Before the taking of evidence. After arraignment but before the taking of evidence on the general issue of guilt, it is possible to withdraw and re-refer charges and specifications, if good cause is shown based upon the factors outlined in the discussion to R.C.M. 604 or

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<sup>3</sup> U.S. v. Hardy, 4 M.J. 20 (C.M.A. 1977). Although, U.S. v. Blaylock, 15 M.J. 190 (C.M.A. 1983) and the discussion to R.C.M. 604 could be read to require putting the convening authority's reasons on the record only if the re-referral is more onerous to the accused, the Hardy decision clearly requires it for all cases. It is recommended that Hardy guidance be followed for withdrawals and re-referrals under the circumstances discussed in this Information Paper.

<sup>4</sup> R.C.M. 604 and its discussion.

contained in prior court precedent. Of particular note, U.S. v. Koke<sup>5</sup> distilled several factors from prior court decisions that are important indicia of whether a withdrawal after arraignment is for a proper reason. One of those factors, operational exigency, is mentioned twice but never defined. Several other decisions have mentioned operational exigency in the context of deciding different issues of law.<sup>6</sup> A very strong argument can be made that a deployment in support of potential combat operations is an operational exigency. Withdrawal of charges and specifications after arraignment, but before the taking of evidence, may be permissible under R.C.M. 604 as a response to operational exigencies resulting from the deployment of the parent unit. However, when a deployment date is known well in advance, it might be more difficult to rely on this provision.

(b) After the taking of evidence. After withdrawal and the taking of evidence on the general issue of guilt, withdrawal and re-referral may only be done if the withdrawal was necessitated by urgent and unforeseen military necessity.<sup>7</sup> This provision is based upon *Wade v. Hunter*<sup>8</sup>; *Legal and Legislative Basis, Manual for Courts-Martial, United States, 1951* at 64. In that case the accused's court-martial for rape was taking place in the European theatre of operations during WWII. His unit was actually engaged in combat operations against the enemy. In the two weeks between when the incident occurred and the accused was tried, his unit had advanced 22 miles. After both the prosecution and defense had rested and the court closed to deliberate, the members requested to hear several additional witnesses. The court-martial was continued until a later date. During this delay the convening authority withdrew the case and, citing the tactical situation, transferred it to the unit now occupying the town in which the incident occurred and where the witnesses were located. The case was re-referred and tried again. The Supreme Court found that the accused's Fifth Amendment double jeopardy rights were not violated. The tactical situation of a rapidly advancing army justified the withdrawal and re-referral in this case. Absent facts closely paralleling those in *Wade*, withdrawal and re-referral after taking evidence on the general issue of guilt should be avoided.

## 5. Formats for Transfer of Cases

- a. Enclosure 1 contains a sample document that may be tailored for transfer of a case tried but pending action.
- b. Enclosure 2 contains a sample document that may be tailored for withdrawal and transfer of a case where charges have been referred. If evidence on the general issue of guilt has been taken, withdrawal and re-referral should not be attempted except in the most unusual case where the facts are akin to those discussed in *Wade v. Hunter*.

PREPARED BY: MAJ Alison Martin (703) 588-6755  
APPROVED BY: COL Flora D. Darpino

<sup>5</sup> 32 M.J. 876 (N.M.C.R. 1991); *affirmed* 34 M.J. 313 (C.M.A. 1992).

<sup>6</sup> See, e.g., U.S. v. Scott, 25 C.M.R. 636, 640 (A.B.R. 1958).

<sup>7</sup> R.C.M. 604(b).

<sup>8</sup> 336 U.S. 684; 69 S.Ct. 834; 93 L.Ed. 974 (1949).



DEPARTMENT OF THE ARMY  
LETTERHEAD

REPLY TO  
ATTENTION OF:

Insert OFFICE SYMBOL

\_\_\_\_\_20XX

MEMORANDUM FOR SEE DISTRIBUTION

SUBJECT: Transfer of U.S. v. *insert Name, Last Four of SSN, Unit* for Initial Action

1. Pursuant to General Order Number (*insert number or originating GCMCA*), dated (*insert date*), I am the General Court Martial Convening Authority for the (*insert GCMCA designation*). On or about the (*insert originating GCMCA unit*) will deploy in support of Operation Iraqi Freedom XX. Due to operational exigencies arising out of this deployment, and the disruptions they will foreseeably cause in the post-trial processing of the case of (U.S. v (*insert name*), referred by me on \_\_\_\_\_ 20XX to (general/special) court-martial by (General/Special Court-Martial Convening Order Number (*insert number*), and in which trial ended on \_\_\_\_\_ 20XX, it is impracticable for me to take initial action in this case.
2. Under the provisions of R.C.M. 1107, I hereby request that this case be transferred to the Commander of (*insert new GCMCA designation*).

signature block of originating GCMCA

Under the provisions of R.C.M. 1107, I hereby accept the case of (U.S. v (*insert name*) for post-trial processing.

signature block of new GCMCA

DISTRIBUTION:

SJA, Originating GCMCA  
SJA, New GCMCA  
Accused  
Each ROT



DEPARTMENT OF THE ARMY

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REPLY TO  
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\_\_\_\_\_ 20XX

MEMORANDUM FOR SEE DISTRIBUTION

SUBJECT: Withdrawal from Court-Martial and Transfer of U.S. v. (*insert Name, Last four of SSN, and Unit*)

1. Pursuant to General Order Number (*insert number or originating GCMCA*), dated \_\_\_\_\_ 20XX, I am the General Court Martial Convening Authority for the (*insert GCMCA designation*). On or about \_\_\_\_\_ 20XX, the (*insert originating GCMCA unit*) will deploy. Due to operational exigencies arising out of this deployment, and the disruptions they will foreseeably cause in the trial by court-martial of the case of (U.S. v (*insert name*), referred by me on \_\_\_\_\_ 20XX to (general/special) court-martial by (General/Special Court-Martial Convening Order Number (*insert number*), I direct the charges and specifications in this case be withdrawn from court-martial pursuant to R.C.M. 604 in the interests of justice. The accused (has/not been arraigned.
2. (*Note: If after arraignment but before the taking of evidence, insert the specific operational exigencies involved in parent unit's deployment. Recommend this memorandum and the supporting facts be entered into the record.*) The charges and specifications are not dismissed.
3. I hereby request the transfer this case to the Commander, (*insert name of new GCMCA*) for disposition as deemed appropriate.

signature block of originating GCMCA

Pursuant to the provisions of R.C.M. 604, I hereby accept the transfer of (U.S. v (*insert name*)).

signature block of new GCMCA

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*Enclosure 2*

Provisional Units and the Uniform Code of Military Justice

## INFORMATION PAPER

AFZF-JA-MJ  
29 October 2002

SUBJECT: Provisional Units and the Uniform Code of Military Justice

1. Purpose. To provide information regarding the authority of a commander of a provisional unit to take judicial and non-judicial punishment action pursuant to the Uniform Code of Military Justice (UCMJ).

2. References.

- a. Title 10, United States Code, Section 822.
- b. Manual for Courts-Martial (MCM).
- c. Army Regulation (AR) 27-10, *Military Justice*.

