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# MILITARY RECRUITING PRACTICES

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## HEARINGS

BEFORE THE

SUBCOMMITTEE ON  
MANPOWER AND PERSONNEL

OF THE

COMMITTEE ON ARMED SERVICES

UNITED STATES SENATE

NINETY-FIFTH CONGRESS

SECOND SESSION

OCTOBER 10 AND 12, 1978

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## MILITARY RECRUITING PRACTICES

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TUESDAY, OCTOBER 10, 1978

U.S. SENATE,  
SUBCOMMITTEE ON MANPOWER AND PERSONNEL,  
COMMITTEE ON ARMED SERVICES,  
*Washington, D.C.*

The subcommittee met, pursuant to notice, at 9 a.m. in room 1318, Dirksen Senate Office Building, Hon. Sam Nunn (chairman) presiding.

Present: Senator Nunn.

Also present: Senator Metzenbaum.

Staff present: Francis J. Sullivan, staff director; John T. Ticer, chief clerk; John C. Roberts, general counsel; Rhett B. Dawson, counsel; Charles J. Conneely, George F. Travers, professional staff members; Christine E. Cowart, research assistant; Fran Frazier and Judy Landesman, clerical assistants.

Also present: Jeffrey Record and Arnold Punaro, assistants to Senator Nunn.

### OPENING STATEMENT BY HON. SAM NUNN, CHAIRMAN

Senator NUNN. The subcommittee will come to order.

The Subcommittee on Manpower and Personnel meets today to review current military recruiting practices and to investigate some specific charges of malpractice.

It should be recognized that our national security depends on maintaining a strong and ready volunteer force and that the adequacy of the size and quality of the people who represent that force is a function of military recruiting efforts. This subcommittee has been interested in military recruiting practices for a long time. Four years ago this month, not long after the establishment of the subcommittee, I wrote to Senator Stennis, then Secretary of the Army, Howard Calloway, and to Comptroller General Staats about problems in Army recruiting practices.

In 1976, in response to allocations of recruiting malpractices in the military services, the General Accounting Office issued three reports, including a recommendation to reorganize the Armed Forces Entrance and Examining Station so that it could act as a central, independent component for monitoring quality, malpractice, and fraudulent enlistment.

One of the recognized accomplishments of the military services since the institution of the All-Volunteer Force has been the enlist-

ment of about 400,000 individuals per year into the Armed Forces by the military recruiting services. That's a big job.

The concerns I have expressed about the All-Volunteer Force concern current problems with our Reserve Forces, problems in manning critical skills and the certain future problems based on the decline in the number of young people, stabilized force levels, and improved economic conditions. Currently, one out of every four qualified and eligible young men between the ages of 17 and 21 in this country must join the military services. That proportion will have to increase over the next 3 years because the number of young people in the target area, as all who follow the military services know, is going down.

These conditions require strengthened efforts by the military recruiting services. Part of the issue before us today is just how much of a strain military recruiting is under. There are currently 21,000 military members and about 3,900 civilians involved in military recruiting. Many of these people are involved in administrative and support activities, and with the Reserve Forces. However, this large effort does represent about one recruiting individual for every 12 recruits that we enlist. Recruiting efforts will expand this year. Currently the Army and Navy are more than 5,000 below their authorized strengths. The Marine Corps is about 1,200 below. Given attempts to meet this year's authorized strengths, including the increases mandated by Congress, and making up the current shortfalls, the Army will have to recruit—this year—about 18 percent more people than last year and the Marine Corps will have to recruit about 10 percent more people this year than last year.

Malpractice in recruiting, even in isolated cases, can have a very serious effect on overall recruiting efforts. Testimony before this subcommittee last spring indicates that there has been a decline in the attitude of our young people toward military enlistment. It is also clear that access to high schools is a prerequisite to successful recruiting. Certainly cases of recruiting malpractice affect both the attitude of young people toward the military and the willingness of high schools to cooperate with military recruiters.

All the members of this subcommittee are aware of current, first-term attrition problems in the military. About 40 percent of the people who do enlist in the military services do not complete their term of enlistment. This is what I have called many times a "revolving door" policy. It flushes poor quality people in and out of the services very quickly, and it serves to increase manpower requirements and costs of maintaining military manpower without serving the national interests. It is one of the fallouts of the volunteer force.

With this overall problem in mind, I want to briefly outline the authority under which the subcommittee is conducting this hearing and investigation so that the record may be clear.

The Senate rules give the Armed Services Committee jurisdiction over the common defense generally, and the Department of Defense specifically, and confer the right and duty to study and review on a comprehensive basis matters relating to the common defense policy of the United States. Current law makes clear that each standing committee may make investigations into any matters within its jurisdiction.

As we begin these hearings on current military recruiting practices and allegations of malpractice, I think we need to keep one overall question in mind, and that is whether the All-Volunteer Force has now reached the point of serious problems in straining to meet recruiting quotas. Does this mean that current recruiting conditions imply a necessary significant reduction in military manpower over the next few years? That is the broader question that I think we should not lose sight of.

The charges of recruiting malpractice are serious. We want to investigate charges of false documentation of educational attainment, covering up police records, compromise of the aptitude tests given to recruits, hiring people to take tests for recruits, covering up medical problems, and conducting "pretend swear-in sessions" for recruits.

At my request, General Wilson and the Marine Corps did order a review of recruiting practices in the State of Ohio and all other Marine recruiting areas.

At this point in the record, I would like to insert a copy of that report. We will be hearing in detail from the Marine Corps on Thursday. [The information follows:]

DEPARTMENT OF THE NAVY,  
HEADQUARTERS, UNITED STATES MARINE CORPS,  
Washington, D.C., September 6, 1978.

Hon. SAM NUNN,  
U.S. Senate,  
Washington, D.C.

DEAR SENATOR NUNN: The investigation requested by you on 3 August 1978 of recruiting practices in the State of Ohio and all other Marine recruiting areas has been completed. It is under review by my staff at this time, however, we have prepared a report of its principal findings and recommendations which I enclose with this letter.

The investigation consisted of the collection and analysis of data on recruiting operations available in our manpower management information systems. Investigation team visits to various operational recruiting offices in all six recruiting districts and examination of the results of recently completed investigations of allegations of major recruiter malpractice within the Recruiting Service.

The Marine Corps Recruiting System is comprehensive in design and operation, has clearly defined objectives and for the past several years has produced acceptable numerical and, to a lesser degree, quality results. It is this latter aspect that the enclosed report addresses.

The enlistment of young men and women capable of successful performance in a variety of assignments is vital to the Corps. The manpower initiatives reported to the Senate Armed Service Committee on 31 January 1975 were designed to correct a level of performance that was at low ebb. I am pleased to state that improvements have been dramatic and readily apparent everywhere in the Corps. Since 1976, diploma high school graduates have increased by 17.5 percent, Mental Group IV-V entrants have decreased by 50 percent, average monthly desertion rates have decreased by 38.9 percent, major command special courts-martial have been reduced 34.4 percent, the confined population has decreased by 48 percent, retention rates have increased by 50 percent and deserter-at-large, unauthorized absence-at-large populations have declined by 35.7 percent and 14.6 percent respectively.

The contribution of the Recruiting Service to this effort has been notable. Thousands of individual recruiters have dedicated themselves to the task of finding and attracting the best possible candidates for service in their Corps. However, the need for high quality entrants has added new dimensions to the recruiting effort, not the least of which is the operation of an effective quality assurance program.

The entire process of recruiting young men and women can be viewed as a quality control screen. It is a series of actions designed to ensure that each

applicant meets the mental, educational, physical and moral standards for entry. The applicant is the primary source of information to determine if he/she meets entry standards. The recruiting process verifies that information. The Recruiting Service is responsible for the initial stages of this verification process, but, in successive stages, other agencies, the Armed Forces Examination and Entrance Stations (AFEES) and the recruit depots conduct independent verifications of the information. For instance, the applicant states he knows of no disqualifying physical condition, he is medically examined at AFEES before enlistment and again after arrival on active duty at the recruit depot. On the surface, this redundant process would seem adequate to assure quality standards but in practice it has been dependent upon ethical conduct on the part of the two principals in the process, the applicant and the recruiter. The subsequent verification efforts have tended to validate the information and documents supplied by the applicant by reference to the applicant himself, not by going to the source of the information or documentation. Of course, not all those sources are open to us. Many schools and police jurisdictions in our country will not verify information submitted by the applicant. They contend that they are constrained from doing so by law, by community policy or by local interpretation of the Privacy Act of 1974.

Virtually every case of illegal enlistment involves some degree of applicant complicity. He knows the facts about himself and the requirements for entry. We have not studied applicants' motives for misrepresentation but obviously many are looking for a fresh start, or the challenge and adventure associated with Marine service—others, to get away from unfortunate environments or to prove their worth in a demanding profession. Unfortunately, some applicants have been aided by the recruiter in this deception.

A few recruiters tend to blame the pressures inherent in the recruiting process for the occurrence of malpractice. Certainly, there are pressures in the process resulting from individual desire to succeed, fear of failure, competition for qualified candidates, personalities of the personnel involved, long working hours, living and working in the civilian sector and the system's need to produce the required numbers of recruits of the requisite quality. However, professional pressure is no stranger to Marines in the execution of their assigned duties. The majority of Marines interviewed stated that the pressures generated were personal in nature resulting from their determination to meet or exceed assigned goals. Another perspective of the way the pressures are viewed by recruiters is reflected in the reaction to the initiation of the career recruiting occupational field in the fall of 1977. Five hundred and twenty-three (523) Marines volunteered for the field. All had previous or current recruiting experience. Two hundred and thirty-two (232) of the best were selected. It is planned to have annual calls for volunteers for the field and to have 559 such recruiters assigned to key billets in the recruiting service by the end of Fiscal Year 1980.

The combination of some recruiters viewing system pressure as being responsible for their unethical practices, willing accomplices in the form of applicants with entry disqualifications and a flawed system of verification has led to some of the results in the enclosure. The recommendations to strengthen the quality assurance process should make a major contribution to ensuring that we actually have the quality Marines that we think we have.

The investigation has caused us to examine our performance from a different perspective. It has disclosed deficiencies in our system and our personnel procedures that we are capable of correcting. We will do so.

Thank you for your continuing interest in the Marine Corps. I trust the information in the report responds to your request. Please do not hesitate to call on me if you have further questions.

Cordially yours,

LOUIS H. WILSON,  
General, U.S. Marine Corps,  
Commandant of the Marine Corps.

REPORT TO THE U.S. SENATE ARMED SERVICES COMMITTEE ON U.S. MARINE CORPS  
RECRUITING PRACTICES

#### EXECUTIVE SUMMARY

##### 1. Introduction

a. The Senate Armed Services Committee has asked the Commandant of the Marine Corps to fully investigate the recruiting situation in Ohio and also all

other Marine recruiting areas to determine the facts on Marine recruiting practice as it exists in the field. A full report on the investigation was requested.

b. The Commandant of the Marine Corps initiated that investigation on August 8, 1978. It involved data collection and analysis and field visits to recruiting activities throughout the United States.

c. This report summarizes the results of that investigation.

## 2. *The Marine Corps recruiting system*

a. The system is national in scope, comprehensive in design, has clearly defined objectives and produces results.

b. It is staffed by 307 officers and 2810 enlisted men of whom 1961 are authorized to be production recruiters.

c. Annual numerical and quality goals are established at Headquarters Marine Corps and allocated to the major elements of the Recruiting Service.

d. Average recruiter productivity for Fiscal Year 1978, a successful year, will be 26.2 recruits per recruiter.

## 3. *Quality control measures*

a. Quality control measures are exercised at each stage of the recruiting process. The recruiter, the recruiting station, the Armed Forces Examination and Entrance Stations (AFEES) and the recruit depots each independently apply quality control measures.

b. Data are captured from the system and are returned to the Recruiting Service in management reports (quality control situation reports, test scores variance reports, recruiter net productivity reports) which trigger investigative action when appropriate.

c. A serious difficulty in the process is that many schools and police jurisdictions in our country will not verify information submitted by the applicant. They contend that they are constrained from doing so by law, by community policy or by local interpretation of the Privacy Act of 1974.

## 4. *Attainments*

a. The Marine Corps is achieving its numerical accession goals and, to a lesser degree, its quality goals.

b. Attrition in the form of discharged Marines, for the period and population examined was 6.1 percent for reasons related to the enlistment process.

c. The impact of quality input on the total enlisted population of the Marine Corps has been dramatic and readily apparent everywhere in the Corps.

## 5. *Recruiter performance*

a. Recruiters are screened and specially trained for their assignment. The percent of volunteers is increasing and recruiters enjoy a higher rate of regular and meritorious promotion than their contemporaries in other occupational fields.

b. Since 1 October 1976, 244 recruiters (7.2 percent of those assigned) have been relieved from recruiting duty for cause (misconduct, performance, malpractice). An additional 213 (6.3 percent of those assigned) have been relieved for the good of the service (inability to perform).

c. During this same period, 1835 investigations were held in the Recruiting Service into allegations of recruiter malpractice or misconduct. The allegations were confirmed in 351 (19 percent) of the cases. Approximately 3350 Marines served as recruiters during this period.

## 6. *Investigation of enlistment of illegal aliens*

a. Illegal aliens were enlisted in the New York area between September 1976 and June 1977.

b. Two hundred and eighty-one (281) illegal enlistments have been identified. Sixty (60) Marines have been discharged and 121 have been retained in the Corps. One hundred (100) cases are still under review.

c. Four (4) Marine recruiters were involved in the process and were referred to courts-martial. One (1) was found guilty and three (3) were found not guilty.

## 7. *Investigation of recruiting practices in Ohio*

a. There is no compelling evidence to support allegations that highly questionable recruiting practices were forced on individual recruiters nor that there was widespread recruiting malpractice at RS Cleveland.

b. A number of recruiters have been identified as having false education achievement documents in enlistment packages presented on individuals enlisted into the Marine Corps.

c. There were irregularities in the processing of applicants for the delayed enlistment program (DEP).

d. The investigation continues in collecting evidence in individual malpractice cases.

#### 8. *Pressures in recruiting function*

a. There are pressures in the system.

b. Most recruiters state the pressures are self-generated in the effort to achieve assigned goals.

#### 9. *Changes in the system*

a. Recruiting practices have been constantly evolving since the introduction of the All Volunteer Force (AVF).

b. Research and development efforts are dedicated to the task of creating long term efficiency and effectiveness in the system.

#### 10. *Action*

a. The Marine Corps will institute action to improve the effectiveness of quality control measures.

b. A detailed study of recruiter working conditions will be made to increase productivity while decreasing working hours and pressures.

c. A separate task group will determine the number of unqualified Marines in the ranks and make recommendations for institutional action.

d. The Marine Corps will seek help in the modernization of the administration of mental examinations, the revision of medical examinations and the passage of legislation to provide relief from current difficulties in verifying applicant information.

#### 11. *Summary*

The Marine Corps Recruiting System is achieving goals, contains quality control measures and has recruited men and women who have had a favorable impact on the performance of the total enlisted population. Recruiters work in a tough, demanding field; a few are not successful or succumb to the pressures inherent in the effort. Recent investigations into recruiting practices in New York and Ohio give visibility to the flaws in the system. The system is constantly evolving but the Marine Corps will take immediate steps to improve quality control features and improve recruiter working conditions.

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### REPORT TO THE SENATE ARMED FORCES COMMITTEE ON U.S. MARINE CORPS RECRUITING PRACTICES

**1. Introduction.**—There is concern that there is widespread malpractice in the Marine Corps Recruiting Service arising from the allegations of several recruiters serving at the Recruiting Station (RS) in Cleveland, Ohio. As a result, the Senate Armed Services Committee (STSC) requested that the Marine Corps fully investigate the situation in Ohio and also all other Marine recruiting areas to determine the facts on Marine recruiting practice as it exists in the field and that a full report be made to the Manpower and Personnel Subcommittee of the SASC.

In compliance with this request, the Marine Corps investigation commenced on August 8, 1978. Investigative efforts were divided into two phases, operating concurrently, to collect and tabulate information that describes the current recruiting process for the enlistment of nonprior services males into the active forces of the U.S. Marine Corps and analyze the product of the process to determine if both the process and product are consistent with law and regulation in design, practice and result.

The first phase consisted of collection and tabulation of official information from all agencies of the Corps associated with the recruiting effort. The period chosen for detailed examination was 1 October 1976 to 31 July 1978 (fiscal year 1977—fiscal year 1978 to 31 July 1978). This period was selected because it was subsequent to the information provided to the Congress in Marine Corps Recruiting Training and Recruiting Programs: Report of the Subcommittee on Military Personnel of the Committee of the Armed Services House of Representatives Ninety-Fourth Congress Second Session, September 29, 1976. In addition, major changes in the recruiting process were instituted in fiscal year 1976 which impacted on the process. The evolution of recruiting practice has continued to the

closing date of the period under investigation. Information collected during this phase was extracted from official directives and the source of those directives; and data from manpower management information systems, the primary source being the Manpower Management System (MMS).

The second phase of the investigation consisted of visits by the investigating officer to various agencies of the recruiting service in the continental United States and review of two recent major investigations of alleged malpractice within the recruiting service.

Visits were made to District Headquarters of the Recruiting Service in Philadelphia, Pa. and San Francisco, Calif. In addition, on-site examinations were made at recruiting stations located at Raleigh, N.C.; South Charleston, W. Va.; Albany, N.Y.; Des Moines, Ia.; Albuquerque, N. Mex.; Alameda, Calif.; Sacramento, Calif.; and Philadelphia, Pa.

These locations were chosen since they represent the full spectrum of performance as measured by numerical and quality attainment or failure in the system. The investigating team interrogated key members (district directors, commanding officers, members of command groups, and recruiters) as to their role and performance in the recruiting system. Simultaneously, other members of the team reviewed the practice of recruiting at the location to include local implementation of required quality control measures. In addition, the headquarters of the Marine Corps Recruit Depots at Parris Island, S.C. and San Diego, Calif. were visited to review their role and performance in the overall system.

The thrust of the investigation reported on herein was to examine the law and regulation pertaining to the recruiting function, the mission and the means (organization, staffing and process) used to accomplish the mission, the quality control measures contained in the system, the attainments of the system, the performance of recruiters within the system and the current evolutionary changes taking place in the system.

This investigation returns partially to an issue of concern to the SASO in 1975 about the Marine Corps' ability to obtain quality recruits capable of performing successfully in the variety of tasks assigned to the Corps. The Marine Corps responded to that concern with a "Report to the United States Armed Service Committee on the Marine Corps Mission, Force Structure, Manpower Levels and Personnel Quality" dated December 31, 1975. In this 1978 report, the issues of the continuing performance of the Recruiting Service and the legality of its actions are addressed.

Quality is defined as it was in the 1975 report, excellence of character and ability. In addition, in this report it means equal to or greater than the minimum physical, mental, educational and moral standard for entry into the U.S. Marine Corps.

**2. The Marine Corps Recruiting System.**—The system is comprehensive in design and operation, has clearly defined objectives and for the past several years has produced acceptable numerical and, to a lesser degree, quality results. It is national in scope, operating at approximately 1233 locations within all 50 States. It is manned by 307 officers and 2810 enlisted men of which 1961 are authorized to be production recruiters. Annual numerical goals are established at Headquarters Marine Corps and are a function of the gains needed to maintain an enlisted population adequate to staff the active and reserve organizational structure of the Corps within authorized end strength ceilings. Quality standards are also established at Headquarters Marine Corps and are based on the best information available to predict successful (professional and moral) performance in the Corps.

These numerical and quality goals are allocated to the Recruiting Service based on demographic considerations and availability of production recruiters. This process of allocation leads to the establishment of the production quota each recruiter is expected to achieve. The minimums required do not appear onerous; annual average recruiter productivity for Fiscal Year 1978, a successful year, will be 26.2 recruits per recruiter, of which 20.2 will be high school graduates.

**3. Quality Control Measures.**—The recruiting process consists of a series of screens to eliminate the unqualified, the unwilling and the incapable. Every aspect of an applicant's qualifications for entry is checked at least twice, each time by a different agency in the process. The recruiter applies the first screen to verify information and documentation supplied by the applicant. The recruiting station serves as a screen to detect recruiter malpractice and applicant attempts to conceal information.

The Armed Forces Examination and Entrance Stations (AFEES) working independently of the recruiting service administers a Form (6 or 7) of the Armed Services Vocational Aptitude Battery (ASVAB) if the applicant has not already taken it at his high school. AFEES also conducts the first physical examination, and examines all other applicant information and documentation. In addition, AFEES conducts an independent inquiry into the applicant's moral qualification. He/she is interviewed by an Entrance National Agency Check (ENTNAC) clerk assigned to AFEES who submits the ENTNAC directly to the Defense Investigation Service inquiring about any federal record the applicant might have. If the completed and returned ENTNAC reveals offenses not admitted at the time of enlistment, he/she is discharged (unless the offense, can be waived and a decision is made to retain the individual) as either an erroneous or fraudulent enlistment. If the enlistee is in the delayed enlistment program (DEP) for 45 days plus, the ENTNAC is returned to the enlisting Recruiting Station for appropriate action. If the enlistee goes to training in less than 45 days, the ENTNAC is sent to his/her depot for appropriate action. Every case of previously undisclosed information on an ENTNAC requires an interview with the recruit to determine if there was recruiter complicity in the concealment of information. If there was, the appropriate district director is required to investigate the case.

TABLE 1.—COMPARATIVE TEST SCORE VARIANCE

[In percent]

	Period		
	June 1, 1976 to June 30, 1977	Dec. 1, 1976 to Dec. 31, 1977	Apr. 1, 1977 to Mar. 31, 1978
	Population		
Depot versus Afees score.....	48, 037	47, 323	45, 530
Equal—greater.....	38. 63	50. 81	50. 7
Decrease 1 to 10.....	44. 12	39. 62	39. 83
Decrease 11 to 20.....	12. 16	7. 60	7. 63
Decrease 21 to 30.....	3. 14	. 28	. 25
Decrease 31 and up.....	. 95	. 02	. 01
Blank.....	1. 00	1. 67	1. 49
Total.....	100. 00	100. 00	100. 00

NOTE.—A decrease in score of 31 points or more requires investigation of possible applicant/recruiter misconduct.

The recruit depots, again working independently of the recruiting service, screen all recruits to identify any unqualified Marines and uncover any recruiting practices that lead to enlisting unqualified applicants. A medical examination is given, all information supplied by the applicant is again checked with the applicant and a different form of the ASVAB is administered. The scores from the two separate ASVAB's are compared. Table 1 provides data on comparative test score variances.

During the processing at the depot, the recruit is strongly counseled to disclose any information that may effect his/her Marine Corps service and instructed in the penalties associated with failing to do so. Disclosures that are disqualifying are examined to determine if they can be waived permitting retention in the service; if not, the recruit is discharged.

Information resulting from these various screens is captured, evaluated and returned to the Recruiting Service in a series of management reports (recruit quality situation reports, test score variance reports, and recruiter net productivity reports) for appropriate action. Any discovery of information that leads to disqualification that should have been uncovered by the recruiter requires investigation as to his/her culpability.

Time, effort and money are spent in the application of these quality screens. However, recruits with disqualifying conditions still pass through the screens. The major flaw in the verification of information is that the applicant is the primary source of verification. Verification to the source of the information is accomplished only occasionally, usually when there is an indication of some disqualifying aspect of an applicant's background. Although the process requires that the recruiter certify that the information is correct, he/she sometimes fails

in that responsibility. The process then is built upon the assumption of ethical/complete performance on the part of both the applicant and the recruiter.

A major obstacle exists in the verification to source of information about applicants. Many schools and police jurisdictions in our country will not verify information submitted by the applicant. They contend that they are constrained from doing so by law, by community policy or by local interpretation of the Privacy Act of 1974.

4. *Attainments.*—The numerical achievements of the Recruiting Service for fiscal year 1977-78 to 31 July 1978 are shown in Table 2.

TABLE 2.—RECRUITING RESULTS (REGULAR MALE NPS)

	Quota <sup>1</sup>	At-tained	At-tained	HSG	CED	MGI	MGI I	MGI IIA	MGI IIB	MGI V
Fiscal year 1977 district:										
1st.....	8,027	9,028	100.01	74.3	3.4	4.1	28.2	30.0	34.4	3.3
4th.....	7,820	7,825	100.06	71.0	6.7	3.6	25.2	29.5	37.0	4.7
6th.....	4,846	4,845	99.98	69.5	3.0	2.8	19.2	27.3	44.8	5.9
8th.....	3,936	3,939	100.08	67.4	3.3	3.4	23.2	27.5	39.6	6.3
9th.....	12,542	12,544	100.02	68.0	6.4	4.5	28.7	30.9	31.8	4.1
12th.....	6,316	6,316	100.00	62.2	8.8	5.3	25.7	27.5	37.3	4.2
Total.....	43,487	43,497	100.02	69.0	5.6	4.1	25.9	29.3	36.2	4.5
Fiscal year 1978 October to July:										
1st.....	4,822	5,402	112.0	71.9	1.7	3.4	23.8	30.0	38.5	4.3
4th.....	6,129	6,191	110.0	75.0	1.2	2.5	22.3	29.8	40.6	4.8
6th.....	3,216	3,378	105.0	64.9	3.6	2.8	17.5	25.4	51.4	2.9
8th.....	3,896	3,970	101.9	67.7	3.2	2.8	22.8	29.2	40.3	4.9
9th.....	7,456	6,159	82.6	69.0	1.0	3.6	24.4	32.7	35.8	3.5
12th.....	4,281	3,870	90.4	68.3	2.6	4.1	24.1	29.3	38.1	4.4
Total.....	29,300	28,970	98.9	70.1	2.0	3.2	22.7	29.8	40.1	4.2

<sup>1</sup> Regular Male NPS quotas listed are not the official quota but the shipping requirement of the actual number for USMC to make authorized end strength.

The numerical and quality goals for fiscal year 1978 of 37,000 recruits of whom 75 percent will be high school graduates will be attained. However, the decrease in the productivity of the 9th and 12th Districts is of concern as is the increase in MGI IIB recruits.

Attrition in the form of discharges from the Marine Corps has occurred from this cohort population. Table 3 provides data on this attrition.

TABLE 3.—ATTRITION—REGULAR MALE NONPRIOR SERVICE—COHORT FISCAL YEAR 1977 TO FISCAL YEAR 1978 TO JULY 31, 1978

Reason	Recruit depot		Post recruit depot		Change
	Number	Percent	Number	Percent	
Enlistment related:					
Med. preinduct.....	422	0.6	1,138	1.5	+0.9
Error.....	2,399	3.2	2,462	3.3	+1
Fraud.....	606	.8	716	1.0	+2
Void—lack of jurisdiction.....	54	.1	176	.2	+2
Drugs—misconduct.....	4	.0	11	.0	-----
Drug abuse.....	42	.1	61	.1	-----
Subtotal.....	3,527	4.8	4,564	6.1	+1.3
Performance related:					
Med. postinduct.....	82	.1	448	.6	+1.5
Recruit failure.....	1,026	1.4	1,023	1.4	-----
Unsuitability.....	4,351	5.8	4,808	6.4	+1.6
Other.....	315	.4	1,921	2.6	+2.2
Subtotal.....	5,774	7.7	8,200	11.0	+3.3
Total attrition.....	9,301	12.5	12,764	17.1	-----
Nonseparated.....	65,587	87.5	62,124	82.9	-----
Total joined.....	74,888	100.0	74,888	100.0	-----

During the period, fiscal year 1977 to fiscal year 1978 to 31 July 1978, 74888 young men started recruit training; by 31 July 1978, a total of 12764 or 17.1 percent of the total enlisted, had been discharged. Discharges for disqualifying conditions that existed prior to entry in the Corps accounted for 4564 of the 12764 discharged or 6.1 percent of the total enlisted. These discharges were classified as being for disabling medical reasons, erroneous enlistments, fraudulent enlistments, voided enlistments because of lack of jurisdiction and drug misconduct or abuse.

Erroneous enlistment is the largest single category of attrition associated with the enlistment process. During the period and population examined, 2462 (3.3 percent) of the 74888 Marines enlisted were discharged for erroneous entry which includes failure to meet Marine Corps physical standards, prior history of police arrest/conviction/confinement, failure to meet educational and mental standards, and malpractice of a federal agent (recruiter).

The number discharged for fraudulent entry was 716 (1.0 percent) of the 74888 Marines enlisted. Fraudulent entry requires proof of deliberate misrepresentation by an applicant of information he knows to be disqualifying.

Medical discharges for conditions considered disabling existing prior to entry accounted for 1138 (1.5 percent) discharges from the 74888 men enlisted. These discharges are the result of a medical examination given at the recruit depot or from complaint or physical failure on the part of recruits while undergoing training.

Voided—lack of jurisdiction discharges were the result of the Catlow-Russo decisions of the U.S. Court of Military Appeals. One hundred and seventy-six (176) or 0.2 percent of the discharges were in this category.

The larger number of discharges during this period from this group, 8200 or 11 percent of the discharges, was a result of the performance of the individuals discharged. The medical discharges were for conditions (injuries or illness) occurring after enlistment. Recruit failure discharges were given for marginal or unsatisfactory performance in recruit training. Unsuitability discharges were for apathy, personality disorders and inaptitude. The category of other discharges include the expeditious discharge program and good of service discharges which are performance related. The most significant increase in the post recruit training period is in this latter category and demonstrates the continuing evaluation of performance that is inherent in Marine Corps service.

The impact of the infusion of quality young men and women on the total enlisted population of the Corps is shown in Table 4.

TABLE 4.—SELECTED QUALITY INDICATORS, FISCAL YEARS

	Percent change				
	1978	1977	1976	1978 to 1977	1978 to 1976
<b>a. Nonprior service accessions:</b>					
(1) Diploma high school graduates (percent) ..	67.5	65.1	56.1	+3.7	+17.5
(2) GED Graduates (percent) .....	2.9	4.5	10.0	-35.6	-71.0
(3) MG I-IIIa percent by recruit depot test <sup>1</sup> ..	53.2	55.7	51.3	-4.7	+3.7
(4) MG IV-V percent by recruit depot test <sup>1</sup> .....	11.9	18.2	25.5	-34.6	-53.3
<b>b. Performance indicators:</b>					
(1) Average monthly UA rate (per 1,000) <sup>2</sup> .....	7.9	8.4	NA	-6.0	NA
(2) Average monthly desertion rate (per 1,000) .....	3.3	4.0	5.4	-17.5	-38.9
(3) Major crime statistics <sup>3</sup> .....	8,791	8,636	9,711	+1.8	-9.5
(4) Average confined population .....	687	812	1,321	-15.4	-48.0
(5) Major commands special courts-martial ..	2,525	3,454	3,848	-26.9	-34.4
(6) Non-EAS attrition <sup>4</sup> .....	8,833	9,590	17,817	-7.8	-50.4
(7) Reenlistment rate (percent) <sup>5</sup> .....	46.9	44.1	44.5	+6.3	+5.1
(8) Retention rate (percent) .....	19.9	17.1	12.6	+16.4	+50.0
(9) Desertion at large population .....	3,293	3,328	5,131	-1.0	-35.7
(10) UA at large population .....	1,197	1,140	1,403	+4.8	-14.6
(11) Percent MG IV-V in OccFld's with historically high proportion of Marines in MG IV-V by recruit depot test on the last day, the month indicated, <sup>1</sup> .....					

TABLE 4.—SELECTED QUALITY INDICATORS, FISCAL YEARS—Continued

OccFld				Percent change	Percent change
	June 1978	June 1977	June 1976	June 1978 to June 1977	June 1978 to June 1977
03.....	28.3	31.8	36.2	-11.0	-21.8
08.....	29.1	33.3	37.0	-12.6	-21.4
13.....	34.0	38.8	42.6	-12.4	-20.2
18.....	29.5	36.6	45.5	-19.4	-35.2
31.....	49.2	47.8	51.8	+2.9	-5.0
32.....	41.3	41.3	50.8	-----	-18.7
35.....	30.1	35.5	42.1	-15.2	-28.5

<sup>1</sup> All marines are tested at AFEES and again upon arrival at the recruit depots. Recruit depots test results are utilized in classification and assignment process.

<sup>2</sup> Commencing in fiscal year 1977 UA rates were computed based on "from UA" incident reporting. Previous years UA rates were based on "to UA" incident reporting and included UAs of less than 24 hours and UA's subsequently declared deserters. Rates based on "from UA" incident reporting not available for periods prior to fiscal year 1977.

<sup>3</sup> Includes forcible rape, murder, larceny, burglary, aggravated assault, auto theft, and robbery committed abroad Marine Corps commands with a PMO (20).

<sup>4</sup> Includes only those SPCM where Marine Corps Military Judge presided.

<sup>5</sup> Includes only unsuitability, misconduct, good of the service, and expeditious discharges. Fiscal year 1978 includes 878 discharged via the recruit failure discharge program which commence in November 1977.

<sup>6</sup> Number reenlisted—number eligible and recommended.

<sup>7</sup> Number reenlisted—total number of separations.

<sup>8</sup> Private to corporal population.

NOTE.—Except where indicated by footnote, all data are cumulative for the 9-month period October through June of the years indicated.

5. *Recruiter Performance.*—Marines are extensively screened before being assigned to recruiter duty. The volunteer rate for assignment to recruiter duty was 36 percent in fiscal year 1976; it has risen to 50 percent in fiscal year 1978. Other recruiters assigned to the duty are ordered to do so by Headquarters, Marine Corps. The normal tour of duty is 36 months; currently Marines successfully completing a recruiting assignment are averaging 39.7 months on the duty. Since October 1977, approximately 127 recruiters have requested to extend on the duty; 100 of the requests have been approved. Approximately 87 percent of the recruiters assigned successfully complete a normal tour.

The regular promotion rates for noncommissioned officers assigned to recruiting duty are higher than for the average of other occupational fields in the Corps. In addition, since 1 January 1976, a total of 319 noncommissioned officers were meritoriously promoted to the next higher grade.

Since 1 October 1976, 244 Marine recruiters (7.2 percent of those assigned) have been relieved from recruiting duty for cause. Reliefs for cause result from unsatisfactory performance by a Marine who had been judged to have all the capabilities to be successful, misconduct or malpractice.

In the same time period, 213 recruiters (6.3 percent of those assigned) have been relieved for the good of the service (GOS). GOS reliefs are without prejudice and occur when the recruiter has put forth his best effort but his innate ability is limited or circumstances beyond his control have rendered him ineffective.

Since 1 October 1976, there have been 1835 investigations held in Marine Corps Districts into allegations of recruiter malpractice or misconduct. Eight hundred and seventy-three of these investigations were the result of Congressional or special interest correspondence. The remaining 962 investigations were generated by evidence of malpractice discovered in the application of the quality control measures in the system. A total of 351 (19 percent) of the allegations were confirmed. Disciplinary action in these cases resulted in 12 courts-martial, 46 non-judicial punishments, 83 non-punitive punishments and 233 cases in which action could not be determined prior to the submission of this report. Approximately 3350 Marines served as recruiters during this period.

6. *Investigation of Enlistment of Illegal Aliens.*—As a result of an anonymous letter received in April 1977 alleging enlistments of illegal aliens from Panama, the Commanding General, Marine Corps Recruit Depot, Parris Island requested that the Naval Investigative Service (NIS) conduct an investigation of the matter. The NIS investigation substantiated that false birth certificates and

high school diplomas were used in the enlistment of individuals in the New York area during the period September 1976 through June 1977. Two hundred and eighty-one (281) illegal enlistments have been identified. Investigations have been conducted in each case with 181 completed. Sixty (60) Marines have been discharged as a result and 121 Marines have been retained in the Corps. One hundred (100) cases are still being administratively processed. Four (4) Marine recruiters were charged under the USMJ for their participation in the process. One (1) was found guilty, the other three (3) were found not guilty.

7. *Investigation of Recruiting Practices in the State of Ohio.*—An investigation has been conducted by the Commanding General, Marine Corps Recruit Depot, Parris Island, S.C. into recruiting practices in the State of Ohio. The investigation finds that there is no compelling evidence to support allegations that highly questionable recruiting practices were forced on individual recruiters nor that there was widespread recruiting malpractice at RS Cleveland. A number of recruiters (seven (7), with four (4) of the seven (7) having one (1) false document each) are suspected of placing false educational achievement documents in enlistment packages presented on individuals enlisted into the Marine Corps (272 high school documents from 943 applicants were verified, 15 were false). One (1) recruiter is suspected of advising an applicant to conceal disqualifying medical information. There were irregularities in the administration of the oath of enlistment to applicants entering the delayed enlistment program (DEP) and in the promotion to private first class for certain members of the DEP. In addition, the correction of discrepancies in quality control measures at RS Cincinnati was examined and found to be progressing satisfactorily. The investigation concludes with 21 recommended actions to improve functioning in RS's in the state of Ohio and in the rest of the Recruiting Service. Specific recommendations are made to continue the investigation of recruiting personnel from the state of Ohio suspected of recruiting malpractice or irregularity.

8. *Pressures in the Recruiting Function.*—Virtually all Marines interviewed in the conduct of the investigation had opinions about the pressures inherent in the function. The pressures were described by some as being unique, continuous and threatening but to others they were no different than the pressures they had experienced in other duty assignments.

District directors acknowledged the existence of pressure in the system. They described it as a way of life, primarily self-imposed, a personal reaction to the need and/or professional desire to accomplish the assigned mission. At the next level, commanding officers of recruiting stations felt pressures ranging from those self-generated to achieve assigned goals and fear of failure to those resulting from strong criticism of individual recruiter performance and the imposition of requirements to work longer hours to achieve satisfactory results. Most productive recruiters stated that their service experience had impressed on them the Marine ethic of the absolute need to accomplish assigned missions and there was a sense of frustration, disappointment and inadequacy felt when they did not meet their objectives. A few recruiters complained of the long working hours involved in the effort and the impact this had on their family lives. Competition with the other services, civilian industry and colleges for qualified applicants was also credited as contributing to the pressure. Highly successful recruiters viewed the pressures as challenging and stimulating and took obvious pride in their accomplishments.

9. *Changes in the Recruiting System.*—The system has been in a state of evolution since the advent of the all volunteer force (AVF). Major reorganizations were initiated in 1975-1976 concurrent with the increase in quality standards. A new system of recruiting, (Systematic Recruiting) was introduced in 1977. It is designed to standardize the recruiting process throughout the country and to achieve greater productivity while reducing working hours. The new system is at various levels of implementation and has met some resistance from those recruiters who are more comfortable with their own approach to the process.

Marine Corps training to prepare Marines for their recruiting responsibilities has gone through a parallel evolution. Recruiters' School at San Diego, CA has gone through frequent syllabus changes to keep pace with the changing conditions facing the Recruiting Service. New training programs for management personnel have been introduced in the last year and have received the approbation of those who have attended.

Research, development and studies efforts have been dedicated to the identification of new techniques to profile successful performance indicators to be applied to applicants before accepting them into service, means to eliminate

ASVAB compromise, methods to improve recruit motivation and reduce performance attrition and the design of new management information systems capable of expeditious collection and tabulation of data for use at all levels in the recruiting effort.

10. *Action.*—

a. The quality control measures now in effect will be revised to include the following features:

(1) Random verification to source of all applicant documentation for a statistically significant segment of the applicant/recruit population conducted at all stages of the recruiting process.

(2) Establishment of a quality control section responsible to the commanding generals of each recruit depot for the daily analysis of quality control information with the resources for rapid independent investigation of any indication of malpractice or system malfunction.

(3) Automated capture of all available information into a single display fully describing individual recruiter performance and the results of his performance for distribution to each level of the Recruiting Service to include the individual recruiter.

b. An examination will be made of recruiter working conditions to determine the appropriate staffing required to reduce the working hours now associated with the effort and to seek authorization from appropriate authority to increase staffing if deemed necessary.

c. A task group will be established to determine the number of first enlistment Marines in the ranks with personal histories that are entry disqualifying and to make appropriate recommendations for institutional action.

d. Commanders at all levels in the Recruiting Service will be counselled as to their responsibilities in the administration of justice to ensure that all cases of suspected malpractice are treated with gravity consistent with the facts of the case and the full protection of the rights of individuals involved.

e. The Marine Corps will request that appropriate authority take the following actions.

(1) Introduction of computer assisted entry mental examinations as soon as possible.

(2) Revise entry medical examinations to reduce the number of medical failures subsequent to induction.

(3) Seek legislation to provide relief to the present difficulties in obtaining information concerning applicants' educational attainments and histories of arrest and conviction.

11. *Summary.*—The Marine Corps Recruiting System is comprehensive in design, has clearly stated objectives and produces required numerical results but requires improved quality control measures. These measures are based on the integrity of both the applicants for service in the Corps and the personnel assigned to the Recruiting Service and their compliance with appropriate directives. The verification to source of individual qualification for entry has not been accomplished in a systematic manner and any effort to do so for the entire population of applicants for entry would not be feasible given institutional restrictions against the release of verifying data. As a result, the current quality measures do not identify or eliminate all unqualified applicants for service and there is an undetermined number of such individuals in the ranks. This number is relatively small resulting in the continuing improvement in the overall quality of performance of the entire enlisted population since fiscal year 1975. Information about the performance of recruiting personnel is available from a wide range of sources and in great detail, but it is not tabulated in a standard format to provide a complete picture of the efficiency or quality of that performance.

The evidence of malpractice in the system is geographically widespread but involves only limited numbers of recruiters. The experience in New York in 1977 and Ohio in 1978 involves few recruiters but illustrates the flaws in the system. There are pressures in the system resulting from individual desire to succeed, fear of failure, competition for qualified candidates, personalities of the individuals in the process, long working hours, living and working in the civilian sector and the system's need to produce the required number of recruits of the requisite quality. Full implementation of Systematic Recruiting and the infusion of new techniques to profile successful performance, eliminate test compromise, reduce attrition and provide pertinent management data now in research and development will contribute to long term efficiency and effective-

ness. Thousands of Marines have served in recent years as recruiters and have conducted themselves with honor and integrity in a tough, demanding assignment.

The Marine Corps will take action to revise and strengthen the quality control measures in the recruiting system. Detailed examinations will be made of recruiter working conditions and of the number of first enlistment Marines who may have entry disqualifying records. Corrective measures for individuals involved in malpractice will be applied with equity. The Marine Corps will seek help in modernizing the testing process, revising medical screening and finding relief from the present difficulties in verifying information.

Senator NUNN. Our first witness this morning is Senator Metzenbaum of Ohio. Senator Metzenbaum and his staff have investigated charges of recruiting malpractice in Cleveland and he initially requested an investigation by this subcommittee. He has been most cooperative in providing information and assistance to the subcommittee for this hearing.