3. Discussion.

a. *General Court-Martial Convening Authority (GCMCA).* Article 22<sup>1</sup> of the UCMJ and Rule for Courts-Martial (RCM) 504(b)(1) delineate who may serve as a GCMCA. In general, Article 22 establishes GCMCA for individuals serving in a specific position (*e.g.*, commander of an Army corps) or if the Secretary of the Army (SA) designates an individual/position as a GCMCA. Army policy implementing Article 22 is in AR 27-10. Review of AR 27-10, paragraph 5-2 reflects that the SA has not designated any positions, other than those cited in Article 22 of the UCMJ, as having general court-martial convening authority.

b. *Special Court-Martial Convening Authority (SPCMCA).*

(1) SPCMCA. Article 23<sup>1</sup> of the UCMJ and RCM 504(b)(2) delineate who may serve as a SPCMCA. Consistent with Article 22 and RCM 504(b)(1), Article 23 and RCM 504(b)(2)<sup>2</sup> focus on specific positions and individuals "empowered" by the SA to serve as a SPCMCA (Article 23(a)(6)). AR 27-10, paragraph 5-2a(2)<sup>3</sup> provides that "[c]ommanders exercising GCM authority may establish deployment contingency plans that, when ordered into execution, designate provisional units under AR 220-5, whose commanders are determined by the GCM authority to be empowered under Article 23(a)(6) to convene SPCM [special courts-martial]."

(2) Provisional Units. AR 220-5, paragraph 2-5<sup>4</sup> sets forth guidance regarding the organization and designation of provisional units. Under the provisions of AR 220-5, paragraph 2-5a, the commander of an Army field commands may establish provisional units. Limitations on provisional units include:

<sup>1</sup> Tab N.

<sup>2</sup> Tab O.

<sup>3</sup> Tab P.

<sup>4</sup> Tab Q.

<sup>5</sup> Per AR 310-25, the term "Army field commands" consists of "[a]ll Department of the Army exclusive of that part defined as Headquarters, Department of the Army. Army field commands include all field headquarters, forces, [r]eserve components, installations, activities, and functions under the control or supervision of the Secretary of the Army."

AFZF-JA-MJ

SUBJECT: Provisional Units and the Uniform Code of Military Justice

organizational duration may not exceed two years; units providing personnel for the provisional unit may not receive replacement sources as a result of the vacancies created by attaching their soldiers to the provisional unit; and the promotion, reduction, or reassignment of an individual attached to a provisional unit remain the responsibility of the commander of the unit to which the individual is permanently assigned.

c. *Summary Court-Martial Convening Authority (SCMCA)*. Article 24<sup>5</sup> of the UCMJ and RCM 1302<sup>6</sup> set forth who may serve as a SCMCA. Similar to the authorities for GCMCA and SPCMCA, Article 24 and RCM 1302 identify specific positions and individuals "empowered" by the SA to serve as a SPCMCA (Article 23(a)(6)). Article 24 and RCM 1302 provide that a GCMCA or SPCMCA may convene a summary court-martial. RCM 1302 lists additional positions wherein the occupant may serve as a SCMCA.

d. *Non-Judicial Punishment*. Per AR 27-10, paragraph 3-7a(4),<sup>7</sup> as a general proposition, commanders of provisional units possess the authority to impose non-judicial punishment authorized under the UCMJ.

e. *Application and Overview*.

(1) GCMCA. Based on the information in paragraph 3a above, if the 4th Infantry Division (4ID) or the 1st Cavalry Division (1CD) seeks to have an individual serve as a GCMCA who is not occupying one of the positions listed in Article 22, they would have to seek that authority through the Criminal Law Division, Office of The Judge Advocate General. See AR 27-10, paragraph 5-2a(l).

(2) SPCMCA. Based on the information in paragraph 3b above, the commanding generals of the 4ID and the 1CD could, subject to compliance with AR 220-5, generate a contingency plan that would allow for the designation of commanders of provisional units as special courts-martial convening authorities. Although Article 23, RCM 504(b)(2), and AR 27-10 do not state that an individual serving as a provisional commander must be a certain grade, from a policy perspective it is prudent to ensure that the individual chosen possesses the grade to execute other adverse administrative actions (*e.g.*, involuntary administrative separations), the intent and purpose of AR 600-20 is satisfied, and possesses the maturity, experience, and knowledge required to fairly adjudicate misconduct.

(3) SCMCA. Subject to compliance with AR 220-5 and proper establishment of the commander of a provisional unit as a SPCMCA, that individual could also serve as the SCMCA.

MAJ Gifford/287-3658

<sup>6</sup> TabR

<sup>7</sup> Tab S

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*Enclosure 3*

FORSCOM Memoranda



REPLY TO  
ATTENTION OF

DEPARTMENT OF THE ARMY  
HEADQUARTERS UNITED STATES ARMY FORCES COMMAND  
1777 HARDEE AVENUE SW  
FORT MCPHERSON GA 30330-1062

JAN 1 1 2007

AFCG-JA

**MEMORANDUM FOR MG Thomas Miller, Deputy Chief of Staff, G-3/5/7, US Army Forces Command, 1777 Hardee Avenue, SW, Fort McPherson, GA 30330-1062**

**SUBJECT: Delegation of Authority – Provisional Unit Request Approval**

1. Under the provisions of Army Regulation (AR) 220-5, paragraph 2-5, I delegate to you the authority to exercise approval authority over provisional unit requests.
2. This delegation is personal to you and you may not re-delegate it. It will remain in effect until I change command, I terminate it in writing, or your position changes. It is without prejudice to my own authority under AR 220-5.
3. Direct all inquiries to COL Karl Goetzke, Staff Judge Advocate, US Army Forces Command, 404-464-6200.

CHARLES C. CAMPBELL  
General, USA  
Commanding



**DEPARTMENT OF THE ARMY**  
HEADQUARTERS UNITED STATES ARMY FORCES COMMAND  
1777 HARDEE AVENUE SW  
FORT MCPHERSON GEORGIA 30330-1062

REPLY TO  
ATTENTION OF

**AFOP-PLF**

**10 July 2003**

**MEMORANDUM FOR SEE DISTRIBUTION**

**SUBJECT: Approval Authority for Provisional Organizations**

1. This is to clarify the approval authority for provisional organizations. The Forces Command (FORSCOM) Commanding General retains the authority to approve the organization of provisional units. Conditions for establishing a provisional unit are described in Army Regulation 220-5, paragraph 2-5.
2. Requests for the establishment of provisional organizations should be sent to the FORSCOM Commanding General, ATTN: AFOP-PLF.
3. For additional information, contact Ms. Lareen Peeples, DSN 367-6455.

**FOR THE COMMANDER:**

/original signed/  
**JULIAN H. BURNS, JR.**  
Major General, USA  
Chief of Staff

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**US ARMY SOUTH**  
**32D ARMY AIR AND MISSILE DEFENSE COMMAND**

**US ARMY RESERVE COMMAND  
US ARMY SOUTH  
32D ARMY AIR AND MISSILE DEFENSE COMMAND**

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*— Enclosure 4*  
Samples



DEPARTMENT OF THE ARMY  
HEADQUARTERS, \_\_\_\_ CORPS AND FORT \_\_\_\_  
AVENUE  
FORT \_\_\_\_, \_\_\_\_\_

REPLY TO  
ATTENTION OF

ABCD-CG

\_\_\_\_\_ 20XX

MEMORANDUM FOR Commander, United States Army Forces Command, Fort McPherson, GA

SUBJECT: Request for the Establishment of a \_\_\_\_ Corps (Rear) (Provisional) and Commander Designation

1. Purpose. To request the establishment of a \_\_\_\_ Corps (Rear) (Provisional) and designation of the senior commander within \_\_\_\_ Corps as its commander.