I know Senator Metzenbaum is deeply concerned, not only about these specific allegations that we will be talking about here this morning, but deeply concerned about our national security and all the questions we will be dealing with this morning having implications for our national security.

So, Senator Metzenbaum, we welcome you and your staff here this morning and we would like you to proceed with your statement. You may want to introduce your staff this morning.

Senator METZENBAUM. Thank you, Mr. Chairman. I do want to introduce my staff.

This is Jim Phillips who has done much of the investigation into this matter and Roy Myers who is in our press department.

#### STATEMENT OF HON. HOWARD M. METZENBAUM, A SENATOR FROM THE STATE OF OHIO

Senator METZENBAUM. Mr. Myers has impressed upon me that, factually speaking, more and more recruiters and recruits called him in connection with this matter. I guess his was the name they saw at various points in the media, and so he is intimately familiar with that matter itself.

I would like to thank you, Mr. Chairman, for taking the time out of your busy schedule and, as evidenced by last night's action on the Senate floor you indeed have been extremely busy and extremely successful, and I compliment you, to conduct these hearings while you have pressures of your own back home as well, and I am grateful to you for that fact.

I commend you for holding these hearings to look into allegations that have been made about recruiting practices in the U.S. Marine Corps. I know everyone in this room shares the same feelings about the need to maintain a strong and vital military force.

Throughout its history, the Marine Corps has been one of the most effective and prestigious arms of our Nation's defense forces. It is my hope, as I am sure it is yours, that these hearings will be a major step in assuring that our military is kept strong and that the Marine Corps, as well as all of the branches of the military, will be able to attract the finest men and women possible to their ranks.

Over the months that my office has been involved in the investigation of Marine recruiting practices, it has become increasingly evident to

me that a serious problem exists. I know that the chairman and the other members of the subcommittee are in agreement that our purpose today is not to point fingers, but rather, to point out the problems that do exist. Then, together, we and the Marine Corps can do our best to offer a constructive solution.

I am also sure that the eventual beneficiary will be the Marine Corps and the men and women who proudly wear the uniform.

At the outset, Mr. Chairman, I would like to give the subcommittee some background about my involvement in this matter, because it is a little bit out of the area of my own involvement with respect to armed services matters.

Last spring, a Marine recruiter stationed in Cleveland came to my district office to outline a series of recruiting problems he had witnessed. He completed his statement, but hesitated to sign it because he feared disciplinary action.

Two weeks later, my Cleveland office received a phone call from a distraught mother telling of her 18-year-old son's problems in the Marine Corps. She was advised to have her son write to me, indicating his problem. He did so, and his letter was forwarded to me in Washington on July 12 of this year.

Mr. Chairman, it is a tragic letter from a young man with an obvious emotional problem; a young man who had already been rejected by the Navy by reason of his emotional instability and other physical problems.

According to the young recruit, he had openly advised the Marine recruiter of the problems but was told it did not matter. Just do not mention it to the medical officer, he was told. And off he went to boot camp in San Diego.

In the letter from Pvt. Kevin McNeeley, he tells of several attempts at suicide and threatens still another suicide attempt by drinking brass polish due to the emotional pressure he was undergoing. And then, just as he predicted, he did make that effort to take his own life.

For several weeks thereafter, he remained in serious condition at the Balboa, Calif., Naval Hospital. Fortunately, he has recovered sufficiently to return to his own home in Cleveland.

The story of Kevin McNeeley is a sad one. He was an honor student in high school and excelled in athletics. He comes from a family environment that is representative of the finest in American life—a father who served his country in the Korean conflict and remains partially disabled from wounds he received, and three brothers, each of whom has served honorably in the military.

The tragedy that befell Kevin has now soured this patriotic family against the military, and all because of the overzealousness of a recruiter and his commanding officer to meet a recruiting goal.

Mr. Chairman, at this point, I ask permission to enter Kevin McNeeley's letter into the record, along with a sworn statement from his mother and father and several news accounts that were printed in the Cleveland newspaper.

Senator NUNN. Without objection.

[The statements of Mr. and Mrs. McNeeley are retained in committee files.]

[The statement of Kevin McNeeley follows:]

LETTER FROM KEVIN MCNEELEY

DEAR SENATOR HOWARD METZENBAUM: I am writing to you asking for your help. Now I'm an 18-year old Clevelander. I'm now in the Marine Corps' Boot Camp which my nerves are unable to cope with. But before I proceed I would like to give you a slight picture of how and why I joined the Marine Corps. In which I'm asking you for your help to get me out. Because they are ruining my sanity and future.

This whole problem started Monday, May 21, 1978. I believe that was the day I quit my Quality Control Lab. Technician job. When I let my mother know I quit an hour and a half later we rushed her to St. John's Hospital because of breathing difficulty and a weak pulse. The doctors said it was her nerves, so I took the blame for quitting my job.

Later that night both a Navy and Marine Corps Recruiter called my house requesting to speak to me. They wanted me to come down and see if I was interested in any field I qualified for. We agreed on Tuesday morning.

I went as I said I would, took the screening test, and they said I qualified for three-fourths of Navy's occupations and close to all of the Marine Corps'. The Navy could not accept me because of bad nerves. But the Marine Recruiter said not to worry about it. So I went home undecided.

About 5 p.m. that night I received a phone call from the Marine Recruiter saying they need a recruit right away. And if I would join I would become a contract Private First Class. I still was uneasy but my mother said it would do me good. So I did. With bad nerves and all.

So on April 3, 1978 I arrived at MCRD San Diego, and the pressure started to build as expected. And it keep building as expected, but with no way to release it. I was getting easily tempered. Even close to fighting, but I controlled it until about May 1, 1978. Only 23 days of training. That's when things got to me. I took my flashlight and pounded my groin area. I was taken out of training and put into the Medical Rehabilitation Platoon after being in there for five days the doctor recommended me to see the psychiatrist. But the drill instructors didn't want me to. It got me upset so I cut up my left hand and wrist. So they had the psychiatrist see me.

He told me "I wasn't crazy", and I agreed and I told him, "This place isn't worth dying for". But if they want to ruin my future if it hasn't already. It will be the death of me. I also told him I would go back to training. If they made me go. See but I didn't want to infear of me keep doing myself harm. So he had sent me to a doctor about my "black outs". They had also sent away for my medical records concerning my "black outs". At that time the psychiatrist said, "He would not see me again until they arrive from home".

I now during my time in MRP (Medical Rehab. Platoon). I was talking to a lot of people who were trying also to get out. One recruit whose name he asked not to be mentioned stared at a mirror in the sun to partially blind himself. Another recruit named Tim Reed asked me to break his stress fracture worse so it wouldn't help to keep him out.

Back to me again. Since I couldn't go to the psychiatrist when I got upset and depressed or my drill instructors. I talked to Chaplain Moore of Second Recruit Training Battalion. I told him the things I've been doing and he told me to refuse training, for mine and everyone else's safety. He also sent me to Chaplain Dunks, 3rd RTBN Chaplain, because he was ordered overseas to the Philippines.

I talked with Chaplain Dunks who said he could not help me, but if I felt I was going to do myself any harm to ask to see him. And I did about three days later. He said, "He cant' help me". So my Drill Instructor (DI) Staff Sergeant Golic took me to see Warrant Officer 3 (not sure of rank) Mr. McCallum. He told my DI to tell me not to do it on his duty shift it was too messy to clean up. So my DI took me back to MPR where I started to recut my wrist, but a Private Hank Hazlewood caught me and stopped me. It was at that time I decided to refuse to train for my own health and welfare!

So when I did refuse, they tried to get me to accept office hours but I refused to sign for them. Which meant I automatically get a court-martial. Now everyone before me got discharged if they were up for a court-martial. Example a Private Beatle was up for a court-martial for refusing to train, going AWOL (U.A.) and stealing a car. He got his court-martial dropped to office hours again. Then had \$92.00 forfeiture of pay. A week of CCP (hard labor) which I was told was suspended. And an honorable discharge.

So as I said when Major C. D. Embrey ordered me to return to training. I refused to go back also I refused office hours. So they are now court-martialing me. After Colonel E. R. Savoy signed the order form for me to get court-martialed.

Now since all this time I have not been able to talk to any one concerning my problem. I'm unable to relax because my life and future is at stake. I've been here at MCRD since April 3, 1978. Been getting paid since March 23, when I signed the contract. And I will still get paid until the judge is given his chance for forfeiture of my pay. But that is still time to come.

You see Sir, I need not waste any of the Government's money. And I also don't want to do me harm or suicide. But I will not serve time for listening to a Chaplain who was trying to help me.

And if its a must I will drink a can of Braso (brass polisher) to get out as a few other privates did whose names are: Ed Williams, Joe Cahedra, a couple of people I just have last names, Chadrick and Challenger. Also a few got out for cutting their wrist as I tried. I also have been carving words in my arms. In hopes of getting out.

Here are the names of a few people who had cut their wrist Duncan, Ellison, Alt. I don't know their first names.

You see Sir, I'm not the only person in this mess. We have a Minister Frank Williams who is getting a court-martial after refusing to return to training after a heat stroke. And we have a Steven Smith who is getting court-martialed after refusing to make his rack. They also refused office hours. Now Minister Frank Williams was told by Chaplain Dempsey to refuse training.

A recruit has not been court-martialed in over 2½ years. Sir, I don't want to be the first, second or none at all. I was never in any trouble in Cleveland I have a clean record. And if I get one now I will not be able to go into the field of work I want to and enjoy, paramedic.

But I feel it is unfair we have to jeopardize our future for listening to a Chaplain's advice. Men of God. Well Sir, I would like to thank you for taking your time to read this. I would also again would like to ask you for your help. And please check my background. I know I was no angel but I keep out of trouble and I'm no criminal. Please help me soon the trial date is July 13 and/or 14, 1978.

Sincerely,

KEVIN JOSEPH MCNEELEY,  
*Marine Recruit, San Diego, California.*

My places of employment :

Paid :

Parr Incorporated, 5151 Denison.  
Chandler & Fischer, 12800 Trisketh.  
Metro Gen. Hospital, Volunteer, Orderly Aide.  
Police Athletic League, Fulton.

Metro. Gen. Hospital, Volunteer, Physical Therapy.  
St. Augustine Manor, Volunteer, Orderly Aide.

Also as a Sub., Pool Guard for various pools.

I'm a high school graduate. I'm a water safety instructor.

Please contact me right away or my parents.

My address : Pvt. Kevin J. McNeeley, [REDACTED], 3rd RTBN HQ Transit MCRD, San Diego, Calif. 92140.

Phone No. [REDACTED], 1127, 4728.

My parents : Mr. and Mrs. L. A. McNeeley, 12205 Brighton Avenue, Cleveland, Ohio 44111.

Phone No. [REDACTED].

God Bless you and thank you.

Senator METZENBAUM. As soon as news reports of the McNeely tragedy were published in Cleveland, the recruiter who had originally come to my office, along with at least two other Marine recruiters, contacted my office and offered to sign sworn statements about the illegal recruiting practices that were being used in Cleveland. When I received their statements, I immediately contacted the distinguished chairman of the Armed Services Committee, Senator Stennis, and the Secretary of Defense, Harold Brown, and urged them to conduct a complete investigation into the allegations.

I have copies of those letters for the record, and I would appreciate their being introduced into the record.

Senator NUNN. Without objection.

[The information follows:]

UNITED STATES SENATE,  
COMMITTEE ON THE JUDICIARY,  
Washington, D.C., July 13, 1978.

HON. JOHN C. STENNIS,  
Russell Senate Office Building,  
Washington, D.C.

DEAR JOHN: For several months, my Cleveland District Office has been investigating complaints concerning questionable recruiting practices on the part of the Marine Corps. In addition, I have received complaints from other areas of Ohio.

On July 10, a letter was received in my Cleveland office from a distraught young Marine recruit at the San Diego Marine Base. He obviously had serious emotional problems at the time he was recruited into the Marines. Since arriving at the training base, his problems multiplied and tragically, he attempted suicide on July 11 by drinking a can of caustic liquid. He presently is in serious condition in the Navy Regional Medical Center in Balboa, California.

My office has been contacted by several Marine recruiters in Cleveland who are willing to testify to some of the highly questionable practices that they are being forced to use in an effort to meet recruiting quotas.

For example, we have evidence of collusion between recruiters and local police officials in expunging criminal records so that a prospective enlistee may qualify; cases where illegal intelligence tests are given to recruits; promises of promotions and special schooling that never materialize, and circumventing of education requirements.

I support the concept of a voluntary military force, but I must protest the overzealous efforts of these recruiters who apparently have exceeded the bounds of propriety in attempting to bring young men and women into the services.

I am bringing this to your attention to urge you to immediately schedule hearings of the Armed Services Committee to look into these charges. My staff will give you its full cooperation in making our files available to you.

If your committee agenda does not permit scheduling of such hearings, I would appreciate your advice and consultation on the advisability of the Judiciary Subcommittee on Citizens and Shareholders Rights and Remedies handling the matter.

The evidence of expunging of criminal records may properly come under the jurisdiction of the Judiciary Committee.

Very sincerely yours,

HOWARD M. METZENBAUM,  
U.S. Senator.

UNITED STATES SENATE,  
COMMITTEE ON THE JUDICIARY,  
Washington, D.C., July 13, 1978.

Dr. HAROLD BROWN,  
Secretary of Defense  
Pentagon, Washington, D.C.

DEAR HAROLD: For several months, my Cleveland District Office has been investigating complaints concerning questionable recruiting practices on the part of the Marine Corps. In addition, I have received complaints from other areas of Ohio.

On July 10, a letter was received in my Cleveland office from a distraught young Marine recruit at the San Diego Marine Base. He obviously had serious emotional problems at the time he was recruited into the Marines. Since arriving at the training base, his problems multiplied and, tragically, he attempted suicide on July 11 by drinking a can of caustic liquid. He presently is in serious condition in the Navy Regional Medical Center in Balboa, California.

My office has been contacted by several Marine recruiters in Cleveland who are willing to testify to some of the highly questionable practices that they are being forced to use in an effort to meet recruiting quotas.

For example, we have evidence of collusion between recruiters and local police officials in expunging criminal records so that a prospective enlistee may qualify; cases where illegal intelligence tests are given to recruits; promises of promotions and special schooling that never materialize, and circumventing of education requirements.

I support the concept of a voluntary military force, but I must protest the overzealous efforts of these recruiters who apparently have exceeded the bounds of propriety in attempting to bring young men and women into the services.

I am bringing this to your attention to urge you to immediately undertake a complete investigation of these charges. My staff will give you its full cooperation in making our files available to you.

I am also contacting Senator Stennis to urge him to schedule hearings of the Armed Services Committee on this matter.

Very sincerely yours,

HOWARD M. METZENBAUM,  
*U.S. Senator.*

Senator METZENBAUM. At the same time, I agreed to have my staff continue the preliminary investigation that had already begun. Concurrent with our investigation, the Marine Corps itself assigned two officers to conduct an investigation of recruiting practices in Cleveland. Over the course of several weeks, my staff continued its investigation which included onsite interviews of present and former recruiters, recruits, and other Marine personnel. At that time we were afforded cooperation from the Marine Commander.

They provided us with a substantial number of files of their own investigations of alleged recruiting malpractice. That cooperation, I might say, Mr. Chairman, has not continued to this date.

In addition, several former recruiters from the Cleveland Recruiting Station contacted me to volunteer more information about the problems that they encountered on recruiting duty in Cleveland. As the news media started to investigate Marine recruiting practices on their own, our offices literally became flooded with calls from past as well as present recruiters. At this point, I would like to introduce into the record just a handful of those letters that were sent in to us and hope that they may be entered into the record.

Senator NUNN. Those letters and what?

Senator METZENBAUM. Sworn statements.

Senator NUNN. Sworn statements?

Senator METZENBAUM. Of recruiters.

Senator NUNN. All right.

I will ask the clerk to appropriately number the various exhibits in consecutive order. Would you like them in the order that you are submitting them?

Senator METZENBAUM. It does not matter.

Senator NUNN. All right.

Without objection, they will be admitted to the record.

Senator METZENBAUM. Thank you, Mr. Chairman.

[The statements of former Marine Corps recruiters, Mr. Donald Robinette, and Mr. Robert Bletz, testifying before the subcommittee this morning, appear as follow:]

PREPARED STATEMENT OF DONALD ROBINETTE

I, Donald J. Robinette, GySgt. U.S.M.C. make the following statement. I began recruiting duty on June 3, 1976. When I reported in to the Cleveland recruiting station, the commanding officer was Lt. Col. Findlay. Shortly thereafter Major Batcheller became the commanding officer. The station wasn't very good under Maj. Batcheller because it never made quota.

In May 1977, Maj. K. D. Schreiber took command. He came very determined to make Cleveland the best station in the country. The way he did it is what should be questioned. First, he informed all recruiters that no one had to worry about investigations that no one would get (*burned*) for recruiting malpractice. Because he or one of the other officers interviewed these people last before they were in and he would cover us. The station started making and even surpassing they could. Everything was done with his approval. Maj. Schreiber put a great amount of pressure on all recruiters. There was no reason for a recruiter to miss quota, because in Major Schreiber's eyes he could do anything or just about anything to get a man or woman in the Marines. I, myself, was given the test, ASVAB #6, #7 or copies to use on people who couldn't pass. This test is not supposed to be in the hands of any recruiters. The test was given to me by GySgt. Warren S. Robinette who was Cleveland area commander. GySgt. Robinette would also help coach these people to pass the test. He also introduced me to one Andy Ladeka of the juvenile court of Cleveland. Andy would clean up police records just for the asking. In Cleveland you didn't have to worry about getting a man in because if he couldn't pass the test you would give him a copy to study. If he had a police record you could get it cleaned up.

All the time this was being done, I was working in the Maple Heights recruiting station, a sub-station under Cleveland.

Under Maj. Schreiber we as recruiters had no set working hours. You never had time off because he always wanted more and more. If a recruiter didn't make quota the C.O. would relieve him, tell him he would ruin his career. One, GySgt. Michael Brady because he would not go along with the enlisting people into the Marine Corps illegally. Brady was from Willoughby Recruiting Station.

Other things that were done to get people in were RS Swear Ins. Say a man did not pass at the AFEES, he would be taken to the office on Rockwell Street and put in anyway by Maj. Schreiber. In one case, a man named Mitchell Oschip was enlisted in this way because he needed a waiver from C.M.C. The waiver was disapproved and they told the man he couldn't go. But when he was sworn in he was given a ship date and told to be ready to leave.

This man has a wife and child. He sold everything and gave up his job. This man today is asking me for a discharge, but he can't get one because he was never in. This, and at least 132 other cases, can be proven to June 5, 1978.

Many recruiters have done the things I have stated. I have been interviewed by Senator Metzenbaum's office and have informed this office of dates, times, and places in which these things were done.

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#### PREPARED STATEMENT OF ROBERT A. BLETZ

On the 27th day of July, 1978, before me, the undersigned authority within and for said county, duly authorized to administer oaths, personally appeared Robert A. Bletz, who, being by me duly sworn, says that:

In November 1975, I was assigned as a Marine Recruiter in Columbus, Ohio and began work at the station located at 3191 West Broad Street. During the winter and early spring of 1976 I became aware of the pressure from Major Lowery being made on other recruiters and myself to make quota. These include the continued threat of relief of the recruiter who worked with me. As a result of this pressure applied to the recruiters, and myself some malpractice was committed in the enlistment of applicants.

Among these was the practice of telling applicants not to admit to drug use, regardless of the amount of times drugs were used. The only thing was to make sure that they did not have an arrest for drug use. At this point in time drug use was reason for denial of enlistment. Other practices of which I was a witness, was with the juvenile court in Franklin County. The police check was taken to the ID section, if a conviction or arrest was shown for the applicant. The check and the record were sent to Mr. Duffey, a probation officer. He would look at the record and ask the recruiter's opinion about the applicant. If it was thought the applicant would make a "good Marine" Mr. Duffey he would sign the police check as clean and destroy the applicant's file.

After being transferred to RS Cleveland and assigned to RSS Akron, the first case of malpractice I had contact with concerned a Richard J. Harm.

GySgt. Harvey had instructed Mr. Harm to contact the prosecuting attorney for Summit County and inform him that he could only be enlisted if charges of grand theft were dropped. Mr. Harm did this and was enlisted in January 1977. Mr. Harm was later discharged and during the process Mr. Harm made statements that the charges against him, grand theft, petty larceny and breaking curfew, were dismissed upon enlistment. He also stated two years of drug use.

In May 1977, SSgt. S. Terry was made NCOIC of RSS Akron. Shortly after his arrival in Akron he displayed a copy of the answers to the word knowledge portion of the ASVAB test. This was shown to applicants before the test and they were told to remember the answers. This practice was done too often to be able to place a date or to remember the names of the applicants. The answers were given along with the test question and was on Air Force paper and referred to as "the tools". It was destroyed when rumored that the CO was going to be told. I saw SSgt. Hayes and SSgt. Amos use the "tools" several times.

At the time I enlisted Gernaldo Thomas I was told to have him stay in the same hotel room as one of Sgt. Hayes applicants. Upon arriving at the room with Thomas, Sgt. Hayes' applicant was already there. He showed me a list of questions with answers that he was told to study and that Sgt. Hayes would get from him the next day.

Also used to insure that an applicant would pass was having the test taken by a person who already showed that he could pass. I witnessed Kimyata Cooper come from the test area of the AFEES station after taking the test for someone else. Cooper gave Sgt. Hayes the results of the test. Sgt. Hayes stated that Cooper may have gotten too high a score as the applicant that Cooper was testing for was not that smart. Through the conversation between Sgt. Hayes, Cooper and myself I know it was not the first time he had taken the test for someone else.

Stephen Beasley was enlisted by not revealing the extent of the charges against him. Sgt. Hayes left out a document showing a felony and enlisted him with a local waiver instead of a CMC waiver.

Ben Kimbrough was enlisted with the knowledge of Major Schreiber about 30 days prior to having his waiver drug charges approved. Kimbrough's paperwork had the required document to submit when he was taken to Cleveland.

The practice of Major Schreiber to use your career was common. He had often told me that he would damage my career and back up this statement by submitting unsat fitness reports to higher headquarters. He also used threats and suggestions. He had once told me that I should jump out a window, he condemned me for taking two weeks leave after my brother's death and when I said I didn't like the amount of lies and cheating which I did on several occasions, he told me I was using that as a cop out. He made contact with my wife and told her that she was interfering with my work.

I had tried to talk to others and was often chewed out for not meeting quota and I was cut short from stating reasons and fact. This is stated in many letters and is on file in numerous places from the RS to district and Headquarters Marine Corps.

During the time I recruited in Akron the practice of telling applicants to lie about drug use continued. And due to the fact that juvenile records were not available to recruiters they were told not to admit to any police involvement.

As senior enlisted Marine at RSS Akron I know I was responsible for the action of the recruiters and accept that responsibility. Also during my recruiting in Columbus we would take Social Security Cards that were left by other applicants, erase the number and type the new applicants number on it so he would have the card as part of the required paperwork.

ROBERT A. BLETZ.

Suscribed in my presence and sworn to before me, this 27th day of July, 1978.

Leonard Tate,

Notary Public for Cuyahoga County, Ohio.

Commission expires April 14, 1981.

Witness—Sharon R. Bletz.

Senator METZENBAUM. Today, we will hear testimony from three present and former recruiters in Cleveland. I would like to say, Mr.

Chairman, that there was a fourth recruiter who had intended to be here and we hope to have him available by Thursday. The fact is that there has been some difficulty with his employer making the time available to let him be here.

I would like to enter into the record, however, his sworn statement, and that will be submitted at the conclusion of the hearing.

I would also like to enter into the record the original sworn statements that were made at the outset of the investigation, along with a statement from another former Cleveland recruiter who is now stationed in Okinawa. Those were part of the documents which were just handed in.

In addition, I present for the record a series of news stories dealing with Marine recruiting problems in Ohio.

[The material referred to is retained in committee files.]

Senator METZENBAUM. Mr. Chairman, I think it is extremely relevant that these Marines here today and other recruiters who have provided us with information about recruiting malpractice are not malcontents or troublemakers. Quite the contrary.

The typical recruiter to come forward has served his country for an average of 10 years, is a combat veteran, and has received enumerable decorations and commendations. In fact, this is true of virtually every recruiter on duty today in the Marine Corps.

Marine recruiters are chosen for their dedication to the corps and for their ability to accept and carry out difficult and demanding assignments. A high-ranking marine officer has said that, next to combat service, recruiting is the most demanding duty that a marine can be asked to accept.

When these recruiters accepted their assignments, they knew it was an honor, and they also knew it would be arduous work. What they were not prepared for, however, was the extreme pressure they found themselves under as they tried to perform their duties.

Mr. Chairman, I spent many years in the business world and I know what it is to manage an operation and try to motivate people to perform. I can tell you that you do not get efficient performance by forcing people to put in 15 to 20 hours a day 7 days a week for weeks on end. You do not get efficient performance by threatening people with demotions if results are not there. And you certainly do not get efficient performance by threats of physical abuse if goals are not met.

But this was exactly the type of pressure to which these recruiters were subjected. Upon reporting for duty in Cleveland, they found that their commanding officer had only one goal in mind: To make the Cleveland office the No. 1 recruiting station in the Nation.

There is nothing wrong with wanting to be No. 1, but I think we must draw the line when, in order to attain that goal, the manager condones and actively promotes illegality.

It was not only the recruiters who suffered from pressure, it extended into their family life as well. I have here a letter from the wife of a recruiter that bears eloquent testimony about the pressure her husband underwent, and if time had permitted, I would have liked to read excerpts from it, but it does not, and I ask that it be accepted for the record.

Senator NUNN. Without objection.

[The material referred to is retained in committee files.]

Senator METZENBAUM. As you will see in that letter, there is great love and devotion expressed for the Marine Corps and there is the same love and devotion expressed by all of these recruiters here today. That is the reason they have come forward, because they care about the honor and reputation of the Corps and can no longer sit idly by and watch the quality of this military force continue to decline simply because a commanding officer wants to look good for his superior.

One of these recruiters has told my staff he would not want to serve in combat with the vast majority of individuals he has seen recruited. In order to meet quotas, he and other recruiters have forged, falsified, cheated, and lied.

I have before me just a sampling of the cases of illegal recruiting found by my staff in Cleveland. They cover a wide range of illegalities and improprieties, including submission of false and forged documents pertaining to the education of recruits, covering up of criminal records, hiding of disqualifying medical or mental problems, and illegal swearing in of potential recruits by the commanding officer.

I intend to turn these files over to the subcommittee, but at this time I would like to point out just a few of the types of illegal practices that have been going on.

But, before I do that, let me first point out that the Marines have set up strict guidelines for themselves to insure that they are getting quality recruits. The Marines motto, "the Marines only want a few good men," is implemented by their guidelines.

For instance, at least 75 percent of Marine recruits must have high school diplomas. All others must have at least completed the 10th grade. They must be able to pass an Armed Forces intelligence test. They must be of good moral character, with no criminal records.

They must be in excellent physical condition, and they must show emotional stability. They also must not have any dependents.

So much for what is required of a recruit. Now, let us take a look at the real world of Marine recruiting.

Here are half a dozen letters from various high schools in the Cleveland area: Willoughby East, East Lake City Schools, Cleveland Public Schools, Sheraton High School, Bander Public Schools, all certifying that recruits had graduated or attended the schools. They are all on the stationery from the schools and, Mr. Chairman, they are all forgeries.

In each case, my staff contacted the school and was told by the officials that the recruit either did not complete school or, in many cases, never even attended the school, and I offer those letters for the record as well at this point.

Senator NUNN. Without objection.

[The material referred to is retained in committee files.]

Senator METZENBAUM. How did they come to be in the recruits files? Mr. Chairman, they were forged on stolen stationery and placed there by a recruiter who needed one or more recruits that month to meet his commanding officer's commands. And, if it required breaking the rules or breaking the law, it didn't matter.

As one recruiter has stated, the commanding officer told them, "I don't care how you get them. I just want warm bodies up here."

Some of the recruiters were a little more ingenious. Forged letters were not good enough for them. Here is a copy of a diploma from the Columbus Adult High School, complete with the recruit's name hand-lettered on it. It is absolutely false.

My staff checked with school officials and found that there was no record of the recruit's ever having set foot in the school, and I offer that document for the record.

Senator NUNN. Without objection.

[The material referred to is retained in committee files.]

Senator METZENBAUM. Was this an isolated case? I think not. Here is a list of 14 such cases that occurred in the Columbus-Cincinnati recruiting offices that were discovered by the Marines themselves. In every case, it was found that the recruit had no record of attendance at the school.

Was it only one or two recruiters doing this? I think not. These 14 recruits were processed by 12 different recruiters.

I offer those for the record.

Senator NUNN. Without objection.

[The material referred to is retained in committee files.]

Senator METZENBAUM. Here are numerous examples where the recruiter gave copies of the Armed Forces intelligence test to a potential recruit and then schooled him on the test. Although a recruiter is forbidden by Marine rules from even having a copy of the test, recruiters have told my staff that virtually every recruiter they know has copies of the test.

In several of the cases we found in the Cleveland area, even having the test didn't help the recruit, so the final alternative was to send in a ringer, a substitute who would take the test and at least obtain a passing grade

According to the recruiter, one such ringer took the intelligence test 10 times for other recruits.

Senator NUNN. Let me ask you one question, Senator Metzzenbaum. Have you or your staff looked into the test itself as to whether they change the test periodically, or whether it is a standard test?

Senator METZENBAUM. It is a standard test.

Senator NUNN. Have you looked into the question of how long it has been since that test has been changed?

Senator METZENBAUM. My staff indicates that they think it is at least 2 years since it has been changed.

Senator NUNN. I understand it has been 3 years since the test was changed. I do not know how many tens of thousands of people the test has been given to with the exact same questions.

It seems to me that it is almost certain that the test would get widely distributed with that kind of pattern. would you not think?

Senator METZENBAUM. I would certainly think so, and I think they have two separate tests. One I am told is a 6 and one is a 7, and apparently these tests are as easy to obtain as walking into the recruiter's office and indicating that you are interested in taking the test. They are not secretive documents at all.

If they changed them regularly, then at least there would be some hope, but it seems to me that what has occurred is that the recruiters have not found that need for the element of secrecy where they wanted to push to get the recruits in. Rather, the contrary was the case. They

wanted to make it available to the recruit so that he could study up and then possibly might be able to pass the test.

Senator NUNN. Does your information indicate that most recruiters have advanced copies of the test?

Senator METZENBAUM. I do not want to use the broad term "most." For the recruiters that we have, and in situations which we have personally investigated, the answer to that is yes. However, I do not want to make a broad statement about the entire United States, because I do not know the answer.

I do know that recruiting practices of this kind are not indigenous just to the Cleveland area—there will be testimony on that today from other witnesses, and I will mention it in my own statement.

Senator NUNN. Now, the recruiters are not supposed to have the test?

Senator METZENBAUM. Absolutely not.

Senator NUNN. They are not the ones that administer the test?

Senator METZENBAUM. That is correct.

Senator NUNN. Thank you.

Senator METZENBAUM. Here is an additional group of cases where serious physical or mental problems were made known to the recruiter and, in every case, the recruit was told: "Keep your mouth shut. Don't tell the doctors and they'll never find out."

They include cases of epilepsy, hemophilia, sickle-cell anemia, kidney disease, and mental illness. I offer those for the record, Mr. Chairman.

Senator NUNN. Without objection.

[The material referred to is retained in committee files.]

Senator METZENBAUM. Finally, Mr. Chairman, there are numerous cases where potential recruits had felony police records that were covered up or hidden by recruiters. The charges include such things as burglary, armed robbery, assault and battery, narcotics charges, sexual molestation. In virtually every case, the recruit later advised the investigating officer that: "I told the recruiter about the police record and he told me not to put anything down about it, and they'll never find it out."

In many cases the recruiters have come up with ingenious methods of getting clean police checks. The simplest method is almost an amazing one. They have a friendly police officer or court official provide a clean check.

In other cases, actual police checks are made with the first letter of the last name of the recruit left off. They ask for the name of "Metzenbaum" and, instead of using "Metzenbaum," they call it "Etzenbaum." When the record comes back from the police department and it shows a clean record for "Etzenbaum," they type in the letter "M" and that is placed into the recruit's file.

Senator NUNN. They correct the name later on?

Senator METZENBAUM. That is correct.

Senator NUNN. Did you find many cases of this?

Senator METZENBAUM. The answer is yes, quite a few, and I think some of the recruiters today will testify to practices of this kind.

Mr. Chairman, when my staff began this investigation, it received fine cooperation from the Marine Corps officers in Cleveland. Just about all of these files I have before me were provided over a period of just a few days.

I am sorry to say that since those early days, the cooperation has been less than I would have hoped for. Recently, the Marine Corps released the results of the investigation that they undertook at the request of the chairman of this subcommittee. I would like to read the Marine Corps official conclusion of its investigation into the Cleveland situation: "There is no compelling evidence to support allegations that highly questionable recruiting practices were forced on individual recruiters, nor that there was widespread recruiting malpractice at RS Cleveland."

Mr. Chairman, I find that to be an unbelievable statement in light of the evidence which is now in the record, and it should be remembered that the cases that we have admitted into the record came from only 2 or 3 days of going through Marine records. Since then, the files have become unavailable to us, although we have made written requests for dozens of cases.

Our investigation also has revealed that this is not a problem confined to Ohio, as the Marine Corps investigation would lead us to believe. We have had statements from Marine Corps recruiters in other parts of the country detailing similar practices. I will enter those statements in the record.

Many of those witnesses would have been available for this morning's hearing, but the constraints of time and the unavailability of travel possibilities did not make it reasonable or possible to bring them all before this subcommittee. I offer these statements for the record at this time, Mr. Chairman.

Senator NUNN. Without objection.

[The material referred to is retained in committee files.]

Senator METZENBAUM. We also have a Marine sergeant here to testify about recruiting malpractice in Houston, Tex.; a Marine captain who has had to defend young marines in hearings dealing with fraudulent enlistments, says in his sworn statement:

As evidenced by the log submitted with this affidavit, these cases are not restricted to one geographical area. They come from such diverse places as rural Wisconsin, Cleveland, Ohio, Brownsville, Tex., North Dakota, California, Iowa, Illinois, Connecticut, Indiana, Oregon, Georgia, Missouri, Florida, and Minnesota.

Senator NUNN. I think we should state here whether you have looked into other military services. I understand that your investigation has primarily been the Marine Corps. Is that correct?

Senator METZENBAUM. That is correct, Mr. Chairman.

Senator NUNN. I might add that we have had a lot of instances in the Army also. I think it would be somewhat misleading if we did not point out that this problem is not unique to the Marine Corps. I think it is particularly prevalent in services that have the hardest job recruiting. The Army, the Marine Corps, and, to a lesser degree, the Navy, are also having some problems.

I have not heard of specific allegations in the Navy, but there is no doubt about the fact that there have been specific allegations in the Army.

Senator METZENBAUM. We have had a number of calls with respect to the recruiting practices of the other services. Frankly, Mr. Chairman, this was not—I felt that this matter properly belonged before your committee. We did not want to broaden our investigation any further than we already had done, and so we did limit it to the Marine

Corps. But I agree with you that similar practices have been brought to our attention in the Army.

I am not certain that we have had any with respect to the Navy, but that is not to indicate that they do not exist.

Senator NUNN. We will also be hearing from the Army on Thursday.

Senator METZENBAUM. Very good.

Another facet of this investigation concerns a court decision handed down several years ago known as the *Catlow-Russo* case. This decision has created many problems for military legal officers, some of whom will be testifying at these hearings. Briefly, this decision holds that if a member of the military is charged with a crime, he cannot be prosecuted by the military if it is proven that he has been illegally or fraudulently recruited.

In the last 2 years, nearly 800 marines have been discharged after raising this defense.

In a sworn statement that I will enter into the record from Capt. John Atkinson, a Marine legal officer stationed in Hawaii who will testify on Thursday, who has traveled to Washington at his own expense, tells of a marine charged with trying to smuggle TNT off the base, who proved that his recruiter had forged his high school diploma. At that point, the trial was stopped.

I would also like to enter into the record an article from the Washington Star that graphically describes this problem. Rather than get to the heart of the problem, the Corps has seemed far more interested in punishing and threatening those marines who have had the courage to come forward and blow the whistle.

At least one of the witnesses who will testify today has been brought up on charges because of his statement. Another has been told that if he testifies, charges will be brought against him, and his testimony will be used against him.

I have asked for immunity for that witness from the Marine Corps Commandant in connection with the testimony of the recruits who will testify. That has been refused. In my opinion, Mr. Chairman, it should not have been. I believe that those who will be testifying will be performing a useful public service. It is far more important that they be able to report upon recruiting practices—that they have the temerity, that they have the courage, that they have the integrity to come forward and offer this subcommittee their testimony—so that the Marine Corps may find the problem and do something about it, than it is that the Marine Corps reserve to itself the right possibly to use the prosecution, that testimony that might be offered here, in a manner to bring the marine himself up on charges.

When problems of recruiting surfaced in House hearings more than 2 years ago, the Commandant wrote to the distinguished chairman of this subcommittee with this assurance:

I wish to assure the committee that we are not sacrificing quality in order to meet end strength. The recruiting service has been meeting the challenge. All Marines are conscious of our determination to achieve quality at the expense of numbers if need be.

Mr. Chairman, I believe this is as it should be. I believe that this should be the goal of the corps, and I would hope that the officers would take the Commandant's words to heart. But from what we have

learned, it appears that many have not, even though nearly 3 years have gone by since General Wilson wrote that letter.

I am confident that these problems can be overcome, but it is going to take a commitment from all of us to make certain that the Marines are getting the men and women that they need. I make that commitment to assist, myself personally, legislatively and in any way that I can, and I sincerely hope that these hearings will be a major step in that direction.

Mr. Chairman, I thank you.

Senator NUNN. I thank you, Senator Metzenbaum, for the enormous amount of work that you and your staff have done. I can assure you that we not only will, but have, already investigated a lot of the charges that you brought to our attention and that we will continue to. I think that you performed a real service for the subcommittee.

I would like to ask you a couple of questions. One, how far up the ladder does this pressure go? In other words, do you have any evidence that, for example, the Commandant of the Marine Corps or people in the Marine Corps headquarters or people at the Washington level, have put this kind of pressure on that has caused this problem?

Senator METZENBAUM. We have not found it at the very top. We have found it through the Office of Manpower Directorate, which would be one step below the Commandant. Apparently, there is an office known as a manpower directorate, and to that point we have found that kind of pressure going through.

Senator NUNN. What kind of pressure did you find from that level? Would you like your staff to make a statement?

Mr. PHILLIPS. Senator, the primary pressure comes in the form of so-called overship quota where one area might be significantly under its quota, and a good recruiting station that gets the numbers regularly, such as Cleveland, would be given the so-called overship quota. The average was 13 percent in Cleveland last year in addition to their regular quota.

These would be required by the Office of Manpower Directorate.

Senator NUNN. In other words, this is a quota above the normal quota that they have been given. Is that right?

Mr. PHILLIPS. Yes, sir.

Senator NUNN. Is that because they are doing well and others have fallen behind? What is the reason for that, say, Cleveland being given more of a quota?

Mr. PHILLIPS. The reason is that there is a corpswide requirement to come up with—I think the figure last year is 50,000 recruits, and it appears that they are not coming up to their figure because of the shortfall in other areas. So stations that have demonstrated that they can get the numbers are given these additional requirements, usually late in the month, as I understand it.

Senator NUNN. Are you saying that is a practice that leads to this kind of pressure?

Mr. PHILLIPS. Recruiters have told us that, yes.

Senator NUNN. Are you saying that there is something improper about giving areas that are successful additional quotas?

Senator METZENBAUM. I do not think that there is anything improper in saying that this office is doing a good job, but I think that

it creates more pressure. You have two kinds of things working, one is, if the office is doing a good job, coming up to 100 percent of quota, oftentimes the directorate says, we want you to come up higher and get up to 13 percent more, in some cases.

But there is the other side of the coin as well, that is, the cases where the commanding officer has been relieved and reprimanded for not meeting quotas.

So you have the pressure that you did not do enough and you have the pressure when you come up to 100 percent where they say you have to get more in, because you have to help bring up some other part of the country.

I do not think that there is anything wrong about that. I would not say that that is a wrongful act, but what I do say is it is the kind of pressure—there will be evidence later—where in this instance there were actual threats of physical violence against recruiters to bring in more recruits.

Senator NUNN. At what level was that?

Senator METZENBAUM. That evidence was a commanding officer, a major, the commanding officer of the Cleveland office. Such things as saying, "I will choke you," or "I will break your arm."

That is pretty strong language. That is in writing. That is not just hearsay, that is not just a remark tossed off the wall. That is actually in a memorandum which will be introduced into the record at an appropriate time.

Senator NUNN. That would be the officer in charge of recruiting for a certain area?

Senator METZENBAUM. That is correct.

Senator NUNN. What level officer would that be?

Senator METZENBAUM. Major.

Senator NUNN. I do agree with you on the seriousness of this matter, and we are going to hear from Major Schreiber later on today. But what I am trying to determine is do you find evidence of these kinds of malpractice in recruiting? Have you found evidence that this kind of practice has been ordered or condoned on up the line at a higher level?

Senator METZENBAUM. Mr. Chairman, I must say that our original investigation did not indicate that, at the very top levels, this was being condoned or supported by the leadership of the Marines, and I alluded to that in my testimony. We were getting cooperation.

I believe that the Marines in this instance should have come forward and said:

Let's find out what the problem is, and let's work together cooperatively to resolve the problem. This is not right and we know it is not right. We will work with you.

Instead of that, we think that the Marines have now put pressure on some of the witnesses who are prepared to come forward and testify. We feel that the Marines have really, in a very perfunctory kind of way, indicated that they were willing to look aside and not really dig deeply into the problems and I would say, even though I do not find evidence that the Marine Corps at the very top was prepared, that these practices met with their approval.

It is hard for me to believe that when practices of this kind are as rampant as they are throughout the entire country that the president

of the company, or the Commandant of the Marine Corps, did not have some idea that they were taking place.

Again, I am not being condemnatory or critical. What is bothering me at this moment is that, as these investigations have proceeded, there has not been an effort to eradicate the problem but rather to cover up, to gloss over, to whitewash it, I guess that is the word to use, and that is the problem that is bothering me.

Whether the Commandant knew it was happening or not—he should have known—but assuming he did not, and giving him the benefit of the doubt, then it seems to me that once this investigation started, we should have had an ally in this investigation, which we have not had except at the very first.

Senator NUNN. We will hear from the Marine Corps on Thursday, but the whole area of giving immunity, I must say, is a very delicate, sensitive one and must be approached from a legal point of view. The giving of immunity is a very serious thing and when you have not given immunity, then the testimony someone may give, whether it is on television or before a committee or anywhere else could be used against them.