2. Background.

a. Current Command Structure for \_\_\_\_ Corps & Fort \_\_\_\_\_. Currently I serve as the Commander for \_\_\_\_ Corps and Fort \_\_\_\_ (enclosure 1). The position of Commander, \_\_\_\_ Corps, is an MTO&E position (enclosure 2) and the position of Commander, Fort \_\_\_\_, is a TDA position (enclosure 3).

b. Impact of Operation Enduring Freedom 2 (OIF2). On or about \_\_\_\_\_ 2004, I will depart Fort \_\_\_\_ to serve as the Deputy Commander, Coalition Joint Task Force-7 [CJTF-7], Baghdad, Iraq. Because I will need to rely on my authority as the Commander, \_\_\_\_ Corps, to administer discipline while serving as the Deputy Commander, CJTF-7, I cannot leave command of \_\_\_\_ Corps with the senior general officer within \_\_\_\_ Corps that remains in CONUS.

c. The DCG, \_\_\_\_ Corps, Will Serve as the Commander, Fort \_\_\_\_\_, Without Contravening Law or Regulation. Major General Smith, Deputy Commanding General, \_\_\_\_ Corps, will serve as the Commander, Fort \_\_\_\_\_, during my OIF2 absence. As the Commander, Fort \_\_\_\_\_, MG Smith will be able to dispose of those actions that I normally act upon in my capacity as Commander, Fort \_\_\_\_.

3. Discussion. As discussed below, the establishment of a \_\_\_\_ Corps (Rear) (Provisional) is necessary for the continued effective command and control within \_\_\_\_ Corps.

a. Necessity for a \_\_\_\_ Corps (Rear) (Provisional). Within \_\_\_\_ Corps, there will be a limited number of actions that by law must be acted upon by a corps commander (or higher) or do not relate specifically to Fort \_\_\_\_\_, thereby exceeding MG Smith's authority as the Commander, Fort \_\_\_\_\_. As a result of retaining my command authority while deployed

ABCD-CG

SUBJECT: Request for the Establishment of a \_\_\_\_ Corps (Rear) (Provisional) and Commander Designation

to Iraq, such actions would need to be forwarded to me in Iraq for decision. Because such a construct would likely create logistical burdens and result in inefficiency, I believe establishment of the provisional unit is required in order to ensure actions comply with law and regulation, while preserving the ability to handle matters by a commander within CONUS.

b. Designation of Commander, \_\_\_\_ Corps (Rear) (Provisional). Subject to the establishment of a \_\_\_\_ Corps (Rear) (Provisional), I request that DA appoint the senior officer within \_\_\_\_ Corps as the Commander, \_\_\_\_ Corps (Rear) (Provisional). If such request were granted, Major General Doe, Commander, 7th Infantry Division and Fort Carson, would be appointed as the Commander, \_\_\_\_ Corps (Rear) (Provisional).

4. POC is COL \_\_\_\_\_ at 123-456-7890.

3 Encls

1. Assumption of command
2. Fort \_\_\_\_ TDA excerpt
3. Fort \_\_\_\_ MTO&E excerpt

IMA CORPS COMMANDER

Lieutenant General, USA  
Commanding



DEPARTMENT OF THE ARMY  
HEADQUARTERS, \_\_\_\_\_ and FORT \_\_\_\_\_  
FORT \_\_\_\_\_, \_\_\_\_\_

REPLY TO  
ATTENTION OF

ABCD-CG

MEMORANDUM FOR Commander, United States Army Forces Command, Fort McPherson, GA

SUBJECT: Notification of Command Structure at \_\_\_\_\_ and Fort \_\_\_\_\_ During Operation Iraqi Freedom 2

1. Purpose. To advise you of the prospective command structure for \_\_\_\_\_ and Fort \_\_\_\_\_ during the period I am deployed to Iraq in support of Operation Iraqi Freedom 2 (OIF2). Specifically, this memorandum explains the rationale for having Brigadier General [BG] Smith, Deputy Commanding General, \_\_\_ Corps, serve as the Commander, Fort \_\_\_\_\_, during my deployment in support of OIF2.

2. Background.

a. Assumption of Dual Role. On 21 January 2003 (enclosure 1), I assumed command of \_\_\_ Corps& Fort \_\_\_\_\_. The position of Commander, Fort \_\_\_\_\_, is a TDA position (enclosure 2) and the position of Commander, III Corps, is a MTO&E position (enclosure 3). Based on informal discussions with the Department of Army General Officer Management Office and Resource Management personnel at Fort \_\_\_\_\_, the two billets have historically been filled by the same individual.

b. Service as a General Court-Martial Convening Authority. Based on my service as Commander, III Corps, Article 22 of the Uniform Code of Military Justice (UCMJ) empowers me to be a GCMCA. In addition, Department of Army General Order 3, dated 19 January 1981 [hereinafter DA GO 3/1981], empowers me to be a GCMCA pursuant to my position as Commander, \_\_\_ Corps& Fort \_\_\_\_\_, and as Commander, Fort \_\_\_\_\_ (enclosure 4). Currently, I convene courts-martial for \_\_\_ Corps units using the GCMCA authority vested in me as the Commander, \_\_\_ Corps& Fort \_\_\_\_\_.<sup>1</sup>

c. Impact of OIF2 on General Court-Martial Convening Authority at Fort \_\_\_\_\_. On or about 15 January 2004, I will depart Fort \_\_\_\_\_ to serve as the Deputy Commander, Coalition Joint Task Force-7 [CJTF-7], Baghdad, Iraq. During the period I serve as the

1 On 28 March 2003, the \_\_\_\_\_ Division began departing Fort \_\_\_\_\_ in support of OIF1. As a result, the undersigned currently exercises GCMCA authority over the \_\_\_\_\_ Division (Rear) (Provisional), in addition to serving as the GCMCA for \_\_\_ Corps units.

ABCD-CG

SUBJECT: Notification of Command Structure at \_\_\_\_\_ and Fort \_\_\_\_\_ During Operation Iraqi Freedom 2

Deputy Commander, CJTF-7, a need will exist to exercise GCMCA authority over \_\_\_\_ Corps units in Iraq (and those attached or assigned to \_\_\_\_ Corps). Because I will not be able to use the GCMCA authority of the Commander, CJTF-7, while serving as the Deputy Commander, CJTF-7, I will be required to use the GCMCA authority vested in me as the Commander, III Corps. In addition, because I occupy all the positions that establish GCMCA authority for \_\_\_\_ Corps and Fort \_\_\_\_, my retention of such authority will result in the complete absence of a GCMCA for those \_\_\_\_ Corps units and personnel who remain at Fort \_\_\_\_\_ during OIF2.<sup>2</sup>

3. Discussion. As set forth in the discussion below, BG Smith's assumption of command as the Commander, Fort \_\_\_\_\_, does not contravene law or regulation and is necessary for the continued effective command, control, and administration of justice at Fort \_\_\_\_\_.

a. Requirement for a GCMCA at Fort \_\_\_\_\_. Approximately 85% of the units that comprise the \_\_\_\_ Corps military justice caseload will remain at (or return to) Fort \_\_\_\_\_ during OIF2, therefore the need for a local GCMCA is great. Although having a remote GCMCA is feasible in theory, it is impractical from both a work efficiency and command and control perspective.

b. BG Smith Can Serve as the GCMCA for Fort \_\_\_\_\_ Without Contravening Law or Regulation. The position of Commander, Fort \_\_\_\_\_, and Commander, \_\_\_\_ Corps, are distinct positions. Accordingly, although historically only one individual has simultaneously served in both positions, the ability exists to bifurcate the duties and allow a separate individual to serve in each position. As a result, BG Smith can serve as the Commander, Fort \_\_\_\_\_, during my absence without affecting my role as Commander, III Corps. In turn, because DA GO 3/1981 recognizes the Commander, Fort \_\_\_\_\_, as a distinct GCMCA, BG Smith would serve as the GCMCA for \_\_\_\_ Corps units and personnel who remain at Fort \_\_\_\_\_ (or return to Fort \_\_\_\_\_) during my OIF2 absence. BG Smith would assume command of Fort \_\_\_\_\_ pursuant to Army Regulation 600-20, paragraph 2-8. Because BG (P) Simmons's assumption of command is only during my OIF2 absence, formal assignment into the position (via the Department of Army General Officer Management Office) is not required. It is my intent to ultimately seek his formal assignment to that position.

c. Establishment of a \_\_\_\_ Corps (Rear) (Provisional). As the Commander, Fort \_\_\_\_\_, BG Smith will be able to dispose of many of the actions that I normally act upon.

2 The Commander, \_\_\_\_\_ Division, will depart Fort \_\_\_\_\_ in approximately April 2004 in support of OIF2 and therefore not be able to assume GCMCA responsibility for \_\_\_\_ Corps.

AFZF-CG

SUBJECT: Notification of Command Structure at \_\_\_\_\_ and Fort \_\_\_\_\_ During  
Operation Iraqi Freedom 2

There is likely to be a limited number of actions, however, that by law must be acted upon by a corps commander (or higher) or do not relate specifically to Fort \_\_\_\_\_. Such actions would thereby exceed BG Smith's authority as the Commander, Fort \_\_\_\_\_. As a result, with regard to those limited number of actions, a need would still exist either to have actions forwarded to me in Iraq or establish a \_\_ Corps (Rear) (Provisional) whose commander could act upon the actions. To ensure the efficient and effective command and control of \_\_ Corps during my absence, I am forwarding to you by separate memorandum a request to establish a \_\_ Corps (Rear) (Provisional). I believe establishment of the provisional unit is required in order to ensure actions comply with law and regulation, while preserving the ability to handle matters by a commander within CONUS. The memorandum requests that DA appoint the senior officer within \_\_ Corps as the Commander, \_\_ Corps (Rear) (Provisional). If such request were granted, Major General Jones, Commander, \_\_\_\_\_ Division and Fort Carson, would be appointed as the Commander, \_\_ Corps (Rear) (Provisional).

3. POC is COL \_\_\_\_\_ at 123-45-6789.

Encls

1. Assumption of command

Lieutenant General, USA

2. Fort \_\_\_\_\_ TDA excerpt

Commanding

3. Fort \_\_\_\_\_ MTO&E excerpt

4. DA GO 3



DEPARTMENT OF THE ARMY  
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REPLY TO  
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\_\_\_\_\_20XX

MEMORANDUM FOR See Distribution

SUBJECT: Establishment of Provisional Units and Jurisdictional Scheme \_\_\_\_ Corps Units and Personnel Remaining at Fort \_\_\_\_\_ During Operational Iraqi Freedom XX

1. Purpose. To establish provisional units and the jurisdictional scheme for \_\_\_\_ Corps units which remain at Fort \_\_\_\_\_ during the current period of contingency operations. My actions are intended to ensure the command, control, and administration of justice during Operation Iraqi Freedom XX.

2. Authority.

- a. Article 22, Uniform Code of Military Justice (UCMJ)
- b. Army Regulation 27-10, paragraph 5-2a(2)

3. Specific Findings. I have determined that those provisional units established within this memorandum, and bearing the special court-martial convening authority ("SPCMCA") designation, are separate and detached commands for the purpose of Articles 23(3) and (6) of the Uniform Code of Military Justice (UCMJ).

4. Jurisdictional Structure. The structure below reflects an ascending jurisdictional scheme. For example, each of the cited SPCMCA falls within the purview of the cited GCMCA. In turn, each of the units cited within each SPCMCA unit fall within the purview of that specific SPCMCA.

a. Commander, Fort \_\_\_\_\_ - General Court-Martial Convening Authority.

b. United States Army Garrison – Special Court-Martial Convening Authority.

(1) Headquarters Command Battalion (Rear) (Provisional) – Summary Court-Martial Convening Authority

(2) Headquarters and Headquarters Company, United States Army Garrison

c. 1<sup>st</sup> Medical Brigade – Special Court-Martial Convening Authority

(1) 21<sup>st</sup> Combat Support Hospital – Summary Court-Martial Convening Authority

All companies assigned or attached to the 21<sup>st</sup> CSH which remain at Fort \_\_\_\_\_ with

OFFICE SYMBOL

SUBJECT: SUBJECT: Establishment of Provisional Units and Jurisdictional Scheme \_\_\_\_\_  
Corps Units and Personnel Remaining at Fort \_\_\_\_\_ During Operational Iraqi Freedom XX

their regularly assigned commander.

(2) 61<sup>st</sup> Area Support Medical Battalion - Summary Court-Martial Convening Authority

All companies assigned or attached to the 61<sup>st</sup> ASMB which remain at Fort \_\_\_\_\_ with their regularly assigned commander.

d. \_\_\_\_ Infantry Division (Rear)(Provisional) - Special Court-Martial Convening Authority

(1) 1<sup>st</sup> BCT (Rear)(Provisional) – Summary Court-Martial Convening Authority

(2) 2<sup>nd</sup> BCT (Rear)(Provisional) – Summary Court-Martial Convening Authority

(3) 3<sup>rd</sup> BCT (Rear)(Provisional) – Summary Court-Martial Convening Authority

(4) Support Brigade (Rear)(Provisional) – Summary Court-Martial Convening Authority

5. Savings Clause. Those personnel who remain at Fort Hood, and are not otherwise accounted for in any of the units cited in paragraph 4 above, shall be attached to Headquarters and Headquarters Company, United States Army Garrison, for the purpose of UCMJ and adverse administrative actions.

6. Effect of Re-Deploying Units.

a. Upon re-deployment of a unit, for whom a provisional unit has been established within this memorandum, the commander of the parent unit shall request that the Commander, Fort Hood, authorize the inactivation of the provisional unit. Such approval is required, per this memorandum, in order to deactivate the unit and re-establish the parent unit as the superior UCMJ authority.

b. Upon re-deployment of a unit, which has had subordinate units re-aligned under another unit during the parent unit's absence, the commander of the parent unit shall coordinate with \_\_\_\_ Corps G1 to restore the subordinate units to their pre-OIF8 UCMJ organizational structure.

c. The SPCMCA is responsible for ensuring the proper generation and publication of those orders, required by Army Regulation 600-8-105, for the re-alignment of units or inactivation of a provisional unit. The SPCMCA shall ensure the \_\_\_\_ Corps G1 and \_\_\_\_ Corps Office of the Staff Judge Advocate (Chief, Criminal Law Division) receive a copy of any such order.