So we will hear from the Marine Corps on that. I am sure that they will give their explanation of why they have not given immunity.

But I have been involved with it a great deal in the Permanent Subcommittee on Investigations and we have approached immunity with a great deal of caution. I think it has to be approached that way.

We also have to approach witnesses who may testify who have not been given immunity with a great deal of care and sensitivity. Otherwise, we could have people testifying here without being fully aware of their legal rights.

Senator METZENBAUM. I respect the chairman's position.

Senator NUNN. Thank you very much, Senator Metzbaum. I also would like to ask if you would like to sit in on these hearings and participate. I would be glad to have you.

Senator METZENBAUM. Thank you, sir. I appreciate your consideration.

Senator NUNN. At this point, we will have testimony from a panel of recruiters who have been suggested by Senator Metzbaum in the course of his investigation.

We have Sgt. Terry Goode; Mr. Donald Robinette, who is a retired recruiter as I understand it; Mr. Robert Bletz; and Sgt. James Thompson.

Would all of you gentlemen please come up to the witness table. Before you take your seat, I am going to give you an oath before you begin your testimony. If you gentlemen will hold up your right hand?

Do each of you swear that the testimony you give before the subcommittee to be the truth, the whole truth, and nothing but the truth, so help you God?

Sergeant GOODE. I do.

Mr. ROBINETTE. I do.

Mr. BLETZ. I do.

Sergeant THOMPSON. I do.

Senator NUNN. First, I would like to apprise each of you of your rights and obligations as a witness before this subcommittee.

First of all, you have the right not to provide any testimony or any information which might tend to incriminate you. If you do testify, anything you say here may be used against you in any other legal proceeding.

Do each of you understand this right you have as a witness?

Sergeant GOODE. Yes, sir.

Mr. ROBINETTE. Yes, sir.

Mr. BLETZ. Yes, sir.

Sergeant THOMPSON. Yes, sir.

Senator NUNN. Second, you have a right to consult an attorney. I will start from left to right.

Sergeant Thompson, do you understand that you do have a right to consult with an attorney?

Sergeant THOMPSON. I do understand.

Sergeant GOODE. Yes, sir.

Senator NUNN. Mr. Robinette?

Mr. ROBINETTE. Yes, sir.

Senator NUNN. Mr. Bletz?

Mr. BLETZ. I do.

Senator NUNN. Do any of you have an attorney here this morning?

Mr. ROBINETTE. I do.

Senator NUNN. Mr. Robinette, who is your attorney?

Mr. ROBINETTE. Anthony Walsh.

Mr. WALSH. I represent Mr. Robinette.

Senator NUNN. Do any of the others here have attorneys representing you?

Sergeant GOODE. Yes, sir. I have Captain Seay from the Marine Corps. I do not wish him to be present beside me, sir.

Senator NUNN. You understand you have the right to have him present beside you?

Sergeant GOODE. I do.

Senator NUNN. You have the right to consult with him before answering any questions.

Sergeant GOODE. I do.

Senator NUNN. Sergeant Thompson, do you have an attorney?

Sergeant THOMPSON. Yes, sir, I do.

Senator NUNN. Who is your attorney?

Sergeant THOMPSON. Captain Polasek, sir.

Senator NUNN. Do you understand you have the right to have your attorney with you, if you like?

Sergeant THOMPSON. Yes.

Senator NUNN. Would you like him to accompany you here and sit by you?

Sergeant THOMPSON. Yes, sir.

Senator NUNN. I will be glad to have the attorney come forward.

I will say this to each of you—you understand that those of you who are represented by an attorney, that each of you has a right that before you answer any question that I ask, or any members of this subcommittee, or any participant, that you have the right to consult with an attorney and get his advice before you answer questions.

Do you understand that, Sergeant Thompson?

Sergeant THOMPSON. Yes.

Senator NUNN. Sergeant Goode?

Sergeant GOODE. Yes, sir, I do.

Senator NUNN. Mr. Bletz, do you understand you have a right to an attorney?

Mr. BLETZ. Yes, sir, I do.

Senator NUNN. Do you have an attorney?

Mr. BLETZ. No; I do not, sir.

Senator NUNN. Do you waive your right to an attorney?

Mr. BLETZ. Yes, sir.

Senator NUNN. As I have indicated to each of you when you took the oath, in addition to your rights as a witness, you also have an obligation by testifying before this subcommittee. Each of you have sworn to testify truthfully. If you do testify, you are obligated to provide truthful responses so as not to subject you to the laws and penalties regarding perjury.

Do each of you understand your obligations as a witness?

Sergeant THOMPSON. I do, sir.

Sergeant GOODE. I do, sir.

Mr. ROBINETTE. I do, sir.

Mr. BLETZ. I do, sir.

Senator NUNN. Do each of you understand your rights as a witness?

Sergeant THOMPSON. I do, sir.

Sergeant GOODE. I do, sir.

Mr. ROBINETTE. I do, sir.

Mr. BLETZ. I do, sir.

Senator NUNN. Do any of you have any particular questions before we begin as to your rights and obligations as a witness?

[No response.]

Senator NUNN. First, I would like the clerk to show each of the witnesses the sworn statements which have been put into the record this morning as an exhibit and I will ask you to take a look at the statement before you. Take your time and look over it. Look at the signatures, and then I will ask each of you if that is your sworn statement.

[Pause.]

Senator NUNN. Sergeant Thompson, you do not have a statement?

Sergeant THOMPSON. I do not have a statement.

Senator NUNN. Sergeant Goode, have you looked at yours?

Sergeant GOODE. Yes, sir, I have.

Senator NUNN. Is that your signature?

Sergeant GOODE. There is no signature on it, sir.

Senator NUNN. Are you familiar with the contents of the statement?

Sergeant GOODE. Yes, sir, I am. It is my statement that I made to Senator Metzenbaum's staff.

Senator NUNN. That is just the typed statement. I wanted the clerk to show them the sworn statement. Do we have any of the sworn statements?

In the interests of time, while the sworn statements are being located, we have a vote on the Senate floor, and we will be back in about 5 or 10 minutes. In the meantime, I will ask the clerk to show each of the witnesses their sworn statements and let them have a chance to read and look at it. When we come back, I will ask you if that is your sworn statement and your signature.

[A brief recess was taken.]

Senator NUNN. Sergeant Goode, have you had a chance to look at your statement?

Sergeant GOODE. Yes; I have, sir.

Senator NUNN. Is that your signature?

Sergeant GOODE. Yes; it is, sir, but there are some errors on the typewritten statement. There was a mix-up in the statement.

Senator NUNN. What about the statement you have actually signed and attested to? Are there any errors in that?

Sergeant GOODE. No, sir, there is not.

Senator NUNN. That one is accurate?

Sergeant GOODE. Yes, sir.

Senator NUNN. Is it a typewritten statement where there are some errors?

Sergeant GOODE. Yes, sir.

Senator NUNN. I would then suggest that we use only the copy of the sworn statement and not have the typewritten statement at this time until the errors are corrected.

Senator METZENBAUM. Mr. Chairman, I want to be certain that Sergeant Goode is appraised of his rights at this point, because I believe that he has some concerns about testifying, and I want to advise Sergeant Goode that submitting a written, sworn statement probably has the same legal impact as does his oral testimony. And I want to put you on notice of that fact, Sergeant Goode, so that if you have any reservations with respect to your oral testimony, it would probably be equally applicable to your written testimony. I want to be certain, since you are not with counsel sitting next to you at the table, that you are fully aware of that so that you do not expose yourself to any criminal prosecution or activity by the Marine Corps.

I wanted to be certain that you understand that.

Sergeant GOODE. Yes, sir.

At this time, being advised by my counsel—he has advised me that my statements will be used against me by the Marine Corps which, in reality, is defeating the purpose in which I started organizing and worked as a catalyst within this investigation to expose the marine recruiting malpractice, not only in Cleveland, but throughout the Nation.

At this time, I do not want to testify under the emphasis that the Marine Corps undoubtedly will prosecute me for my testimony; trying to correct and clarify the problem within the system without immunity or without some assurance by the Marine Corps which my counsel has checked into, and it has been denied.

I do not want to testify at this time, sir, because of the prosecution that will follow.

Senator METZENBAUM. Mr. Chairman, may I advise you that, knowing of Sergeant Goode's concern, I wrote to the Commandant of the Marine Corps on October 6 and told him that I was sure that he would agree that the subcommittee should have before it all of the available evidence. I also indicated that Sergeant Goode had been advised by counsel that it may cause him to be brought up on charges by the Marine Corps.

And I said to the Commandant, under those circumstances, will the Marine Corps assure Sergeant Goode that his testimony will not be used, directly or indirectly, to cause him to be brought up on charges?

It is my view, that by relating these facts publicly, Sergeant Goode is performing within the highest standards of the Marine Corps and our American precepts of free speech.

I then received a response from Gen. Robert H. Burrow of the U.S. Marine Corps, the Acting Commandant of the Marine Corps responding on behalf of General Wilson. He indicated that the Marine Corps had decided that it would be inappropriate to grant immunity to Sergeant Goode for any violation of the regulation that he may have committed in connection with his performance of duty.

Mr. Chairman, I would again ask the Marine Corps Commandant's representative here, with respect to the testimony of this man whose evidence we believe to be important to these hearings, whether in connection with his testimony, they would grant immunity if there is other evidence that they have with reference to his conduct that, of course, would not be subject to the question of immunity. But with respect to today's testimony, it would seem to me that no harm would be done to the Marine Corps and that much good could come of it.

We know that the President of the United States is calling for people to come forward as whistle blowers. I believe that Sergeant Goode, who is very willing to testify, in his statement says that he knows of at least 50 separate cases of inappropriate acts, whereas the Marine Corps investigation came up with only 8 such cases.

I think his testimony is important and I would ask the Marine Corps again whether they would reconsider their position. I cannot believe that prosecuting this one man for what he may testify to here today or any acts that he frankly comes forward and tells us about can be nearly as important to the Marine Corps as the importance of knowing what the facts are. I think that there is no good reason or logic for the Marine Corps to deny him immunity under these circumstances.

Senator NUNN. Senator Metzenbaum, I have the greatest respect for your views on that subject, but I believe that this question should be posed to the Marine Corps in terms of when they testify on Thursday. There is enormous complexity when you grant immunity. It is not a simple matter, not something that can be done by any marine sitting in this room today. They do not have that kind of legal authority or power.

It is a complicated legal question. It is just not a question that the Marine Corps has to answer. It can also, based on some of the allegations that I have seen, involve civil charges which the Marine Corps would not be able to deal with in any way.

Therefore, I would respectfully request that that question as to why they have chosen not to grant immunity be reserved until Thursday when the Marine Corps is testifying. I do not really believe that a congressional committee has the right to demand of the executive branch that they make a decision granting immunity.

The congressional committees themselves have a right to grant immunity under the appropriate conditions. We have looked at this case very carefully. We have looked at the implications of immunity. We have looked at the implications of what could be derived from testimony under immunity.

I personally, as a former defense counsel, am very aware of the whole ramifications of immunity. I have dealt with it on many, many, occasions in the Permanent Subcommittee on Investigations. We have

had many fifth amendment witnesses. It is something that has to be undertaken with a great deal of caution and a great deal of judicial discretion on the part of the congressional committees.

Our subcommittee decided that we did not believe we should grant immunity in this case. That is a decision for which I will be fully responsible and accountable, and I do not believe that we should, in this subcommittee, ask the Marine Corps to make that kind of decision here. We can ask them on Thursday why they did not make that decision and certainly you can ask them as an individual and give your views as to why they should have.

I do not think that it is the role of our subcommittee to try to get the executive branch to make that kind of a decision, and I am perfectly confident that no one in the Marine Corps here today could possibly, no matter what their personal view might be, grant immunity here on the spot.

So I would ask that that question be left open.

Senator METZENBAUM. No problem, Mr. Chairman. I appreciate your position. I think that it is possible that I may have included Sergeant Goode's statement in one of the documents that I submitted, and I ask for it to be returned at this point.

Senator NUNN. We will work that out.

Senator METZENBAUM. Fine. Thank you.

Senator NUNN. Sergeant Goode, I respect your right to not testify based on your own constitutional rights. I am not going to go through the formalities here today. There are certain formalities that we could require you to go through in order not to testify. We have the right to compel your testimony unless you invoke your constitutional privileges. I believe that you have done that, though, today and I respect your own decision here and we will not ask you any further questions.

Sergeant GOODE. Thank you, sir.

Senator NUNN. Thank you very much, Sergeant Goode.

You may remain seated here at the witness table if you would like or you may return to your chair in the audience.

Sergeant GOODE. I will return to my chair, sir.

Senator NUNN. Thank you.

**TESTIMONY OF DONALD ROBINETTE, FORMER RECRUITER, USMC  
RECRUITING STATION, CLEVELAND, OHIO, ACCOMPANIED BY  
ANTHONY A. WALSH, ESQ.**

Senator NUNN. Mr. Robinette, would you explain, in your own words, the circumstances of the enlistment of a recruit by the name of Chris Murray?

Mr. ROBINETTE. The circumstances involving Chris Murray, sir, was what I would call a make or break situation. We had already been working about 7 days a week, 9 hours a day and we had Memorial Day weekend coming up. Between the recruiters, the idea arrived in order to make it a no-work 4-day weekend and not have to call in every 3 hours and tell them what interviews we were doing and what our activities were. Therefore, Chris Murray was derived and an individual ringer was utilized to go down to the station and process under the name of Chris Murray, who did not exist.

Senator NUNN. What was the reason for this? Basically because

you were under a lot of pressure to get that extra recruit in so you could take the weekend off?

Mr. ROBINETTE. So you could have a little time off, and to take the pressure off of you. We had already been under the threat of being relieved and transferred out.

Senator NUNN. Mr. Robinette, where was your job when you were a Marine Corps recruiter?

Mr. ROBINETTE. I was a noncommissioned officer in charge of recruiting, Substation Willoughby, Ohio.

Senator NUNN. Willoughby, Ohio. How long were you in that position?

Mr. ROBINETTE. As noncommissioned officer in charge, I was in the position for about a year.

Senator NUNN. For about 1 year. What had been your previous duty in the Marine Corps? How long had you been in?

Mr. ROBINETTE. I had been in the Marine Corps 9½ years prior to that, and had served on the USS *Midway* as a brig warden in detachment, gunnery sergeant.

Prior to that I was a marksmanship instructor, training recruits. Prior to that I served with the 1st Battalion 5th Marines in Vietnam.

When I was on the USS *Midway*, we were attached to the operation known as the Meyaguez and went in with the evacuation from Vietnam.

Senator NUNN. What kind of discharge did you get from the Marine Corps?

Mr. ROBINETTE. I received an honorable discharge. However, I received a reenlistment code that stated I was not eligible for reenlistment.

Senator NUNN. How long did you serve totally?

Mr. ROBINETTE. Nine and one-half years.

Senator NUNN. Nine and one-half years. Was there a particular reason that you were not eligible for reenlistment?

Mr. ROBINETTE. Yes, sir.

From what I can understand, on the 18th I was charged with four articles of misconduct and awarded punishment. I, at that time, chose to accept a commanding officer's nonjudicial punishment. I was charged with article XV, conspiracy to commit fraudulent enlistment, of a private, or a PFC J. D. Hall.

I was charged with article LXXXIV in effecting the unlawful enlistment of K. W. Smith, M. P. Sneed, and J. D. Hall.

I was charged with article XCII, dereliction of duty.

I was charged with article CVII, signing false official statements and that I signed an application for enlistment, at which time I was awarded at the hearing forfeiture of one-half of 1 month's pay for 2 months, an official letter of reprimand detailing the exact nature and type of marine I was, which the commanding officer did not go into detail how that would read, nor was it shown to me.

And then, on September 28, when I received my discharge papers, I had a reenlistment code of RE-4, not eligible for reenlistment.

Senator NUNN. Mr. Robinette, what was your reaction when you were first assigned the job of being a recruiter? Was this something that you welcomed or was this something you dreaded?

How would you describe the task of being a recruiter in the Marine Corps today?

Mr. ROBINETTE. In the beginning, I welcomed it because I had heard so much about the extra benefits that recruiters received. They get extra money—\$150 extra a month; \$25 out-of-pocket expense. They get a Government vehicle. They are pretty well their own boss. This is what I thought when I came on recruiting.

However, when I got into it, I realized that I had the obligation of moving myself and my family and relocating and they were only going to give me \$50 the first 6 months to do that, plus my travel pay. I realized that the out-of-pocket expenses were not even enough. I realized that you were not your own boss, nor did you control your own hours and that you were assigned exact tasks that you had to accomplish.

It was not as all fired up as I had thought it would be in the beginning.

Senator NUNN. How many people worked directly under you?

Mr. ROBINETTE. I was noncommissioned officer in charge of Maple Heights and, at one time, had four individuals working for me.

Senator NUNN. Who was your immediate superior?

Mr. ROBINETTE. At that time, my commanding officer was Major K. D. Schreiber.

Senator NUNN. What was the timeframe that we are talking about here? What year?

Mr. ROBINETTE. I believe that Major Schreiber took command in May of 1977.

Senator NUNN. When did you actually become a recruiter?

Mr. ROBINETTE. June 3 of 1976.

Senator NUNN. You had already been there about 1 year before Major Schreiber arrived?

Mr. ROBINETTE. Yes, sir.

Senator NUNN. How long were you there while Major Schreiber was there? How long was he your commanding officer?

Mr. ROBINETTE. He was my commanding officer from May of 1977 until April of 1978.

Senator NUNN. When did you get out of the service?

Mr. ROBINETTE. When did I get out?

Senator NUNN. Yes.

Mr. ROBINETTE. I received my discharge paper on the 28th of September of this year.

Senator NUNN. You were actually in recruiting for a little over 2 years?

Mr. ROBINETTE. A little over 2 years.

Senator NUNN. Major Schreiber was your commanding officer for about 1 of those years?

Mr. ROBINETTE. Yes, sir.

Senator NUNN. Who was your commanding officer the first year?

Mr. ROBINETTE. When I first arrived there, the commanding officer for 30 days was a Lieutenant Colonel Findley who was transferred—his time was up on recruiting—and a Major Batcheler took command and was there for about 8 months, I would say.

Senator NUNN. Was your commanding officer in the same office as you, or at a different location? What was the physical proximity?

Mr. ROBINETTE. At a different office. My location was approximately 18 miles from the main station.

Senator NUNN. Did you see your commanding officer every day, or talk to him on the phone every day? How constant was your communication?

Mr. ROBINETTE. Every day usually.

Senator NUNN. On the basis of the telephone?

Mr. ROBINETTE. You would at least talk to him on the telephone every day, sir.

Senator NUNN. Getting back to the case of Chris Murray, how did you go about getting Chris Murray in as a marine? In other words, what was the procedure you went through?

Chris Murray was a fictitious person, is that right?

Mr. ROBINETTE. This is true, sir.

Senator NUNN. No such person as Chris Murray. How did you go about signing this fictitious person up as a U.S. marine?

Mr. ROBINETTE. Chris, as I said, utilized a ringer. The individual had an address in which he would memorize. He would memorize a different social security number. You would probably use someone who had already been through the processing—maybe a guy who was already a delay in enlistment—who knew the procedures and was very intelligent.

Senator NUNN. Someone who was already a Marine, going into the Marine Corps, but who had not been inducted yet?

Mr. ROBINETTE. Yes, sir.

Senator NUNN. Who did you use in this case?

[Pause.]

If you would prefer not to give the name, I would just ask you what type of person did you use?

Mr. ROBINETTE. I would rather not give the name, sir.

Senator NUNN. What type of person was it? Someone who had already been recruited?

Mr. ROBINETTE. Yes, sir.

Senator NUNN. You called this person a ringer?

Mr. ROBINETTE. Yes, sir.

Senator NUNN. That means he is basically taking tests and so forth for someone else.

Mr. ROBINETTE. I will go ahead, in this case, and give the name because I think that it substantiates some other things. The individual's name was Daniel Beloit.

Dan was originally processed a couple of months earlier and was illegally sworn in by the commanding officer because he had had problems with his eyes and had had to see an eye doctor before he could actually be in the Marine Corps. So he was not actually in the Marine Corps when he did this. He thought he was, but he was not actually in.

The paperwork was filled out under Chris Murray's name. Dan practiced a signature. In order to help the recruiters out, he went down the next day and processed and came up with the same eye problem and again was illegally sworn in.

Senator NUNN. When you say "illegally sworn in," what do you mean by that?

Mr. ROBINETTE. An illegal swear-in, sir, is when an individual fails to meet the criteria at the Armed Forces entrance and examination

station, such as a minor problem which later he will be able to take care of and qualify. However, the numbers are needed now, today, in order to be able to report and also the individual must be kept from not losing interest. The purpose is to make believe that he is already in.

So what goes on here? He is taken to the main recruiting station, in this case, and he is talked to and counseled about the job opportunities he will go into and was told that he has to get a doctor's letter for them.

For instance, in Dan's case, it was an eye refraction, saying what his vision was. To keep the individual from losing interest, they take him into the swearing-in room, fill out a contract for him, have him sign the contract and application under the delayed enlistment program, and swear him in.

Senator NUNN. What good does this do? Is he not going to have to correct that physical problem before he can get in?

Mr. ROBINETTE. Yes, sir.

Senator NUNN. What is the motivation of having him falsely sworn in then?

Mr. ROBINETTE. To keep him from losing interest. If an individual thinks that he has been physically rejected, you have to get his mind off of that because he is liable to lose interest and the command loses the contract. After he leaves that station, he will say, the heck with this. I'm not going to see a doctor, I'm not going up and spending another day from 6 in the morning until 5 in the evening trying to process again. I'm not going to do that.

The majority of kids will go back and say forget it, I am not interested.

Senator NUNN. In other words, he is not really in the Marine Corps, but he has been officially sworn in.

Mr. ROBINETTE. Right, sir.

Senator NUNN. Who does the swearing in? Who did it in this case?

Mr. ROBINETTE. In Dan's case, I believe the operations officer did it, Lieutenant Le Hockey.

Senator NUNN. Lieutenant who?

Mr. ROBINETTE. Le Hockey.

Senator NUNN. Did he know that he was not physically qualified?

Mr. ROBINETTE. Yes; he did, sir. So did the commanding officer.

Senator NUNN. Who was the commanding officer?

Mr. ROBINETTE. Major Schreiber at that time, sir.

Senator NUNN. Beloat, that was the one they swore in, or did they also swear in Chris Murray?

Mr. ROBINETTE. They also swore in Chris Murray, who was Dan Beloat.

Senator NUNN. They had sworn him in previously.

Mr. ROBINETTE. Right.

Senator NUNN. As Dan Beloat?

Mr. ROBINETTE. Yes, sir.

Senator NUNN. Officially and legally, is he a marine once he is sworn in, even though he has not passed the physical requirements?

Mr. ROBINETTE. No, sir, because the legal swear-in takes place at the Armed Forces examination station for all members of the service, whether it be Marine, Army, Air Force, or whatever. They do it in one large ceremony.

Senator NUNN. This is not the real ceremony, just a fake swearing in?

Mr. ROBINETTE. Yes; it is.

Senator NUNN. In the case of Beloit, did he finally qualify physically to go into the Marine Corps?

Mr. ROBINETTE. No; he did not.

Senator NUNN. He never went in?

Mr. ROBINETTE. Other problems came up with the individual. As far as I know, he had to be discharged.

Senator NUNN. He went in, but was then discharged?

Mr. ROBINETTE. No, sir. He could not ship after he was in the delay enlistment program. He had gotten into some kind of trouble in Florida and then had a criminal record which was known and could not be covered up. So they had to do something with him. I do not believe he shipped.

Senator NUNN. He was never officially sworn in?

Mr. ROBINETTE. No, sir.

Senator NUNN. What happened to the fictitious person by the name of Chris Murray? What would have happened to his papers and so forth in the Marine Corps?

Mr. ROBINETTE. Well, the number was all right for the time being. He was given a ship date that was probably, I believe, was about 6 months out into November of this year. He would have been leaving next month.

At the time it comes up before he was supposed to ship, what takes place here is that he cannot be located. He disappears.

Senator NUNN. So he is not carried on the Marine Corps roll now?

Mr. ROBINETTE. No, sir.

Senator NUNN. He was carried as a part of the recruiting goal and quota during that particular time frame. In the short run, he showed up as a recruit; in the long run, he did not show up on the Marine Corps records?

Mr. ROBINETTE. Right, sir. He showed up only as a number.

Senator NUNN. Mr. Robinette, I am going to want to talk to you a little bit about other forms of recruiting malpractice.

Are you aware of a case of a recruit by the name of Marvin Lind?

Mr. ROBINETTE. I am aware of Marvin Lind; yes, sir.

Senator NUNN. Tell us about that case in your own words.

Mr. ROBINETTE. Sir, Marvin Lind enlisted, I believe, in 1977 in January. He enlisted in January 1977, and shipped on January 21. He enlisted, and left about a week later.

Marvin Lind had a police record as long as my leg. He had everything from breaking and entering—he even ran a car through a high school gymnasium. He had auto theft. He was the kind of hilarious-type guy that you run into.

Marvin could not have gotten in at all under these conditions. I believe he was a non-high-school graduate, which meant that his offenses were not waivable, and he had too many of them anyway, so that even if he was a college graduate, they would not have let him in.

So in order to get him in, the first name, or the first letter of the last name was dropped. The police check was ran under I-n-d and clean police checks came back on him, and the first letter was then typed in.

He is in the Marine Corps today, and I guess he has done pretty well.

Senator NUNN. Basically, the practice was to drop the first letter of the last name, so it would appear as I-n-d rather than L-i-n-d, and the police check would come back and it would not be on the same person. Would that be right?

Mr. ROBINETTE. Right, sir. At the Euclid Police Department, it had to be run like that. At juvenile court, it did not, because there was an official there who would assist and just give you a clean police check and stamp it for you.

Senator NUNN. You had someone at juvenile court, even if you give him the right name, they will give you a clean record?

Mr. ROBINETTE. Right, sir.

Senator NUNN. You had somebody there who would falsify the record, in other words?

Mr. ROBINETTE. Yes, sir.

Senator NUNN. Was this a frequent occurrence, or is this an unusual kind of a case?

Mr. ROBINETTE. It is frequent.

Senator NUNN. Did you personally see a lot of this going on while you were recruiting?

Mr. ROBINETTE. Various cases. A lot of it.

Senator NUNN. Were there 3 or 4, 5 or 6, 8 or 10? Would you care to estimate?

Mr. ROBINETTE. I would say more than 100.

Senator NUNN. You saw more than 100 cases?

Mr. ROBINETTE. That is, myself, that I could think of. You see it every day. It is a common thing, because you are talking to other recruiters and everybody is giving everybody advice. You are telling one another who to go to to get this done, how to do that. So, you see it every day, because you find that a lot of kids, a pretty good majority of them, have at least something on their police record.

Senator NUNN. Did you have people in the juvenile court that you were paying? Why were they willing to send you a fraudulent police record?

Mr. ROBINETTE. In this particular case, the individual was an ex-marine who was, of course, proud to have been a marine, and there were special favors done to the individuals. If he needed booze or cigarettes or something like that, then a recruiter would get them from the Coast Guard Thomas area in Cleveland for him.

Senator NUNN. Basically, the main motivation was not so much material, it was just the fact that he was an ex-marine?

Mr. ROBINETTE. Yes, sir.

Senator NUNN. Did it bother you that people who were unqualified by Marine Corps rules, regulations and standards, and people who had police records and so on, were getting in the Marine Corps?

Were you worried about the quality of recruits and what that would do to the Marine Corps?

Mr. ROBINETTE. Sure, I was worried, but at the same time, I was caught up in a system that I could not do anything about, or felt I could not do anything about, at that time. I looked around me, and if the individual could not pass the test, I had a test to give him. It did not matter. Everyone was doing it.

Senator NUNN. It was a widespread practice?

Mr. ROBINETTE. Yes, sir.

Senator NUNN. Do you think it is just in the Cleveland area, or do you think it was broader than that?

Mr. ROBINETTE. I have a copy of the roster from Columbus, Ohio.

Senator NUNN. Is that the test you are talking about?

Mr. ROBINETTE. The Armed Services Vocational Aptitude Battery.

Senator NUNN. You had a copy of that?

Mr. ROBINETTE. Yes, sir.

Senator NUNN. Was that against the rules and regulations? You were not supposed to give that test, were you?

Mr. ROBINETTE. No, sir. Recruiters are not even supposed to see it. As a matter of fact, if you even try to step in the room where they test people you will be brought up before the commanding officer at the Armed Forces Station there.

Senator NUNN. What was the reason for your getting the test? Why did you want it?

Mr. ROBINETTE. To school people who could not pass, to get the higher scores to get the program they desired. Because if they did not get the program that they desired, they did not enlist.

Senator NUNN. Was this unusual, or do you think this was a widespread practice?

Mr. ROBINETTE. Well, sir, during the Marine Corps investigation, it was stated by Colonel McManus, when he asked me, did I have the test, I failed to comment. And he said, do you know of the test's being in other recruiters' hands? And I said, yes, sir, and he wanted me to give names, and I would not.

However, he said, damn it, Robinette—or words to that effect—the test is out all over the Nation. We know that.

Senator NUNN. Who told you that?

Mr. ROBINETTE. Colonel McManus. That was during the Marine Corps investigation.

Senator NUNN. He basically told you that the test was all over the Nation?

Mr. ROBINETTE. Right, sir.

Senator NUNN. This was recently?

Mr. ROBINETTE. That was in August.

Senator NUNN. August 1978?

Mr. ROBINETTE. Yes, sir.

Senator NUNN. He was one of those doing the investigation?

Mr. ROBINETTE. Yes, sir.

Senator NUNN. He basically told you that the test was spread throughout the country?

Mr. ROBINETTE. Right, sir.

Senator NUNN. Did it appear to bother him?

Mr. ROBINETTE. No; it did not.

Senator NUNN. Why did he tell you this? Was he saying that what you did was right or wrong?

Mr. ROBINETTE. It was in the midst of a conversation regarding the test. As I said, leading up to it, they were asking questions regarding the allegations made about the test and police checks and high school records, and it had come down to the test portion and I said, yes, I know that other recruiters have a copy of the test.

At that time, he said he knew the test was out throughout the Nation.  
 "We know this."

Senator NUNN. It was pretty common knowledge among all recruiters?

Mr. ROBINETTE. Right, sir.

Senator NUNN. How high up does this go, Mr. Robinette? Does your commanding officer know about these malpractices that were taking place in your recruiting station?

Mr. ROBINETTE. Yes, sir, he did.

Senator NUNN. Which commanding officer? You had more than one.

Mr. ROBINETTE. Major Schreiber, sir.

Senator NUNN. How about the one prior to him?

Mr. ROBINETTE. I would not say so. We did not make quota too good.

Senator NUNN. You did not make quotas then?

Mr. ROBINETTE. No, sir.

Senator NUNN. Just tell us about the changed circumstances when you changed commanding officers, if there were any changes?

Mr. ROBINETTE. There was a drastic change, because we jumped from 40 some or so enlistments—I cannot remember the exact numbers—to almost triple that amount in the first month.

Senator NUNN. What was your monthly quota before you changed commanding officers?

Mr. ROBINETTE. Three a month. All I was required to do was just put my three men in, and everything was fine. Not all recruiters were able to put their three in.

Senator NUNN. Were you meeting those quotas? Who was your first commanding officer? What was his name?

Mr. ROBINETTE. That was Major Batcheler.

Senator NUNN. Were you meeting your quotas under him?

Mr. ROBINETTE. I had made quota all the time I have been on recruiting duty, under any commanding officer.

Senator NUNN. Were you using any of these malpractices when you were recruiting under your first commanding officer?

Mr. ROBINETTE. No; I was not, not at that time, other than the test.

Senator NUNN. You had the test then?

Mr. ROBINETTE. That is right.

Senator NUNN. Did he know that?

Mr. ROBINETTE. No; he did not. Major Batcheler did not know it. If he had known it, he would have filed charges on you. He would not put up with it.

Senator NUNN. Tell us about the change when you changed commanding officers?

Mr. ROBINETTE. Things got a heck of a lot more strict in the command. We were placed on an exact schedule of things. Every recruiter at that time had no exact schedule. We normally did our phone calls in the evening, and so on. We went into an exact schedule of events that would take place every hour of the day.

In the morning, we were to be in high schools from, say, 11 a.m. to 1 p.m. From 1 p.m. to 2:30 p.m., we were to be street recruiting, out talking to people on the street, trying to get them to join, a number of means to get names and information about individuals.

The pressure went on. It got a lot stiffer then, because the hours increased to where we were working every day of the week. There was no time off. None.

Senator NUNN. Seven days a week?

Mr. ROBINETTE. Seven days a week. We went straight into it.

Senator NUNN. How many hours a day?

Mr. ROBINETTE. I would arrive at my office about 9 in the morning and some days I would have to get up at 4:30 or 5 in the morning to take individuals for processing. I have worked as late as 12 midnight.

Senator NUNN. Was this being done because your commanding officer was trying to meet the quotas? Was this the pressure?

Mr. ROBINETTE. Yes, sir. We had to close out, when he came there he said we would have 2 or 3 months closed out by July. We would be ahead of the game by that much.

Senator NUNN. What was the overall quota that your commanding officer had for all of his recruiters?

Mr. ROBINETTE. During the summer months it is quite high, usually about 168, something like that. We were also taxed with about a 13-percent overship average for each month in the summer because we were making it.

Just like the old saying, if you've got a good horse, work him to death. In this case, we were the good horse—Cleveland was—and we were taxed with the overships.

Senator NUNN. Did you ever discuss any recruiting malpractices with your commanding officer, Major Schreiber?

Mr. ROBINETTE. Not directly, no, sir.

Senator NUNN. How do you know he knew about them, then?

Mr. ROBINETTE. In one particular case, Michael Sneed—I believe I was brought up on charges for him. The commander knew about him. The night before I was called, at that time I was asked what I had working. I said, all I've got is a nongrad named Mike Sneed who has a criminal record and the next thing I heard was you had better have a high school grad with no criminal record on the floor in the morning.

The next day, Michael Sneed was on the floor, put down as a high school graduate. The commanding officer reads the daily bulletin every day. I told him the guy's name the night before.

The next day, his name is on the daily bulletin as a high school graduate. His police checks are there and he has no record. This is 8 o'clock at night. Where am I going to come up with a high school grad for the next morning when the only guy I talked to today is a nongrad?

Senator NUNN. You are saying that the circumstances are such that he could not have helped but know that you had done something with the records, is that right?

Mr. ROBINETTE. Yes, sir.

Senator NUNN. What did you do with the records in that case?

Mr. ROBINETTE. There was no problem as far as a record. Michael Sneed was from Cleveland. However, he was in some boy's home in Perry, Ohio, so you gave him an address in Mineral, Ohio, when you ran the police checks. He had never heard of the guy. He had never lived there.

When the FBI ran their check, it went to Lake County rather than Cuyahoga County. Therefore, it would not have been uncovered.

Senator NUNN. Did you discuss this with Major Schreiber?

Mr. ROBINETTE. Not in detail; no, sir. All I did was mention that I did have a nongrad named Mike Sneed.

Senator NUNN. You had a what?

Mr. ROBINETTE. Nongrad, non-high-school graduate.

Senator NUNN. Did you pose him to be a high school graduate, or did you bring him in as a nongrad?

Mr. ROBINETTE. I brought in Michael Sneed as a high school graduate.

Senator NUNN. How did you get the high school certificate or diploma?

Mr. ROBINETTE. What we did was use high school stationery and type "Michael Sneed had graduated from"—I believe it was Mineral High School.

Senator NUNN. Did you falsify the name of the person signing?

Mr. ROBINETTE. I did not falsify the name on it; no.

Senator NUNN. Somebody did, right?

Mr. ROBINETTE. Yes, sir.

Senator NUNN. Did you use the high school principal's name, or someone else?

Mr. ROBINETTE. Just a name. I do not remember whose name.

Senator NUNN. Was this a common occurrence, or something unusual?

Mr. ROBINETTE. I knew of other recruiters that were doing it; yes, sir, quite a few others.

Senator NUNN. How many instances do you recall during your 2-year recruiting experience where people were given fraudulent or fake high school diplomas or certificates that they had graduated? What is your best estimate?

Mr. ROBINETTE. The ones that I can actually say I knew about I would say 20 or 30 that I know about for sure that it happened.

Senator NUNN. The fake certificates were not as prevalent in terms of recruiting practices as really covering up past police records, is that right? You said there were over 100 of those.

Mr. ROBINETTE. The police records would be more so.

Senator NUNN. Mr. Robinette, how many individuals would you have recruited during your 2 years? Would you have any idea about how many?

Mr. ROBINETTE. Up until November of 1977, somewhere in the area, I believe, of 79.

Senator NUNN. Seventy-nine.

Mr. ROBINETTE. I believe, because the noncommissioned officer in charge is not taxed with making quota himself. In other words, he does not have to put people in his name that are enlisted. He does not have to sign for them.

Senator NUNN. Would this be people whom you personally put in?

Mr. ROBINETTE. Those would be people whom I have enlisted.

Senator NUNN. How about the people you have seen and listed, and are very familiar with in terms of being directly under you?

Mr. ROBINETTE. How many people had I seen?

Senator NUNN. You said you had four people working for you. What I am trying to find out is the total number of recruits that you had responsibility for during your 2 years. Not an exact number, but your best estimate.

Mr. ROBINETTE. Somewhere in the area of 175 to 200.

Senator NUNN. 175 to 200.

Of those 175 to 200, how many of them would have fully met the standards of the Marine Corps?

Mr. ROBINETTE. I would say about 50 percent, about half.

Senator NUNN. About half. So there would be about 50 percent of them who would fall short for one reason or another?

Mr. ROBINETTE. It may go even higher when you get down to brass tacks; I have not seen too many individuals who fully qualify to go in without getting a waiver. Then the recruiter is faced with the possibility of having that waiver disapproved.

For instance, a young man comes into your office and says that he smokes marihuana daily, and we know that it is going on in the high schools and throughout. We go out to the schools and watch them smoke under the security guard's nose there.

So what ends up happening here, like what we were told to do by the command, to school these people so that when they came downtown they did not mention that they smoked marihuana.

Senator NUNN. Who told you to do that?

Mr. ROBINETTE. Major Schreiber said we would have to school people better. Sergeant Major McCullen really got on me one time because a kid came up there and admitted to smoking marihuana.

Senator NUNN. Is that question on the original questionnaire that the Marine Corps has them fill out?

Mr. ROBINETTE. Yes; it is.

Senator NUNN. Do you know what the question is?

Mr. ROBINETTE. Have you ever been involved in the use, purchase, possession, sale of marihuana, LSD, or any other harmful or habit-forming drugs, except as prescribed by a licensed physician.

Senator NUNN. If they answer yes on that question, what happens to them?

Mr. ROBINETTE. Then you have to annotate what the involvement was on the next page in the remarks section, saying that he had either experimentally used marihuana or he used it daily or whatever. If he did, of course—if an individual is a daily user of marihuana, or a week-end user, or whatever you want to call it, he is going to be rejected. He does not qualify.

Senator NUNN. What if they have simply used marihuana? What if they answer that they have used marihuana on two or three occasions or they used marihuana once a week? Can you get them into the Marine Corps if they give you an affirmative answer and tell you the truth on that?

Mr. ROBINETTE. If they have only used it two or three times in their lifetime, yes, but you are getting into a higher level waiver. If you just used it yesterday, you know, it will have to go all the way to the district or headquarters Marine Corps.

Senator NUNN. The remoteness of the use is important?

Mr. ROBINETTE. Right, sir.

Senator NUNN. Mr. Robinette, on the question of ringers, is it a common practice to send someone to take someone else's test, whether you have a fictitious person or someone you are worried about taking the test? Do you use ringers very often?

Mr. ROBINETTE. Yes, sir.

There are those young men who are stuck with these vocational programs in school where they don't get any academic education, all they learn are trade skills. When they come into your office to take the screening test in the office, they will get maybe 10 or 12 questions right out of 45.

Then you try to school them. They cannot memorize very well. You try to take a copy and you say, Johnny, study these five words and do five more, and so on. They cannot comprehend it.

So he really wants to be a Marine badly, you want to help him out, so you have one of your other guys who are in delay enlistment, or someone who likes you, who does not want to go in the military or cannot qualify, to go in and take the test for them.

Senator NUNN. Is this a common practice?

Mr. ROBINETTE. Yes; it is.

The Marine Corps says that they have a system that will catch this. If there are a lot of people taking that test, or being schooled on the test, that it will be caught at Parris Island, S.C. I can test a guy and just give him enough to barely pass the test, and when he goes down to Parris Island and he is retested, there is not going to be enough difference where they will question it, and that is the thing there. I think they need about a 10-percent variance in test scores. If he has just barely passed the test in Cleveland, when he goes down to Parris Island, if he just barely misses it, who is going to question it? Or he just cuts a little higher? They are not going to question it.

You have to get them within that range. It is the same thing with the ringer. One ringer that was used, took the test about 15 times. I could tell that kid—I never used him, I know of him—but if I wanted to use this individual, I could tell him, I want this guy to have a 31 AFQT or a 21 AFQT with an 85 or an 86 GT, and he could tell him the questions and put down just exactly what he wanted and get just the exact score needed.

Senator NUNN. You could order any kind of score you wanted?

Mr. ROBINETTE. Right.

Senator NUNN. Has the Marine Corps test been changed very often during your 2 years? Was the test ever changed, or did you always have the same test?

Mr. ROBINETTE. They had come out with the ASFAB 6 and 7 just prior, I believe, it was in January 1976, prior to my arriving on recruiting duty. They have not changed it since.

That is one thing I was curious about. They know that the test is being compromised, but they never changed it.

Senator NUNN. Are you saying that it is a pretty well-known fact throughout the entire Marine Corps that everybody has got that test?

Mr. ROBINETTE. Everybody takes the same test for the Armed Forces; no matter which force they are going into, they take the same test. There is just a different way of scoring it.

The Armed Forces Entrance and Examination Station knows that that has been compromised in Cleveland. They have even confiscated copies of it. Why do they not change the test if they want to clear this thing up, if they want to see it stopped? Because they need the numbers, in my opinion, sir.

Senator NUNN. Because they need the numbers, they are not willing to change the test?

Mr. ROBINETTE. Right. That is why I say it is not only the Marine Corps—I am not here to batter the Marine Corps, because it is first and foremost right here, within me; I will always be a marine. But, at the same time, it is the other services, too. They have copies of the test.

Senator NUNN. Mr. Robinette, you have been out there recruiting for a long time and you have seen that it is a tough job. What is your view as to what should be done?