OFFICE SYMBOL

SUBJECT: SUBJECT: Establishment of Provisional Units and Jurisdictional Scheme \_\_\_\_  
Corps Units and Personnel Remaining at Fort \_\_\_\_\_ During Operational Iraqi Freedom XX

7. Effective Date for Provisional Units and Orders Requirements.

- a. The effective establishment date for those provisional units identified in this memorandum, which have not yet already been established by separate memorandum, shall be the date on which the regularly assigned commander deploys.
  - b. The S-1 of each SPCMCA is responsible for ensuring the generation and publication of those orders necessary to lawfully appoint the commanders of provisional units and/or re-align units.
  - c. The G1, \_\_\_\_ Corps and Fort \_\_\_\_\_, provide notice to Headquarters, Department of Army (DAMH-HSO), regarding the creation of the provisional units, as required by AR 220-5, paragraph, 2-5a.
8. Explanation of Terms. As used in this memorandum, the term military justice includes, but is not limited to: courts-martial, non-judicial punishments action, administrative separations, memoranda of reprimand and admonition, and administrative reduction actions.
9. If you have any questions or concerns, please contact COL SJA at 123-456-7890.

Enclosures  
as

IMA CORPS COMMANDER  
Lieutenant General, USA  
Commanding

Distribution: A



## DEPARTMENT OF THE ARMY

Letterhead

REPLY TO  
ATTENTION OF:

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\_\_\_\_\_20XX

### MEMORANDUM FOR SEE DISTRIBUTION

SUBJECT: General Court-Martial Convening Authority and Jurisdictional Scheme for Select Army Units in Iraq in Support of Operation Iraqi Freedom XX

1. Purpose. To identify those units in Iraq for which the Commanding General, \_\_ Corps, will serve as the General Courts-Martial Convening Authority (GCMCA) and the jurisdictional scheme for those units. My actions are intended to ensure the proper command, control, and administration of justice in Iraq during Operation Iraqi Freedom XX.

2. Authority.

- a. Articles 22, 23 Uniform Code of Military Justice (UCMJ)
- b. R.C.M. 504 (Manual for Courts-Martial 2005)

3. Jurisdictional Structure. The Commanding General, \_\_ Corps, shall serve as the GCMCA for the units set forth below (and in the attached appendices). The court-martial convening authority for the commanders of the units delineated in this memorandum are also set forth.

- a. \_\_ Medical Brigade – Special Court-Martial Convening Authority (SPCMCA).
  - See Appendix A for those units for which the Commander, \_\_ Medical Brigade, will serve as the SPCMCA
- b. \_\_ Corps Artillery -SPCMCA.
  - See Appendix B for those units for which the Commander, \_\_ Corps Artillery, will serve as the SPCMCA
- c. \_\_ Signal Brigade SPCMCA.
  - See Appendix C for those units for which the Commander, \_\_ Signal Brigade, will serve as the SPCMCA
- d. \_\_ Corps Support Command –SPCMCA.
  - See Appendix D for those units for which the Commander, \_\_ Corps Support Command, will serve as the SPCMCA
- e. \_\_ Military Police Brigade – SPCMCA
  - See Appendix E for those units for which the Commander, \_\_ Military Police

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Brigade, will serve as the SPCMCA

f. \_\_\_\_ Armor Brigade – SPCMCA

- See Appendix F for those units for which the Commander, \_\_\_\_Armor Brigade, will serve as the SPCMCA

g. \_\_\_\_ Aviation Brigade – SPCMCA

- See Appendix G for those units for which the Commander, \_\_\_\_Aviation Brigade, will serve as the SPCMCA

h. \_\_\_\_ Engineer Brigade – SPCMCA

- See Appendix H for those units for which the Commander, \_\_\_\_Engineer Brigade, will serve as the SPCMCA

i. \_\_\_\_ Military Intelligence Brigade –SPCMCA

- See Appendix I for those units for which the Commander, \_\_\_\_ Military Intelligence Brigade, will serve as the SPCMCA

**4. Savings Clause.**

a. Those Army units and personnel not assigned to units operating within Iraq, who are not otherwise accounted for in any of the units cited in paragraph 3 above (or the appendices), and are not accounted for in the jurisdictional memoranda for other major commands operating within Iraq shall be attached to Headquarters and Headquarters Company (HHC), \_\_\_\_ Corps (and, commonly use that unit's UCMJ chain), for the purpose of UCMJ and adverse administrative actions.

b. Units affected by paragraph 4a above, who seek to administer a UCMJ chain independent of HHC, \_\_\_\_ Corps, shall seek written approval from the Staff Judge Advocate, \_\_\_\_ Corps. Although paragraph 4a does not limit a commander's authority to administer non-judicial punishment, paragraph 4a serves to limit the special and summary courts-martial convening authorities that a commander might otherwise have pursuant to Articles 23 and 24 of the UCMJ. As a result, commanders affected by paragraph 4a who seek to have courts-martial convening authority must satisfy the written authorization requirement delineated in this paragraph prior to exercising courts-martial convening authority.

**5. Explanation of Terms.**

a. As used in this memorandum, the term military justice includes, but is not limited to: courts-martial, non-judicial punishments action, administrative separations, memoranda of

OFFICE SYMBOL

SUBJECT: General Court-Martial Convening Authority and Jurisdictional Scheme for Select Army Units in Iraq in Support of Operation Iraqi Freedom XX

reprimand and admonition, and administrative reduction actions.

b. As used in the appendices, the acronym "SCMCA" refers to summary court-martial convening authority.

6. COL SJA at 123-456-7890 is the POC for this memorandum.

Enclosures  
as

IMA CORPS COMMANDER  
Lieutenant General, USA  
Commanding

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REPLY TO  
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\_\_\_\_\_20XX

MEMORANDUM FOR Commander, Fort \_\_\_\_\_, Fort \_\_\_\_\_, \_\_\_ 12345-6789

SUBJECT: Formal Recognition of the Fort \_\_\_\_\_ General Court-Martial Jurisdiction and Transfer of Select \_\_\_ Corps & Fort \_\_\_\_\_ Cases

1. Purpose. To request you take the actions delineated below to ensure the command, control, and general administration of military justice at Fort \_\_\_\_\_ during Operation Iraqi Freedom (OIF).

2. Authority. Rules for Courts-Martial, 401, 604, 1107, Manual for Courts-Martial (MCM 2005)

3. Exercise of General Court-Martial Convening Authority (GCMCA). In your capacity as the Commander, Fort \_\_\_\_\_, request you serve as the GCMCA for those units listed in enclosure 1 and those units and personnel who are at Fort \_\_\_\_\_ and who would otherwise fall under the general court-martial authority of the GCMCA, \_\_\_ Corps & Fort \_\_\_\_\_. In my capacity as Commander, \_\_\_ Corps, I will serve as the GCMCA for units and personnel in Iraq who would otherwise fall under the GCMCA, \_\_\_ Corps & Fort \_\_\_\_\_.