Mr. ROBINETTE. You have got the problem with the parents. They know Johnny does not have to join any more. He does not have to sign up; he does not have to give 2 years of his life.

The biggest problem is the draft. The draft was instrumental in getting people to enlist. As an individual, if I was going to be drafted, I would rather join and try to get into a program which would benefit me in my 2 or 3 years rather than be drafted and placed where the service wanted me.

The parents are downgrading the Armed Forces these days. You call parents on the phone. I have talked to one mother, I called her up, and she says, "No, no; not my son, not my Johnny." I hear the people down the street somewhere has a son who has a police record. He will do good in the service. I have told them to talk to me when you have tank tracks in the backyard. But that is beside the point. They are not supportive.

The schools are not supportive. A recruiter tries going to a principal of a high school and says, "Can I set up here just once a week? Every Wednesday, say, for instance? I would like to set up here and talk to your students at random, or set up in some of your government classes, or even in assembly." And they refuse you.

Senator NUNN. Would it be of assistance if there was some law on the books that required recruiters have a certain amount of accessibility to the high schools of our country on certain hours and days of the week?

Mr. ROBINETTE. Yes, it would, sir. It would help a heck of a lot. And all high schools be required to provide a list to the Armed Forces of their male and female graduating, junior and senior classes. Because normally, one high school, they charge you \$45 for a list.

Senator NUNN. Several months ago I asked the military personnel chief to evaluate the impact on recruiting of that kind of proposal. That is, to require that there be some cooperation from the high schools in our country where we are recruiting.

But you say, having been out there and experiencing it, it would be of great help?

Mr. ROBINETTE. Yes, sir.

Senator NUNN. What other suggestions would you have?

Mr. ROBINETTE. I would suggest also that some of the pressures be taken off the recruiter. I would like to bring out a couple of inserts from a letter that an ex-commanding officer wrote to me, which would probably state the point a little better than I can do in my own words.

Senator NUNN. You go ahead.

Mr. ROBINETTE. He was an officer. I served with this captain. He was Captain Peterson and I served with him in 1971 in the 1st Battalion 5th Marines in California, and he had seen me on television and wrote this letter to me.

He said:

I was glad to know that recruiting duty had not robbed you of your integrity and honor that is so essential to being a good Marine leader.

Looking back on my old fitness reports, I noticed he was talking about me, and so on.

He says:

After 7 years of duty, I resigned my regular commission to go into business for myself. My last 2½ years were as a selection officer in Salt Lake City and I am well aware of the problems and pleasures and even the occasional joys of recruiting duty.

The great ugly god, Quota, has ruined many a good Marine for reasons that were beyond their control, their capacities, their training, and even their very nature as Marines. It is really unfortunate that a professional, qualified Marine has to be rated, tested, and maybe ruined for his skills as a salesman.

As you know, many recruiters cannot succeed as salesmen and, rather than face failure and tarnished careers, they have succumbed to short-cuts, the Three Monkeys: Hear-No-Evil, See-No-Evil, Speak-No-Evil, as you mentioned, full-fledged cheating.

For your sake and the Corps', I hope the leadership at Headquarters will realize that your public comments were a reflection of the fatally flawed system of the present recruiting system, that a Marine should not be forced into recruiting, nor should they be judged on their abilities to be salesmen of any kind, sweet-talkers, con men, fanny patters, back slappers, or any other types that exist.

Marines are, and should be charged, as the best fighting men of the Armed Forces. As I suspect you have done, my Officer Candidates were always of good quality and potential, but finding and recruiting quality young men make quota very difficult to achieve.

I spent many sleepless nights worrying about Quota and the whims and luck in young men's decisions, but nowadays my conscience does not bother me. I know I took the best officers I could find, and I do not have any trouble sleeping and do not worry about some of my mistakes leading someone into an obvious ambush.

It is hard to keep your honor and integrity on your recruiting duty, and even harder to keep them and make quota, I am honored to have served.

and so on.

I think that Captain Peterson states it better than anyone. The pressure of this thing called quota has to be removed from recruiters somehow, some way.

Senator NUNN. Mr. Robinette, based on your experiences as a recruiter, do you believe that a volunteer force is capable of producing the kind of young men and women we need for the military for our country?

MR. ROBINETTE. No, sir, I do not. They are just not there. They do not have to serve anymore. Most of the young men live at home, even after graduation from high school, or go on to college, and still do not know what they are going to pursue, and they can settle for a \$2.50 an hour job while living home with Mom and Dad. Mom and Dad do not force them to get out anymore.

#### TESTIMONY OF ROBERT BLETZ, FORMER RECRUITER USMC RECRUITING STATION, CLEVELAND, OHIO

Senator NUNN. Mr. Bletz, let me ask you that same question, and then I will come back and ask you a lot of other questions.

Before we get into details, though, Mr. Robinette has been very frank and candid with us today, and he stated that he does not think the Volunteer Force will produce the kind of people we need for the armed services.

What is your view?

Mr. BLETZ. No, sir, I do not think the All Volunteer Force will sup-

ply the needs, the manpower for basically the same reason as Mr. Robinette. They do not have to serve, they do not have to be there. They do not have to take the rigorous basic training in any of the armed services, so it is easier just to stay at home, like Mr. Robinette said—live off Mom and Dad.

**TESTIMONY OF GUNNERY SGT. JAMES L. THOMPSON, FORMER RECRUITER, U.S. MARINE CORPS BASE TWENTY-NINE PALMS; ACCOMPANIED BY RONALD LYNN POLASEK, ESQ.**

Senator NUNN. Sergeant Thompson, what is your view on that?

Sergeant THOMPSON. I will add to what has been previously stated, too, that I will also add that recruiters soon lose motivation after being out on recruiting duty for a year or a year and a half. They lose that motivation for going out there and getting those personnel working 7 days a week, all hours of the night.

The family structure is destroyed. They have no reason to work.

Industry, corporations within our cities and States have the same benefits, or better benefits, than the military, so why should the young man enlist in the Marine Corps or some other branch of the service just for the benefit of education?

Senator NUNN. Your opinion is that it is not going to work the way it is now?

Sergeant THOMPSON. That is my opinion, sir.

Senator NUNN. Senator Metzenbaum?

Senator METZENBAUM. Mr. Robinette, in reference to the charges brought against you, did you have any difficulty in the Marine Corps before?

Mr. ROBINETTE. I never had any trouble.

Senator METZENBAUM. Did you receive any medals or citations?

Mr. ROBINETTE. At every command.

Senator METZENBAUM. Even while you were a recruiter?

Mr. ROBINETTE. Yes, sir.

I have enough to cover my wall.

Senator METZENBAUM. Enough to cover your wall.

How about medals? Have you received any medals since you have been in the Marine Corps?

Mr. ROBINETTE. I received the various decorations which go with serving in combat, unit awards and some personal awards, yes, sir.

Senator METZENBAUM. About how many of those, in total, would you say in the 9½ years?

Mr. ROBINETTE. I have 11.

Senator METZENBAUM. How about the citations? How many citations have you received?

Mr. ROBINETTE. About 40.

Senator METZENBAUM. Forty?

Mr. ROBINETTE. Yes, sir.

Senator METZENBAUM. The only matter with respect to which you were brought up had to do with this matter of recruiting and it came after you went public and talked about it publicly, after you appeared on the 20/20 television show, is that right?

Mr. ROBINETTE. Yes, sir.

Senator METZENBAUM. Before you had this new development with respect to the pressure to obtain recruits, had you expected to remain in the Marines beyond the period of your past enlistment?

Mr. ROBINETTE. Before I got involved in recruiting, sir, my goal was to be sergeant major of the Marine Corps someday, as an enlisted man.

Senator METZENBAUM. That would have meant making a career out of the Marines?

Mr. ROBINETTE. Right, sir.

Senator METZENBAUM. Mr. Robinette, you told our staff that Major Schreiber said that no recruiter under his command would burn in any malpractice investigation. Is that your statement and, if so, when did the Major say that, and what do you think he meant by it?

Mr. ROBINETTE. Initially the statement—the statement was made several times at different noncommissioned officers in charge conferences. It was not only made by Major Schreiber, it was made by the commanding officer who is there now, Major Chase.

He said we were not to talk to anybody on the phone. If anybody called up about an investigation from Parris Island, that you should turn them over to the main recruiting station, that they handled all that, that we could get ourselves in a lot of trouble, we could burn ourselves. So to be sure to turn them over to them, because when the investigations came from Parris Island that they handled them, Lt. Le Hockey handled them and Captain Page handled them and they would be taken care of at that level.

Senator METZENBAUM. He was protecting the crew, so to speak?

Mr. ROBINETTE. No one would burn.

Senator METZENBAUM. Did Major Schreiber have any personal knowledge of any fraudulent enlistments?

Mr. ROBINETTE. He had to. He swore them in.

From February until June, there were at least 132 RS swear-ins.

Senator METZENBAUM. RS swear-ins?

Mr. ROBINETTE. The thing where an individual does not qualify at the Armed Forces entrance station and they bring him over to the recruiting station and swear him in illegally.

In fact, in one case, it was done with a Mitchell Oschip. He sold all his furniture because he thought he was in the Marine Corps. He sold his car and told his boss where to go, because he did not like the guy anyway. But he thought he was a Marine and he thought he was going to be leaving for training in 2 weeks.

He had one child that had to be waived. They went ahead and swore him in. Two weeks later, they come back and tell him, you're going to have to tell the kid he's going to be discharged. Headquarters did not approve the waiver.

Now, this kid, if he could find me today, he would still want a discharge from me today. He would still want the benefits that that discharge gives him.

Senator NUNN. Who swore him in? Who swore these other 132 in?

Mr. ROBINETTE. Mr. Oschip was sworn in under the command of Major Schreiber. I believe that Lt. Le Hockey swore him in.

Senator NUNN. They were physically present when he was sworn in?

Mr. ROBINETTE. They had to hold the ceremony and had him sign the contract.

Senator NUNN. You were there when he was sworn in?

Mr. ROBINETTE. He even has a copy of the contract.

Senator NUNN. You have 132 cases like that that you know of?

Mr. ROBINETTE. February of this year, before they started to document them on the daily bulletins. This is a daily bulletin. I have a couple of RS swear-ins on here from May 25, 1978. I do not know what the difficulty was on them. One was Dean R, and he has an RS beside his name. That means he was not legally sworn in. The RS means recruiting station swear-in. That tells the recruiter that as soon as that individual has done processing, find out what the problem was, get it squared away and get him back up to the Armed Forces entrance and examination as soon as possible and get him put into the system, so that they have him at the Armed Forces station here.

Senator METZENBAUM. Mr. Robinette, did you ever witness any physical abuse of a recruit by a recruiter?

Mr. ROBINETTE. Yes; I have.

Senator METZENBAUM. Would you tell us the occasion?

Mr. ROBINETTE. On one occasion—I cannot remember the young man's name offhand—

Senator METZENBAUM. It does not matter.

Mr. ROBINETTE. I had two recruiters, Kevin Bowers and James Sheldon, working with me when I was a recruiter in Richmond Heights.

At that time, Gunnery Sgt. Warren Robinette was the sergeant in charge. I was just a recruiter. I was not in charge at that time.

It used to be common practice to take young men to your homes and sit down and have a couple of beers with him. We worked on this young man for about an hour, talking about all the benefits and opportunities in the Marine Corps.

Finally, he turned to Gunnery Sgt. Warren Robinette and said, "You are so full of S—, your eyes are brown. I don't want to hear anymore of it at this time." Robinette punched him off the chair.

The young man—he was a little guy anyway, about 5 feet 6 inches, and Robinette is only 240 pounds, 6 feet 4 inches.

Senator METZENBAUM. A different Robinette?

Mr. ROBINETTE. Not me.

Senator METZENBAUM. Was Sergeant Robinette disciplined for that?

Mr. ROBINETTE. No; it was not reported.

Senator METZENBAUM. Sgt. Warren Robinette has admitted to charges that he has schooled applicants in 1974, but that this practice ceased in 1975. Is that your understanding?

Mr. ROBINETTE. No, it is not. He originally gave me cheat sheets for the six and seven and helped me to schoolhouse various individuals—the Blake brothers, to name a couple. I don't remember the first names. They both tried to get in.

Senator NUNN. What do you mean by "schoolhouse"?

Mr. ROBINETTE. You sit down with him; you give him a screening test, first of all, a 45-question test designed to tell you just about what an individual would do on the actual test. That is legal.

Then you sit down with the individual and you grade it and you find out there are 15 vocabulary questions, 15 math, and 15 space per-

ception. You sit down with him and you count how many of each he missed and you tell him, hey, buddy, you are pretty weak.

So you get the old cheat sheet out of the drawer and you break down the words for him. You know he is going to have to get at least 10 words right, so you pick the 10 simplest and easiest words and school him on that. That is what schoolhousing is about.

Senator NUNN. How long has it been since those words have changed on the test?

Mr. ROBINETTE. They have not.

Senator NUNN. The same words?

Mr. ROBINETTE. There are 13 parts to the test. There are parts 1 through 13. Major Schreiber told us when he came there that the parts that were important—I did not know this until then—were parts 4, 5, and 6 which actually qualifies a man to enlist.

Parts 1, 2, and 3 are very minor, technical parts that really do not mean anything. Then you get to parts 4, 5, and 6, space perception, word knowledge, and arithmetic reasoning. Those are the three that are used to arrive at the score to see whether he qualifies.

Senator METZENBAUM. I think you furnished us with the names of a number of individuals who had criminal offenses but were, notwithstanding that, taken into the Marines. William Morris Oler. Do you remember that name?

Mr. ROBINETTE. Yes, I do, sir.

Senator METZENBAUM. Breaking and entering—two other minor offenses.

Mr. ROBINETTE. Right, sir.

Senator METZENBAUM. Richard J. Harvey, charged with grand theft?

Mr. ROBINETTE. I do not know a Harvey.

Senator METZENBAUM. Thomas Blasa?

Mr. ROBINETTE. Blasa, armed robbery.

Senator METZENBAUM. And many others, I gather; is that right?

Mr. ROBINETTE. Yes, sir; that's right.

Senator METZENBAUM. Of the 1,500 recruits put in during Major Schreiber's tour, how many would you estimate were frauds?

Mr. ROBINETTE. In some way, shape, or form, out of the 1,500, there had to be 600 to 800.

Senator METZENBAUM. I have no further questions.

Thank you, Mr. Robinette.

Senator NUNN. One other question, Mr. Robinette. Did you ever get threatened by Major Schreiber?

Mr. ROBINETTE. Indirect threats.

Senator NUNN. What kind of threat? Describe them for us?

Mr. ROBINETTE. It was obvious. You would see other individuals who were being transferred out and getting bad fitness reports that were being published on the daily bulletins.

The way he would work, he would use a little bit of mind games with you, call you up on the phone, and say, "You had better get your blankety-blank-blank up, your session average up, or whatever." And then he would hang up the phone on you, and threaten to bring office hours up against you, or whatever.

Senator NUNN. It is your statement, your testimony here this morning, it basically pointed out Major Schreiber. What about the other

officers? Do you have anything to tell us about any illegalities or improprieties that they were guilty of during your tenure as a recruiter?

Mr. ROBINETTE. Major Batcheler—I can find nothing to comment about it.

Colonel Findley—the only thing I could say about Colonel Findley would be indirect. It would be hearsay.

I could not make any other comments on those.

Senator NUNN. Sergeant Thompson, we have a rollcall vote. I will just ask you a couple of preliminary questions and then we will come back as soon as the rollcall vote is over.

How long have you been in the Marine Corps?

Sergeant THOMPSON. I have been in the active Marine Corps 20 years, 2 months.

Senator NUNN. What is your rank now?

Sergeant THOMPSON. My rank is gunnery sergeant.

Senator NUNN. Where are you stationed at the present time?

Sergeant THOMPSON. At the present time, I am stationed at Twenty-nine Palms, Calif., approximately 150 miles out of Los Angeles.

Senator NUNN. What is your present job in the Marine Corps?

Sergeant THOMPSON. My present job in the Marine Corps is career counselor.

Senator NUNN. Career counseling?

Sergeant THOMPSON. Yes.

Senator NUNN. Were you engaged in recruiting at one time?

Sergeant THOMPSON. Yes, sir, I was.

Senator NUNN. Where was that?

Sergeant THOMPSON. It was in Houston, Tex., eighth district, and the period of time was May 1973 to December 1976.

Senator NUNN. Let me ask you those dates again.

Sergeant THOMPSON. May 1973 to December 1976.

Senator NUNN. You were there a little over 3 years?

Sergeant THOMPSON. I was there 42 months, sir.

Senator NUNN. Forty-two months?

Sergeant THOMPSON. Yes, sir.

Senator NUNN. Have you been engaged in any recruiting since December 1976?

Sergeant THOMPSON. Basically I am still engaged in recruiting, sir. My job is now reenlisting personnel who had enlisted.

Senator NUNN. Career counseling. That is not getting new people, but trying to keep people who are already in.

Sergeant THOMPSON. Keep the people who are in in the Marine Corps.

Senator NUNN. We will take about a 10-minute break while we go vote.

[A brief recess was taken.]

Senator NUNN. Sergeant Thompson, we were just talking to you about your experience in Houston. Let's just go back a minute. How long were you in Houston?

Sergeant THOMPSON. I was in Houston for a period of 42 months.

Senator NUNN. Forty-two months.

Sergeant THOMPSON. Yes, sir.

Senator NUNN. The dates were?

Sergeant THOMPSON. The dates were May 1973 to December 21, 1976.

Senator NUNN. Since then, you have been engaged in California in what you call career counseling, which is basically an effort to get people to reenlist, right?

Sergeant THOMPSON. No, sir. After being relieved of my assignment at RS Houston, the recruiting station in Houston, I was subsequently transferred to Okinawa.

Senator NUNN. Okinawa?

Sergeant THOMPSON. Yes, sir. I was there for a year, after which I was transferred.

Senator NUNN. Now you are in career counseling?

Sergeant THOMPSON. I was a career counselor in Okinawa also.

Senator NUNN. You were there also. I see.

Sergeant Thompson, you have heard some testimony here this morning, I am sure, and I am not going to ask you to comment on each and every instance that I heard from Mr. Robinette. In your experience, do you feel that recruiting malpractice is widespread?

Sergeant THOMPSON. I do, sir, especially in the Eighth District.

Senator NUNN. Especially the Eighth District?

Sergeant THOMPSON. The Houston, Tex., area that I am more familiar with.

Senator NUNN. Houston, Tex. That is where you have personal experience?

Sergeant THOMPSON. Yes, sir.

Senator NUNN. What kind of malpractice in general goes on there that you know of?

Sergeant THOMPSON. It was there during my period of time, sir.

Senator NUNN. Do you have a statement that you would like to give us, just give us your observations? Why don't you go ahead with that.

Sergeant THOMPSON. I will read portions of my statement to you.

During my tour of duty as a Marine recruiter, I observed many cases of recruiter malpractice within the Houston, Texas area. It is my opinion that at least 40 percent of all enlistments from May 1973, to December 1976, were effected as a direct result of recruiter malpractice.

I observed during the period of time that the major malpractice was using exact questions from official tests and would prep an applicant before being officially tested at the Armed Forces examination station.

Senator NUNN. Would you repeat that?

Sergeant THOMPSON. I observed during that period of time that the major malpractice was using exact questions from official tests to prep an applicant prior to being officially tested at the Armed Forces examination station.

Other methods I observed were where recruiters were obtaining GED's for applicants which served them as high school graduates. These GED's were taken at a test site that they knew would give them a passing grade.

Normally the applicant would go down to the center and draw pictures for an hour and a half, after which he would come out a high school graduate for the record.

Other methods were using phony applicants, already in the Marine Corps, to test for other applicants; falsification of birth certificates, police checks, and character references. Character references are required for applicants that had disqualifying records, such as police records or had a baby or had to be processed through Headquarters Marine Corps for approval.

And also blood pressure readings. When a man had a high blood pressure as noted by the examination station, the man would get a falsified blood pressure reading from one of the recruiters.

Senator NUNN. Where would he get the falsified blood pressure reading?

Sergeant THOMPSON. One of the recruiters would do the reading.

Senator NUNN. Take the recruiter's blood pressure, use that instead of his?

Sergeant THOMPSON. What would happen, the applicant was taken down to a different dispensary. He was given the initial blood pressure reading there. Just one is all that is needed.

Subsequently he was taken back to the recruiting station. A recruiter would fill out the other three and four required—it did not matter what the first one was, it could be high, low or whatever. He would do the other readings in line that would give him a qualifying score.

Senator NUNN. A recruiter himself would falsify the blood pressure?

Sergeant THOMPSON. Yes, sir.

On several occasions, these violations were brought to the attention of the person in command. In each situation, the violation was ignored. I brought it to the attention of the station sergeant-major.

Senator NUNN. You did?

Sergeant THOMPSON. I did.

Senator NUNN. What was his name?

Sergeant THOMPSON. The station sergeant-major, at that time, was Sergeant Loker.

I brought it to the attention of Major Satcher, Don Satcher, the officer-in-charge. Also, I turned in a test to the XO.

Senator NUNN. A test?

Sergeant THOMPSON. Yes, sir.

Senator NUNN. A copy of the test that you were not supposed to have?

Sergeant THOMPSON. Yes, sir. On three occasions, I turned in the test that the recruiters were not supposed to have.

Senator NUNN. Who was the CO you turned it into?

Sergeant THOMPSON. Major Satcher.

Senator NUNN. Did he do anything about it?

Sergeant THOMPSON. No, he did not.

Senator NUNN. Do you know if he turned it in to anybody above him?

Sergeant THOMPSON. In the Marine Corps, any malpractice or any compromise of test should be suspended from use. Headquarters Marine Corps should be informed and the test should not be put in use until authorization from Headquarters Marine Corps is given again. That was not done.

Senator NUNN. That was not done. You do not know how high up the line it went?

Sergeant THOMPSON. Five months later he informed district. I asked Major Satcher after a month, after I informed him a month later. I asked him what was being done with the test, why was the test not being suspended from use.

He said at that time that in 25 days there would be a new test, and there was a lot of money wasted or spent if they would change the test at that time. This was December 1975.

Senator NUNN. Do you want to go ahead and complete your statement? We will be glad to hear the whole thing, if you like.

Sergeant THOMPSON. Because of my refusal to participate in these practices which were commonly accepted throughout the Houston, Tex., area, I was then and am now being continually subjected to undue harassment, repositioning, and discriminatory treatment by my commanding officers and other personnel involved.

Senator NUNN. You feel that you are being discriminated against even right now because you did not participate in turning in the tests, and you made known anything that came to your attention; is that right?

Sergeant THOMPSON. Yes, sir. In May of this year I requested an extension of 4 months in the Marine Corps, I went over 20 in August. I requested an additional 4 months in the Marine Corps to complete my time on station and also to be able to go to school in January of 1979.

Headquarters Marine Corps came back with a statement stating that my record was such that my service record should go before an enlisted performance board because of my overall duties back at Houston, Tex., back in 1976.

Senator NUNN. You mean you got a bad rating in Houston when you were there?

Sergeant THOMPSON. Yes, sir.

Senator NUNN. Who gave it to you?

Sergeant THOMPSON. Major Satcher.

Senator NUNN. And he did so for what reason?

Sergeant THOMPSON. In September of 1976 I requested Mast—

Senator NUNN. You requested what?

Sergeant THOMPSON. I requested Mast, requested an audience with the Commandant of the Marine Corps, and it directly related to the tests that I turned in to Major Satcher, to Sergeant Major Loker, and to the OIC. Nothing was being done about it, plus my unit, my station which I was in charge of was under constant harassment, which we should not have been under.

I requested Mast. Two days later a nonjudicial punishment proceeding was going against me.

Senator NUNN. By whom?

Sergeant THOMPSON. By Major Satcher.

Senator NUNN. What was the nature of the offense you were accused of?

Sergeant THOMPSON. I was accused of changing or falsifying official documents, which entailed changing an address on a DD-Form 1966.

Senator NUNN. Was that true?

Sergeant THOMPSON. That is not true.

Senator NUNN. What happened to that charge against you?

Sergeant THOMPSON. I was brought up before a summary court-martial and given an official reprimand.

Senator NUNN. And you claim you were not guilty of that.

Sergeant THOMPSON. Yes, sir.

Senator NUNN. That was an official courtmartial?

Sergeant THOMPSON. It was an official courtmartial.

Senator NUNN. And who testified against you?

Sergeant THOMPSON. The applicant, the young lady that they said I was trying to falsify information in order to get her in the Marine Corps.

Senator NUNN. She testified against you.

Sergeant THOMPSON. Yes, sir.

Senator NUNN. Did you ever get to meet with the Commandant?

Sergeant THOMPSON. I never did, sir. I requested Mast in September of 1976. Twenty-two months later I received a reply back, only after a great deal of effort on my part, from the Commandant that my request was denied.

Three weeks ago I learned that the Commandant was on his way to Twentynine Palms for a visit. At that time I also requested Mast because he would be in the area. General procedure is to accept all requests for Mast. A day before his arrival I was told that my request was denied for Mast with him, but I could talk to anyone else within his command, anyone else that was traveling with him, the sergeant major or any one of the other officers, which I refused to do.

Senator NUNN. You did not want to talk to anybody but him.

Sergeant THOMPSON. That is all I wanted to talk to.

Senator NUNN. Why is that, why could you not see someone else?

Sergeant THOMPSON. Because I had taken the required effort, time, to go through the chain of command in trying to bring these matters to the Commandant. I was under the impression that very possibly along the line it was being stopped.

Senator NUNN. You felt that since you had tried to go through the chain of command and had no success in that regard, that you ought to go directly to the Commandant.

Sergeant THOMPSON. Yes, sir.

Senator NUNN. That is basically the procedure that you are supposed to follow; is it not?

Sergeant THOMPSON. Pardon, sir?

Senator NUNN. Is that not the procedure you are supposed to follow?

Sergeant THOMPSON. That is the procedure, sir, that is correct.

The Commandant held a breakfast for the staff NCO's at Twentynine Palms on the morning of his arrival. At that time I approached him with the question, why was I being ignored. I requested Mast with him 22 months ago and I was denied; and also 3 weeks previously I had requested Mast and that was also denied. A comment was made, "At least we are improving, it is no longer taking 22 months to get a denial, it has taken 3 weeks to get a denial."

Senator NUNN. Now, why do you think you are still being punished? Why would your former commanding officer have that much influence where you are now stationed in another part of the country?

Sergeant THOMPSON. It is not the former commanding officer, sir, it is the impression that the commanding officer has, the present commanding officer. If there is any doubt that in your past you brought charges against the Marine Corps, or acted any way out of line, they would attempt to get rid of you, transfer you out.

Senator NUNN. In other words because of your bad fitness report you got from Houston and the fact that you turned in evidence showing malpractice in recruiting?

Sergeant THOMPSON. Yes, sir.

Senator NUNN. Now, have you talked to your present commanding officer about that and told him frankly what your opinion is?

Sergeant THOMPSON. I have, sir.

Senator NUNN. Who is that commanding officer?

Sergeant THOMPSON. Lieutenant Colonel Mehan.

Senator NUNN. And what is his reaction to that?

Sergeant THOMPSON. Lieutenant Colonel Mehan, sir, is an individual that I found since May of this year, when all of this came out within his command, that he chose not to make an issue of it; he chose not to act on it. Two or three times he has tried to transfer me out, he has also given me no support whatsoever.

Senator NUNN. But you have not accused him of doing anything wrong, or any irregularities under his command; have you?

Sergeant THOMPSON. I have not, sir.

Senator NUNN. Just one other question. I understand that you had something in your statement about a staff interview about the use of false birth certificates. Can you tell us about that?

Sergeant THOMPSON. If a man is not of legal age to join the Marine Corps—if he is 16 or he is 17, if he is 17 he needs his parents' signature. If a parent is not available they have a form that they will type up and give him a legal age. This form is called birth certification.

Senator NUNN. And you have seen that done?

Sergeant THOMPSON. I have, sir.

Senator NUNN. Sergeant, is there anything else you want to say at this point to the subcommittee; or is there anything else in your statement that you would like to give us?

Sergeant THOMPSON. Yes, sir. I would like to bring out that the command is very aware of my views on this. The noncommissioned officer in charge assisted in many cases and falsified these documents.

Senator NUNN. That is in Houston?

Sergeant THOMPSON. In Houston, yes, sir. Sergeant Howell and Sergeant Marsecano are two that I know of personally that are guilty of signing or forging names on certifications of one form or another.

When the test was obtained in the Houston area two recruiters decided to see how it affected the test work. Sergeant Wilbry and Gunnery Sergeant Whittaker, two of the recruiters at the time, went and took the test themselves. They brought their test scores up 30 to 40 points above what they previously were.

There was a recruiter there, Gunnery Sgt. Howard Hughes, he was known as "The Trashman"; any reject from any other branch of service was turned over to Gunnery Sergeant Hughes and he would subsequently enlist the man.

Senator NUNN. He was called "The Trashman"?

Sergeant THOMPSON. Yes, sir, because he would get everyone to pass; everyone that no one else could use.

I have seen Gunnery Sergeant Hughes bring in a man from off the street who did not live in the city, set the man down, enlist him, physically test him, and enlist him in the Marine Corps without him even leaving the seat or going down to the station. This happened on numerous occasions.

The main point that I would like to bring out to the committee is that had the Marine Corps taken steps in August 1975 when I first brought this to their attention, McClure, the incident that we had in 1975 would never have happened in the Marine Corps.

Senator NUNN. Who?

Sergeant THOMPSON. McClure. He would never have been in the Marine Corps. McClure was tested originally from the Houston area.

Senator NUNN. Is this the marine that was later killed?

Sergeant THOMPSON. Yes, sir; the same one.

Senator NUNN. He was recruited in your area?

Sergeant THOMPSON. No, sir, he was tested in the Houston, Texas area.

Senator NUNN. Why do you say he never would have come in?

Sergeant THOMPSON. Had they taken steps to follow the regulations that were in force at that time, informed Headquarters Marine Corps to stop using the test, McClure would never have come in. He enlisted in September of 1975. I informed the command in August of 1975.

Senator NUNN. Are you saying that McClure has a copy of the test, or somebody coached him?

Sergeant THOMPSON. Yes, sir, the recruiter, one of the recruiters that initially tested him from the Houston, Tex. area of responsibility, told me that he initially tested the man and he did not pass the test, even with the official test.

Senator NUNN. The recruiter told you that?

Sergeant THOMPSON. Yes, sir.

Senator NUNN. What was his name?

Sergeant THOMPSON. The gunnery sergeant in charge of RSS Lufkin. I cannot think of his name, Martinez, or Gonzalez, or something like that.

Senator NUNN. You knew him personally?

Sergeant THOMPSON. I knew him personally.

Senator NUNN. Did he tell you that before or after McClure was killed?

Sergeant THOMPSON. After.

Senator NUNN. After. He just voluntarily told you that?

Sergeant THOMPSON. Yes, sir.

Senator NUNN. He told you that McClure did not pass the test.

Sergeant THOMPSON. He did not pass the test.

Senator NUNN. How did he get him in, did he tell you that?

Sergeant THOMPSON. McClure, after being tested for the Houston area went to San Antonio, which is an area out of our recruiting area. He was retested again. The recruiter, from what I understand—this is second hand—the recruiter that enlisted him mentioned the fact that he tested McClure again, and this time he did pass the test.

Senator NUNN. So, the sergeant who told you McClure did not pass the test did not do anything illegal in getting him in; McClure was taken somewhere else.

Sergeant THOMPSON. The sergeant that told me that he initially tested McClure informed me that he had given McClure the test.

Senator NUNN. He had actually given him the test?

Sergeant THOMPSON. Given him the official test, and he could not pass it the first time.

Senator NUNN. You mean he gave it to him before he took it?

Sergeant THOMPSON. Yes, sir.

Senator NUNN. And he still did not pass?

Sergeant THOMPSON. Yes, sir.

Senator NUNN. So, he gave him the test, he could not pass it. Then he was taken to another district and given another test; is that right?

Sergeant THOMPSON. Yes, sir.

Senator NUNN. Do you know anything about what happened in that other district?

Sergeant THOMPSON. Nothing personally.

Senator NUNN. What you are saying about McClure is, you were told that he was given the test the first time he took it beforehand, which is against the rules and regulations of the Marine Corps, and then, in spite of having the benefit of the test in advance, he flunked the test.

Sergeant THOMPSON. That is correct, sir.

Senator NUNN. Senator Metzenbaum?

Senator METZENBAUM. A few questions, Sergeant Thompson. You got along pretty well, did you not? Did you not receive a commendation from Major Satcher commending you for "a high degree of professionalism leading to Recruiting Station North Shore being named leading substation"? And did he not go on to say, "Your initiative is commendable and identifies you as a marine of high caliber and conscientious dedication. With the elite cadre of men such as yourself, the Marine Corps is assured of a future comparable to or greater than the past."

What happened? What changed him from saying that you were an excellent recruiter and marine, what changed his attitude toward you?

Sergeant THOMPSON. In September of 1976, which was 2 months later, after I had received that commendation, I informed Major Satcher that I was requesting Mast with the Commandant of the Marine Corps.

Senator METZENBAUM. Then you were denied that. Then, had you reported these abuses at any time previous to these reports to the sergeant major in January of 1974?

Sergeant THOMPSON. Yes, sir, I reported them in January of 1974. At that time I was stationed at Recruiting Substation Sharptown. There were numerous violations at Recruiting Station Sharptown.

Senator METZENBAUM. And did you report to anybody in 1975?

Sergeant THOMPSON. Yes, sir, in August of 1975, to the sergeant major.

Senator METZENBAUM. And then, did you report them to the Director of Marine Corps Personnel Procurement, General Myers, on May 15, 1975?

Sergeant THOMPSON. During that period of time, during May of 1975, I talked to General Myers, but I did not have the information that I needed to back up the statement I was making.

Senator METZENBAUM. Did you ask for a further meeting?

Sergeant THOMPSON. Yes, sir, I did.

Senator METZENBAUM. What happened, did you have the opportunity to have a further meeting with General Myers?

Sergeant THOMPSON. I had a conference with General Myers.

Senator METZENBAUM. And what happened as a result of that?

Sergeant THOMPSON. As a result of that, I received another below-average fitness report.

Senator METZENBAUM. A below-average fitness report?

Sergeant THOMPSON. Yes, sir.

Senator METZENBAUM. Actually, the abuses you were reporting on were police record coverups—medical problem coverups—and compromising the Armed Forces entrance exam; is that correct?

Sergeant THOMPSON. Yes, sir, that is correct.

Senator METZENBAUM. Now, what was the Commandant's response to your request for Mast with him; that was the one that was turned down after 22 months?

Sergeant THOMPSON. Yes, sir, and also the one after 3 weeks.

Senator METZENBAUM. That was the second one, the 3 weeks. Was that more recent?

Sergeant THOMPSON. Yes, sir, that was 3 weeks ago, in fact.

Senator METZENBAUM. And was that with Major Kelly?

Sergeant THOMPSON. No, sir, that was with the Commandant, Marine Corps. I requested through my CO, Lieutenant Colonel Mehan, Mast with the Commandant of the Marine Corps.

Senator METZENBAUM. Now, did you have some conversation with Major Kelly, your commanding officer, concerning your submitting a statement to this subcommittee?

Sergeant THOMPSON. Major Tiley, sir.

Senator METZENBAUM. He is your commanding officer?

Sergeant THOMPSON. No, sir, he is my executive officer.

Senator METZENBAUM. He is your executive officer. And what did Major Tiley say to you?

Sergeant THOMPSON. After I informed him there was a request for me to make a statement out and send it to your office, he informed me that the Commandant would be in in possibly 3 weeks, 2 or 3 weeks, and that I would be granted Mast with the Commandant at that time. So, he advised me not to send any information to your office.

Senator METZENBAUM. And did you get to see the Commandant, when he came out?

Sergeant THOMPSON. The only way I got to see the Commandant, sir, was at a breakfast that was given for all staff NCO's.

Senator METZENBAUM. And how many were there at the meeting?

Sergeant THOMPSON. About 300 personnel, sir.

Senator METZENBAUM. And did you bring the matter up at that time?

Sergeant THOMPSON. Yes, sir, I did. I asked the question, I told him of my efforts to see him; and I also asked him about the problem that we had in the Marine Corps and what could we do to correct it. He joked with me about the request for Mast.

Senator METZENBAUM. What?

Sergeant THOMPSON. He joked with me about the requested Mast to the effect that it was no longer taking me 22 months to get a refusal back, it only had taken 3 weeks.

Senator METZENBAUM. Did the Commandant at that time indicate his views with respect to recruiting fraud in the Marine Corps?

Sergeant THOMPSON. No, sir, he did not.

Senator METZENBAUM. Let me ask you, you told us how you made these complaints. How does one bring allegations of this sort to the command's attention so that they can be corrected within the system?

Sergeant THOMPSON. Sir, that is the question I have been trying to work out myself for the last 6 years—it is almost impossible.

Senator METZENBAUM. Almost impossible.

Is there anything else you would care to tell us, Sergeant Thompson, that you have not had an opportunity to tell us concerning Marine recruiting practices?

Sergeant THOMPSON. No, sir, that is all I have at this time.

Senator METZENBAUM. I appreciate your time.

Senator NUNN. Thank you, sergeant. Mr. Bletz?

Senator METZENBAUM. Sergeant Thompson—I am sorry to interrupt you, Mr. Chairman.

Senator NUNN. Go ahead.

Senator METZENBAUM. In connection with that charge of having used the wrong address, I guess her name is Alexis Linda Rasha. I have in my hand here, apparently one application that was filed using the address 8446 Gallahad, Houston, Tex.; the other one was filed 2501 Chew, Houston, Tex. Did you file two separate applications, and was one of those the right address and one the wrong address?

Sergeant THOMPSON. I filed both the Chew address and the Gallahad address, and this is on her documents.

Senator METZENBAUM. And why were there two addresses used?

Sergeant THOMPSON. The purpose for the two addresses was to show all the addresses that she had lived in within the past 10 years. The Chew address was where her mom was living at—

Senator METZENBAUM. Her what?

Sergeant THOMPSON. Her mother was living at. The Gallahad address was the address where she was staying at that point in time, with her sister.

Senator METZENBAUM. And you were charged with using a false address for the Chew address; is that it?

Sergeant THOMPSON. For the Gallahad address.

Senator METZENBAUM. The Gallahad address. And it was on this basis that you were court-martialed?

Sergeant THOMPSON. Yes, sir, on that basis alone.

Senator METZENBAUM. Nothing else?

Sergeant THOMPSON. Nothing else.

Senator METZENBAUM. I would like to offer these in evidence.

Senator NUNN. Without objection, they will be part of the record; they will be given the appropriate exhibit numbers.

[The material referred to is retained in committee files.]

Senator NUNN. Mr. Bletz, did you have a prepared statement, or any notes you would like to lead off with, before we ask the questions?

Mr. BLETZ. No; I do not, sir.

Senator NUNN. Mr. Bletz, in your statement that is part of the record now, I believe dated July 27, you stated that one of the practices at Columbus, Ohio, where you were before going to Cleveland, was telling—and I quote—“Applicants not to admit to drug use regardless of the number of times drugs were used.” It that correct?

Mr. BLETZ. Yes, sir, it is.

Senator NUNN. Did you tell applicants not to admit to drug use?

Mr. BLETZ. Yes, sir.

Senator NUNN. Did anybody, your commanding officer or anybody else, tell you to make those kinds of statements to them?

Mr. BLETZ. No, sir, not in a direct manner. As a new recruiter you were not told to come out and falsify documents, or anything like that. You were made aware of how to get certain things done without actually being told, normally, during a session at the recruiting sta-

tion. No one would actually come out and say, "If you got a bad check," do something like this.

Senator NUNN. They did not tell you specifically how to do it?

Mr. BLETZ. No; they just casually let you in on how it could be accomplished without actually committing them, their own career, and so on.

Senator NUNN. How long were you a recruiter, Mr. Bletz?

Mr. BLETZ. I was an active recruiter from November 1975 until September of last year.

Senator NUNN. September 1977?

Mr. BLETZ. Yes, sir.

Senator NUNN. And where were you recruiting, where were you assigned?

Mr. BLETZ. My first assignment, I was out of Recruiting Station Cincinnati, and I was assigned to a permanent contact station at Columbus, Ohio. I was transferred from there after some difficulties to Akron, Ohio out of RS Cleveland.

Senator NUNN. When did you leave the Marine Corps?

Mr. BLETZ. I left the Marine Corps June 19, 1978.

Senator NUNN. What kind of discharge did you get?

Mr. BLETZ. Honorable, sir.

Senator NUNN. Honorable discharge?

Mr. BLETZ. Yes, sir, with the re-enlistment code of RE3C.

Senator NUNN. What does that mean?

Mr. BLETZ. I am not to be re-enlisted by the Marine Corps.

Senator NUNN. Why is that?

Mr. BLETZ. As near as I can understand the reasoning that the Marine Corps gave is that I can no longer meet the requirements of a staff NCO in the Marine Corps.

Senator NUNN. Were you ever accused of any wrong-doing, was any court-martial brought against you, or were you ever charged with recruiting malpractice?

Mr. BLETZ. No, sir. I have been charged with disobedience, but it was not in connection with recruiting, it was in connection with more or less the administrative process that was used.

Senator NUNN. So, you were never accused of recruiting malpractice.

Mr. BLETZ. No, sir.

Senator NUNN. That was related to your administrative duties, not related to recruiting malpractice?

Mr. BLETZ. Correct, sir.

Senator NUNN. During your period as a recruiter, what kinds of malpractice did you observe by recruiters in the overall process?

Mr. BLETZ. The first thing that I became aware of was in Columbus. At that time period, according to Marine Corps regulations, the use of drugs, including marihuana, they let it be known that this thing was something that you should certainly tell the recruit that he is not to mention.

The older recruiters, the ones that have been on recruiting duty longer let it be known to new recruiters, myself included, that drugs, such as marihuana use, if there is no police record of it, that the applicant should be told not to say anything about it.

Senator NUNN. In other words, not to fill out the application correctly?

Mr. BLETZ. Yes, sir. Some of the things that were done, I can remember one meeting in particular with all the recruiters from the Columbus area, where our noncommissioned officer in charge brought up the subject how to ask somebody if he used drugs. He more or less pantomimed the situation, he said, "Have you ever used drugs?" And then he held his hands over his ears, so you could not hear the guy if he replied.

Senator NUNN. Who did that?

Mr. BLETZ. This was the NCOIC of our station.

Senator NUNN. Was he an officer?

Mr. BLETZ. He was a master sergeant.

Senator NUNN. Master sergeant. Basically, he was telling you that when you ask questions about drug use, just cover up your ears.