4. Transfer of Preferred Cases.

a. Based on my extended absence in support of OIF, and the foreseeable disruptions that absence will cause on the administration of justice of current cases, I hereby request transfer of the following **preferred** cases under the provisions of Rule for Courts-Martial (RCM) 401 (c), for disposition as appropriate:

(1) U.S. v. John Doe, SSN, Unit.

(2) U.S. v. Jane Doe, SSN, Unit.

b. In addition, request you accept the transfer of any case preferred between the date of this memorandum and your acceptance of my request.

5. Transfer of Post-Trial Cases.

a. Based on my extended absence in support of OIF, and the foreseeable disruptions that absence will cause on the administration of justice of current cases, I hereby request transfer of the following current **post-trial cases** under the provisions of Rule for Courts-Martial (RCM) 11 07(a), for action as appropriate:

(1) U.S. v. Ima Soldier, SSN, Unit.

OFFICE SYMBOL

SUBJECT: Formal Recognition of the Fort \_\_\_\_ General Court-Martial Jurisdiction and Transfer of Select \_\_\_\_ Corps & Fort \_\_\_\_ Cases

(2) U.S. v. Youra Soldier, SSN, Unit.

b. I have retained responsibility for the referred cases listed below. I referred the cases in my capacity as Commander, \_\_\_\_ Corps and Fort \_\_\_\_\_. In the event the cases listed below result in a requirement for post-trial processing, request transfer of each case for post-trial processing, under the provisions of RCM 1107(a), for action as appropriate:

(1) U.S. v. Bill Smith, SSN, Unit.

(2) U.S. v. Bob Jones, SSN, Unit.

6. If you have any questions or concerns, please contact MAJ Chief of Justice at 123-456-7890.

Enclosure

Fort \_\_\_\_ Jurisdiction Memo, date

IMA CORPS COMMANDER

Lieutenant General, USA

Commanding



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\_\_\_\_\_ 20XX

MEMORANDUM FOR Commander, \_\_\_\_ Corps, Baghdad, Iraq

SUBJECT: Formal Recognition of the Fort \_\_\_\_\_ General Court-Martial Jurisdiction and Acceptance of \_\_ Corps & Fort \_\_\_\_\_ Cases

1. Purpose. To document my acceptance of your request to serve as the general court-martial convening authority (GCMCA) for select \_\_ Corps and Fort \_\_\_\_\_ units/activities/personnel and accept the transfer of select \_\_ Corps & Fort \_\_\_\_\_ cases.

2. Decision. Based your request, I specifically:

a. Accept for disposition as appropriate, those pretrial cases cited in the \_\_\_\_\_ 20XX memorandum (hereinafter “\_\_\_\_ Corps CG Transfer Memo.”).

b. Accept the transfer of any case preferred on or between \_\_\_\_\_ 20XX and the date of this memorandum. I specifically recognize the case of U.S. v. \_\_\_\_\_, SSN, Unit.

c. Accept, for processing and post-trial action as appropriate, those post-trial cases and potential post-trial cases cited in the \_\_ Corps CG Transfer Memo.

d. Accept service as the GCMCA for those units listed in enclosure 1 of the \_\_ Corps CG Transfer Memo and those units and personnel who are at Fort \_\_\_\_\_ and who would otherwise fall under the general court-martial authority of the GCMCA, \_\_ Corps & Fort \_\_\_\_\_.

3. Findings.

a. Department of Army General Order 3, dated 19 January 1981, empowers me to be a GCMCA pursuant to my position as Commander, Fort \_\_\_\_\_.

b. On or about \_\_\_\_\_ 20XX, many units and most of the headquarters personnel from \_\_ Corps began deploying from Fort \_\_\_\_\_ to the CENTCOM area of operations in support of OPERATION IRAQI FREEDOM. The deployment will affect the general court-martial convening authority of the Commander, \_\_ Corps, and numerous special and summary courts-martial convening authorities, and administrative and legal support personnel. Due to operational exigencies and the foreseeable disruptions caused by those exigencies, I find it in the interests of justice to take these actions.

OFFICE SYMBOL

SUBJECT: Formal Recognition of the Fort \_\_\_\_\_ General Court-Martial Jurisdiction and  
Transfer of Select \_\_\_\_\_ Corps & Fort \_\_\_\_\_ Cases

4. If you have any questions or concerns, please contact MAJ Chief of Justice at 123-456-7890.

Enclosure  
as

IMA COMMANDER  
Brigadier General, USA  
Commanding



DEPARTMENT OF THE ARMY  
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REPLY TO  
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MEMORANDUM FOR Commander, \_\_\_\_ Personnel Group, Fort \_\_\_\_, \_\_ 12345-6789

SUBJECT: Establishment of \_\_\_\_ Brigade Provisional Units

1. Based on current contingency operations and pursuant to Army Regulation 220-5, paragraph 2-5a, I approve:

- a. The immediate establishment of the \_\_\_\_ Personnel Services Battalion (Rear) (Provisional).
- b. The immediate establishment of a Headquarters and Headquarters Detachment (HHD) (Rear) (Provisional), \_\_\_\_ Personnel Group.

2. I direct the following actions:

- a. The G1, \_\_\_\_ Corps and Fort \_\_\_\_ , provide notice to Headquarters, Department of Army (DAMH-HSO), regarding the creation of the \_\_\_\_ Personnel Services Battalion (Rear) (Provisional), as required by AR 220-5, paragraph, 2-5a.
  - b. The G1, \_\_\_\_ Corps and Fort \_\_\_\_ , generate and publish the necessary orders to lawfully realign the \_\_\_\_ Personnel Services Battalion (Rear) (Provisional), HHD (Rear) (Provisional), and various separate companies.
  - c. The G1, \_\_\_\_ Corps and Fort \_\_\_\_ , and the S1, \_\_\_\_ Personnel Group, generate and publish the necessary orders as appropriate, to lawfully appoint the commanders of the provisional units.
  - d. The S1, \_\_\_\_ Personnel Group, generate and publish the necessary orders to lawfully attach non-deployed soldiers to the HHD (Rear) (Provisional).
3. If you have any questions or concerns, please contact MAJ Chief of Justice at 123-456-7890.

IMA CORPS COMMANDER  
Lieutenant General, USA  
Commanding



# DEPARTMENT OF THE ARMY

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\_\_\_\_\_20XX

MEMORANDUM FOR Commander, \_\_\_\_\_ Corps, and Fort \_\_\_\_\_, Fort \_\_\_\_\_, \_\_\_\_\_ 12345-6789

SUBJECT: SJA Advice - Establishment of \_\_\_\_\_ Brigade Provisional Units

1. Purpose. To obtain your decision on a request by the Commander, \_\_\_\_\_ Brigade (Bde), to establish provisional units within that command for the purpose of command, control, and the administration of justice during the current period of contingency operations.

2. Discussion.

a. Need to Create Provisional Units.

(1) Due to current operations, units within the \_\_\_\_\_ Bde will deploy outside the continental United States. Of particular concern at this time is the \_\_\_\_\_ Battalion. Once deployed, commanders for deploying units and most of the assigned soldiers will no longer be located at Fort \_\_\_\_\_. The deploying units will have soldiers who do not deploy ("non-deployed"), thereby remaining at Fort \_\_\_\_\_. Absent official action to properly defer the command authority of the non-deployed soldiers, such authority remains with the deployed commander. Disciplinary actions under the Uniform Code of Military Justice ("UCMJ") and adverse administrative actions would have to be forwarded to the deployed commander for disposition.

(2) In addition to the non-deployed soldiers, the \_\_\_\_\_ Bde has several separate companies who are assigned to the \_\_\_\_\_ Battalion for the purpose of punitive and adverse administrative matters. Based on current operations, the separate companies have been reassigned to the \_\_\_\_\_ Bde for punitive and adverse administrative purposes to allow the \_\_\_\_\_ Battalion commander to focus on deployment readiness. As a result, currently there is no battalion level commander for the separate companies and the \_\_\_\_\_ Bde commander is having to fill that role. Creation of a provisional battalion level unit will facilitate having the separate companies assigned to that battalion level command, thereby relieving the \_\_\_\_\_ Bde commander of those duties.

b. Authority to Create Provisional Units. As a general court-martial convening authority you are authorized to establish and designate provisional units within your command pursuant to Army Regulation (AR) 220-5, paragraph 2-5a. Upon creation of a provisional command, AR 27-10, paragraph 5-2a (2), authorizes you to designate the commander of a provisional unit as a special courts-martial convening authority. You are further authorized to establish provisional units that would be subordinate to the provisional SPCMCA.

c. Powers of Provisional Commanders. Provisional unit commanders have the authority

OFFICE SYMBOL

SUBJECT: SJA Advice - Establishment of \_\_\_\_\_ Brigade Provisional Units

granted under the Manual for Courts.-Martial and Army Regulation 27-10, commensurate with their unit and command designation.

d. Actions Requested. The Commander, \_\_\_\_\_ Bde, requests you direct the following actions:

(1) Establishment of a Provisional Battalion. Pursuant to AR 220-5, paragraph 2-5a, immediately establish and designate a provisional battalion level unit, the \_\_\_\_\_ Battalion (Rear) (Provisional).

(2) Establishment of Provisional Companies / Detachments. Pursuant to AR 220-5, paragraph 2-5a, establish and designate a Headquarters and Headquarters Detachment (Rear) (Provisional), to consolidate the administration of justice and adverse administrative actions within the \_\_\_\_\_ Battalion and the \_\_\_\_\_ Battalion (Rear) (Provisional). Soldiers within the \_\_\_\_\_ Battalion, who remain at Fort \_\_\_\_\_ after their regularly assigned company deploys, will be attached to the HHD (Rear) (Provisional) upon deployment of their regularly assigned company level commander. Consistent with AR 27-10, paragraph 3-7a(4), commanders of provisional company level commands possess authority to administer military justice, as established by law and regulation, absent withdrawal of such authority by a superior.

e. Limitations on Provisional Units. The existence of a provisional unit may not exceed two years. Units providing personnel for the provisional unit may not receive 'replacement sources as a result of the vacancies created by attaching their soldiers to a provisional unit.

3. Recommendations. I recommend you:

a. Authorize the establishment of the \_\_\_\_\_ Battalion (Rear) (Provisional) and direct its activation upon deployment of the regularly assigned \_\_\_\_\_ Battalion Commander

b. Authorize the immediate establishment of an HHD (Rear) (Provisional).

c. Direct the G1, \_\_ Corps and Fort \_\_\_\_\_, provide notice to Headquarters, Department of Army (DAMH-HSO), regarding the creation of the \_\_\_\_\_ Battalion (Rear) (Provisional), as required by AR 220-5, paragraph, 2-5a.

d. Direct the G1, \_\_ Corps and Fort \_\_\_\_\_, generate and publish the necessary orders to lawfully realign the \_\_\_\_\_ Battalion (Rear) (Provisional), HSC (Rear) (Provisional), and the various separate companies.

e. Direct the G1, \_\_ Corps and Fort \_\_\_\_\_, and the S1, \_\_\_\_\_ Bde, generate and publish the necessary orders, as appropriate, to lawfully appoint the commanders of the provisional units.

OFFICE SYMBOL

SUBJECT: SJA Advice - Establishment of \_\_\_\_\_ Brigade Provisional Units

- f. The S1, \_\_\_\_\_ Bde, generate and publish the necessary orders to lawfully attach non-deployed soldiers to the HSC (Rear) (Provisional).
  - g. A memo to accomplish these actions is enclosed.
4. POC is the undersigned at 123-456-7890.

3 Enclosures

- 1. AR 220-5 excerpt
- 2. AR 27-10 excerpt
- 3. Establishment of Provisional Units

IMA SJA

Colonel, JA

Staff Judge Advocate

**DEPARTMENT OF THE ARMY  
LETTERHEAD**

OFFICE SYMBOL

\_\_\_\_\_ 20XX

\_\_\_\_ Corps and Fort \_\_\_\_, (WABCD) Fort \_\_\_\_, \_\_\_\_ 12345-6789

Following organization/unit action directed.

Action: Organize provisional units designated as \_\_\_\_ Corps (Rear)(Provisional)(WABCD) Fort  
\_\_\_\_, \_\_\_\_ 12345-6789

Assigned to: \_\_\_\_ Corps and Fort \_\_\_\_

Attached to: \_\_\_\_ Corps (Rear)(Provisional) Fort \_\_\_\_

Mission: To provide command, control, and administration of justice over the \_\_\_\_ Corps units and personnel who do not deploy in support of Operation Iraqi Freedom and fall within the general court-martial jurisdiction of the Commander, \_\_\_\_ Corps and the Commander, Fort \_\_\_\_ . Effective date of organization: 15 July XXXX Organization terminates: TBD

Military structure strength: Not applicable

Military authorized strength: Not applicable

Civilian structure strength: Not applicable

Civilian authorized strength: Not applicable

Accounting classification: Not applicable

Authority: AR 220-5; AR 27-10, Memoranda dated \_\_\_\_\_ SUBJECT: Request for the Establishment of a \_\_\_\_ Corps (Rear Provisional) and SUBJECT: Notification of Command Structure at \_\_\_\_ Corps & Fort \_\_\_\_ During Operation Iraqi Freedom, which notifies FORSCOM that the Commander, Fort \_\_\_\_ will serve as the general court-martial convening authority for \_\_\_\_ Corps units and personnel who remain at Fort \_\_\_\_ during Operation Iraqi Freedom.

Additional Instructions: Effective the organization date, Commander, Fort \_\_\_\_ assumes UCMJ authority as set forth in Memoranda dated \_\_\_\_\_, SUBJECT: Notification of Command Structure at Fort \_\_\_\_ During Operation Iraqi Freedom, SUBJECT: Request for the Establishment of a \_\_\_\_ Corps (Rear) (Provisional) and Commander Designation, and SUBJECT: General Court-Martial Convening Authority and Jurisdictional Scheme for Select Army Units in Iraq in Support of Operation Iraqi Freedom XX. Effective the organization date, Commander, Fort \_\_\_\_ assumes peacetime award approval authority according to AR 600-8-22 for Fort \_\_\_\_ units and personnel who do not deploy in support of Operation Iraqi Freedom XX. The Commander, \_\_\_\_ Corps (Rear) (provisional) assumes peacetime award approval authority according to AR 600-8-22 for \_\_\_\_ Corps units outside of Fort \_\_\_\_ and personnel who do not deploy in support of Operation Iraqi Freedom XX.