Mr. BLETZ. Yes, sir; and you would ask the question in such a way that the applicant knew that if he said "yes," that it could be a reason to disqualify him from service. So, if the applicant was really serious about coming into the Marine Corps, he knew when you asked the question that you expected a "no" answer.

Senator NUNN. What other kinds of abuses have you seen?

Mr. BLETZ. While in Columbus, with juvenile records. One of the people who worked in Franklin County Juvenile Hall, if we had a police check with a young man that had a record, he took it down to the ID section there, the record was shown on the young man's juvenile jacket, the record was checked and the recruiter would be sent upstairs to that man's office. At that point it was up to you to convince this man that you wanted to put this kid in. Basically you sold Mr. Dumfee on the fact that you needed this kid, and he would then destroy the record, the juvenile record and sign the check for you.

Senator NUNN. Anything else?

Mr. BLETZ. In Columbus there was a certain amount of forgery as far as high school counselors' letters and other forms we needed for the individual's package. We would sometimes sign the documents ourselves, have other recruiters sign them; have a recruiter from another branch of the service sign it.

Senator NUNN. Who knew about these kinds of abuses? How high up the line do you have personal knowledge that this kind of malpractice was known?

Mr. BLETZ. While in Columbus I made mention of the drugs, I was particularly against that specific aspect of it, to the station sergeant major, my own NCOIC; and the sergeant major of the station at that time told me I should not be a "blank" Marine, but I should be a "blank" saint; that was the end of the conversation.

Senator NUNN. That is what he said when you were complaining to him about this drug business?

Mr. BLETZ. Yes, sir.

Senator NUNN. Exactly what was your complaint?

Mr. BLETZ. The enlistment of people we knew were drug users, or had been drug users, and were not qualified under the Marine Corps regulations.

Senator NUNN. Who did you say that to?

Mr. BLETZ. The station sergeant major, my NCOIC.

Senator NUNN. Who was that?

Mr. BLETZ. Off the top of my head I do not remember, sir.

Senator NUNN. Did you bring any of these matters to the attention of your commanding officer?

Mr. BLETZ. In Akron I brought it up, when I was transferred to Akron.

Senator NUNN. You did not bring up any of these matters in Columbus?

Mr. BLETZ. Not to the commanding officer, no, sir. I had very little contact, mainly because of the distance between the two stations.

Senator NUNN. Before you left Columbus, did you have any personal knowledge that the commanding officer knew of these malpractices?

Mr. BLETZ. At that time Major Laurie was commanding officer in Cincinnati, and I do not believe he knew.

Senator NUNN. Tell us what you did in Akron in terms of reporting.

Mr. BLETZ. Well, in Akron, again, the drug, the marihuana regulations were changed where you could get a young man in that had used it; those continued. The falsification of high school records, again, was used. The use of the test was also used in Akron. During the time period I was in Akron every recruiter that was there had a copy of the test, or had access to a copy—I should say the answers to the questions.

Senator NUNN. Tell us now who you reported these kinds of malpractices to in Akron, if anyone.

Mr. BLETZ. I did feel as a senior Marine I was responsible, and I had great concern for the other recruiters there. I did not, and I do not believe that their actions were indicative of the type of people they were, but that it was only as a result of the pressure they were under. My complaints were not pointed to specific allegations, the wrongs. When I talked with members of the staff higher than myself, one of the things that I always received was that my opposition to the drugs and stuff like that was nothing but a cop-out. In their opinion this was my reason, or my excuse not to go out and recruit the same numbers that other recruiters were doing.

Senator NUNN. Who told you that?

Mr. BLETZ. Major Schreiber in one case. Again, I do not believe I was ever given fully a chance to really say what was on my mind, or really go into any details.

Senator NUNN. You did not bring the specifics of that to their attention as much as you brought the general pressure to their attention; is that right?

Mr. BLETZ. Yes.

Senator NUNN. Did you ever tell Major Schreiber directly that you, or any of the other recruiters, had been engaged in recruiting malpractice?

Mr. BLETZ. I mentioned it, yes, sir. But I would say, that was answered that it was a cop-out on my part.

Senator NUNN. How did you mention that? What did you tell him?

Mr. BLETZ. Normally, sir, during the time that Major Schreiber was in his office an individual was given a chance to fully say what he wanted to. If he did say something it was redirected into a com-

ment against the individual, rather than trying to find out the point that he was trying to make. It was just misinterpreted and, like I say, redirected as a cop-out, rather than as a concern for the quality of the individual, as it was intended. It was a cop-out on my part. That is the way all conversations were.

Senator NUNN. Did Major Schreiber ever give you any kind of command, or order, that would indicate to you that you were supposed to engage in malpractice?

Mr. BLETZ. No, sir.

Senator NUNN. Did he ever tell you directly to avoid the drug question, or close your ears, or that kind of thing?

Mr. BLETZ. Never was there anything direct—indirect things were done. It was more or less psychological pressure. Mr. Robinette explained that with the working hours.

Senator NUNN. Do you agree with Mr. Robinette's general description?

Mr. BLETZ. Yes, sir. When I first met Major Schreiber in May of 1977, after he had talked to all the recruiters in the Akron area, I was called into his office to speak with him separately from the rest of the recruiters. At that time he let me know in no uncertain terms that if I could not work for him, I could work for no one else in the Marine Corps, in his opinion. Basically, if I did not work for him, that he would see to it that my career was terminated.

Senator NUNN. Excuse me, we are going to have to go over and vote. At this point in time, we will not be able to complete the hearing before noon. We hope to come back here at 2 o'clock, at which time we will hear from our next witness, Major Schreiber.

Mr. Robinette, Mr. Bletz, and Sergeant Thompson, if any of you have anything else you want to say that we have not completed this morning, please be back here at 2 o'clock.

I also want to thank all of you for being here. You have come voluntarily, and we appreciate your testimony. We hope it will be in the best interest of our national security and the Marine Corps in the long run, and we appreciate your being here.

[Whereupon, at 12:30 p.m., the subcommittee adjourned, to reconvene at 2 p.m. on the same day.]

#### AFTERNOON SESSION

The subcommittee met, pursuant to recess, at 2:05 p.m. in room 1318, Dirksen Senate Office Building, Hon. Sam Nunn, chairman, presiding.

Present: Senators Nunn and Metzenbaum.

Staff present: Francis J. Sullivan, staff director; George F. Travers, professional staff member, Louise R. Hoppe and Christine E. Cowart, research assistants; Fran Frazier and Judy Landesman, clerical assistants, Committee on Armed Services, Jeffrey Record and Arnold Punaro, assistants to Senator Nunn.

Senator NUNN. The subcommittee will come to order. I will ask Mr. Bletz if he would please come back up; I believe Senator Metzenbaum has a couple of questions to ask you that we did not get through with.

Mr. Bletz, you understand you are still under oath here before this subcommittee.

Mr. BLETZ. Yes, sir, I do.

Senator NUNN. And you understand your rights and your obligations as a witness.

Mr. BLETZ. Yes, sir, I do.

Senator NUNN. Thank you.

Senator METZENBAUM. Mr. Bletz, I just have a couple of questions. In April 1977 Major Schreiber relieved Major Batcheller as the commanding officer of the recruiting station in Cleveland; correct?

Mr. BLETZ. Yes, sir.

Senator METZENBAUM. And in June of 1977 you went on emergency leave due to the death of your brother?

Mr. BLETZ. Yes, sir, I did.

Senator METZENBAUM. Now, was there anything unusual that happened when you returned to work after you had been out? How long was the leave?

Mr. BLETZ. I was gone just a little over 2 weeks, sir.

Senator METZENBAUM. Was there anything unusual that occurred after you came back?

Mr. BLETZ. Yes, sir. When I came back to the recruiting station in Akron I found a letter dated the day before I started on emergency leave. The letter gave me 2 weeks to improve, or there would be a fitness report, special fitness report submitted as to my nonproductivity during the 2-week time.

Senator METZENBAUM. I cannot hear you. Could you pull the mike a little closer?

Mr. BLETZ. The letter stated that I would receive a special fitness report for the time period, the 2 weeks he had given me to improve, which was the 2 weeks I was on emergency leave.

After returning I got the letter. At the same time I got called up and was counseled about the special fitness report.

Senator METZENBAUM. He called up what?

Mr. BLETZ. I was called up to the station in Cleveland and was given counseling on the special fitness report that was being submitted. The report was very derogatory in nature. I personally question the timing of the letter, the original letter telling me that I had 2 weeks to get better, and the fact that it was the same day I got back from emergency leave that I went up to be counseled on the derogatory fitness report.

Senator METZENBAUM. Did Major Schreiber give you any other counseling advice?

Mr. BLETZ. During the course of the counseling—if it can be called that—the NCOIC of Akron, Sergeant Terry, who had just recently gotten married in June and taken about 2 days off, it was pointed out to me several times during the course of the counseling that there was Sergeant Terry, hard-working, you know, a hard-charging Marine who only took a couple days off for his wedding whereas, when I went home to my brother's funeral I had taken 2 weeks.

There were other derogatory—in my opinion derogatory—remarks. With my dealings, I would say it was common.

Senator METZENBAUM. In the letter to the Commandant, requesting your reinstatement in the Corps, you state that Major Schreiber told you to commit suicide. Did he actually use those words, "to commit suicide"?

Mr. BLETZ. No, sir. I would not say that the major would be that open with his comments, especially with other people around.

Senator METZENBAUM. What did he say?

Mr. BLETZ. He strongly suggested it.

Senator METZENBAUM. Suggested what?

Mr. BLETZ. Among other things, jumping out a third-floor window, things like this; that sort of stuff.

Senator METZENBAUM. Was he kidding, or was he serious?

Mr. BLETZ. I believe he was serious. I took it as being serious.

Senator METZENBAUM. I have no further questions.

Senator NUNN. What was your response to that? You did not jump, I assume.

Mr. BLETZ. No, sir, I did not. There were times during the last summer that my morale was anything but high. The only thing that became of Major Schreiber's little "chewing-out" sessions that I received, it just in my own opinion made me more determined that I was not going to become a part of his psychological games that he liked to play with recruiters; his false promises; his ability to implant fear into the recruiters. The very first session I ever had with the major was a private session, and he told me that he would ruin my career if I did not work for him. He felt that if you could not work for Major Schreiber you could not work for any other officer in the Marine Corps.

The very next month in part of the form letters that were used by the RS, the monthly evaluations, the only comment he made on my evaluation was that, "Your activity level is very dangerous to your career." I believe through the course of the summer he proved just how well he could take care of a person's career because I strongly believe that I would say 80 percent of the reason I was not allowed to reenlist in the Marine Corps was based solely on his comments.

Senator NUNN. Did you want to reenlist?

Mr. BLETZ. I tried, yes, sir. I was due to get out in January of this year. I submitted a reenlistment request in January and the matter was finally settled in June of this year. I was finally discharged.

Senator METZENBAUM. Mr. Chairman, at this time I would like to submit for the record a communication from the commanding officer, Headquarters and Headquarters Squadron of the 4th Marine Aircraft Wing, FMF—I think it is—New Orleans. This goes back to March of 1975, and the subject was "Request for appointment under the fiscal year 1976 warrant officer program for active duty personnel."

The first paragraph of that letter reads, "One, forwarded. Gunnery Sergeant Bletz is recommended with enthusiasm for selection for warrant officer." I think this gives some indication of his past record in the Marine Corps, if I may submit it for the record.

Senator NUNN. What is the date of that?

Senator METZENBAUM. This is March 6, 1975. So, actually his relationship with Major Schreiber is considerably after that.

Senator NUNN. That was before you went into recruiting?

Mr. BLETZ. Yes, sir. That was before I volunteered to go into recruiting.

Senator NUNN. Did you volunteer to go into recruiting?

Mr. BLETZ. Yes, sir, I did.

Senator NUNN. If you backed up and had to do it all over again, what would you do?

Mr. BLETZ. I would probably still volunteer, yes, sir. I believed at the time that it was an area where I could be of use. I came out in recruiting duty with the express desire to find recruits that I thought would meet the standards of the Marine Corps. What I had seen while on active duty, I did not have the impression that the quality was there from what we were receiving at the base.

Senator NUNN. Do you think the quality has improved now?

Mr. BLETZ. No, sir; I do not. It looks better, the scores might be higher, but I think there is enough deviation, or foul play in there, that they are very misleading.

Senator NUNN. So, you do not really think the Marine Corps quality has gone up in the past few years.

Mr. BLETZ. No, sir. I have a list of individuals that were recruited by myself. One case in particular, a Private Thomas whom I enlisted in Akron, who was afforded the use of the ASVAB answers. His scores show a very high—not very high, but a high score, 51 Armed Forces qualifying test score, and 113 general technical level, which is a great deal beyond this individual's capability, as indicated by the screening test that he was given at the office. But I do know that this particular individual did have access to the test.

Senator NUNN. You know that personally?

Mr. BLETZ. Yes, sir; I do.

Senator NUNN. Are you saying that this is not an isolated case?

Mr. BLETZ. No, sir; it is not.

Senator NUNN. Very prevalent?

Mr. BLETZ. As I stated earlier, sir, every recruiter in Akron had access to those answers.

Senator NUNN. Thank you very much, Mr. Bletz, we appreciate your coming here and we appreciate your cooperation.

Our next witness is Maj. Klaus Schreiber. Major Schreiber enlisted in the Marine Corps in 1959 as an enlisted man. As I understand it, Major Schreiber became a recruiting officer in 1975 in Richmond, Va., and from May 1977 until March 1978 commanded the Cleveland Recruiting Office.

Major Schreiber, as we did all other witnesses, I will ask you before you take your seat to hold up your hand. Do you swear the testimony you will give before this subcommittee will be the truth, the whole truth, and nothing but the truth, so help you God?

Major SCHREIBER. I do, Mr. Chairman.

Senator NUNN. Please be seated. Major Schreiber, before you begin your testimony, I want to advise you of your rights and obligations as a witness before the subcommittee. First, you have the right not to provide any testimony or information which may tend to incriminate you. If you do so testify, anything you say here may be used against you in any other legal proceeding. Do you understand that?

Major SCHREIBER. Yes, I do, Mr. Chairman.

Senator NUNN. Second, you have the right to consult with an attorney prior to answering any question or questions. Do you have an attorney with you today?

Major SCHREIBER. Yes, I do, Mr. Chairman.

Major MITCHELL. I am Maj. Stephen Mitchell.

Senator NUNN. Thank you, Major Mitchell.

Major Schreiber, if you would like to consult with your attorney before you answer any question, I hope you feel free to do so. That is your prerogative as a witness before our subcommittee.

Third, under the rules of procedure for our subcommittee, you have not only rights as a witness, but you also have obligations. You understand that you have taken the oath, and you have sworn to testify truthfully.

Major SCHREIBER. I do, Mr. Chairman.

Senator NUNN. If you do testify, you are obligated to provide truthful responses so as not to subject yourself to the laws and penalties regarding perjury. Do you understand that as an obligation?

Major SCHREIBER. Yes, I do.

Senator NUNN. Major, do you have any questions on your rights and obligations as a witness before the subcommittee?

Major SCHREIBER. No, sir; I do not.

Senator NUNN. I understand that you have a statement here, and of course, I believe you have been here for these hearings in which your name has come up many times. I certainly want to accord you the right to lead off with your statement if you would prefer to, before we get to any questions.

Would you prefer to lead off with your statement?

Major SCHREIBER. Yes, sir; I would.

**TESTIMONY OF MAJ. KLAUS SCHREIBER, U.S. MARINE CORPS;  
ACCOMPANIED BY MAJ. STEPHEN MITCHELL**

Major SCHREIBER. Mr. Chairman, I do not have a prepared statement, but I do have a few opening remarks.

I would like to say at the outset that I can conceive of few tasks, or few tasks more essential to the maintenance of the Marine Corps as this Nation's finest combat outfit than the recruitment of high quality men and women to fill its ranks. It is not an easy task or any easy job, nor a 9 to 5 job; it demands loyalty—and I personally think that loyalty is the highest quality a man can exhibit, particularly a Marine—it demands skill, and it demands a high degree of dedication which in practical terms means long hours of work.

At the same time recruiting, because of the challenge and because of its importance to the mission of the Marine Corps, is a particularly gratifying tour of duty. It is also a dangerous tour of duty, Senator.

When I took over as commanding officer, recruiting station Cleveland, in May 1977, its recruiting program was unsatisfactory in every category. The average number of recruits shipped to the recruit depots—or boot camps, as they are known—for the preceding 3 months was only 59 per month, about two-thirds of the station's assigned quota.

Morale of the Marines was questionable and the members of the Command Group—which includes the commanding officer, executive officer, and sergeant major—lacked operational experience. I immediately took steps to improve the situation at Cleveland, Ohio.

I did this first of all by establishing individual activity goals for each recruiter. We call that "management by objective", which included the number of telephone contacts; the number of appointments,

interviews, applicants tested, and so on. Never was a recruiter asked to produce a man, or in the vernacular, "a body". He was asked to make a certain number of phone calls, conduct a certain number of interviews and appointments, and the new marines would come by themselves.

To guard against attempts to slip unqualified applicants through the system I required that every applicant—every applicant—be interviewed by an officer of the command group; in 80 percent of the cases myself. I have personally spoken to approximately 2,500 new marines in a one-on-one situation, without the recruiter present.

During this interview the applicant was to be closely—and was closely—questioned as to his age; as to his education; his medical problems—both past and present—his involvement with law officials, or law enforcement authorities, and promises made by the recruiter.

The response of my recruiters to the new program was immediate and gratifying. In the 3-month period after I assumed command, the monthly average of recruits shipped to the recruit depots jumped to 132 recruits, which was 100 percent of the quota assigned to my station. The quality of recruits was high. I was leading at one time the entire Nation in the number of high school graduates acquired; and the substations displayed a fierce and competitive spirit.

Cleveland became recognized as one of the leading recruiting stations in the 4th Marine Corps District.

Apparently some of my recruiters—and a distinct minority at that—and I must remind all of the ladies and gentlemen in this room that I have 52 recruiters working for me, we have only heard from 3 this morning. Again, apparently some of my recruiters felt that I set unreasonably high goals and backed them up with threats of physical violence or career "ruination" if the goals were not met. To this I would simply say that it is an indispensable job of any leader to set goals and standards of his subordinates, and for his subordinates.

In the case of my recruiters, there is no doubt that I required them to work hard and to produce to the best of their capabilities. I am a hard man to work for, Senator. I make very many demands.

I would not—and I do not—and I never have tolerated laziness, apathy, and lack of motivation. I demand 150 percent of myself, and I demand 149 percent of my men. In every case, however, the goals I set for individual recruiters were based on my honest assessment, backed by 18 years experience as a Marine officer and Marine enlisted man, of that recruiter's capabilities. I have never asked a man to do more than he was capable of doing, though it may have been more than he wanted to do. There is a very big difference here.

I absolutely did not desire, nor encourage any of my recruiters to bend the rules in order to meet their goals, and I do not believe that any recruiter had, or has to bend the rules in order to make the quota. I would like to emphasize that again, I do not believe that any recruiter had, or has at the present time to bend the rules to make the quota.

My exhortations to recruiters who were not doing their best were sometimes couched in forceful language. We are in the Marine Corps, and that is the way we speak. We are not graduates from the College of the Immaculate Conception—we are the Marine Corps and we are proud of that.

But no one who has ever served more than a few days in the Marine Corps would ever have interpreted them as actual threats of bodily harm; it was a method of motivation. I never threatened to ruin a man's career for not making a quota. I did make it clear, however, that a recruiter's career was in jeopardy if he or she failed to produce because of lack of diligent effort.

Where recruiters failed to perform because of factors beyond their control—for instance, lack of communicative ability—I recommended their relief for the good of the service, without prejudice to their future careers.

Despite the claims of wide-spread compromise of the Armed Forces' vocational aptitude battery—that is known as ASVAB, Mr. Chairman—I am confident that little if any illegal coaching occurred. The reason I can be so confident is that an entirely different form of the test is administered to recruits when they reach the recruit depot—and we are the only service to do that, by the way.

For the 11-month period that I was at Cleveland the variance between the IQ—we call them GT scores—attained at the Armed Forces entrance and examining station and the scores that were subsequently achieved at the recruit depots, was one point on an average score of 105. That, Mr. Chairman, is well below the national average, and that is a statistic that I am personally very proud of.

With regard to the allegation of falsified police checks, I cannot believe that it was common practice for the simple and clear-cut reason that any deliberate concealment of a police record would almost certainly—not almost, would certainly—come to light by the time the applicant reached boot camp because of the FBI fingerprint check that is done. This topic was mentioned once before this morning, Mr. Chairman. A man can give us a police check. It may have—to illustrate for the Senators—the “M” scratched off, but 45 days later, Mr. Chairman, the FBI will give us the “ENTNAC” and the “M” is on. Then we investigate the recruiter, should he have chosen to falsify the initial police check.

These things have happened. They happened while I was the commanding officer in two instances, when I could demonstrate that a recruiter had deliberately falsified the police checks. He was fined, and he was given disciplinary punishment. The fines awarded by me as commanding officer ranged anywhere from \$200 to \$500.

Falsification of high school diplomas and attendance certificates are more difficult to catch. But in those cases where the documents were suspicious on their face, telephone checks were made with the school itself to verify whether the documents were genuine. In one case just a casual screening of the document indicated that it was obviously falsified. The man who had perpetrated that act was a Sergeant Holland, who was at that time one of my most productive, one of my most loyal, and one of my best-looking Marines. On top of that, he was the noncommissioned officer in charge of a substation.

I called in Sergeant Holland—and of course this is on file at Headquarters, Marine Corps—and I said, “Sergeant Holland, you falsified it, didn't you?” He said, “Yes.” I said, “That will be \$300.” Of course, I went through the regular routine, the regular legal procedure.

I hope, Mr. Chairman—no, I know, Mr. Chairman, that when this meeting is concluded that you gentlemen are convinced that the great—

the great majority of recruiters, or Marine recruiters, and also the recruiters of the other services, are honest, are dedicated, and are totally loyal. In our case they are totally loyal to our Commandant's demands for quality and for quantity.

Mr. Chairman, I will be pleased to answer any and all questions.

Senator NUNN. Major, in your recruiting, which did you put first, quality or quantity?

Major SCHREIBER. That is a difficult question to answer, Mr. Chairman. I have been directed by the Commandant of the Marine Corps that those two categories should fit together; and of course it is my mission, in accordance with the Commandant's wishes, to produce the highest quality of men possible.

Senator NUNN. In other words, you try to have both go together, is that right?

Major SCHREIBER. Yes, sir.

Senator NUNN. If you had to miss your quota 1 month in order not to take in marginal quality, did you miss your quota?

Major SCHREIBER. Sir, I never missed quota. If a man met the requirements laid down by the Commandant of the Marine Corps, then he was qualified to come into the Marine Corps. But, of course, we strove for the high school graduate, for the most qualified person available, lady or young man.

Senator NUNN. I am interested in these safety checks in terms of the Marine Corps procedure. You mentioned a minute ago that it would be impossible to eliminate a clean police record, to falsify that when a man really did have a criminal record, and the reason for that was what, again?

Major SCHREIBER. That is a very major point. If a man comes into the Marine Corps and the young man and the recruiter has chosen to falsify his police record, he is enlisted on the basis of a clean police record.

Senator NUNN. Right.

Major SCHREIBER. Forty five days later he may still be in town. To use the example, he may still be in Cleveland; or, he may in the meantime have left for the boot camp. But anyway, 45 days later we get a check which has been prepared by the Federal Bureau of Investigation, and they, of course, have the authority to contact the juvenile department, and the sheriff's department, whatever. This ENTNAC check will show the authorities in the Marine Corps that the initial police check was invalid. This is done in each and every case.

Senator NUNN. You say the FBI has access to the juvenile records and all the other records at every level of government?

Major SCHREIBER. Let me clarify that, Mr. Chairman. I do not know if the FBI has access to the various departments, I only know about the ENTNAC check. When it comes back it is much more complete than anything we can obtain on a local level.

Senator NUNN. We can question the FBI about that. Do they do that for the other services, too, or is it just the Marines?

Major SCHREIBER. I believe they do that for the other services too; yes, sir.

Senator NUNN. Do you get a check back from the FBI on every single marine that goes in?

Major SCHREIBER. Yes, sir, we do.

Senator NUNN. And the request that the Marines make to them is to check to see if there is any kind of criminal record anywhere, whether it is in the Federal courts, the city courts, the juvenile courts, the State courts, or whatever; is that right?

Major SCHREIBER. That is correct.

Senator NUNN. And it is your understanding that the FBI is all-inclusive; it does check every level of possible criminal violations?

Major SCHREIBER. That is my opinion, Senator.

Senator NUNN. Let me ask you one other question on the overall question of test scores. You are saying the Marines have a different procedure than the other services, and you are saying that Marines test twice; is that right?

Major SCHREIBER. Yes; we do.

Senator NUNN. You test once at the preadmission level, and that is the test we have been hearing about this morning in terms of allegations. You also check again when the marine goes in and actually reports for duty; is that right?

Major SCHREIBER. Yes, sir. The second test is administered at the second or third day when this young man or lady reports to boot camp. The tests are approximately of the same difficulty. They also test the same aptitude areas and we can obtain a correlation, coefficient between the two.

Senator NUNN. They are different tests but similar; is that right?

Major SCHREIBER. Yes, sir, they have to be different tests. The man will never be given the same test twice.

Senator NUNN. What kind of differential is required before that original test is deemed to be suspicious?

Major SCHREIBER. I will have to explain that in layman's language. If, for instance, a man scores at Cleveland a 110, he gets a 110 IQ, and he goes down to Parris Island or San Diego and scores a 77, then we become immediately suspicious. But, the cutoff is 30 points. If there is a 30-point difference between the first and second check, then the responsible recruiting station must answer in writing to the next higher command.

Senator NUNN. Our testimony this morning indicated that it was pretty easy to keep within that 30-point range, that you could put a ringer in, or you could coach him on the test and get him up to a reasonable level; and then send him off and unless it was more than 30 points, there was not any kind of discrepancy. The testimony was that it was easy to come within that range.

Do you agree or disagree with that?

Major SCHREIBER. I disagree with that.

Senator NUNN. What is the basis of your disagreement?

Major SCHREIBER. The way the testimony went this morning, I did not quite understand it because I am not a qualified psychometrist. But, it would be extremely difficult to adjust the test so that it would just barely qualify a young man. Nobody who testified in front of this committee this morning has qualifications which even meet those required for that task.

Senator NUNN. We have here a statement that will be given on October 12 by Major General Mundie, Commanding General, U.S. Army Recruiting Command, U.S. Army. This is testimony prepared to be

given at a later time, and I want to get ahead of him a little bit and just read to you the relevant parts. This has reference, basically, to the criminal records which you stated.

Recruiters ask applicants if they have even been arrested, charged, cited or held by law enforcement or juvenile authorities. Guidance counselors also discuss law violations with the applicant. An Entrance National Agency Check—ENTNAC—is processed on each applicant. The applicant is asked questions regarding any law violations by the ENTNAC interviewer. Thus, law violations are discussed on three separate occasions during the enlistment process.

Do you agree with that?

Major SCHREIBER. Yes sir, that is correct.

Senator NUNN. Well, "These record checks are processed on applicants who claim to have law violations that would need a waiver to enlist." Do you agree with that?

Major SCHREIBER. That is a new procedure. It was not in effect when I was on recruiting duty, Senator.

Senator NUNN. All right, I will continue to quote.

Department of Justice Order 60175, effective 19 June, 1975, precludes non-criminal justice agencies from having access to criminal records, except that recruiting services are entitled to adult felony conviction records.

I continue to quote.

This poses a problem for recruiters. Unless an applicant admits to a juvenile offense, recruiters have no way of knowing for certain if the applicant has a juvenile record. Often soldiers admit to a juvenile record after they are on active duty.

Now, basically, what is your comment on that?

Major SCHREIBER. That is correct, Senator, and again, that is one of the great shortcomings in our game.

Senator NUNN. Well, of course, your statement just a minute ago was, there was no way that this kind of fraud on criminal records could have taken place because the FBI did a check, and the FBI check would have shown any kind of record.

Major SCHREIBER. Yes, sir.

Senator NUNN. Now, what the major general is saying here is that the FBI does not have access to juvenile records.

Major SCHREIBER. They may not have access to juvenile records, in which case that information of course is not provided. Nobody has access to juvenile records, as far as I know.

Senator NUNN. That just about does away with your statement that these records could not have been falsified, does it not?

Major SCHREIBER. No, sir; it does not.

Senator NUNN. Why?

Major SCHREIBER. It means that when we get the ENTNAC back that this young man's entire past and youth has been traced up to a certain age; that the law enforcement agencies have been checked in every home, every place that he has lived.

Senator NUNN. Well, if you do not get the juvenile record, most of them, any offenses they would have committed would have been handled in juvenile court, based on the ages of them coming in. If you do not have a juvenile record, what do you have? The only thing you have is adult felony conviction records, according to the major general's testimony.

Major SCHREIBER. Unfortunately that is quite true, yes, sir. In most cases, when we are talking about 17- or 18-year-olds, it is a blank police check. We have to rely upon the testimony of the applicant.

Senator NUNN. That is not your fault, I mean, you cannot help that. I do not in any way say it is, but I am just saying that means that the testimony here this morning, in spite of the FBI check that is given when they get in the service, is entirely possible it could have happened; is it not?

Major SCHREIBER. Sure.

Senator NUNN. That the FBI check does not preclude this kind of falsification of criminal records.

Major SCHREIBER. Not in all cases, no, sir. It gives us more information than we would have been able to obtain on our level.

Senator NUNN. It is an additional amount of information and some cross-check, as far as adult offenses are concerned; but not as far as offenses committed while they were still juveniles.

Major SCHREIBER. That is correct, sir.

Senator NUNN. Major, where are you stationed now?

Major SCHREIBER. Sir, I am currently attached to the German General Staff College in Hamburg.

Senator NUNN. And how long have you been there?

Major SCHREIBER. Sir, I have been in Hamburg since approximately August 7.

Senator NUNN. August 7?

Major SCHREIBER. Yes, sir; of this year.

Senator NUNN. Where were your previous stations?

Major SCHREIBER. Sir, previous to that I was at the Defense Language Institute for approximately 3 months; before that, at Cleveland; before that I was the commanding officer of a recruiting station in Richmond, Va.

Senator NUNN. How many years have you served in the Marine Corps altogether?

Major SCHREIBER. Eighteen years, Mr. Chairman.

Senator NUNN. Where did you go to school? Did you go to college, did you get your degree?

Major SCHREIBER. Yes, sir; I received my degree in psychology at Chapman College on the west coast, sir.

Senator NUNN. How did you get your commission? Did you get your commission after you were already in the Marine Corps as an enlisted man?

Major SCHREIBER. Yes, sir. I was selected for the meritorious non-commissioned officer program.

Senator NUNN. Do you speak foreign languages?

Major SCHREIBER. Yes, sir; I am fluent in German.

Senator NUNN. In German?

Major SCHREIBER. Yes, sir.

Senator NUNN. How were you selected for the War College in Germany?

Major SCHREIBER. Sir, I am familiar with the process, but only my superiors can answer that.

Senator NUNN. Do you know how long ago that selection took place?

Major SCHREIBER. How long does the selection take place?

Senator NUNN. When were you first notified that you would be attending the War College?

Major SCHREIBER. I was notified, I would think, last December sometime. The exact date escapes me.

Senator NUNN. That is a German War College.

Major SCHREIBER. Yes, sir; it is.

Senator NUNN. Do they have any other American officers there?

Major SCHREIBER. We have one representative from each of the services, sir. This is the first time the Marine Corps has sent a marine officer to this school.

Senator NUNN. I assume that you welcome this opportunity.

Major SCHREIBER. The best thing that happened to me in 18 years.

Senator NUNN. Is it considered to be an honor when you are selected for that?

Major SCHREIBER. I consider it as such, yes, sir.

Senator NUNN. Major, do you have any kind of blemishes on your record, any kind of courts-martial, anything of that nature?

Major SCHREIBER. No, sir.

Senator NUNN. You described a minute ago the situation that existed when you went to Ohio and took over command of the recruiting command there. You found it to be in pretty deplorable condition as far as meeting quotas. Is that right?

Major SCHREIBER. That is correct, sir.

Senator NUNN. To what do you attribute that condition before you took over? You were there, and you made certain changes and corrections and so forth. What was the cause of the lack of fulfilling the quotas before you arrived?

Major SCHREIBER. Mr. Chairman, let me preface this by saying that success in a recruiting station is directly correlated to the degrees of dedication, motivation, loyalty, and product knowledge exhibited by the commanding officer—nothing else matters. The situation as I found it in Cleveland was that the recruiters were working long hours and everybody was extremely concerned in attaining their goals and making their mission, except that the recruiters, the basic recruiters had not been taught what to do, how to do it, and when to do it. That was my job. That is the job of any commanding officer.

As soon as I told them what to do, everything fell into place immediately.

Senator NUNN. What kinds of steps did you take to improve the situation, other than telling them what to do? What did you tell them to do?

Major SCHREIBER. I instituted my management by objective program. I told each individual recruiter to whom I spoke how many interviews I desired; whether he could accomplish that, how many interviews he needed, how many appointments he must have, and how many applicants I expected from him each and every month.

I instituted a system of this one-on-one interview which hopefully will be incorporated on a Marine Corps-wide basis in the very near future. I instituted a system that the commanding officer—not his representative—that the commanding officer—myself—talk to each and every man every day, usually at 7:30 at night.

Senator NUNN. You mean each recruiter.

Major SCHREIBER. No, sir, each NCO in charge.

Senator NUNN. Each NCO in charge?

Major SCHREIBER. Yes, sir, he had to talk to me every night.

Senator NUNN. How many of those did you have?

Major SCHREIBER. I had 13, Mr. Chairman.

Senator NUNN. How many people did you have under you all together?

Major SCHREIBER. I had 52 recruiters, Mr. Chairman.

Senator NUNN. Is the NCO in charge counted in that number?

Major SCHREIBER. If I wanted to count him, yes, I could; but usually he is not.

Senator NUNN. So, the 52 is in addition to the 13 in charge?

Major SCHREIBER. No, sir; the 13 in charge are included in the number 52; but they are not responsible for personnel attainment, they must run their offices.

Senator NUNN. How many other personnel did you have under you besides the 52; were there any clerical people, or anything of that nature?

Major SCHREIBER. Yes, sir, I had a regular personnel office, a supply office, operations shop, another 10 or 12 people, sir; and the officer selection team.

Senator NUNN. What is that, now?

Major SCHREIBER. That is usually two officers plus a couple of enlisted men who are responsible for the attainment of officer quota for the Marine Corps.

Senator NUNN. What were the results, Major, of the changes you made at the recruiting station when you took over?

Major SCHREIBER. The result was that Cleveland moved from almost last place into certain first place; that the quality went up; that we became a dependable station, dependable to such a degree that we sometimes had to help out other stations, or other districts, or other commands throughout the country.

Senator NUNN. Were you pleased with the results?

Major SCHREIBER. I was very much pleased, I still am; yes, sir.

Senator NUNN. Who was your commanding officer; who was your immediate superior when you were in this position?

Major SCHREIBER. Sir, my immediate superior was then, and is now, Colonel Kehoe; he still holds that post. He is a colonel in the U.S. Marine Corps, stationed at Philadelphia, Pa.

Senator NUNN. He was your commanding officer then?

Major SCHREIBER. Yes, sir; he was.

Senator NUNN. Why are you still under him if you are at War College?

Major SCHREIBER. I did not mean to imply that I was still under him. I meant to imply that the colonel is still in charge.

Senator NUNN. He was your commanding officer during the entire time you were in recruiting?

Major SCHREIBER. During the entire time I was at Cleveland, I believe he assumed his job as district director some time in June 1977.

Senator NUNN. Major, you know that it is against the rules and regulations for recruiters to have tests in advance do you not?

Major SCHREIBER. Yes, sir; I do.

Senator NUNN. That is a violation of the rules and regulations; is it not?

Major SCHREIBER. It is one of the most severe violations there is.  
 Senator NUNN. Had you ever had knowledge of any test being available to any of your recruiters?

Major SCHREIBER. No, sir; I did not.

Senator NUNN. No one ever brought that to your attention?

Major SCHREIBER. That a recruiter had the test, this illegal test in hand?

Senator NUNN. Yes.

Major SCHREIBER. No, sir, nobody ever has.

Senator NUNN. Have you ever had knowledge of any of the applicants to go into the Marine Corps, that were under your jurisdiction, having advance knowledge of the tests, or any part of the tests?

Major SCHREIBER. No, sir; I did not.

Senator NUNN. What action would you take if you had?

Major SCHREIBER. I would have had no choice. I am forced to immediately relieve this man from recruiting duty.

Senator NUNN. Were you ever aware of any police record coverups by the recruiters?

Major SCHREIBER. In two instances, and both times they were punished by nonjudicial punishment, article 15, and fines were levied on the two persons involved.

Senator NUNN. And one of those, I assume, was the one you told us about a few minutes ago; or was that a high school diploma?

Major SCHREIBER. That was a high school diploma; Sergeant Holland.

Senator NUNN. There were just two times during your tenure as a recruiting officer that you were aware of any kind of cover-up of police records?

Major SCHREIBER. Where I was able to prove that the recruiter with malice aforethought perpetrated that offense, yes, sir.

Senator NUNN. Were there other times when you suspected it?

Major SCHREIBER. There were other times when I had indications that something could have happened; yes, sir.

Senator NUNN. Did you check that out as best you could?

Major SCHREIBER. Yes, sir. I was required to. We call it an investigation. I must complete the investigation and forward the results to my higher headquarters.

Senator NUNN. During your tenure as a recruiting officer, did you ever have any awareness that there was collusion by police officials to conceal police records?

Major SCHREIBER. I was never aware, and such a thing has never happened.

Senator NUNN. Were you ever aware that any juvenile officials concealed records?

Major SCHREIBER. No, sir.

Senator NUNN. Are you saying that has never happened?

Major SCHREIBER. I am saying it has never happened.

Senator NUNN. How do you know it has never happened? Do you mean it never happened with your knowledge, or just never happened while you were recruiting officer?

Major SCHREIBER. It has never happened to my knowledge. Plus, I am so confident in my recruiters that I find it unbelievable that somebody could be so stupid as to approach a police officer in this matter.

Senator NUNN. You heard the testimony this morning. Are you saying you disbelieve that testimony?

Major SCHREIBER. I certainly do, Senator.

Senator NUNN. Do you believe that the recruiters here this morning were committing perjury?

Major SCHREIBER. I certainly do.

Senator NUNN. Major, do you know of any instances where recruiters have told applicants not to reveal a past history of marihuana use?

Major SCHREIBER. Yes, sir; I do.

Senator NUNN. Under your command how many times has that occurred that you know of?

Major SCHREIBER. Sir, that is one of the most common practices in the field of recruiting, mainly because any intelligent person in this day and age, 1978, realizes that the average 18, 19-year-old has experimented with, or has frequently used marihuana.

Senator NUNN. Why is that question on that application, then?

Major SCHREIBER. I have asked myself that question many times, Senator. I do not know.

Senator NUNN. Somebody up above you does not have much commonsense to put it on there, right?

Major SCHREIBER. That is correct, sir.

Senator NUNN. You are not sure who that is.

Major SCHREIBER. I do not want to find out, no, sir. [Laughter.]

Senator NUNN. Your statement applies, whoever it was.

Major SCHREIBER. Yes, sir.

Senator NUNN. What happens if they answer the question in the the affirmative and say they have used marihuana?

Major SCHREIBER. Then it depends on the frequency of the use and the time interval between the use and his enlistment in the Marine Corps. Within a year, I would have to request a special waiver case from our next higher headquarters.

Senator NUNN. Did Sergeant Bletz ever tell you that drug use was being covered up?

Major SCHREIBER. No, sir; he did not.

Senator NUNN. You say you had general knowledge that that kind of question usually was not answered very honestly; is that right?

Major SCHREIBER. Yes, sir, I had strong suspicions.

Senator NUNN. You had strong suspicions?

Major SCHREIBER. Yes, sir.

Senator NUNN. No one ever told you that.

Major SCHREIBER. No, sir. It is a fact of life, Senator. I mean, if I talk to 2,500 kids in the years 1977, and 1978, and 1976 and only about 15 say, "Oh, my God, I have only perhaps had it once, just right after high school graduation", I find it unbelievable. It is a fact of life, there is nothing I can do.

Senator NUNN. Did you ever tell your recruiters to ignore that question?

Major SCHREIBER. No, sir. It has to be asked. I, myself, had to ask it every time I talked to a man prior to enlistment in the Marine Corps.

Senator NUNN. Did you ever tell your recruiters to basically coach the applicants on that question so that they would not answer it in the affirmative?

Major SCHREIBER. No, sir, although I did say when we first started, I said, "Gentlemen, I think it is best that you ask this question in the following manner", that when he talks to a young man that he says, "Well, Mr. Smith, do you happen to smoke marihuana", and hopefully the man will say, "No."

Senator NUNN. I gather what you are basically saying is, if you rigidly asked that question and grilled every applicant on that question, you would not have many marines. Is that right?

Major SCHREIBER. I would have almost no marines. All the services would have almost no one.

Senator NUNN. Did you ever make any kind of a report to any of your superiors recommending that they change this question because it was really in effect corrupting the process?

Major SCHREIBER. Sir, this question has been discussed in great detail at the annual Marine Corps conferences at Parris Island, and my superiors knew that we experienced troubles in that field, and everybody was trying to do his best in this particular area. I do not know what has been accomplished, I have been away too long.

Senator NUNN. Major, were you ever aware of any falsification of educational documents or diplomas?

Major SCHREIBER. Yes, sir, in the case of Sergeant Holland who was subsequently punished by N.J.P. Otherwise, no, sir.

Senator NUNN. On no other occasion did that come to your attention.

Major SCHREIBER. Not while I was the commanding officer, although afterwards as the result of this most intensive investigation that has ever been held at a recruiting station, I was told that there were 15 cases where there were instances of false high school diplomas or false education verification letters. Yes, sir.

Senator NUNN. You are speaking of the Marine Corps investigation now?

Major SCHREIBER. Yes, sir, I am, in the Cleveland area.

Senator NUNN. Were you ever aware of any collusion between high school officials and recruiters to falsify educational documents?

Major SCHREIBER. No, sir, I was not; mainly because the chance to talk to high school officials in the State of Ohio was so far and few in between.

Senator NUNN. Were you ever aware that so-called ringers took mental and physical examinations for other people?

Major SCHREIBER. No, sir; mainly because a ringer would have been identified at the AFEES immediately. Every AFEES has instituted a system that they can check back on people, despite the identification they produce. A ringer cannot work and does not work.

Senator NUNN. How do they check?