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BY COMMAND OF LTG \_\_\_\_\_:

Colonel, GS  
ACofS. G-1/AG

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I-AEAGC-FMD-DE; I-AEAGC-FMD-I(UICIO); I-AEAGC-IO-TO; I-AEAGD-ROA;  
1 - AEAGD-BP; 1 - AEAGD-SD; 1 - AEAGF-C; 1 - AEAGF-M; 1 - AEAGS-MH; 1 AEAIM-SM-EB;  
2 - AEAJA-X; 1 - AEAPM-PL); 1 - Cdr, \_\_\_\_ Corps , 5 - Cdr, 1 st PERSCOM (1- AEUPE-EPMO-R; I-AEUPE-OPMD; 1- AEUPE-PIMD-SIDPERS; I-AEUPE-PODOPSD; 1 - AEUPE-CS-OPS),  
Unit 29058, APO AE 09081-9058; 19 - Cdr, V Corps (5- AETVGF; 5 - AETV -AGM; 5 - AETV - GSF; 2 - AETV -CSH; 2 - AEUPE-PSB-HA (SIDPERS), 1 AETV - THN, 1 - AETV -THO, 1-  
AETV - THR, I-AETV - THQ, 1 - AETV - THT, 1 - AETV - THNA, 1 - AETV - THN-A (Rear)  
(Provisional)

**DEPARTMENT OF THE ARMY  
LETTERHEAD**

OFFICE SYMBOL

\_\_\_\_20XX

\_\_\_\_ Corps and Fort \_\_\_\_, (WABCD) Fort \_\_\_\_, \_\_\_\_ 12345-6789

Following organization/unit action directed.

Action: Organize provisional units designated as \_\_\_\_ Corps (Rear)(Provisional)(WABCD) Fort  
\_\_\_\_, \_\_\_\_ 12345-6789

Assigned to: \_\_\_\_ Corps and Fort \_\_\_\_

Attached to: \_\_\_\_ Corps (Rear)(Provisional) Fort \_\_\_\_

Mission: To provide command, control, and administration of justice over the units and personnel for the units set forth below.

- a. \_\_\_\_d Medical Brigade (-)
- b. \_\_\_\_Corps Artillery (-)
- c. \_\_\_\_rd Signal Brigade (-)
- d. \_\_\_\_th Corps, Support Command (-)
- e. \_\_\_\_th Military Police (MP) Brigade (-)
- f. \_\_\_\_st Armor Brigade (-)
- g. \_\_\_\_th Military Police (MP) Brigade (-)
- h. \_\_\_\_d Corps Support Group (-)
- i. \_\_\_\_th Aviation Group (-)
- j. \_\_\_\_rd Engineer Group (-)
- k. \_\_\_\_th Engineer Brigade (-)
- l. \_\_\_\_th Military Intelligence Brigade (-)
- m. \_\_\_\_rd Corps Support Group (-)

Effective date of organization: 15 July XXXX Organization terminates: TBD

Military structure strength: Not applicable

Military authorized strength: Not applicable

Civilian structure strength: Not applicable

Civilian authorized strength: Not applicable

Accounting classification: Not applicable

Authority: AR 220-5; AR 27-10, Memoranda dated \_\_\_\_\_ SUBJECT: Request for the Establishment of a \_\_\_\_ Corps (Rear Provisional) and SUBJECT: Notification of Command Structure at \_\_\_\_ Corps & Fort \_\_\_\_ During Operation Iraqi Freedom, which notifies FORSCOM that the Commander, Fort \_\_\_\_ will serve as the general court-martial convening authority for \_\_\_\_ Corps units and personnel who remain at Fort \_\_\_\_ during Operation Iraqi Freedom XX.

Additional Instructions: Additional Instructions: Commander, \_\_\_\_ Corps assumes authority for UCMJ and adverse administrative actions over the units set forth in Memorandum dated 19

December 20XX, SUBJECT: General Court-Martial Convening Authority (GCMCA) and Jurisdictional Scheme for Select Army Units in Iraq in Support of Operation Iraqi Freedom XX, upon arrival of those units or personnel in the CENTCOM area of operations.

Commander, \_\_\_ Corps, assumes wartime award approval authority according to AR 600-8-22 for units listed in the mission statement above that deploy in support of Operation Iraqi Freedom XX.

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BY COMMAND OF LTG \_\_\_\_\_:

Colonel, GS  
ACofS. G-1/AG

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DEPARTMENT OF THE ARMY  
Letterhead

REPLY TO  
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\_\_\_\_\_ 20XX

MEMORANDUM FOR Commander, \_\_\_ Infantry Division, Fort \_\_\_\_\_, \_\_\_ 12345-6789

SUBJECT: Transfer of Select \_\_\_ Infantry Division Court-Martial Cases

1. Purpose. To request you accept the cases of *US v. Private First Class Smith* and *US v. Specialist Jones* for disposition, as appropriate.

2. Basis for Request.

a. On \_\_\_ March 20XX, you requested that the Commander, \_\_\_ Corps & Fort \_\_\_\_\_, serve as the general court-martial convening authority (GCMCA) for the \_\_\_ Infantry Division (Rear) (Provisional) (\_\_\_ ID (R)(P)) and the attachment of the \_\_\_ ID (R)(P) to \_\_\_ Corps for the purpose of UCMJ or adverse administrative actions. You requested the attachment based on the deployment of the \_\_\_ Infantry Division in support of Operation Iraqi Freedom XX. The Commander, \_\_\_ Corps & Fort \_\_\_\_\_, approved your request on \_\_\_ 20XX.

b. On \_\_\_\_\_ 20XX, the Commander, \_\_\_ Corps, requested the Commander, Fort \_\_\_\_\_, serve as the GCMCA for, and accept responsibility of the Fort \_\_\_\_\_ court-martial jurisdiction. Included in that jurisdiction was the \_\_\_ ID (R)(P). The Commander, Fort \_\_\_\_\_, approved that request on \_\_\_\_\_ 20XX.

c. On \_\_\_\_\_ 20XX, court-martial charges were preferred against Private First Class Smith, 123<sup>rd</sup> Cavalry Regiment (Rear) (Provisional) [(R)(P)], \_\_\_ Brigade (R)(P), \_\_\_ ID (M)(R)(P)] (enclosure 1) and Specialist Jones (123rd Aviation Support Battalion (R) (P), Division Support Command (R) (P), \_\_\_ ID (M)(R)(P)) (enclosure 2).

d. On \_\_\_\_\_ 20XX, the Headquarters, \_\_\_ ID , formally returned to Fort \_\_\_\_ the Commander, \_\_\_ ID , has resumed exercising general court-martial convening authority over all \_\_\_ ID Soldiers at Fort \_\_\_\_.

3. Recommendation. Based on the facts delineated in paragraph above, request you accept the cases of *US v. Private First Class Smith* and *US v. Specialist Jones* for disposition as appropriate.

4. MAJ Chief of Justice, \_\_\_ Corps (Rear)(Provisional), is the POC for this memorandum.

Enclosures

1. PFC Smith, DD Form 458
2. SPC Jones, DD Form 458

IMA REAR COMMANDER

Brigadier General, USA  
Commanding



**OFFICE OF THE JUDGE ADVOCATE GENERAL – CRIMINAL LAW DIVISION**

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