Major SCHREIBER. Sir, they have a social security number, every man must produce a social security number; that goes on the microfiche and is researched every time a man comes up to test.

Senator NUNN. Do you think it is a foolproof system?

Major SCHREIBER. No system is foolproof, Senator, but that is the best system we have right now.

Senator NUNN. You are basically implying that nothing could have happened like we heard this morning because the system just is so good, that it will not allow that kind of problem?

Major SCHREIBER. Sir, I am saying, yes, it could have happened—anything can happen. But I am saying, no, it did not happen on that scale as was implied this morning.

Senator NUNN. What would prevent them from just bringing in somebody else's social security card?

Major SCHREIBER. That could be done, yes, sir. As I said, there are always ways and means to do those things. But, if the social security card has been used once before, of course, AFEES will immediately find that out.

Senator NUNN. Do they keep a record of every number?

Major SCHREIBER. Yes, sir, they do.

Senator NUNN. Did you ever inform your recruiters that once you interviewed a man no one would get burned from recruiting malpractice?

Major SCHREIBER. Yes, sir, I did.

Senator NUNN. What do you mean by that?

Major SCHREIBER. Sir, what usually happened before I reached Cleveland was that when an investigation came back from Parris Island, that the recruiter was held responsible. When I instituted the system of one-on-one, when I was the last person to talk to a young man, and I asked him every question that I considered pertinent and important to his enlistment; when I asked him, "Have you ever smoked marihuana? Are you 18 years old? Are you a high school graduate? Have you ever been in trouble? Have you ever been in the Army? Have you ever been in the Uganda National Guard" and this man said, "No," and I will put that down and he will sign each question. Then, if somebody asks me I can say, "Gentlemen, I am the last person to talk to this man. I am the one responsible, don't pick on my recruiter."

Senator NUNN. So, you assumed personal responsibility for every applicant that came through your command?

Major SCHREIBER. As the commanding officer I assume personal responsibility for everything, Senator.

Senator NUNN. We heard this morning estimates that as much as 50 percent of the number recruited by a particular recruiting official came in under false or fraudulent circumstances. What do you say about that?

Major SCHREIBER. Sir, the statistics that are available from the last Marine Corps investigation prove the opposite, of course.

Senator NUNN. You mean this most recent investigation?

Major SCHREIBER. Yes, sir.

Senator NUNN. We will be hearing about that on Thursday.

As I understand recruiting regulations, if an applicant brings in two additional recruits, he is awarded a private first class rating, rather than a normal private rating; is that right?

Major SCHREIBER. Yes, sir, it is.

Senator NUNN. Did you use this practice very frequently?

Major SCHREIBER. Certainly, as frequently, and I believe more so than any other recruiting station.

Senator NUNN. You found it a good practice?

Major SCHREIBER. It is one of the best practices available to us; yes, sir.

Senator NUNN. Did you ever award private first class to recruits who did not meet this requirement under the regulations?

Major SCHREIBER. Yes, sir, I did.

Senator NUNN. And what were those circumstances?

Major SCHREIBER. Sir, in the State of Ohio, despite the decision of the 111th Ohio General Assembly, and despite the 1974 decision of the Ohio Supreme Court which authorized the release of directory information to nonprofitmaking agencies—of which of course we are one—the school system in Ohio was completely opposed to our efforts to recruit people into the U.S. military.

Therefore, a list of high school graduates, or a list of high school seniors was the most important single document that we could possibly obtain. Out of a list of 2,000 high school seniors, based on my experience as a recruiting officer, I can guarantee my superior, I knew that I was going to enlist about 20 to 25 people into the Marine Corps.

If a young man, despite our intense efforts to obtain such a list was lucky enough to obtain one himself, by either going to the high school newspaper, or whatever source he had, then I thought that this particular list was worth at least two applicants. The man was brought in front of me by his recruiter who said, "Sir, this man did this and this", and I said, "Young man, you are now a private first class." But prior to him leaving for boot camp, this man had to have enlisted at least 2 men, sometimes as many as 19. Their names were on the required form and were attached to his package.

Senator NUNN. In other words, you made him a private first class before he actually produced those two additional recruits.

Major SCHREIBER. Yes, sir, I laid my hand on his shoulder and I immediately promoted him to private first class; that is correct. Of course, he did not get the warrant, I just said, "As of right now you are a private first class."

Senator NUNN. Did you have that authority?

Major SCHREIBER. No, sir, I did not.

Senator NUNN. Who has the authority to make someone a private first class? In other words, what kind of process would they have to go through?

Major SCHREIBER. Well, sir, I have the authority to make a private first class, I cannot make him a private first class on the basis of him providing a high school list.

Senator NUNN. In other words, he did not meet the requirement of producing two extra recruits.

Major SCHREIBER. He does not meet the requirement unless he produces two recruits; or unless he has been in the service before or has been through ROTC training, and things like that.

But in this instance I cannot promote the man if he has just given me a list; no, sir.

Senator NUNN. So, basically, what you did was a violation of the regulations.

Major SCHREIBER. That is correct, Senator.

Senator NUNN. Are you saying that basically you required them to fulfill this as a condition subsequent?

Major SCHREIBER. Yes, sir, I did. Before the man went on to boot camp he had his two enlistments and, as I said, he had more than two in every instance.

Senator NUNN. What would you do to them if they did not produce them after you had already made them private first class?

Major SCHREIBER. The man would not have been issued his warrant yet, but I would have given it to him, yes, sir. I promised the man.

Senator NUNN. In this case you are very frank in admitting that you did violate the regulations.

Major SCHREIBER. Sure did; yes, sir.

Senator NUNN. Did you ever report this or get permission from your superior officer to carry out this practice?

Major SCHREIBER. No, sir, I did not. I thought that my position as commanding officer and as a field grade officer in the Marine Corps independently, away from everybody, in Cleveland, Ohio, gave me enough authority to make up my mind on things like that.

Senator NUNN. You felt it was just as productive as the strict regulations about producing two new recruits.

Major SCHREIBER. It was much more productive.

Senator NUNN. More productive?

Major SCHREIBER. Yes, sir, it was.

Senator NUNN. How do high school graduates who enlist in the Marine Corps go about getting a list of all the other graduates?

Major SCHREIBER. They have various sources, sir. They can go to the high school newspaper and obtain a copy of every name. They can go to the person who manufactures the yearbook. They can go to the person who manufactures the class rings. They can go to the coaches; they can go to the people who sell tickets for the high school football games.

Senator NUNN. Are you saying the Ohio school system would not give you those lists?

Major SCHREIBER. With very few exceptions, they would not.

Senator NUNN. Is this up to each individual high school, or is this a systemwide rule?

Major SCHREIBER. Sir, that is usually the position of the school district, the superintendent of each individual school district; yes, sir.

Senator NUNN. How about access to high schools? We have talked about that some this morning. Did you and your recruiters have access to high schools in Ohio?

Major SCHREIBER. Again, sir, it is a matter of percentages. Yes; we had access to certain schools, but in the majority of the schools the Marines and any other service were not welcome. The great majority of schools, we could only go in there perhaps once a week, or once a month.

Senator NUNN. What would be your view, Major Schreiber, if there was a legal requirement that the schools let the recruiters come in on a periodic basis and let the students meet with them on a strictly voluntary basis? Would it be of assistance, if there were some kind of legal requirement that all schools would allow recruiters access for certain reasonable periods of time and let the students meet with them on a strictly voluntary basis?

Major SCHREIBER. Yes, sir, that would. That would be extremely beneficial to the entire recruiting service. Extremely.

Senator NUNN. What about if there were some kind of requirement that the lists of high school seniors be made available, would that be helpful?

Major SCHREIBER. Sir, something like that would change the entire recruiting picture for the country.

Senator NUNN. Do you think there would be a significant change?

Major SCHREIBER. I know it would be a significant change, Senator.

Senator NUNN. I have asked the manpower people in the military, orally, at several different hearings, and I have never gotten a response from the services on this. I have also put in the Defense authorization bill for this year, a requirement of a report from the Department of Defense, giving the effect of this and the ramifications of it, together with the pros and cons of it. I have never heard from the Pentagon on this, but it seems to me that is something they ought to be very interested in. Would you not think so?

Major SCHREIBER. Yes, sir, I would consider it critical.

Senator NUNN. Major, there have been a number of allegations made this morning about recruiting malpractice under your command. You have been sitting in and heard them all. Did you ever engage in the practice of pretending to swear-in applicants in the Marine Corps before all their qualifications had been determined?

Major SCHREIBER. Yes, sir, I did.

Senator NUNN. Give us in your own words why you did this, and what the justification was.

Major SCHREIBER. It was a gesture of motivation. It was a means to save the Government untold thousands of dollars. It was a means of getting the man back into my command, so that he would enlist in the Marine Corps; and the big difference was, there was never any illegal enlistment carried out. The man was given the oath, but he was not a member of the Marine Corps or the Marine Corps Reserve; his name was never entered into any type of computer system, which is a necessity; the date was never established, and it was strictly a very local affair which I considered essential to the well-being of my station.

Senator NUNN. Did you indicate to the particular individual that was being sworn in that he was a member of the Marine Corps?

Major SCHREIBER. No, sir. Every man knew that he was not a member of the Marine Corps, but as soon as the detail that prevented him from becoming a member was, as we say, "squared away," he would then become a member of the Marines. Yes, sir.

Senator NUNN. What did you give them in the way of explanation for swearing them in when they were not a member?

Major SCHREIBER. I said to the young man, "This is a gesture, the Marine Corps' compliment that you will be a Marine, and that you have nothing to worry about, and that this little defect, or this little missing document, will not prevent you from becoming a Marine."

Senator NUNN. Did this happen many times under your command?

Major SCHREIBER. Yes, sir, it happened many times.

Senator NUNN. Would you care to make an estimate?

Major SCHREIBER. I think the number that was mentioned this morning is probably correct.

Senator NUNN. 132 times?

Major SCHREIBER. I would guess so. I have no idea. I have not seen the list of the names that were submitted to the Senator.

Senator NUNN. Did you consider this to be within your authority under the rules and regulations of the Marine Corps?

Major SCHREIBER. Yes, sir, I did.

Senator NUNN. Is there a specific rule or regulation that gives you that authority?

Major SCHREIBER. No, sir.

Senator NUNN. Did you ever ask your commanding officer if you had authority to do this?

Major SCHREIBER. I am sorry, sir, I did not understand, sir.

Senator NUNN. Did you ask your commanding officer if you had the authority to swear people in before they were members?

Major SCHREIBER. No, sir, I never did, mainly because nobody was sworn in to anything.

Senator NUNN. Did you ever report to your commanding officer that you were swearing people in before they were members?

Major SCHREIBER. No; I considered that practice so insignificant I never mentioned it to anybody; no, sir.

Senator NUNN. Well, you must have thought it was pretty important, otherwise you would not have done it.

Major SCHREIBER. For R. S. Cleveland; yes, sir.

Senator NUNN. If it is insignificant, too insignificant to report, but so important that you did it 132 times, how do you explain that?

Major SCHREIBER. Sir, we are competitive. Why should I give away the things that I do and lose my first or second place in the standing among my friends?

Senator NUNN. You felt like this was a trade secret, then?

Major SCHREIBER. Yes, sir, sure was.

Senator NUNN. And you do not feel like you exceeded your authority?

Major SCHREIBER. No, sir; I do not.

Senator NUNN. Even looking back on it, you think you were within your authority?

Major SCHREIBER. Yes, sir; I do.

Senator NUNN. Major, did you swear in Don Beloit in this manner? Do you remember a young man by the name of Don Beloit?

Major SCHREIBER. No, sir; I do not.

Senator NUNN. You do not remember him?

Major SCHREIBER. No, sir; I do not.

Senator NUNN. Well, you would not remember all the 132 names anyway. He could have been one of these people, could he not?

Major SCHREIBER. He could have been, yes, sir.

Senator NUNN. Did you swear in this same individual again under the name of Chris Murray?

Major SCHREIBER. Sir, if I do not remember the first name, I would not be able to comment on the second.

Senator NUNN. You do not know anything about Don Beloit, or Chris Murray?

Major SCHREIBER. No, sir; I do not.

Senator NUNN. Did you have a conversation with Sergeant Robinette about a Michael Snead in which Sergeant Robinette told you he was not a high school graduate and would need a waiver?

Major SCHREIBER. I do not recollect that conversation; no, sir.

Senator NUNN. Could it have happened?

Major SCHREIBER. Yes, sir; it could have happened.

Senator NUNN. Do you recall seeing Mr. Snead the next day, or did you see his name on a list presented to you as a high school graduate that had no problems?

Major SCHREIBER. No, sir; that is the first time I became aware of this young man's name. It would be very easy to research.

Senator NUNN. We will take about a 10-minute break now as I will have to go vote.

[Whereupon, a short recess was taken.]

Senator NUNN. Senator Metzenbaum has a few questions.

Senator METZENBAUM. Major, you talked about the fact that there were only 3 recruiters testifying this morning and that you had 52. I think you suggested that they were perjuring themselves in some of their testimony. Now, would you say that they were just malcontents, or something of the kind?

Major SCHREIBER. It is difficult for me, Senator, to guess as to the reasons why their testimony differed from the truth. I do not know what motivates these three gentlemen. But, yes, basically I would say that they are malcontents. That is right.

Senator METZENBAUM. Would you say that the 49 others were then supportive of your recruiting practices; is that the implication, and these just happened to show up?

Major SCHREIBER. I would say perhaps not all 49, Senator, but a great majority of my recruiters, yes, sir, were supportive of our methods.

Senator METZENBAUM. You are aware, Major, that we have a sworn statement from Captain Fleming, describing similar practices under your command?

Major SCHREIBER. Practices similar to what, sir? I do not understand that question.

Senator METZENBAUM. Similar to some of the allegations in the statements that were made today by Mr. Robinette and by Mr. Bletz.

Major SCHREIBER. No, sir; I was not aware of that.

Senator NUNN. Is that statement in the record? I would like to take a look at that statement, is it in the record?

Senator METZENBAUM. Captain Fleming's statement?

Senator NUNN. Yes.

Senator METZENBAUM. It will be. Just a minute, I will get it for you.

Senator NUNN. I have not seen that one.

Major SCHREIBER. If I may ask the Senators, is that the captain who retired from the Marine Corps, sir?

Senator METZENBAUM. Captain Fleming talks about your RS swearing-in practices.

I have a statement, a sworn statement from Sergeant Goode, with which you are familiar, I believe. A sworn statement from Sergeant Bletz, who testified this morning, Mr. Bletz. A sworn statement from Sergeant Stidham; a sworn statement, or a statement from Mr. Robinette; a sworn statement from Sergeant Garmon; a sworn statement from Sergeant Greco; a sworn statement from now Mr. Sutton.

An oral statement from Sergeant Fosberg; an oral statement from Sergeant Bungo; an oral statement from Sergeant Foanachiari; an oral statement from Sergeant Venable; an oral statement from Sergeant Wethington.

Were all of these people under your command at one time or another?

Major SCHREIBER. Yes, sir; they were.

Senator METZENBAUM. Recently, at the request of this subcommittee, the Marine Corps conducted a study of their recruiting programs. On page 2 in response to allegations that undue command pressure caused recruiters to use fraudulent means to achieve recruitment

quotas, the study concluded, "The majority of Marines interviewed stated that the pressures generated were personal in nature, resulting from their determination to meet or exceed the assigned goals." Do you agree that most of the pressures placed upon recruiters are self-inspired? Or, do you think they come from up above?

Major SCHREIBER. The pressures come from up above. I would say, 60 percent come from up above; 40 percent are self-inspired; in our good recruiters 100 percent are self-inspired, Senator.

Senator METZENBAUM. Would you say that the pressures you put on your recruiters in Cleveland were normal for a Marine Corps recruiting station?

Major SCHREIBER. Sir, I do not know what the Senator means by the term "normal." It is hard to define.

Senator METZENBAUM. Well, was the same done by other recruiters and recruiting commanders throughout the country?

Major SCHREIBER. Again, sir, I have no basis for comparison, but talking to my fellow officers throughout the country, the basic indicator such as working hours; such as quota achievement figures were basically the same, yes, sir.

Senator NUNN. Excuse me just a minute, Senator Metzenbaum. I have read this, and I do not remember exactly what was said about it, but I do think just for the record it should be summarized. It is very complimentary of Major Schreiber. This is the statement from Captain Fleming. I believe it is "Captain Fleming." It is rather complimentary and is not in the nature of accusations. I think, since we have not put that into the record we probably should because it does rebut some of the previous testimony.

Senator METZENBAUM. Well, I think the point that I make here is that Captain Fleming also talks about the "false RS swear-ins."

Senator NUNN. I think that is alluded to in there, that is correct. But I think it ought to be part of the record so it can be reflected.

The overall report is on the positive side, not on the negative side, and I think that ought to be clear.

Senator METZENBAUM. Good.

[See statement by Captain Fleming. P. 92.]

Senator METZENBAUM. The Corps' report states that average recruiter productivity for fiscal year 1978, which it terms a successful year, will be 26.2 recruits per recruiter. That averages out to 2.2 recruits a month. What was your quota per recruiter for March, your last month as commander of the Cleveland Station?

Major SCHREIBER. Senator, my quota for each recruiter, not only during the month of March, but during every month, was as many as he could possibly enlist.

Senator METZENBAUM. And is it a fact that you were constantly shooting for five?

Major SCHREIBER. No, sir, that is not true.

Senator METZENBAUM. I think you wrote a memo, "To all hands. If you continue like this we will end up with a five. This has never been done in the history of the U.S. Marine Corps recruiting. It would be nice."

Major SCHREIBER. Yes, sir, I did. This was, I believe, during the month of March. When I said, "No, sir," I believe the Senator said,

"Did you constantly strive for five." No, sir, I did not. This was the single and only instance.

Senator METZENBAUM. An overship quota is an additional quota to make up for poor performance by other stations?

Major SCHREIBER. Either that, or increased manpower requirements of Headquarters Marine Corps level; yes, sir.

Senator METZENBAUM. Did you receive any overship quotas during your tour?

Major SCHREIBER. I received an overship quota during every month I was commanding officer on recruiting duty, sir.

Senator METZENBAUM. And what do they average for the entire period of your 11-month tour?

Major SCHREIBER. Sir, I do not have that figure. I would say approximately 15 per month, perhaps, would be a safe figure to mention.

Senator METZENBAUM. The record seems to indicate 113 percent, does that sound correct to you?

Major SCHREIBER. On the average, yes, sir. Some months it was more, some it was less.

Senator METZENBAUM. Did your predecessor have any trouble making his quota in Cleveland?

Major SCHREIBER. Yes, sir, he had severe problems.

Senator METZENBAUM. And his quota, he was making something like a 55.6 percent quota; and you were going to 113 percent.

Major SCHREIBER. That is correct, sir.

Senator METZENBAUM. How many hours a week did your recruiters work, on the average?

Major SCHREIBER. The formal working hours were established by myself and published, and were approximately from 11 o'clock in the morning until 7 o'clock at night. Those working hours were never adhered to. The average good recruiter, the average good recruiter who brought a man into the AFES processing station in the morning worked from approximately 4:30 in the morning until 2100, or in civilian terms, 9 o'clock at night.

Senator METZENBAUM. General Wilson has stated the policy of the Marine Corps, that no recruiter will be relieved for failure to make his quota.

Did you ever threaten to relieve a recruiter, or ruin his or her career for failing to make quota?

Major SCHREIBER. No, sir, I did not. I threatened to institute proceedings for their relief if they failed to achieve certain activity levels which I felt and they felt they could achieve, when they were first established. But, I was strictly forbidden by the Commandant of the Marine Corps and by my superiors to even mention, "this man is being relieved for failure to make quota."

Senator METZENBAUM. How many recruiters did you relieve during your tour of duty?

Major SCHREIBER. I do not have the figures available, but I am sure there is somebody in the back of the room. I would say in Cleveland approximately six. It could have been nine; it could have been four.

Senator METZENBAUM. Would 11 sound out of line to you—because that figure is in our records.

Major SCHREIBER. Sir, if you take into consideration those relieved without prejudice with an excellent fitness report, 11 would seem to be a good figure; yes, sir.

Senator METZENBAUM. You say you never put on excessive pressure. However, in a weekly success planner for the month of June 1977, you wrote one sergeant that, "If you don't get your referral percentage up I am going to break your arm." Is that normal pressure?

Major SCHREIBER. I do not look at it as pressure because that is a Marine Corps vernacular that he and I are accustomed to since the Marine Corps was first established.

Senator METZENBAUM. Well, that was a man who was relieved 2 months later; was he not?

Major SCHREIBER. I do not recall the name of the individual. It should appear at the top of the page, Senator.

Senator METZENBAUM. Was it a man by the name of Sergeant Turner?

Major SCHREIBER. Sergeant Turner, I do not think he was relieved, he was transferred to AFEES and he is still on his job, sir.

Senator METZENBAUM. "Turner, go recruit. You can manage your"—I am not sure what the word is, a word I cannot read—"nonproductive time. If you do not bring your referral percentage up I am going to break your arm." Signed, Major.

I guess I am going to have to leave to go vote also. I have some further questions. I will be back.

Major SCHREIBER. Surely.

[Whereupon, a short recess was taken.]

Senator NUNN. Until Senator Metzenbaum comes back and resumes his line of questioning, I think in fairness, we have had some very serious allegations against the major here today, and this is an affidavit from Mr. K. L. Fleming—and of course, I had not really seen the affidavit. This is a typed version. Do we have a sworn affidavit on this? This is a copy of the sworn affidavit, is that correct? Could Senator Metzenbaum's staff tell us who K. L. Fleming is?

STAFF. He was the executive officer during the tour of Major Schreiber. He works for some corporation in Cleveland.

Senator NUNN. He was a captain in the Marine Corps during Major Schreiber's tenure in recruiting. He is now out of the Marine Corps; is that right?

STAFF. Yes.

Senator NUNN. And I assume this came from a staff interview, and you reduced it to writing; it was an affidavit.

STAFF. That is right.

Senator NUNN. All right. I think it ought to be read into the record because there are serious allegations, and this is relevant to some of them—of course, some for better and some for worse. I think it ought to be up to everyone to make his own judgments. Do you know K. L. Fleming?

Major SCHREIBER. Yes, I do.

Senator NUNN. Was he your executive officer?

Major SCHREIBER. He was.

Senator NUNN. I will read the statement of K. L. Fleming of Shaker Heights into the record.

## STATEMENT OF K. L. FLEMING

I have been the XO of RS Cleveland for slightly over two years, during which time I worked for three excellent COs. From January, 1975, to approximately September, 1975, I worked for Lt. Col. Ray Findley, who in my estimation was one of the finest, most realistic men I will ever meet. He really kept a tight line over my recruiting practice, which might be considered suspect and all the recruiters knew it. Major Gordon Batcheller took over the RS in September 1975, and failed to realize the importance of a CO personally motivating the recruiters, and at the same time concentrated his efforts on too many of the things that do not bring recruits, such as pots, waxed vehicles, paper work, etc. Although a fine and outstanding gentleman, he failed as a recruiting officer and was subsequently transferred to headquarters in Washington, D.C.

Major Schreiber took over the reins in May 1977, at a time when RS Cleveland was virtually at the bottom of the pile. He assumed the air of a very knowledgeable and forceful recruiting officer immediately upon his entrance. His initial attempt at gaining control and turning the station around took the form of an all-day class which he personally administered to each RSS on an individual basis. During that time he thoroughly explained the amount of work he expected from the recruiters and the sales methods they were to use. Upon leaving this initial meeting, I am sure the recruiters knew that he had taken charge and was not going to accept anything less than complete dedication to duty. The recruiters were expected to start off with a prospecting system which centered around high school visits and telephone canvassing. Except when actually processing an interested applicant, they were encouraged to prospect and told how to use their time wisely. The station made quota that month and every month thereafter. This was due to extreme effort on everyone's part.

In my estimation Major Schreiber used a form of motivation individually tailored to each recruiter's need in light of his abilities.

Concerning illegal or fraudulent recruiting activities, Major Schreiber strongly encouraged all recruiters to bring before his attention all potential recruits whom the recruiters considered to be good candidates for enlistment, but who might seemingly have a record or something else which on first look would disqualify them. In effect, Major Schreiber did not want the recruiters to turn anyone away due to their own misinterpretation of the latest recruiting regulations. The added positive effect of this approach was that as long as the recruiter "played straight" with the RS we, when feasible, could go to bat for them. It encouraged openness and discouraged the majority of recruiters from attempting to hide an applicant's defects.

Recruiters were strongly warned not to try and hide anything about a recruit, so long as they were honest with Schreiber, so good. But he assured the recruiters he would not tolerate deception. To ferret out deception either myself, the Sergeant Major, or the CO, or the DPSO interviewed each applicant prior to his swearing in. At this time we counseled him on his job opportunities within the Corps, discussed departure dates, and informed him as to the penalties which would accompany a fraudulent enlistment. In particular, he was asked if he had been completely honest with us. Very few said "no."

At some point it was decided to conditionally enlist some applicants who were temporarily disqualified for minor things, such as over-weight, excessive pimples, a broken finger, pending a read-out of their eye sight. To my knowledge we never intended, nor did we ever ship a man to boot camp who had not been subsequently qualified by the doctor for enlistment. By doing this we saved time, money, and enlistments. It added flexibility without which we would have lost the applicant to peer pressure, etc. I believe that every man so enlisted was informed that, although he was enlisted, he would not be able to go on active duty unless the defect was corrected. I also believe we served the best interest of the applicant in that we were able to assign his schools and MOs and allow him to plan ahead.

We admittedly had to later discharge a few due to the fact that their defect could not be corrected. Whereas we later had to turn away a handful, it is my feeling that by doing this we saved 30 or more enlistments directly, and probably as many as 90 enlistments indirectly through that applicant's participation in the recruiting effort.

Concerning the slush fund, Major Schreiber mentioned to myself and the Sergeant Major that he would like to start one in order to have some free cash around for such things as poker parties, recruiters in need of a loan until payday—

Scratch the word "poker", it is supposed to be "Proleff"—

Major SCHREIBER. May I correct the Senator, P-o-o-l-e-e, those are the kids that have not left for boot camp yet. But, please, make sure it is not called a poker party.

Senator NUNN. The typed version has "poker party," but the other version, my staff tells me—what do you call it, again?

Major SCHREIBER. Poolee, yes, sir.

Senator NUNN. What does that mean?

Major SCHREIBER. That is a Marine Corps terms that means that the man is in the Marine Corps, but he has not left for boot camp yet; he has up to a year, of course.

Senator NUNN. I will start over on that paragraph.

Concerning the slush fund, Major Schreiber mentioned to myself and the Sergeant Major that he would like to start one in order to have some free cash around for such things as poolee parties, recruiters in need of a loan until payday, and other recruit/recruiter activities. All officers in the RS were encouraged to contribute their out-of-pocket expenses. I am not sure what the amount was, but the Sergeant Major also requested that the RSS contribute a certain amount of money. To the best of my knowledge at no time was there a substantial amount of money in the fund (perhaps \$300 to \$400), and it was never used for any personal gain. The fund gave us a small amount of flexibility that the inordinately encumbered supply system never could or would. To my knowledge the above two items were the only activities which could be classified as "suspect."

Just a few words in closing. Recruiting was the most difficult, pressure-laden job I have ever encountered. Some of this is due to our own (U.S.M.C.) inadequacies and shortcomings, but much of it is due to the fact that there is no interest among our public institutions to encourage young men and women to join the Armed Forces. Getting high school lists was a year's effort for me personally, and even then I only got about 30 percent of the names of graduating seniors. This was due to the Privacy Act and the fear of repercussions on the part of families who became irate when a recruiter had the audacity to call their home to ask if "Johnny" might be interested in the military.

I once wrote a letter to your office and to John Glenn, outlining in more detail the problems encountered, and only Glenn replied. His letter in effect said that the problem was imaginary. Ask the recruiters without high school lists how imaginary the problem is. A U.S.M.C. recruiter's work day began early in the morning and ended late at night, 6 or 7 days a week. Major Schreiber and the majority of his recruiters put their best efforts forth with dedication to making the bottom line. Their jobs were thankless and never-ending. For the most part there were open, honest dealings within the RS, with the exception of a few recruiters who took the lazy way out and did nothing (they were fired after considerable counseling and second chances), and the recruiters who tried to pull the wool over our eyes and enlist fraudulently due to their own inability to withstand the pressures of recruiting. Some of the latter recruiters got away with it, but very few due to the Corps' checks and balances.

In closing I just say that with a very few exceptions every man at RS Cleveland deserves a "hats off" for the total dedication and unflagging effort they exhibited in this very adverse recruiting climate.

KENNETH L. FLEMING.

End of letter. End of actual affidavit. Senator Metzenbaum, while you were gone, I just felt that this—for better or worse—ought to be put in the record in toto because we have had differing opinions here and different viewpoints. I think it does add something to the record. I would ask the clerk to put that in the record. I would put both versions in the record side by side, and they can be compared. I would ask the staff to make any necessary changes, so that the typewritten version is in compliance.

Senator METZENBAUM. I had asked you before about this question of your having written a note saying that, "I am going to break your arm." Did you threaten to choke another sergeant, Sergeant Petkowicz in a written memo?

Major SCHREIBER. That sounds familiar, I probably did. I do not recall it but, yes, sir, I probably did.

Senator METZENBAUM. And former Sergeant Bletz today told us that you told him he could jump out a window. Did you say that to him?

Major SCHREIBER. Sir, I did not listen to Sergeant Bletz testimony that closely.

Senator METZENBAUM. We have a statement here, which is in the record, of a Sgt. David Sutton, who was to be here today but could not get off work. In it he states as follows:

The policy was, get as many bodies as you can, and the procedure was to do whatever you had to get one. An example that comes to mind was, one month I was not up to par. I had two enlistments in and already it was the 20th of the month. I was ordered to report to the commanding officer, Major Schreiber. "I know that you are not working up to your full potential. You are the best salesman I have, and you are not doing—" "You are able to give me 6 a month clean and 6 a month dirty. I am not expecting 12 a month, but \* \* \*."

Now, what did you mean when you said six a month clean, and six a month dirty?

Major SCHREIBER. Sir, as part of the background, Sergeant Sutton, of course, had severe problems with alcoholism and he would have probably been denied reenlistment in the Marine Corps.

Senator METZENBAUM. I do not think that was the question.

Major SCHREIBER. Well, first of all, permit me, Senator, to give you the background and show these gentlemen where this information is coming from.

Senator METZENBAUM. But did you say to him that you wanted six clean and six dirty?

Major SCHREIBER. No, sir, I did not. I said, "Sergeant Sutton, you are the type of recruiter that can get me 6 clean, or probably 12 a month dirty," with no implication that I had any intention of accepting any of the dirty ones.

Senator METZENBAUM. What do you mean when you say "six dirty"?

Major SCHREIBER. It means that Sergeant Sutton was a very experienced recruiter, that he knew the ins and outs; that he knew all the shortcuts that were available to somebody who knew what he was doing; and that he could very easily have submitted no police checks, or false high school certificates.

[The sworn statement of D. Sutton follows:]

#### PREPARED STATEMENT OF D. SUTTON

DEAR SIRs: My purpose in writing this statement is not to discredit the Marine Corps, but to place in perspective the unfair treatment of recruiters as well as prospective applicants for the Marine Corps, and the armed forces. I hope it will also show the public some vital points about Recruitment Procedures and the present state of the military.

Having spent 2 years on Recruiting Duty from July 1976 to March 1978 I have found the attitude and actions of all persons involved in the Marine Corp. Recruitment Procedure deficient. Not only are the majority of procedures illegal, but the attitudes of the recruiters as well as the upper level commands are lacking.

The following portions of this statement should explain.

My commanding officer (Major Schreiber) not only set up a quota system of 4 enlistments a month (minimum requirement) but had weekly as well as daily quota's. If you did not meet your monthly quota within the first few days of the

month a weekly quota was set down. There was also a daily report sent in on, "How many bodies do you have coming down?" This system was backed up by an unethical but rather effective means of enforcement.

I.E. I did poorly and I was threatened that I would be transferred to Erie or Mansfield (A major move which would severely affect my personal life, financially as well as socially), or my "career would be ruined" by bad fitness reports. I would be carefully watched until I was caught and receive office hours for anything illegal I did (which I received and was fined \$250.00 for something commonly done) by recruiters.

On the other hand when I did well such as in Nov. 1977 I was top recruiter in the district with 13 enlistments, in one month, I received a certificate and one day off.

Working mandatory hours ranging from 5 a.m. to 10 p.m. 6 to 7 days a week not only made recruiting a near impossibility but severely hampered the physical and mental state of each recruiter. I.E. Alcohol and Drug Abuse, a high divorce rate etc. "We once spent 87 days without one whole day off!"

The majority of recruiters developed a split attitude. A long range attitude of I don't care. I'm getting out of the Marine Corps as soon as my enlistment expires as well as a short range attitude of having to make quota to keep the Commanding Officer and area Commander off my back and stay out of trouble. As one recruiter told me, "Your sole function as a recruiter is to get an enlistment regardless of what you have to do, or how you do it.

This brings us to the points of policy and procedure.

The policy was get as many "bodies" as you can and the procedure was do whatever you have to, to get one. An example that comes to mind was one month I was not up to par. (I had 2 enlistments in, and already it was the 20th of the month). I was ordered to report to the Commanding Officer Major Schreiber and I quote "I know you are not working up to your full potential. You are the best salesman I have and you are not doing shit! You are able to give me 6 a month clean and 6 a month dirty. I'm not expecting 12 a month. But!"

Many things could be said about the atmosphere and conditions of recruiting I.E. Long hours, poor vehicles, fear of prosecution for illegal enlistment procedures etc., but rather than expounding on these I would like to explain actual enlistment procedures.

To start, I would like to explain that each recruiter is formally trained in salesmanship and public speaking to give him an edge over the applicant. The majority of enlistments come from telephone canvassing and high pressure sales. Leads are generated by screening and canvassing high school lists which are illegally obtained by bartering school officials, stealing or obtaining them by what ever means are available, i.e., Sgt. Major McKullen traded 100 Marine Corps T-shirts for a high school list from Rhodes High School, using the vocational counselor as a contact.

Once the lists are obtained they are canvassed using lines such as your buddy in the Marine Corps sent me your name, I received a card stating you wanted information on the Marine Corps, etc. The eventual outcome being an interview.

When the applicant finally arrived at the interview any means the recruiter had available were used to convince him to enlist in the Marine Corps. These range from degrading him, his family or friends, to promising him jobs, schools etc. Which may or may not be available or he may or may not be qualified for.

Everything to this point is debatable as far as legality, being ethical, or proper. Procedures from this point on are illegal and everything but ethical.

Keep in mind the order of events varies on the applicant and situation.

The screening procedure normally starts with mental testing. The applicant is given a 45 question test. This is graded. If he passes promising jobs as previously described begins. If he fails and his score is "workable" a copy of the test or a portion of it is then used to "School House" or teach him the test, hopefully to arrive at him passing the test.

The second step in screening is reviewing the applicant's police record. This is done by tactfully questioning him. If he indicates he has a police record, he is told not to say anything and the recruiter will check it out. The recruiter then does what he can to get a clean police check. This is done by talking to a contact at the police or juvenile dept who seals the record for you, lying to records clerks about information needed, or fraudulently obtaining a clean check, i.e., typing the applicant's name in capital letters and double spacing between the middle name and last name, leaving the first letter of the last name off. Once the check is marked "NO RECORD" the 1st letter of the last name is typed in, giving the recruiter a clean check.

The third step "Moral Screening" is probably the most important and the most difficult to avoid complications with. The applicant is asked a series of questions about his personal background ranging from have you ever smoked pot to have you ever engaged in homosexual activities.

Explaining how to answer the questions is the most vital part of this procedure. The applicant is told "anything you answer yes on this form can and will disqualify you from entry into any military service. I have or will get clean police checks proving you've never been in trouble. Anything else you've done is between you and God. God won't tell on you. I don't care what you have done or do, pop pills, smoke dope, rob banks, that's between you and God. Like I said, he won't tell on you. Do you understand?"

The form is then read and marked appropriately.

The final step is to explain to the applicant how to answer questions when he is in the process of enlisting especially those asked by doctors. Having been briefed on his physical he is told how to answer questions asked about high school background, the number of dependents he has, once again his police background and any other area which might hamper his enlistment. These are frequently substantiated by phony certificates, letters etc. made up by the recruiter.

At this point he is sent through the processing (AFFEE's) center. If he qualifies he is sworn into the Marine Corp at the AFFEES building. If he needs more paperwork to prove he is qualified, he is taken to a different building (recruiting headquarters) and illegally sworn in. This is done so he won't change his mind about enlisting. He is told he is now in and obligated. He has no obligation at all at this point in that the procedure is illegal.

There are areas which I may not have mentioned or explained inadequately in this statement, but hopefully it will shed some light on the present state of the military recruiting situation.

The functioning of such a system is now and will continue to produce an inferior recruit going into the military. The ultimate consequence of this is a less capable and ready military force.

Sworn and attested to me on this 1st Day of 1978.—Leonard E. Tate, Notary Public For Cuyahoga County, O. My Commission Expires April 14, 1981.

Respectively submitted,

D. SUTTON.

P.S. This situation caused me to give up a career in the military after 7½ years! There are several other recruiters in the same boat!

Senator METZENBAUM. Sergeant Garmon, whose statement is in the record, said the following:

During June I started witnessing all kinds of abuses from Major Schreiber. Again there were abuses directed toward both applicants and recruiters. Major Schreiber had the saying, "I don't care how you get them, I want warm bodies up here." Major Schreiber would call, if you were not having a good month, threaten to relieve you and slam the phone down. This was a constant harassment.

Would you care to comment on that?

Major SCHREIBER. That statement is false, Senator.

Senator METZENBAUM. That statement also is false?

Major SCHREIBER. Yes. Not in its entirety, but the major points are misrepresented; yes, sir.

Senator METZENBAUM. Would you tell us which part is true and which part is false?

Major SCHREIBER. The mistreatment of recruiters and mistreatment of applicants; and the threat to relieve. I do not have the authority to relieve anybody.

Senator METZENBAUM. But the statement about all you want is warm bodies, would that be a true statement?

Major SCHREIBER. The term "warm body" is used by myself quite frequently. I could have said that, yes, sir.

[The sworn statement of Clanis Garmon follows:]

## PREPARED STATEMENT OF CLANIS R. GARMON

I, Gunnery Sergeant Clanis R. Garmon, being aware of my rights under Article 31 of the Uniform Code of Military Justice, do hereby freely and voluntarily make the following statement, certifying it to be true and correct to the best of my knowledge:

CLANIS R. GARMON.

On 18 February 1977 I graduated from Recruiters School and was assigned orders to Recruiting Station, Cleveland, Ohio. I reported to R.S. Cleveland and was assigned to a recruiting sub station located at Mansfield, Ohio. The Officer-in-Charge at that time was Major G. D. Batcheller. Until 1 May 1977 I saw or noticed no violations. On 1 May 1977 Major Batcheller was relieved and was replaced by a Major K. D. Schreiber. It was at this time that abuses and occurrences started at R.S. Cleveland.

On or shortly after 1 May, an all hands meeting was held at R.S. Cleveland for all recruiters to meet Major Schreiber and listen to his policies to bring R. S. Cleveland to the number one Recruiting Station in the Marine Corps. At this meeting, I recognized Major Schreiber as the man I talked to just a few days before graduating. At this point, I would like to enlighten you on a comment Major Schreiber made when visiting me at recruiters school. I am mentioning this so you can have a better understanding what this man is like.

Major Schreiber was sent from 4th Marine District as a representative to talk to all recruiters being assigned to 4th District. The purpose of his visit was to pass on information what recruiting in the 4th district was all about and what we could expect. There were approximately fifteen recruiters going to the 4th district and we assembled together in one room and was called in separately to see Major Schreiber who was in another room. I was the second man sent in to be seen by Major Schreiber. When I went in, he introduced himself and made the following remark, "How many niggers are out there?" I was caught off guard and said two or three. At this time he said, "I hate niggers as recruiters, they only recruit dumb niggers like themselves." This I discovered later was just a start of his open mind opinions.

At the meeting on the 1st of May or shortly thereafter, Major Schreiber described his procedures for making R.S. Cleveland number one. He made it very clear to everyone that he was the best recruiter in the Marine Corps, he was the boss, and his policies would be enforced. When I left the meeting that day, I was very impressed with his ideas on recruiting and how he would meet our quota. My first opinion of this man would in time turn me one hundred eighty degrees.

By the end of May, I started witnessing abuses to both recruiters and applicants.

Major Schreiber had a policy that before any recruiter could leave the office at the end of the day, either himself, the executive officer, or Sergeant Major would call, ask how many phone calls were made, how many appointments we had set up, and how many applicants was coming up the next day. If they weren't satisfied, we would stay and continue making phone calls till they called back to tell us to go home. Sometimes we didn't leave the office till past 2200 hours. Most of my work days began at 0800 hours but there were many which required getting up at 0200 in the morning to take applicants to Cleveland.

I finished the month of May with five accessions but something started coming over me the first part of June. My marriage was on the rocks because of the hours I worked, and Major Schreiber was making me mad because the majority of my applicants in May came back saying that they didn't get the jobs they wanted or were pressured into going to boot camp earlier than they wanted. I had this feeling they were blaming me and I felt like I lied to them. I started to really resent recruiting duty because I was getting caught in a web of guilty feelings toward my family and the applicants.

During June I started witnessing all kinds of abuses from Major Schreiber. Again they were abuses directed toward both applicants and recruiters. Major Schreiber had this saying, "I don't care how you get them, I want warm bodies up here." Major Schreiber would call if you weren't having a good month, threaten to relieve you, and slam the phone down. "This was a constant harassment." I only put two men in during the month of June but I decided to stay in the office while Major Schreiber talked to them. This was after they passed their mental and physical exams at AFEEES. I wanted to see with my own eyes what kind of pressure and lies Major Schreiber put on or told these young men.

Again let me stop, explain, and bring out a point. Every day we recruiters would receive what is called a daily Bulletin Report. This report would tell you what job guarantees were open and for which months up to six months. So when an applicant asked if he could have a certain field and go in a certain month you could tell him yes or no. If I said yes, I would tell him he would have to pass the mental exam with a certain score first.

One of my applicants in June was Brian Newell from Bucyress, Ohio. He was wanting Electronics and was wanting to leave in November. Again I was present during the interview with Major Schreiber. Major Schreiber said, you can have the Electronics field but must go in July because it's closed in November. I was wanting to say something but knew not to open my mouth. Brian started saying he wouldn't go in and Major Schreiber promised him PFC if he would go in July. After a lot of talking and pressures, Brian finally agreed to leave in July. My second applicant was treated basically the same way, Major Schreiber lied and pressured him into going when Major Schreiber wanted him to go.

Brian Newell is another story so I will go into his story at this point. Come July and time for him to leave, Brian refused to leave. He told me he was pressured in signing his contract and wouldn't leave. Major Schreiber told me to tell him if he didn't go, he would have the FBI to pick him up, which I did. Brian again refused and his dad got a lawyer. "The lawyer must have not been knowledgeable about what Major Schreiber could actually do or could not do." Mr. Newell and his lawyer met with Major Schreiber and Major Schreiber told them if Brian would go into the reserves he would not prosecute him. So in time, Brian went into the reserves.

At a meeting during the last part of May to the best of my knowledge, Major Schreiber made a statement to all the recruiters present, "We have a female coming to R. S. Cleveland as a recruiter and I've tried to hard not to take her but have been told I must anyway." "I haven't seen any female that could recruit male Marines and I don't want her." Shortly there after, a Sergeant Fornachiari reported to R. S. Cleveland. Before she arrived Major Schreiber informed our recruiting substation at Mansfield she would be assigned to us. I remember clearly the day she reported in at Mansfield, because she reported in crying. Major Schreiber actually told her in short what he had told us other recruiters, that he didn't want her but was stuck with her. Major Schreiber with in a few months made her life as a recruiter very miserable for her. There were two occasion that Sgt Fornachiari came back crying from seeing Major Schreiber. By July Sgt Fornachiari was relieved and waiting orders.

I won't go into detail about what all happened with Sgt Fornachiari because most is only what I heard from her. I am assuming that Mr. Phillips has a statement from her. I am trying to keep this statement on what I know based on facts.

In June, we sent David Johnson of 3509 St Rt 602, Bucyrus, Ohio 44820 to Cleveland to enlist. David failed the physical at AFEES due to ACNE. David was so hurt, he personally called Major Schreiber. Major Schreiber called our office and said to send the man back to see him. On 8 July 1977 we sent David to Cleveland by bus and he returned that night saying he was in the Marine Corps.

On the 8th of Sept. 1977 the major called me and told me to bring David back up to Cleveland for another physical. I couldn't understand why David had to be examined but personally took him back up. David was examined and told he was permanently disqualified. I got curious and opened his enlistment package. There inside I found an enlistment contract with Major Schreiber's signature on it. I asked David if he had seen a medical doctor on the 8th of July. David said no that the Major just took him in the office and swore him in.

Only the AFEES Commander has the authority to enlist anyone after he is fully mentally and physically qualified. During some investigating and talking to GySgt W. Boyd, I was told Major Schreiber did this to David so as to not lose him to another service at a late date. Major figured in time he would eventually pass the physical exam, be enlisted legally by AFEES with the same reporting dates to boot camp, and David would not know different. Gy Boyd also stated the major did this with over weight applicants as well. Illegally sign them up, have them weighed periodically and once they passed, would be signed up legally, thus them not fully understanding what had happened.

Presently, David is in the U.S. Navy. During July 1977, we had four applicants kicked out of the major's office. He was putting so much pressure on them, they refused to enlist. I had a statement from each individual but the District

Commander kept them when I requested mast on 20 Aug. 1977. I did not have time to make second copies. The following are names, addresses, and phone numbers of these individuals. They will enlighten you to what happened in Major Schreiber's office.

David Deboard, Mt. Vernon, Ohio.

Howard Guiber, Mt. Gilead, Ohio.

Tim Hawks, Edison, Ohio.

During August 1977, I had a recruiter caught forging a police check on an applicant. His name was SSgt John Medeiros. I notified Major Schreiber of the incident and he said he would handle the problem. All that was done, was a verbal reprimand by Major Schreiber. Within a two month period, SSgt Medeiros had several investigations held on him. Each time, nothing, supposedly could be found to substantiate the allegations.

SSgt Medeiros maintained a 6.0-7.0 accession average. I watched him closely but he never let me listen in on talks or screening of applicants. He had one of the worst recruit training dropout records of all recruiters at R. S. Cleveland as the records will verify.

SSgt Medeiros had a problem, grabbing our secretaries. They complained constantly of him trying things with them. He kept denying each incident. I approached Major Schreiber with the problem and he thought it was funny. Finally SSgt Medeiros was charged by civilian authorities with rape.

Major Schreiber talked the authorities into putting him on a counseling program. To this day, SSgt. Medeiros is still recruiting and I don't know if more allegations has arisen since I left.

I tried getting an investigation started at R. S. Cleveland concerning recruiting policies through a Request Mast to Col Kehoe, the 4th Marine Director on 20, Aug. 1977. Nothing was done concerning my allegations except starting the ground work to my relief that would come three months later.

When I returned from seeing Col. Kehoe, Major Schreiber told me that my days would be numbered as a recruiter.

On 3 November I was relieved by Major Schreiber as a recruiter. On 3 Dec. 1977, I wrote the Inspection General, HQMC a letter again requesting an investigation but again my efforts were fruitless.

On 27, Dec. 1977, I was on a verge of a nervous breakdown and I was admitted to Breakesville V. A. hospital for two weeks. I was even contemplating suicide by the pressures Major Schreiber had brought on me. I was sick at what was going on up there, no one would do anything and Major Schreiber was possible ruining by M. C. Career.

There is so many things that went on at R. S. Cleveland that I can't substantiate. Things that was said, things that were done that I can't prove. I only hope this statement and statements of others will make a more clearer picture of what really happened at R. S. Cleveland.

CLANIS R. GARMON, XXXXXXXX  
Gy Sgt. USMC.

Subscribed to and sworn before me this 29th day of September 1978.

P. T. HENRY,  
Captain, USMC.

Senator METZENBAUM. Did you give recruiters ASVAB-5 books; is that the procedure that you followed?

Major SCHREIBER. ASVAB?

Senator METZENBAUM. Yes.

Major SCHREIBER. No. 5, that was, I believe, in the Marine Corps. The term escapes me right now. Is it the ASVAB-5?

Senator METZENBAUM. ASVAB, A-S-V-A-B.

Major SCHREIBER. That is the counselor's copy, I believe. Yes, sir, I did.

Senator METZENBAUM. Now Sergeant Goode says:

Major Schreiber on many occasions informed us that the ASVAB-5 books being issued for schooling purposes were illegal. Yet, he never counted the books he had given the recruiters. He also informed the NCOIC's to brief the hell out of prospective applicants on AFEES processing to help a reject over on the processing steps. If you, as a recruiter, lost an applicant at AFEES, Major Schreiber would ream the recruiter for stupidity.

Does that statement sound accurate to you?

Major SCHREIBER. The first part, the counselor's copy of the ASVAB-5 was distributed by me to the recruiters. At that time that was a legal procedure.

Senator METZENBAUM. Go ahead.

Major SCHREIBER. The ASVAB-5 was subsequently called back, was retracted on orders from the district. I immediately did so and turned in all copies to higher headquarters.

The EST is called the enlisted screening test; we have two versions. I told my people to use the EST-5 and 6 to the maximum extent possible. Yes, sir; that is also a legal procedure and fully endorsed by headquarters.

Senator METZENBAUM. Let me ask you, Major Schreiber, how many recruits would you get a month under your command?

Major SCHREIBER. How many would I enlist in the Marine Corps on the average, sir?

Senator METZENBAUM. Yes.

Major SCHREIBER. Anywhere from 180 to 212, sir.

Senator METZENBAUM. And that would be an average, counting only working days, of about eight or nine a day, something like that. Is that about right?

Major SCHREIBER. Yes, sir. We usually have 21 processing days a month, sir.

Senator METZENBAUM. Now, there have been introduced into evidence a lot of false certificates from schools; there has been introduced evidence with respect to criminal records being covered up, medical records being covered up. In what manner, when you would get these recruits, did you ever check to see whether they were legal recruits and had conformed or not; or were you just satisfied to get the recruits in? Did you do anything on your own to verify the recruits?

Major SCHREIBER. Sir, my operations section had strict orders, and they were required not only by myself but from higher headquarters, that a recruit's package—I will call him a "recruit," but he is really an applicant—his package was checked four different times. First of all by the recruiter; then by his NCOIC, his next superior; then by my operations section, and finally by the AFEES liaison who was at my time a master sergeant in the Marine Corps.

Senator METZENBAUM. If you did all of that, how did you account for the fact that we have a list of recruits that were accepted, who had criminal records; we have here a list of recruits who were accepted with false certificates; we have here a list of recruits who were taken in who had medical disabilities or mental disabilities. How do you account for the fact that when you went through all of these steps they still got by you. Or, is there something implied in this, that this was part of your competitive drive, that you wanted to be the best recruiting officer in the entire Marine Corps?

Major SCHREIBER. I was the best recruiting officer in the Marine Corps, Senator.

Senator METZENBAUM. Well, were you the best recruiting officer—excuse me, do you have more to answer? I did not want to interrupt you.

Major SCHREIBER. I am sorry, also.

Sir, to get back to the Senator's basic question, even though we made every attempt to screen every document that is required by cur-

rent regulations, if you have a forged document, as somebody had, of course, put into the record, it is hard to see. Sir, we do not have the time, we do not have the personnel to screen every piece of paper as to its authenticity.

Senator METZENBAUM. Well, my staff, which does not really have the number of personnel working with it, in fact, quite the contrary—did not have too much trouble in verifying the fact that many of these school graduation certificates were totally fraudulent, merely by picking up the telephone and calling.

The Marine Corp investigation did not have too much trouble in determining that recruits had been accepted with covered-up medical records.

It was easy for the Marine Corps to come out there for a couple of days to find that out; and for my staff, which was really one person with perhaps a little help from our local people in Cleveland to find these kinds of things out. And yet, you, who had charge of this operation and could have had another member of the Marines checking, never did that.

As a matter of fact, you heard Sergeant Thompson this morning, who was not under your control, indicate the Marines really never wanted to learn about this kind of thing. Now, that is the position that I think this committee is in—to determine if the Marines really want to sweep the problem under the rug?

Major SCHREIBER. Yes, sir, if I may reply in detail to the Senator. First of all, when we talk about “many false documents,” we talk about 15 out of 276 checked, I believe. Second of all, I do not have the time, neither does my staff, to check every available document and trace its source. We do not have the time. We work 12 and 14 hours a day, sir, and that is just regular work.

I would have done so, I would have immediately done so, had I been notified of the slightest trend affecting my command. Had Parris Island, S.C. said to me, “Major Schreiber, there are indications that your high school certificates are fraudulent,” I would have been forced to immediately hold an investigation. At that particular point, Senator, I can assure you that we would have gone over every available high school document that we had in our possession.

But there were no trends, Senator. My station was—and still is, always has been—a clean station. Yes, some things happened, but they were the results of individual people and have nothing to do with the command.

Senator METZENBAUM. Well, Major, you yourself testified in answer to the chairman of the subcommittee that you set up these false swearing in ceremonies, that you really did not want to share that information with other recruiting stations. You knew that there was something—if it was not fraudulent, it certainly was deceptive to indicate to the marine that he was actually in the Marine Corps, and in some instances, I guess, it would cause some personal trauma to him when he found that he was not. And in other instances, it really was not a recruiting practice, it was a recruiting—I do not know what you would call it, but it certainly has all the elements of impropriety about it to swear somebody into the Marine Corps that really is not in the Marine Corps at that time. Is it not?

Major SCHREIBER. Sir, he was notified of that fact, as I brought out quite clearly. We told that young man, "You are not in the Marine Corps."

In the same vein, Senator, may I at this time address myself to the chairman here, we have a problem that has not been addressed until this particular time. I do not know whether the chairman knows of this, but if a man is fully qualified, may he be Army, Navy, Air Force, or Marine Corps, he passes his physical which, I believe, costs somewhere in the neighborhood of \$600, including an eye refraction, a urinalysis, full X-ray, EKG, and EEG, psychiatric examination. Then the man has of course been tested and goes through the entire process. He is sworn into the respective military service.

Five minutes, Senators, after this man is sworn into the service of this country, he can stand in front of me and say, "Hey, Major, the only reason I did this is because I wanted to find out if I am healthy, and you can take your Army, Navy, Air Force and do whatever you want with them, I am out."

And the only recourse I have, gentlemen, is to take a piece of paper that unfortunately has the name "United States Marine Corps—Honorable Discharge" printed on it, and I have to give the man that certificate. And that happens 1,000 times a month throughout the United States.

Senator METZENBAUM. You said that the individual was advised. I have in my hand here a letter signed by a David C. Johnson. This was given to Congressman Guyer, not to me. He says, "These are some of the questions I still have unanswered, regarding my involvement with the Marine Corps."

I think he is still in the U.S. Navy. "I feel that I was sworn in illegally and was deliberately misled so I would continue to work for the U.S. Marine Corps in the hope that I would eventually be qualified for enlistment in the Marines. I feel they used illegal means to convince me that I was in the Marines, and very probably I am not the only individual that this has happened to. I feel something should be done about it."

Now, that individual was not advised that he was being sworn in illegally—this is dated May 18, 1978. Nobody told him that this was a make-believe swearing-in.

Major SCHREIBER. Sir, despite the counseling by my counsel here, the counseling I have just received, the way I would like to reply here, I am very familiar with Mr. Johnson. I am very familiar with Mr. Johnson's family. He, as everybody else, had been told about this; perhaps he misunderstood.

But there were some things in this case, perpetrated by my command, which were not right, and for which I take the responsibility.

Senator METZENBAUM. From the Director to the Commandant of the Marine Corps, I have here a document dated June 9, 1978, that says, "Mr. Johnson was placed in the DEP, given a shipping date under the assumption that his contract was legal. Due to the incompleteness of his contract, however, it was not legal."

Now, you say you are familiar with this case, but the fact is that somebody in the Marine Corps checked into it and came to that conclusion.

Did you give these men a certificate of acceptance when they were sworn in under these circumstances?

Major SCHREIBER. I do not believe so, Senator. No, sir, I do not think they did.

Senator METZENBAUM. I am reading from a document that is engraved, and it is called "The United States Marine Corps—Certificate of Acceptance. This is to certify that David E. Johnson has successfully passed the required mental, moral, and physical examination and has been accepted for enlistment in the U.S. Marine Corps. The defense of our country and our freedoms is the duty and privilege of every citizen. The Marine Corps has a proud tradition of outstanding service to our country in peace and war. Voluntary enlistment in this elite military organization is a clear demonstration of the American qualities of patriotism and loyalty."

I will show that to you and ask you, I am not positive it is your signature.

Senator NUNN. The clerk will show that to the witness.

Major SCHREIBER. I do not think that is necessary, I am familiar with that type of document, sir. Thank you.

Senator METZENBAUM. Is that your signature?

Major SCHREIBER. Yes, sir, it is.

Senator METZENBAUM. And are these the kinds of documents that were given to the individual when he was falsely sworn into the Marine Corps?

Major SCHREIBER. Those certificates of acceptance are signed by myself. Once a month I signed 300 copies.

Senator METZENBAUM. But are these the certificates that are used when the Marine enlistee is falsely sworn in, or are these the certificates that he gets when he is actually sworn into the Marine Corps?

Major SCHREIBER. As I stated earlier, I do not think that these certificates were usually given to the people whom I swore in, not falsely sworn in, prematurely sworn in.

Senator METZENBAUM. Prematurely.

Major SCHREIBER. Yes, sir.

Senator METZENBAUM. But you signed 300 of them a month?

Major SCHREIBER. Approximately, yes, sir.

Senator METZENBAUM. Then 300 applicants were sworn in, in those so-called "premature swearing-ins"; they received a document that has the Marine Corps emblem on it; very legal looking, and it certifies that the applicant successfully passed the required mental, moral, and physical examinations and has been accepted for enlistment in the U.S. Marine Corps.

And now you are saying to me, under oath, that that Marine is told at that time that he really has not been sworn in; is that your testimony?

Major SCHREIBER. Sir, as I just said, I do not know if Private Johnson had been given this document.

Senator METZENBAUM. I am not talking about Private Johnson, I am talking about all of the others who were sworn in prematurely and given these documents.

Major SCHREIBER. As I said before, Senator, I do not think they were given these documents.

Senator METZENBAUM. Well, who got the 300 that you signed every month?

Major SCHREIBER. Well, it may have been 200, it may have been 400. I am talking about a stack of documents like that, that is administrative procedure.

Senator METZENBAUM. Whatever the number, who got them? Where did they go?

Major SCHREIBER. The people who enlisted in the Marine Corps, sir; that is a common practice. That is just a nice gesture on our part.

Senator METZENBAUM. And they were given at the time of these premature swearing-ins.

Major SCHREIBER. As I said for the third time, Senator, I do not think they were. No, sir.

Senator METZENBAUM. Well, David Johnson was prematurely sworn in. There is another document here from the commanding officer, the Director, 4th Marine Corps, District 31, June 7, 1978. "It is the opinion of this officer that a legal contract was not negotiated in this case. Major Schreiber is no longer with this command and I cannot comment on what may have transpired in his office."

Now, Johnson apparently was sworn in. It was found by the Marine Corps that it was not legal. He did receive this document, and you are saying to us that those who were prematurely sworn in did not receive those documents. Now, will you please reconcile that for me?

Major SCHREIBER. I have difficulty following the Senator. What I already said, sir, was that there were things in this particular case—that is why I am so familiar with it, out of 3,000 enlistees—that should not have been done. I am very willing to take the responsibility for it. The only thing I would like to say, I personally was under more pressure by Mrs. Johnson than I am under pressure from the Senator at the present time.

Senator METZENBAUM. Well, tell us what was special about the Johnson case?

Major SCHREIBER. The Johnson case, Senator Metzbaum, consumed untold hours of my staff. If I recall correctly, and I am sure I do, Mrs. Johnson desperately wanted her son to enter the U.S. Marine Corps. He was temporarily disqualified because of acute acne. When he did not pass the second physical examination, I think she wrote to everybody—to my bosses, to the Commandant—and there was just a constant hassle in replying to these things. I personally talked to Mrs. Johnson. I traveled to Mansfield, Ohio, explained the situation to her; said that the Marine Corps would do everything possible to reexamine her young son.

Senator METZENBAUM. Working from your office's Daily Bulletin, I can account for 132 of these false—as I would call them—or premature swearing-ins over the period February 17 to June 5, 1978, when the practice was ordered terminated by district headquarters in Philadelphia.

Now, were these recruits given certificates, and were they led to believe that they were in the Marine Corps?

Major SCHREIBER. They were not led to believe that they were in the Marine Corps.

Senator METZENBAUM. Who told them that they were not actually in the Marine Corps?

Major SCHREIBER. My operations officer, or my executive officer, who usually conducted this little ceremony at my headquarters.

Senator METZENBAUM. Now, Major Schreiber, in another RS swear-in case, a young man in Cleveland told my staff that he was so sure that he was in the Marine Corps that he moved his family and quit his job. He was rejected when his dependency waiver did not come through. Five months later, he told us, he still was awaiting his discharge papers. My staff informed him that his discharge would never come. He was never in the Marine Corps.

Now, did you not create a traumatic personal problem for many of these young Marines, young men who thought they were in the Marine Corps and woke up one day to find that they were not in? Does that not concern you at all?

Major SCHREIBER. No, sir.

Senator METZENBAUM. Why not?

Major SCHREIBER. I must disagree with the Senator on all points. As I mentioned—and I am positive on this point—every man was told that he was not in the Marine Corps until this, whatever defect it was, had been alleviated.

Senator METZENBAUM. You are saying this young man was lying to us?

Major SCHREIBER. I am not familiar with the case, sir.

Senator METZENBAUM. Major, the Corps report found what it called irregularities in processing of applicants for the delayed enlistment program, DEP, in Cleveland. Is this what they were talking about?

Major SCHREIBER. Yes, sir, I believe it was.

Senator METZENBAUM. How many discharges from the DEP groupings were there during your tour?

Major SCHREIBER. That would have to be researched. Perhaps I have it right here. I will look through it.

Sir, I do have that.

Senator METZENBAUM. Did you ever threaten to jail any people if they backed out between the DEP period and the actual swearing in?

Major SCHREIBER. There were three or four instances when a man backed out for no apparent reason, just because he got a new car, or found a new girlfriend. I said that I would possibly notify the FBI.

Senator METZENBAUM. Now, what would you be notifying the FBI for? Was that a threat?

Major SCHREIBER. It is a legal procedure, sir. Just a second, please, sir.

Sir, a man who is in the DEP, the delayed entry program, is a Marine. He is a Marine Corps reservist.

Senator METZENBAUM. Although he had not actually been sworn in?

Major SCHREIBER. No; he would have to be sworn in. They take two oaths, Senator.

Senator METZENBAUM. But the first oath, you told us, was really not a true oath, that he really was not in the Marine Corps. You told us earlier that he could drop out any time after that occurred.

Major SCHREIBER. I am confused here, Senator.

Senator METZENBAUM. I am sorry.

Major SCHREIBER. I am confused, I am sorry. I cannot respond to that question. Would you perhaps clarify it?

Senator METZENBAUM. How many such discharges were there in the month of September 1978?

Major SCHREIBER. 1978? Last month? I have no idea, sir, I was in Germany.

Senator METZENBAUM. I see. Why was the RS swear-in procedure terminated?

Major SCHREIBER. I do not think it was initially terminated, but the new commanding officer felt that he had another system which would produce the same results for him.

Senator METZENBAUM. So it is no longer being used by the Marine Corps.

Major SCHREIBER. It is no longer used at RS Cleveland, not that I am aware of; no, sir.

Senator METZENBAUM. Major, I have no further questions, and I think it is necessary that I go over to vote. I think Senator Nunn is on his way back. Thank you for your testimony.

Major SCHREIBER. Thank you, Senator.

[Whereupon, a short recess was taken.]

Senator NUNN. Major, as I understand it, Senator Metzbaum has completed his questions, and I know you have been here a long time. We apologize for having to get up and leave, but that is the nature of the occupation around here.

Just two or three more questions. One, do you feel in the recruiting operation that you ran, that you were subjected to a tremendous amount of pressure from your superiors in terms of quotas, in terms of expected goals?

Major SCHREIBER. Sir, I was on recruiting duty for a long time. I was never pressured by my superiors in any way, but that may be unusual because they know that I always give my very best; there is no need to pressure me, I always do as much as I possibly can. There is no need for pressure, they know that.

Senator NUNN. So, you felt no undue pressure from above.

Major SCHREIBER. I have never been reprimanded, no, sir; no pressure at all. That may not have been the case in other commands.

Senator NUNN. Major, let me ask you another question. What do you think of the general quality of the enlisted personnel that are recruited today in the Marine Corps? What is your personal evaluation of them? I am not asking you what the Marines' official position is; I am asking your personal opinion.

Major SCHREIBER. The quality of people that are coming into the Marine Corps right now, Mr. Chairman, is the best that we can possibly find. We go to the sources where we can obtain these people, the qualified high schools. I have seen a drastic increase in the quality of people from the time that I first came in the Marine Corps, or first entered recruiting duty, until the time that I left. It is a very difficult process; yes, sir.

Senator NUNN. You have been in the Marine Corps 18 years?

Major SCHREIBER. Yes, sir.

Senator NUNN. And were you in Vietnam?

Major SCHREIBER. Yes, sir.

Senator NUNN. How long were you there?

Major SCHREIBER. I was there for one tour.

Senator NUNN. Did you get any kind of citations, anything like that during Vietnam?

Major SCHREIBER. Yes, sir, I did.

Senator NUNN. What kind?

Major SCHREIBER. I received the Bronze Star with Combat V; the Navy Cross; and various Vietnamese citations, sir.

Senator NUNN. Did you volunteer for recruiting duty?

Major SCHREIBER. No, sir, I did not.

Senator NUNN. Was it a job you wanted?

Major SCHREIBER. I did not know initially exactly what it entailed, but once I took over as commanding officer I thought it was the most challenging job I ever held.

Senator NUNN. Most challenging?

Major SCHREIBER. Most challenging—there is nothing better, and there is nothing worse.

Senator NUNN. No better job, and no worse job?

Major SCHREIBER. That is correct, sir.

Senator NUNN. Would you want to be involved in that particular job again?

Major SCHREIBER. Yes, sir, I would.

Senator NUNN. Let me ask you this question. You were in the military 18 years ago, that would have been what, 1962?

Major SCHREIBER. I came in in September 1959, Mr. Chairman.

Senator NUNN. 1959, yes, my arithmetic is not good; that figures.

How would you compare the Marine Corps today to the Marine Corps that existed in 1959 in terms of the Marine Corps' capability to perform its job in terms of the quality of people?

Major SCHREIBER. The Senator must remember that during my initial years in the Marine Corps I of course was not privy to the big picture, I was a private and a lance corporal; I was just concerned about my own well-being.

The Marine Corps, Mr. Chairman, has always been able to carry out its mission, in 1959, in 1969, and also in 1979. I think that the degree of readiness that the Marine Corps enjoys at the present time, our constant striving for better personnel, I think, we can see, and we can hope, and we can almost anticipate that the Marine Corps progresses toward a higher and higher standard.

Senator NUNN. You mean it has gotten better every year since you have been in it, then?

Major SCHREIBER. There were some years in the early 1970's which we hate to think about. But, yes, sir, it has shown a steady improvement in almost every personnel category.

Senator NUNN. What about the volunteer force, what is your view of that?

Major SCHREIBER. Sir, the pros and cons of the volunteer force are, of course, a political consideration, and I do not like to talk about that—I cannot talk about it.

Senator NUNN. But you have been in recruiting, and that is the front line, we know that. That is the toughest job, and that is where the burden of the volunteer force is, on the recruiters and people we have heard from today, like you and the others we have heard from.

You know more about it, in my opinion, in many cases than the Chairman of the Joint Chiefs of Staff, or the Commandant of the Marine Corps. You have been out there on the front line.

Major SCHREIBER. Yes, sir. My personal opinion is this: That the volunteer concept of course has been forced upon us, we have to live with it. If someone like me, who knows a great deal about recruiting and who is a good recruiting officer, has to work 16 hours a day to achieve his goal; and if we look at the moneys expended in this process, then it occurs to me that somewhere, somehow, someone has to be able to make a decision to make this job easier; to make the procurement of these young men easier; to present the military to the entire civilian community in a more favorable light.

But, Senator, if you could see, or if you could possibly have seen the way we are treated in the civilian community, particularly the recruiters, then you would just shake your head and say, "There is something basically wrong here," particularly when you are selling a product. We are selling the finest product in the world, the U.S. Marine Corps.

Young men can prove themselves with us. They can become men. They can get an education. And then, when we go in there and talk to high school counselors from a high school, Senator, where the median IQ is 10 points below this room temperature and they will not let you talk to the people, then I say, there is something wrong with the country.

Senator NUNN. Now, you are saying if the volunteer force is going to work, the attitude is going to have to change.

Major SCHREIBER. That, and something needs to be done so that these recruiters and myself, and my superiors, do not have to work day and night for 7 days a week. Yes, sir. The job is too tough.

Senator NUNN. I know that marines never say anything is impossible, but I guess what you are describing is that recruiting is almost impossible.

Major SCHREIBER. It is very difficult, yes, sir—very difficult.

Senator NUNN. We mentioned the access to high schools and the access to high school lists as possible things to consider in terms of legal changes. Do you have any other recommendations to Congress?

Major SCHREIBER. Sir, there are many recommendations, and may I perhaps ask the chairman to permit me not to answer this question because these recommendations applicable to the national level will appear in the Marine Corps investigation; and they will of course be made public here on Thursday.

Senator NUNN. Do you agree with that assessment in that investigation?

Major SCHREIBER. Yes, sir, totally.

Senator NUNN. You have read it.

Major SCHREIBER. Of course I have. I have studied it.

Senator NUNN. And you agree with it totally in terms of recommendations?

Major SCHREIBER. Yes, sir, I do; of course.

Senator NUNN. There is nothing else, then, that is not in that investigation, other than what we have talked about today in terms of recommendations and changes, and recruiting practices, and so forth, that you would like to add right now?

Major SCHREIBER. I do not think that the point of access to high schools has been emphasized as strongly as I would like to see it. The high schools, Senator, are our bread and butter. The recruiting officer

who does not believe that does not know his job. We must talk to these eligible young men who have an education behind them; who have spent 4 years in high school. That tells us that they have that stick-to-it'ness, and that is what we want in the Marine Corps.

My God, if we have high schools and we cannot get into them, and these kids graduate and they go to the civilian job market and they cannot find a job; 3 months, or 4 months later, running around on the street, they have perhaps committed a crime which renders them ineligible for the military service.

Senator NUNN. I get a little bit perplexed about this subject because nobody has ever come up here and asked for any kinds of changes in law from the whole Department of Defense. Nobody has ever come up and made a recommendation from DOD that they have that kind of legal access. Nobody has ever made any kind of recommendation to this subcommittee. In fact, I made the statement months ago—I do not know whether it was over a year or not, I probably made it several times—and I have never even had a reaction from the Department of Defense, officially.

And here you are saying that it is one of the most important tools that you can be given as a recruiter.

Major SCHREIBER. Yes, sir, it is—it is. If I may add, I am pretty much aware on what social level the Senator operates here in Washington, D.C., but I would personally like to ask you if it possible—of course you can do that, Senator—just one night after work—and you can always get off a little early—just one night, go to a recruiting substation. Just go in there and say, “I am Senator Nunn, and how can I help you?”

That is when you hear the basic things, and this is when you come up with some viable questions that you can ask the higher-ups. The kids do not lie to you. You would make their entire life, they would never forget it, of course.

Senator NUNN. Well, I think it would be very interesting for us to do that, I agree with you; and also to get some recruiters to come up here in a noninvestigatory proceeding, and just tell us the problems because I happen to believe that there are some very severe problems out there. I have talked to enough recruiters informally to know that.

Major SCHREIBER. Yes, sir.

Senator NUNN. We appreciate your candor here today.

Do you have anything else you want to say? You have been the defendant, so to speak, here today. You have been placed in a position of hearing several serious charges made against you. We are not here to judge those charges, that is not the matter of our legislative inquiry. We are here to look at the overall problems with recruiting; the overall problems with the military services, the personnel, the quality. We are here to look at possible legislative remedies. And of course, in the process of that inquiry, if we come upon allegations, we think they ought to be aired and they ought to be made known to the authorities. But it will have to be up to the executive branch to decide as to the validity of these, not the legislative branch, in terms of personalities and in terms of particular charges against you or any other individual.

But if you have anything else you would like to say for the record, you are welcome to say it now.

Major SCHREIBER. Just one short note, Mr. Chairman. I would like to express my, really, astonishment that the former Gunnery Sergeant Robinette who testified here this morning said the things that he did today because when he came on recruiting duty—

Senator NUNN. Who is this, now?

Major SCHREIBER. Gunnery Sergeant Robinette, sir.

Senator NUNN. Right, Robinette.

Major SCHREIBER. When he started to work for me I considered him one of the finest marines I have known. He was motivated, he was a good marine. I would have gone with him anywhere. The reason for his turn-about, I cannot comment on that. I had to relieve him because of personal things that he did, but I would also like to ask the Senator and particularly the members of the press—again—not to judge the Marine Corps recruiters by the statements, by the appearance, and by the general demeanor that the three gentlemen have exhibited here today.

That is all I have to say, sir.

Senator NUNN. Thank you very much, Major Schreiber.

We will have another hearing on Thursday morning at 9 o'clock in this room. At that time we will hear from the Marine Corps, and we will also hear from some of the top people in the Army.

Our witnesses for our October 12 hearing will be Lt. Gen. Kenneth McLennan, U.S. Marine Corps, Deputy Chief of Staff for Manpower/Director of Personnel; Maj. Gen. William Mundie, U.S. Army, Commanding General; Capt. Joseph Smith, U.S. Marine Corps Reserve; and Mr. John Romano, Chairman of the Military Law Section of the Association of Trial Lawyers.

We have one other witness that is going to be on here, too. Captain Atkinson of the Marine Corps will also be testifying. He is also going to talk to some of the legal aspects of the recruiting problems.

At this point the subcommittee is adjourned for today.

[Whereupon, at 4:45 p.m., the subcommittee adjourned, to reconvene at 9 a.m., Thursday, October 12, 1978.]

# MILITARY RECRUITING PRACTICES

WEDNESDAY, OCTOBER 12, 1978

U.S. SENATE,  
SUBCOMMITTEE ON MANPOWER AND PERSONNEL,  
COMMITTEE ON ARMED SERVICES,  
*Washington, D.C.*

The subcommittee met, pursuant to notice, at 9 a.m., in room 1318 Dirksen Senate Office Building, Hon. Sam Nunn, chairman, presiding.

Present: Senators Nunn, Morgan, and Metzenbaum.

Staff present: George F. Travers, professional staff member; Phyllis A. Bacon, assistant chief clerk; Christine E. Cowart, research assistant; Fran Frazier and Judy Landesman, clerical assistants; Jeffrey Record and Arnold Punaro, assistants to Senator Nunn; Charles Stevenson, assistant to Senator Culver; Ron Lehman, assistant to Senator Bartlett; Ted Farfaglia, assistant to Senator Morgan.

Senator NUNN. The subcommittee will come to order.

The Subcommittee on Manpower and Personnel meets today to continue its review of military recruiting practices.

Last Tuesday, the subcommittee heard from Senator Metzenbaum, who is here with us again today. We also heard from past and present Marine Corps recruiters about many cases of alleged recruiting malpractice. It is clear from their testimony that the military recruiting program is under great strain to provide the number of young people required for military service. I believe that testimony indicates that some changes are going to have to be made.

In this year's authorization bill, the Senate and Conference Committee agreed with the proposal made first at the subcommittee level; then to the full Armed Services Committee; then to the Senate; and then to the Conference Committee. Everyone agreed throughout this process to require the Secretary of Defense to submit a study by December 31, 1978, assessing the cost and consequences of possible alternatives to the current All-Volunteer Force policies. This study will review the current status of the Selective Service System, the changes needed for an effective standby draft, and alternative ways to increase military recruiting under the present system. Part of that study will include the effects of access to high school students by military recruiters, which we discussed at length on Tuesday, and also changes in the current quota assignment system and other aspects of recruiting operations.

This study is supposedly under way by the Department of Defense and I believe that the hearings reinforce the need for these considerations. I might just add that I know the Department of Defense has many requests for several different studies, but this one is ex-

tremely important. This study is going to be looked at very carefully by the full committee, by this subcommittee, and in my opinion, will also be looked at very carefully by the House of Representatives.

Very frankly, if the Department of Defense does not make a serious effort on this study, then I will be very discouraged about having any kind of an objective analysis of the volunteer force by DOD. So far, I have not felt that we were getting objective, candid, frank opinions by the Department of Defense as to the real problems of the volunteer force.

I might also add I get many private comments from people in the Department of Defense that vary substantially from what the Department of Defense testifies to here before the subcommittee. I am also saying, very frankly, I am getting a little weary of it, and I think other people on Capitol Hill that are familiar with the military also feel the same way.

We cannot deal with the serious problems facing our national security if we continue to get what I believe to be lack of candor in terms of the Department of Defense realistically assessing the problems. I hope that that attitude in this study that will be presented in December will change.

Last Thursday we heard much testimony from recruiters on many abuses, but we also talked to them about some of the possible alternatives, including access to high schools. There was a unanimous opinion by all the people who testified, including Major Schreiber, that access to high schools would be a very, very important aid to the current recruiting problem. It is again strange to me that this was proposed at least 12 months ago in this subcommittee and as yet we have had no official reaction from the Department of Defense.

Of course, cases of recruiting malpractice adversely affects the willingness of high schools to cooperate with recruiters and can also affect the attitude of young people toward the military. What we have here is a situation with fraudulent diplomas. We have checked some of them, and we know several of these cases are accurate in terms of false diplomas and false certifications. This has the effect of closing the door to high schools. It has the effect of having high schools on a voluntary basis less willing to cooperate than ever before.

I have gotten letters back since Senator Metzenbaum started his inquiry and we followed up some of the suggestions about possible fraudulent diplomas. The letters from high school principals, whose names had been forged, were very, very indignant and understandably so. I think that it is understandable that they would be less cooperative after seeing this kind of experience.

I think we are going into a rather vicious circle in terms of trying to get high schools to cooperate when they feel as though they have been the victims of fraud. Also, I think this entire type of malpractice which has been alleged, can have a very serious effect on the attitude of the young people toward the military and, of course, that attitude is all important in an all-volunteer environment.

In today's hearings we will have other testimony. We will hear from a panel of attorneys as to the problems of fraudulent enlistments, the cause and effect relationship between fraudulent enlistment and military discipline, and also the very substantial effect it has on the military justice system.

We will also hear from the commander of the U.S. military enlistment Processing Command, Major General Mundie, who is also the commander of Army recruiting, and from the Marine Corps, Lieutenant General McLennan, who is the Deputy Chief of Staff for Manpower.

Senator Morgan will also be here later in the morning. He is going to ask questions and perhaps may have a statement for the subcommittee on some Army problems in recruiting in North Carolina.

Senator Metzenbaum, do you have an opening statement?

Senator METZENBAUM. I have no opening statement but I would like to say, Mr. Chairman, that I can't tell you how pleased I am that you have seen fit to conduct these hearings. You bring to the hearings a sense of objectivity and concern and leadership that I think is very refreshing, at least to me. I hope that the message comes out to the Marines that we seek cooperation, we seek to improve the situation, rather than to prove the derelictions of the past. We are attempting to find a way to provide some positive answers that would aid the Marines in future recruiting practices. Certainly your suggestions concerning access to the high schools is a simple and sound one. I totally subscribe to that concept and I am most pleased to have the privilege of working with you in this connection.

Senator NUNN. Thank you very much, Senator Metzenbaum.

As our first witnesses today, we will call as a panel, Mr. John Romano, Capt. Joseph Smith, and Capt. John Atkinson. They will discuss the effect of fraudulent enlistments and recruiter misconduct on the military justice system.

Mr. John Romano is chairman of the military law section of the Association of Trial Lawyers of America. He wrote to me in August of this year offering to assist the subcommittee in its investigation of alleged recruiting malpractice within the Marine Corps.

By way of background, Mr. Romano is a former prosecutor and defense counsel for the Marine Corps. Mr. Romano, please would you come up to the witness table. I appreciate very much your being here today. I know you have a very busy schedule. If you will have a seat, I will introduce the other panel members and we will proceed from there.

Capt. Joseph Smith is a member of the U.S. Marine Corps Reserve, serving as an appellate defense counsel here in Washington. Captain Smith is appearing at the suggestion of Senator Metzenbaum. Captain Smith, if you will come up, we are pleased to have you this morning and appreciate your cooperation.

Capt. John B. Atkinson is currently assigned as an attorney with Headquarters Company, First Marine Brigade, Fleet Marine Force, Marine Corps Air Station, in Hawaii. From April 1977 to November 1977, Captain Atkinson served as a prosecutor for the First Marine Brigade. In November 1977, he was reassigned as a defense counsel within the same brigade. Captain Atkinson is here at the suggestion of Senator Metzenbaum. In a sworn statement introduced into the subcommittee's record on October 10, Captain Atkinson outlines several cases where individuals charged with criminal offenses under the Uniformed Code of Military Justice have been allowed to go unpunished as a result of recruiter misconduct in the fraudulent enlistment of these individuals. Captain Atkinson came here at his own expense, all the

way from Hawaii. Captain Atkinson, we are grateful for your cooperation and we appreciate your being here.

If we could start in the order I called the witnesses, I would be glad to hear your statements if any of you have one, then later we will have some questions.

Mr. Romano, do you want to lead off?

**STATEMENT OF JOHN ROMANO, CHAIRMAN OF THE MILITARY LAW SECTION, ASSOCIATION OF TRIAL LAWYERS OF AMERICA**

Mr. ROMANO. Yes, sir, thank you. At the present time, I am an attorney engaged in the private practice of trial law in West Palm Beach, Fla. None of my cases now pending or none of my clients at the present time are related to the subject matter of these hearings, recruiter fraud. However, I am representing several clients in cases which involve military activities of various sorts. I am admitted to practice law before the Florida Supreme Court and all the State courts within the State of Florida, the U.S. District Courts in and for the Southern and Middle Districts of Florida, the U.S. Supreme Court and the U.S. Court of Military Appeals.

As stated previously, I am now the chairman and founder of the Military Law Section of the Association of Trial Lawyers of America.

I was on active duty in the Marine Corps from November 15, 1974, until November 15, 1977. During that period of time I was a JAG officer or military lawyer. My contact or involvement with cases of recruiter fraud was due to my involvement in the prosecution in defense of special and general courts-martial cases and trials while serving with the Office of the Staff Judge Advocate of the 2d Marine Division located at Marine Corps Base, Camp LeJeune, N.C. While at Camp LeJeune, the 2d Marine Division Staff Judge Advocate's Office was responsible for the trial of more special and general courts-martial cases at that time than any other military command in the entire U.S. Armed Forces.

As a defense counsel, I represented, at various times, 603 military servicemen and this included both enlisted personnel and officers. Of my defense cases, approximately 100 went to court or trial in one form or another. I was a defense counsel for the 2d Marine Division for the period of September 8, 1975, through April 1976, although I did, from time to time, represent service members in my capacity as a defense counsel subsequent to that time when requested as IMC or individual military counsel pursuant to the Uniform Code of Military Justice. I was subsequently assigned as a prosecutor or trial counsel with the 2d Marine Division and served in that capacity until separated from the service.

During that period, I prosecuted 210 cases, although not all of these actually ended up as contested trials. A large number of these cases involved allegations in one form or another of recruiter fraud or recruiter misconduct—these allegations coming from the particular accused.

My first direct experience with allegations of fraudulent recruiter practices occurred in 1975, while assigned as judge advocate at Camp LeJeune. In that year, it should be noted that the U.S. Court of Military Appeals rendered its landmark decision, *United States v. Russo*.

I have attached a copy to my statement.

Senator NUNN. We will put that in the record, without objection.

[See *United States v. Russo*, p. 128.]

The Court of Military appeals in the *Russo* case, ruled that the Government would be estopped from asserting jurisdiction over any serviceman who had been enlisted by recruiters in knowing violation of applicable, written recruiting standards. Following, and as a direct result of the *Russo* decision, many marines accused of offenses under the Uniform Code of Military Justice routinely began to challenge the jurisdiction of the court-martial proceedings by alleging improprieties by their individual recruiters.

As a matter of procedure, prior to trial at the motion stage, the defendant or accused would rise in court and deny, in so many words, that the court-martial had jurisdiction to try him for his alleged offense. The defendant would routinely then describe, during testimony, how he was not qualified for enlistment, how this fact was related to his individual recruiter, and how his individual recruiter then conspired to conceal the disqualification and effect the enlistment.

As you can imagine, a tremendous amount of time, effort and man-hours then became devoted to combating these motions by the Government's prosecutors when such incidents never should have occurred in the first place.

The immediate effect of such allegations would be to automatically require the Government to locate the defendant's recruiter and any and all witnesses needed by the Government to rebut the defendant's allegations, wherever they may be, and to return them to the location of the trial to testify in opposition to the defendant's allegations. This, of course, necessitated returning requested witnesses by the defense to the location of the trial, if, in the opinion of the command and the court, such defense witnesses were reasonably necessary. I personally know of several cases where recruiters had to be returned, at Government expense, not only in the Continental United States but outside the Continental United States. Some of these cases were won by the Government and some of these cases were won by the defense.

Varying from my statement for just a moment, I should point out the court-martial proceeding, or the motion stage of the court-martial, when the allegation was made, in essence it was of the same nature of many other motions, whereby the defense would raise a certain amount of evidence to show what maybe we can term a probable cause, and then the burden became that of the Government to rebut the allegations, and that burden of proof was clear and convincing evidence, and I believe in one case it was a rebuttal that required using the standard beyond a reasonable doubt.

Of course, in cases where the motion itself put forth by the defense was won by the defense, the court was not, in those particular cases, saying there had been recruiter fraud. What the court was saying was that the allegations of recruiter fraud was made and the Government could not rebut that.

I think that can be analyzed to our system of justice involving an acquittal, wherein an acquittal in a criminal case does not necessarily mean that the individual accused of a crime didn't do it, or that he was totally innocent, it meant that the Government could not prove the case by establishing its proper burden.

Between January 1, 1977, and September 30, 1978, there were 1,353 special and general court-martial trials conducted at the 2d Marine Division. In 1977, there were 80 such recruiter fraud jurisdictional motions raised at the special court-martial level at this command. Forty-six of these motions were granted in favor of the defense and 34 were denied. In 1977, there were eight of these motions made at the general court-martial level with three being granted and five denied.

Senator NUNN. This is just in your jurisdiction, just for the 2d Marine Division?

Mr. ROMANO. Yes, sir, that is correct. Of course, the 2d Marine Division is just one of the commands at the Marine Corps base, Camp Lejeune. When I stated previously that the 2d Marine Division tried more general and special court-martial cases than any other command in the United States, the entire U.S. Armed Forces, I am talking about the 2d Marine Division as opposed to the other commands at Camp Lejeune or Camp Lejeune as a Marine Corps base itself.

From January 1, 1978, until September 30, 1978, there were 19 recruiter fraud jurisdictional motions made at the 2d Marine Division Command at the special court-martial level and of these, 12 were granted and 6 denied. During that same period, five such motions were made at the general court-martial level and three were denied while two were granted. It is obvious that far fewer of these motions were made during 1978 and, based upon information and belief, this is due to a new procedure followed at the 2d Marine Division, which permits the Government to process an individual out of the military under the separations manual for a fraudulent or erroneous enlistment as opposed to the previous method of voiding the man's enlistment following the granting of a recruiter fraud jurisdictional motion. It is my understanding that this is now the method followed as a general rule in the Marine Corps.

Senator METZENBAUM. Would you elaborate on that for a moment to explain exactly the difference. Are you saying—

Mr. ROMANO. Yes sir, when I was on active duty, I should point out that some of these statistics, all of these statistics I have just given you, were furnished me by the present people in charge of the Staff Judge Advocate's Office of the 2d Marine Division.

There has now been a dramatic decrease in the number of these motions raised or allegations of recruiter fraud. At the time when I was on active duty, the procedure would be for an individual accused of a crime to make this allegation once he came into court, and if he won he would then have his enlistment voided, in so many words, and he would be released from active duty. He did not get, from a realistic standpoint, any type of discharge. It was in essence just a separation from the service.

There is a new procedure in effect, a procedure that is followed, and I have not been a part of it because I have not been on active duty during this period of time. But it is my understanding that the Government is now permitted to process an individual out of the military under the Separations Manual.

Now, this may be for fraudulent enlistment or this may be in certain terms for a fraudulent enlistment which involved recruiter malpractice or recruiter fraud. Again, I do not know specifically because I have not been a part of this new procedure.

Senator METZENBAUM. I guess what I am really asking is: What is the difference to the individual if he is processed out of the military under the Separation Manual or if the Marine Corps voids his enlistment? What are the different results as far as he personally is concerned, or as far as the Marines are concerned? That is what I don't understand.

Mr. ROMANO. The very frank answer to your question is I am not sure. I can tell you that when the enlistment is voided the man does not get a discharge. He is in essence released from active duty. He doesn't have an honorable discharge, a dishonorable discharge, all he has is papers that show he was in the military, although since he had a void enlistment I suppose from a very technical standpoint you could say he really wasn't on active duty in the first place.

As to the new procedure that is followed regarding a Separations Manual, I do not know the answer to that question.

Senator METZENBAUM. The reason I asked the question is because you say due to the new procedure there are lesser numbers of these claims, these motions being made, and I was trying to get—

Mr. ROMANO. I think I can answer that question. I believe what we are speaking of there is all of the information that I have is information that deals with the criminal element of the Marine Corps. So that when I give statistics or I talk about recruiter fraud, I am not talking about the tens of thousands of marines that come on to active duty, have a good tour, and then are released. I am talking about strictly the criminal element or the element that finds its way to the court martial system of which I was a part.

And in that system, when a man was accused of a crime, if he raised this motion and won, he would be released, which I can say from a very factual point of view is exactly what that individual wanted, was to be released.

However, under the new system, an individual can avoid the court martial in the first place and either he can initiate it through certain systems or the military can initiate it through certain other channels, so that this man is permitted or forced in some cases, to leave active duty, or leave the military, without going through the court martial process.

Senator NUNN. Are you saying because these statistics have gone down in terms of the number of people who have gone into court martial proceedings and made this plea of no jurisdiction because of fraudulent recruitment, then being found innocent, gotten out of the service, the reason those statistics have gone down is not because there is less of that going on necessarily, but because they have a new procedure and they are now separating them rather than going through the court martial?

Mr. ROMANO. That is correct, but I am also saying that I am not familiar with that new procedure because all I know about it is what I have been told and as we know, when we are told certain things we often get incorrect information.

Senator NUNN. I will ask the Marines, if they could get the statistics on how many of this type of separation they have had in the past.

When did this procedure start, Mr. Romano?

Mr. ROMANO. Well, I left active duty in November of 1977 and I think at approximately that time is when it was coming into effect. I did not have any cases that involved this new procedure. It may have already been in effect. It may have just been in the changing process at that time. I am not sure.

Senator NUNN. I would like to ask the Marines, when they testify, the number of people that have been separated under this procedure for fraudulent enlistment since the inception of the policy. Also I would like to ask them the number that have been found innocent for lack of jurisdiction in terms of the plea being fraudulent enlistment for the whole Marine Corps. If we could have that information when the Marine Corps testifies, or as soon as possible, we would appreciate it.

Mr. ROMANO. As a very practical matter, the effect of granting such a jurisdictional motion meant that the service member's enlistment contract was void or null or nonexistent. To put it another way, this meant that he was not or had not been on active duty.

In the case of most of these motions granted during the time I was on active duty, the individual would be released.

If it were a situation involving a serious crime, such as kidnaping, then upon the granting of such a motion the service member would be turned over or released to the custody of the U.S. authorities, and in one such kidnaping case we did have a situation where at a general court-martial level trial or motion, an individual who had been charged with kidnaping won on such a motion and he was released to the U.S. authorities and was subsequently prosecuted by the United States Attorney's Office in that particular district in North Carolina.

Senator NUNN. In other words, if they commit a crime and they get off in terms of the military court-martial because of fraudulent enlistment, if that crime is also a crime under the civil code of the United States, or under the jurisdiction where the crime took place, then they also could be prosecuted? That does not keep the civil authorities from prosecuting?

Mr. ROMANO. That is right. I need to qualify that.

First, we know the military offenses, such as desertion, unauthorized absence, disobedience of lawful orders, et cetera, the U.S. attorney's office has no jurisdiction to prosecute them, so I am speaking more or less of common law type of offenses, and it would have to be a crime of enough of a serious nature to, in essence, convince the U.S. attorney that it was an important enough case to prosecute.

Of course, in the kidnaping case I am talking about, it was a very violent matter, and it was turned over and subsequently prosecuted.

As a general rule, the defendant in these cases alleges disqualification in three primary areas. Physical disqualifications, mental disqualifications, and moral disqualifications—with the moral disqualifications, of course, including the hiding of various portions of an individual's criminal record.

It is important for me to point out that I have never personally been involved in recruiting young men or women into the Marine Corps or any other branch of the U.S. Armed Forces. I have never been assigned to the recruiting branch of the U.S. Marine Corps, and I have never gone to any type of recruiting school. All the information I have or will reveal to this committee is based upon my investigations of cases involving allegations of recruiter fraud.

I also had an exceptional amount of contact with other defense counsel and prosecutors within the Marine Corps, had the opportunity of consulting with them in cases which involved allegations of recruiter fraud.

If I were to set out a general discussion of my impression or opinions as to the reasons behind problems in this area of recruiter misconduct, it would serve no general purpose. Therefore, I will be brief in my conclusions as to what I believe are the problems and what concrete recommendations I have.

I believe the primary inertia behind recruiter fraud incidents as I have come to know them, as an attorney, in the military, are:

A. The quota system of recruiting places undue pressure and a tremendous burden upon the individual recruiter. In his evaluation or fitness reports rendered by his supervisor, often and from a very practical standpoint, the number of recruits signed up by the recruiter determine his grades of evaluation. This, of course, causes one to seek quantity as opposed to quality and may lead to an abuse of the system.

B. The recruiting regulations at the time I was on active duty seem unrealistic in many portions not practical in today's day and age.

C. There is no control over recruiter shopping as between various recruiting offices within any given branch and as between recruiting offices among the various branches of the U.S. Armed Forces.

For example, an individual may very well be turned down by an Air Force recruiter and subsequently a Navy recruiter, and he may then turn to an Army recruiter in another city or State and obtain enlistment, although actually disqualified.

My recommendations are as follows:

A. A cross-reference system of recruiters and/or recruiting offices should be established to prevent recruiter shopping.

B. The evaluation of fitness report system as it relates to the quota system must be studied by qualified individuals from both the military and civilian communities to seek a change in that part of the system which bears undue pressure in seeking quantity in terms of recruits; also, as it relates to the evaluation system.

C. A committee should be established to do a complete study and reevaluation of the present recruiting regulations to seek a change in those portions which are unrealistic and not in conformity with today's societal and military needs. This committee should be composed of qualified individuals from both the civilian and military communities.

Senator NUNN. Let me ask a question on that point. I understand the Marine Corps has a question on these applications that asks if you have ever used marihuana, or did you ever smoke marihuana? Are you familiar with that one?

Mr. ROMANO. Yes, sir, and it is unrealistic in today's day and age.

Senator NUNN. Doesn't that really force the recruiter to be involved in coaching almost from the very beginning? Doesn't that almost require him, if he is going to have any success at all, to let that young man know one way or the other he had better not answer that question in the affirmative, otherwise he is going to have to spend a lot of time trying to get a waiver?

Mr. ROMANO. I would definitely agree with the spirit of what you are saying. In essence, my belief, in the cases that I was involved in, brought out a certainty to me, and that is the regulation pertaining

to have you ever used marihuana was very unrealistic. You may have an individual who had used, tried marihuana on an experimental basis, perhaps once or twice. If he was truthful and if the recruiter were truthful, he would probably be denied enlistment under the system as set up. Under those circumstances, he should not be denied enlistment.

What it does is, as you say, it starts a chain of coaching or a trend of maneuvering applications so that this man can get on active duty.

Senator NUNN. Well, that is right. It seems to me that corrupts the whole system. I don't in any way condone the use of marihuana. It seems to me the question should be more like, are you a constant, continuous, present user of marihuana? The national statistics show something like 60 percent of the young people in this age group had at one time or another used marihuana. I deplore that; I think it is a bad indictment of our society. But, nevertheless, you already have to recruit one out of every four qualified males to meet the armed services quota. If you disqualify that 60 percent, I guess even the Pentagon would admit the Volunteer Force wouldn't work.

It seems to me from the very beginning in this application the recruiters are being put in a position of either failing in their mission or fudging on the rules and regulations. I do not think that is the fault of the recruiters. These young people—and we had them up here yesterday—and all of the ones that had good records until they got into recruiting. Yet, they got into recruiting and the system, it seems to me, put them in a position where they have "Mission Impossible." They have to either deviate from the high standard that we hope our military people have in terms of integrity and honesty, or they have to fail in their recruiting mission.

That may be an oversimplification of the problem, but I would like to get your reaction to it one way or the other.

Mr. ROMANO. Well, first of all, I would tend to agree, but let me say this. The information I am about to give you now comes primarily from the individuals that I defended wherein we brought up allegations of this nature you or we were able to avoid the system in some way through some type of negotiation.

Some of these kids that found their way into the military had seen nothing but several years of trouble, criminal trouble, trouble with the juvenile authorities, trouble in their homes, troubles everywhere. They sought a utopia in the Marine Corps. Some of them would come to the Marine Corps recruiter with problems and perhaps reveal them to the recruiter and literally get down on their knees and beg and beg again for that recruiter to somehow get them into the Marine Corps.

So, although I believe the pressure involved in the quota system itself, and other areas of pressure, had a lot to do with it, I think it is also a two-edged sword in that the good strong recruiter, the recruiter that we would like to think every Marine Corps recruiter or Army or Navy recruiter is, when he can see a situation like this, he may have the strength and determination to keep that man out, not only because it is going to hurt that individual more, but because also it is going to hurt the military and society in general.

On the other hand, the rigorous pressures of recruiting often put a man in a situation where he felt it was better to recruit that man,

bring him on to active duty, and so he did, and as a result some of these cases involved men who came on active duty and trouble started right in boot camp. They were not adapted to be on active duty, at least in the branch of service that I was in, because of the system of infantry type training being so difficult.

The last recommendation that I have is a recruiter should be given the right to completely investigate the background and criminal record, if one exists, of any and all potential recruits. One of the problems that I ran into here as a prosecutor, primarily, was the fact that an individual may come into court and tell us about an extensive juvenile record, and if that particular record involved offenses which could also be considered as a felony in that particular State, then under certain circumstances that would serve as a disqualification to come on active duty, but it was in a sense very unfair to a recruiter who investigated a case such as he could, and we had one such case like that in Raleigh, N.C. He would attempt to get all of the records but he couldn't because juvenile records in some States are virtually impossible to get, under certain circumstances.

So, even though the recruiter may in good faith do what he can, the system in various States disallows it or "dispermits" it, so that he can't get the records that he has to have.

Senator NUNN. Are you suggesting a Federal law that would give access; or one that would override State laws?

Mr. ROMANO. I suppose that I am at least recommending consideration of a law of that nature, and my own gut feeling is, yes. However, I haven't studied it in detail and it should be studied before it is put into effect, because it could be a terrible law. So I think it definitely has to be considered so that recruiter can get the information he needs to bring good people on active duty or people that will be good not only for society but for the military and also good for that individual.

Senator NUNN. Of course if you got it without the permission of the applicant, it would certainly violate some type of Federal law on privacy. But, a prerequisite of an application to the Marine Corps would be a waiver as to access to the juvenile records, it would be another question.

Do you know whether there is any kind of waiver by the applicant as to juvenile court records required by the Marine Corps? Do any of you know that?

Captain SMITH. Yes, sir.

Senator NUNN. Captain Smith?

Captain SMITH. Senator, the Marine Corps Personnel Procurement Manual provides that if a recruiter cannot get access to personnel records or to juvenile records he is to stop the enlistment process and tell the applicant to go get his own juvenile records, and that if the applicant can't provide them there is to be no enlistment.

Senator NUNN. You are saying there is that kind of procedure already?

Captain SMITH. Yes, sir.

Senator NUNN. Why don't they get the juvenile records?

Captain SMITH. I don't know, sir. I, in my experience, have been involved with many recruiters who have claimed that they cannot get access to juvenile records. Uniformly the recruiters have told the applicant to go and try to get his own records, and uniformly, when I check with the clerk of the court, the clerk of the court said if the

recruiter appeared personally with the applicant the records would have been turned over.

Senator NUNN. In other words, you don't think they are trying to get the records?

Captain SMITH. That is correct.

Senator NUNN. That is your experience?

Captain SMITH. That is correct.

Senator NUNN. Are you saying it is something they don't want to know?

Captain SMITH. That is correct.

Senator NUNN. This gets worse the more I know about it. I understand now they have a new policy where they are not going to check on any records unless the recruiter or the applicant admits that he has got a police record. So it seems to me that what we are seeing here is that the Marines are moving or marching in the wrong direction, if they really want to find out whether they are bringing in people with records.

Do any of you know about that new policy? I understand it is true for all services, not just the Marines.

Captain ATKINSON. Mr. Chairman, I can't speak for all the services. I can speak at least from my personal experience in the Marine Corps. Yes, I have been informed by recruiters at the 1st Marine Brigade that policy change has been made, I believe it was sometime earlier in this calendar year, to the extent that a recruiter who does not have to perform an investigation into the individuals prior criminal record unless he is informed that the individual has such a crime record.

I found in my own cases, the problem I found is that often, yes, this does take a tremendous burden off the recruiter in having to check in each and every case, but the pattern that develops is that an accused at the time of court-martial will come in and say I did disclose certain things and the recruiter said do not put those down, because if you put those down then I am going to have to require a production of the juvenile records so that I can in fact check and see what, if any, disqualifying offenses you have indicated.

Senator NUNN. Are you saying this is going to make the Russo situation even broader in application, or do you think it would narrow it because there would be less absolute fraud?

Captain ATKINSON. No, sir, at least in my experience in the cases I have handled it seems to broaden it. It seems to be a further invitation to fraud.

Senator NUNN. Do all of you agree with that?

Mr. ROMANO. Yes, sir, I do.

Senator NUNN. Did you know about this new policy?

Mr. ROMANO. No, sir.

Senator NUNN. Captain Smith, do you agree with that?

Captain SMITH. Absolutely, sir.

Senator NUNN. And it is an invitation to fraud?

Captain SMITH. No question about it, sir.

Senator NUNN. Thank you.

Senator METZENBAUM. The last paragraph in your written testimony, I think it is a good paragraph, do you want to go ahead and read it?

Mr. ROMANO. My last paragraph?

Senator METZENBAUM. Yes.

Mr. ROMANO. Yes, sir.

Senator METZENBAUM. Because you talk about the court-martial system and I think for the record, you ought to state it publicly.

Mr. ROMANO. I would like to state I did skip quite a bit of my statement because I think it is as easy to read it.

Senator METZENBAUM. In the last paragraph I think you are very commendatory of the court-martial system and I think you ought to put it in the record.

Mr. ROMANO. Thank you, sir.

The statements I have made here today and the opinions and recommendations I have rendered are mine alone. I am not speaking on behalf of any organization and I have appeared here voluntarily. I want this committee to understand that my contacts with the U.S. Marine Corps and the military in general have proven to me that the system of justice as rendered by the court martial system at the special and general court martial level in the U.S. Armed Forces is perhaps the most just, fair and independent system of fair play in existence.

The Marine Corps is, from my observation, as fine an organization in terms of effectiveness and efficiency as I have seen. In my estimation, there has been and is a problem involving recruiter abuses and with the proper input from investigations and actions put into effect, it would be a task that most assuredly can and must be accomplished.

Senator METZENBAUM. I appreciate your reading that into the record because I am concerned that in these hearings we do not lose sight of what we are talking about—Marine Corps recruiting abuses. We are not talking about the court-martial system, we are not talking about the Marine Corps, and I appreciate your putting that into the record.

Senator NUNN. Thank you very much. Your prepared statement and exhibit 3, *United States v. Russo*, will be inserted in the hearing at this point.

[The prepared statement follows:]

PREPARED STATEMENT OF JOHN FLETCHER ROMANO

My name is John Fletcher Romano. I am an attorney engaged in the private practice of trial law in West Palm Beach, Florida, and I am a member of the law firm of Cone, Owen, Wagner, Nugent, Johnson & McKeown, P.A. I was first admitted to practice law on 10 May 1974 upon being sworn in as a member of The Florida Bar and upon being permitted to practice before The Supreme Court of the State of Florida. My practice is devoted entirely to litigation and trial work and I am designated as a specialist in the fields of "trial practice" and "criminal law" through the Specialization Designation Plan of the State of Florida Bar Association through its Integrated Rules. At the present time, none of my cases or clients involve issues or facts which can be said to be related to the subject matter of these hearings: recruiter fraud. However, I am representing several clients in cases which involve military activities of various sorts.

In 1970, I received my Bachelor's Degree from Florida State University. I received my Juris Doctor Degree in 1973 from South Texas College of Law. I am admitted to practice before The Florida Supreme Court and all State Courts within Florida, the U.S. District Court in and for the Southern and Middle Districts of Florida, the United States Court of Military Appeals in Washington, D.C., and the United States Supreme Court. I am a member of numerous professional and legal organizations and societies, which include The American Bar Association and The Association of Trial Lawyers of America. I am the Chairman and founder of the Military Law Section of The Association of Trial Lawyers of America.

In 1976, I founded and served as the first President of the Camp LeJeune-Cherry Point Bar Association which, at that time, was the first Trial Bar As-

sociation of its kind in the United States Armed Forces. I was responsible for promoting and establishing a system of extensive continuing education programs within the United States Marine Corps via seminars and schools sponsored by national and state legal organizations.

I was on active duty in the United States Marine Corps from November 15, 1974, until November 15, 1977. My military occupational specialty during that time was that of a 4402, which is a military lawyer or JAG Officer. I was an honor graduate from the Marine Corps Officer's Basic School in Quantico, Virginia. My contact or involvement with cases of recruiter fraud was due to my involvement in the prosecution and defense of special and general court martial cases and trials while serving with the Office of the Staff Judge Advocate of the Second Marine Division located at Marine Corps Base, Camp LeJeune, North Carolina. While at Camp LeJeune, the Second Marine Division Staff Judge Advocate's Office was responsible for the trial of more special and general court martial cases at that time than any other military command in the entire United States Armed Forces. As a defense counsel, I represented, at various times 603 military servicemen and this included both enlisted personnel and officers. Of my defense cases, approximately 100 went to Court or trial in one form or another. I was a defense counsel for the Second Marine Division for the period of 8 September 1975 through April of 1976, although I did, from time to time, represent servicemembers in my capacity as a defense counsel subsequent to that time when requested as IMC or individual military counsel pursuant to the Uniform Code of Military Justice. I was subsequently assigned as a prosecutor or trial counsel with the Second Marine Division and served in that capacity until separated from the service. During that period, I prosecuted 210 cases, although not all of these actually ended up as contested trials. A large number of these cases involved allegations of recruiter fraud.

My first direct experience with allegations of fraudulent recruiter practices occurred in 1975, while assigned as a Judge Advocate at Camp LeJeune. In that year, it should be noted that the United States Court of Military Appeals rendered its landmark decision, *United States v. Russo*. The Court of Military Appeals in the *Russo* case, ruled that the government would be estopped from asserting jurisdiction over any serviceman who had been enlisted by recruiters in knowing violation of applicable, written recruiting standards. Following, and as a direct result of the *Russo* decision, many Marines accused of offenses under the Uniform Code of Military Justice routinely began to challenge the jurisdiction of the court martial proceedings by alleging improprieties by their individual recruiters.

As a matter of procedure, prior to trial at the motion stage, the Defendant or accused would rise in Court and deny, in so many words, that the court martial had jurisdiction to try him for his alleged offense. The Defendant would routinely then describe, during testimony, how he was not qualified for enlistment, how this fact was related to his individual recruiter, and how his individual recruiter then conspired to conceal the disqualification and effect the enlistment. As you can imagine, a tremendous amount of time, effort and man hours then became devoted to combating these motions by the government's prosecutors when such incidents never should have occurred in the first place.

The immediate effect of such allegations would be to automatically required the government to locate the Defendant's recruiter and any and all witnesses needed by the government to rebut the Defendant's allegations, wherever they may be, and to return them to the location of the trial to testify in opposition to the Defendant's allegations. This, of course, returning requested witnesses by the defense to the location of the trial if, in the opinion of the command or the Court, such defense witnesses were reasonably necessary. I personally know of several cases where recruiters had to be returned, at government expense, from distant locations. Some of these cases were won by the government and some of these cases were won by the defense.

Between 1 January 1977 and 30 September 1978, there were 1,353 special and general court martial trials conducted at the Second Marine Division. In 1977, there were 80 such recruiters fraud jurisdictional motions raised at the special court martial level at this command. 46 of these motions were granted in favor of the defense and 34 were denied. In 1977, there were 8 of these motions made at the general court martial level with 3 being granted and 5 denied. It is important to realize that although the granting of such a motion meant that the particular Defendant could not be tried by the court, the finding was, in essence, a judicial determination that the government had not sufficiently

met its burden in rebutting the allegations of the defense. It does not mean that there was an actual finding of recruiter fraud. This can be analyzed to the situation of an acquittal in a criminal case, which frees a Defendant even though it is not necessarily a finding that the criminal did not do wrong, but merely that the government had not proven the specific offense charged.

From 1 January 1978 until 30 September 1978, there were 18 recruiter fraud jurisdictional motions made at the Second Marine Division Command at the special court martial level and of these, 12 were granted and 6 denied. During that same period, 5 such motions were made at the general court martial level and 3 were denied while 2 were granted. It is obvious that far fewer of these motions were made during 1978 and, based upon information and belief, this is due to a new procedure followed at the Second Marine Division, which permits the government to process an individual out of the military under the Separations Manual for a fraudulent or erroneous enlistment as opposed to the previous method of voiding the man's enlistment following the granting of a recruiter fraud jurisdictional motion. It is my understanding that this new procedure is followed throughout the Marine Corps.

In virtually every one of these cases, there was almost no way of rebutting the Defendant's allegations without producing the recruiter, since most recruiting transactions that I have knowledge of appeared to be one on one confrontations in Court between the recruiter and the applicant without any outside witnesses. As a direct result, judicial determinations of recruiter malpractice or fraud were frequently based on an objective determination or subjective determination by the Trial Judge of the respective credibility of the Defendant making the allegations, and the recruiter denying those allegations.

Considering that the government in such judicial proceedings is required by law to rebut the Defendant's allegations by "clear and convincing evidence," the testimony of the recruiter, even if credible, is frequently not enough as a matter of procedure. Accordingly, during my tenure at Camp LeJeune, there were many judicial determinations of recruiter misconduct based on the government's simple inability to produce any affirmative rebuttal evidence. Since I was primarily a felony-level prosecutor, I did not run into the jurisdictional motion at the trial level or motion level as frequently as did prosecutors involved in minor offenses or military offenses. The practical effect of a judicial determination of recruiter misconduct at a court martial proceeding would normally be to immediately void the servicemember's enlistment contract. The servicemember would then, almost immediately, be released.

I am attaching a copy of the *United States v. Russo* case to my statement as Exhibit No. 1, so that you will have greater insight into this problem upon a thorough reading of the case.

As you can see, the practical effect of the granting of such a jurisdictional motion meant that the servicemember's enlistment contract was void or null or nonexistent. To put it another way, this meant that he was not on active duty. In the case of most such motions granted, the individual would be released. If it were a situation involving a serious crime such as kidnapping, then the servicemember would be turned over or released to the custody of the United States Attorney for prosecution.

Generally, Defendants alleged disqualification in three essential areas: Physical disqualifications, Mental Disqualifications, and Moral disqualifications. I will cover them below:

#### A. PHYSICAL DISQUALIFICATIONS

Defendants alleging recruiter misconduct in the area of physical disqualifications invariably alleged that they had disqualifying maladies which were made known to their individual recruiters, who then failed to refer that information to the appropriate medical authorities.

The basic problem in the area of medical standards is that the applicable regulations make disqualifying various physical conditions which are not easily discernible, or are not even looked for, on the very cursory pre-induction physical. Moreover, as a practical matter, at least fifty per cent of the raw data available to personnel responsible for physically evaluating applicants comes from the applicant's own answers to the standard Department of Defense Medical Questionnaire.

In short, if the applicant responds negatively, he runs very little risk of being found out.

As a direct consequence, applicants who, for their own reasons, conceal medical disqualifications can later assert that their recruiters were aware of their disqualifications all along with very little fear of extrinsic contradiction. This is particularly true since the medical examiners have no basis to remember any of the thousands of individuals which they process.

It was frequently argued that an applicant would not have the expertise to lie to the medical authorities had he not previously been coached by a recruiter as to his potential for disqualification. However, it is a fact that many applicants, as a result of repeated rejections, easily acquire such expertise independent of their individual recruiters.

#### B. MENTAL DISQUALIFICATIONS

It is a fact that most applicants, having taken the basic ASVAB battery of tests prior to enlistment, score significantly less on the same battery of tests administered at basic training. Many Defendants successfully asserted the foregoing drop in scores as prima facie evidence of illegal recruiter test coaching. Defendants frequently supplemented their evidence by expert testimony as to the statistical probability of illegal coaching attendant upon the percentage decrease of boot camp scores measured against the pre-induction examination.

Preparing several cases in rebuttal to such allegations, I discovered that a degree of control over personnel admitted to pre-enlistment testing centers was minimal. As a result, it appeared to be an easy matter for the applicant, with or without the aid of recruiters, to provide an intelligent substitute to take the test.

Again, because of the vast number of applicants tested during any given period, it was virtually impossible to produce evidence extrinsic to the testimony of the individual recruiter, to rebut the allegations of the Defendant.

#### C. MORAL DISQUALIFICATIONS

Perhaps the most troublesome type of allegations to rebut by the government were in the area of moral disqualifications.

The applicable Marine Corps regulations provided a rather intricate formula wherein the degree of disqualification posed by a criminal offense was roughly measured against the degree of the offense. Not all criminal offenses were absolutely disqualifying and, according to the degree of the offense, waivers could be obtained at various levels in the recruiting chain of command. For example, a minor misdemeanor could be waived by the local recruiting officer whereas a major felony could only be waived at the Headquarters Marine Corps level.

The regulations were extremely ambiguous as to the duty imposed on an individual recruiter to dig into an applicant's past. For example, the regulations purported to require that, absent any verbal notice by the applicant of an arrest record, that the recruiter check the records of the appropriate Courts and police authorities in the immediate area of the applicant's home of record.

This procedure could be easily torpedoed by an applicant by simply giving the recruiter an inaccurate address.

Moreover, numerous investigations by me in connection with my preparation of cases in rebuttal to allegations of recruiter misconduct, revealed that it is the practice of many jurisdictions to expunge juvenile records after a statutory period. Recruiters asking if an applicant had any juvenile convictions would then be told "no" by authorities in those jurisdictions. However, the applicable regulations hold the recruiters responsible for all convictions, whether they are expunged or not. Accordingly, many recruiters find themselves in an impossible situation where the authorities simply refuse to cooperate.

In such cases, the recruiter is forced to rely upon the representations of the applicants as to his moral qualifications. Frequently, applicants who have been rejected by answering truthfully to other services have a clear motive, and realize the necessity for lying.

In at least fifty percent of the cases I dealt with, the problem was not that the appropriate information regarding an applicant's police record went unreported, but simply that the required waiver was either not obtained at the appropriate level or not obtained at all.

Much of the difficulty in this area appeared to be due to a wholesale ignorance at the local recruiting level of exactly what paperwork had to be completed to effect a waiver. In point of fact, prior to the fallout from the *Russo* decision, most waivers, if obtained at all, were given telephonically. As a practical matter,

this created enormous difficulties in terms of providing competent evidence to prove at trial that a waiver had, in fact, been obtained. Thus, in many areas where there was no fraud, misconduct and impropriety was nevertheless an un rebuttable presumption.

A particularly troublesome moral requirement was that an applicant never have had any previous contact whatsoever with marijuana. The required information as to this qualification could only come from a "yes" or "no" answer by the applicant. Prior marijuana use was absolutely unverifiable by the local recruiter. As a result, this was a fertile area for allegations by Defendants that the recruiter was, in fact, told by the applicant of prior marijuana use. Moreover, in light of recent statistics as to the percentage of military-age persons who have at least experimentally indulged in marijuana, the foregoing regulation would certainly appear somewhat unrealistic.

It is important for me to point out at this time that I have never been personally involved in recruiting young men and/or women into the Marine Corps or any other branch of the United States Armed Forces. I have never been assigned to the recruiting branch of the United States Marine Corps and I have never gone to any type of recruiting school. All of the information that I have or will reveal to this committee is based upon my investigations of cases involving allegations of recruiter fraud from criminal Defendants at the court martial level while a prosecutor and defense counsel at the Second Marine Division. I also had an exceptional amount of contact with other defense counsel and prosecutors at the Second Marine Division and numerous other commands and had the opportunity of consulting with them on their cases which involved allegations of recruiter fraud.

If I were to set out a general discussion of my impression or opinions as to the reasons behind problems in this area of recruiter misconduct, it would serve no general purpose. Therefore, I will be brief in my conclusions as to what I believe are the problems and what concrete recommendations I have.

I believe the primary inertia behind recruiter fraud incidents as I have come to know them is as follows:

A. The quota system of recruiting places undue pressure and a tremendous burden upon the individual recruiter. In his evaluation or fitness reports rendered by his supervisor, often and from a very practical standpoint, the number of recruits signed up by the recruiter determine his grades of evaluation. This, of course, causes one to seek quantity as opposed to quality and leads to an abuse of the system in numerous cases.

B. The recruiting regulations now utilized are unrealistic in many portions and not practical in today's day and age.

C. There is no control over recruiter shopping as between various recruiting offices within any given branch and as between recruiting offices among the various branches of the United States Armed Forces. For example, an individual may very well be turned down by an Air Force recruiter and subsequently a Navy recruiter and he may then turn to an Army recruiter in another city or state and obtain enlistment, although actually disqualified.

My recommendations are as follows:

A. A cross reference system of recruiters and/or recruiting offices should be established to prevent recruiter shopping.

B. The evaluation or fitness report system as it relates to the quota system must be studied by qualified individuals from both the military and civilian communities to seek a change in that part of the system which bears undue pressure in seeking quantity in terms of recruits.

C. A committee should be established to do a complete study and re-evaluation of the present recruiting regulations to seek a change in those portions which are unrealistic and not in conformity with today's societal and military needs. This committee should be composed of qualified individuals from both the civilian and military communities. No such committee should be limited to solely military career personnel.

D. Recruiters must be given the right to completely investigate the background and criminal record, if one exists, of any and all potential recruits.

The statements I have made here today and the opinions and recommendations I have rendered are mine alone. I am not speaking on behalf of any organization and I have appeared here voluntarily. I want this committee to understand that my contacts with the United States Marine Corps and the military in general have proven to me that the system of justice as rendered by the court martial system at the special and general court martial level in the United States Armed

Forces is perhaps the most just, fair and independent system of fair play in existence. The Marine Corps is, from my observation, as fine an organization in terms of effectiveness and efficiency as I have seen. In my estimation, there has been and is a problem involving recruiter abuses and with the proper input from investigations and actions put into effect, it would be a task that most assuredly can and must be accomplished.

## [EXHIBIT 3]

50 CMR 650

COURT OF MILITARY APPEALS

UNITED STATES, APPELLEE

v.

LOUIS W. RUSSO, PRIVATE, U.S. ARMY, APPELLANT

Statutes and regulations § 1—when government agency must abide by its own rules and regulations.

1. A government agency must abide by its own rules and regulations where the underlying purpose of such regulations is the protection of personal liberties or interests.

Enlisted men § 21—accused's standing to contest legality of his enlistment in violation of regulations.

2. Regulations promulgating minimum mental standards for enlistment are not solely for the benefit of the government and, thus, an accused who had disclosed his inability to read when he sought to enlist, but who succeeded in enlisting because the recruiter provided him with answers to the Armed Forces Qualifications Test, had standing to contest the legality of his enlistment.

Courts-martial § 45; Enlisted men § 21—jurisdiction—enlistment resulting from recruiter's misconduct as void.

3. Where the accused had disclosed his inability to read when he sought to enlist, but he succeeded in enlisting because the recruiter provided him with answers to the Armed Forces Qualifications Test, his enlistment was void and the court-martial which tried him was without jurisdiction.

Rehearing § 1—absence of controverting evidence obviating need for rehearing on jurisdictional issue.

4. Where a void enlistment issue was raised by the accused's testimony at trial, the absence of controverting evidence on this jurisdictional question either at trial or during the course of appeal obviated the need for a limited rehearing on the question of jurisdiction.

No. 29,573

August 1, 1975

On petition of the accused below. SPCM 9773, not reported below. Reversed. *Captain LeRoy W. Robinson, Jr.* argued the cause for Appellant, Accused. With him on the brief were *Colonel Victor A. DeFiori, Lieutenant Colonel James Kucera, and Major Richard J. Goddard.*

*Captain William A. Poore* argued the cause for Appellee, United States. With him on the brief were *Lieutenant Colonel Ronald M. Holdaway, Lieutenant Colonel Donald W. Hansen, and Major Steven M. Werner.*

## OPINION OF THE COURT

FLETCHER, Chief Judge:

Although suffering from dyslexia, a mental disorder which severely impairs an individual's ability to read, appellant sought out an Army recruiter in order to enlist voluntarily in the service. Appellant's uncontroverted testimony at trial indicated that, after advising the recruiter that he could not read, the recruiter provided him with "a list of numbers and letters to put on the [Armed Forces Qualifications] test" to assure his eligibility for enlistment. Appellant now contends that the court-martial which tried him lacked jurisdiction as a result of the recruiter's misconduct. *United States v. Brown*, 23 USOMA 162, 48 CMR 778 (1974).

## I

While the Government does not take issue with the defense assertion that the recruiter's action in providing appellant with the answers to the entrance examination rendered meaningless the established minimum test scores for enlistment, Government counsel assert that appellant lacks standing to challenge the Army's failure to abide by the regulation promulgating the minimum mental requirements<sup>1</sup> since the regulation operates solely for the protection and benefit of the armed services. *Korte v. United States*, 260 F.2d 633 (9th Cir 1958), cert. denied, 358 US 928 (1959); see *Daniels v. United States*, 372 F.2d 407 (9th Cir 1967); cf. *United States v. Martin*, 9 USCMA 568, 26 CMR 348 (1958).

(1, 2) It is well-settled that a government agency must abide by its own rules and regulations where the underlying purpose of such regulations is the protection of personal liberties or interests. *American Farm Lines v. Black Ball Freight Service*, 397 US 532 (1970); *United States ex rel. Accardi v. Shaughnessy*, 347 US 260 (1954).<sup>2</sup> The various enlistment disqualifications evidence not only a desire to assure an effective fighting force for the country but also a commendable attempt to minimize future administrative and disciplinary difficulties with recruits by qualitatively reducing the class of eligible enlistees. See *United States v. Catlow*, 23 USCMA 142, 48 CMR 758, 761 (1974). The latter objective is not solely for the benefit of the armed services. It also is a means of protecting applicants who do not meet specified mental, physical, and moral standards for enlistment by barring their access to an environment in which they may be incapable of functioning effectively. See *United States v. Yellin*, 374 US 109, 116 (1963); see also *United States v. Catlow*, supra. Since it is the recruit who ultimately is protected, albeit from himself, it is he who can best assure the enforcement of such safeguards.<sup>3</sup> We conclude, therefore, that appellant has the necessary standing to challenge the legality of his enlistment. The result we reach will have the salutary effect of encouraging recruiters to observe applicable recruiting regulations while also assisting the armed forces in their drive to eliminate fraudulent recruiting practices. See *United States v. Heffner*, 420 F.2d 809 (4th Cir 1969).<sup>4</sup>

Primarily relying upon *In re Grimley*, 137 US 147 (1890), the Government also contends that appellant's enlistment was not void as a result of the recruiter's misconduct. In *Grimley*, the Supreme Court restated the rule of voidable contracts that an individual may not profit from his own misrepresentations where the other party to the contract is misled. The Court also distinguished the status which arises from a valid enlistment contract from the usual contractual rights and obligations which flow from a binding agreement between two parties.<sup>5</sup>

"May [a contracting party] . . . utter a falsehood to acquire a contract, and plead the truth to avoid it, when the matter in respect to which the falsehood is stated is for his benefit? . . .

\* \* \* \* \*  
 . . . Enlistment is a contract, but it is one of those contracts which changes the status, and where that is changed, no breach of the contract destroys the new status or relieves from the obligations which its existence imposes. . . . In other words, it is a general rule accompanying a change of status, that when once accomplished it is not destroyed by the mere misconduct of one of the parties, and the guilty party cannot plead his own wrong as working a termination and destruction thereof. Especially is he

<sup>1</sup> Rule C, tables 2-1 and 2-2, Army Regulation 601-210, Personnel Procurement, Regular Army Enlistment Program (Mar. 24, 1969).

<sup>2</sup> See also *Yellin v. United States*, 374 U.S. 109 (1963); *Vitarelli v. Seaton*, 359 U.S. 535 (1959); *Service v. Dulles*, 354 U.S. 363 (1957); *United States v. Heffner*, 420 F.2d 809 (4th Cir 1969); *United States ex rel. Brooks v. Clifford*, 409 F.2d 700 (4th Cir 1969), rehearing denied, 412 F.2d 1137 (4th Cir 1969); *Smith v. Resor*, 406 F.2d 141 (2d Cir 1969).

<sup>3</sup> The recruiting regulation with which we are here concerned is readily distinguishable from the induction statute we considered in *United States v. Martin*, 9 USCMA 568, 26 CMR 348 (1958). The purpose of the induction statute was to increase the pool of eligible inductees, whereas, the present recruiting regulation evidences an intention to reduce the class of eligible enlistees.

<sup>4</sup> Acceptance of the rationale in *Korte v. United States*, 260 F.2d 633 (9th Cir. 1958), would not dictate a contrary result for *Korte* merely stands for the proposition that the Government, in accordance with its own regulations, may waive a bar to induction and subsequently prosecute for a draft evasion.

<sup>5</sup> *In re Grimley*, 137 U.S. 147, 151-52 (1890).

debarred from pleading the existence of facts personal to himself, existing before the change of *status*, the entrance into new relations, which would have excused him from entering into those relations and making the change, or, if disclosed to the other party, would have led it to decline admission into the relation, or consent to the change.

Since appellant made known his disqualification to the recruiter, the crucial inquiry in this case must focus upon the effect of the recruiter's misconduct in smoothing the enlistment path for appellant once on notice that he legally could not qualify for enlistment. Although the Supreme Court in *Gimley* emphasized that a valid enlistment contract gives rise to a change in status which forecloses subsequent claims of breach of contract,<sup>6</sup> that is not to say that the Government knowingly may violate its own regulations by entering into illegal enlistment contracts and then subsequently rely upon the change of status doctrine as a shield to avoid judicial scrutiny. To so conclude would be to countenance on behalf of recruiters the very procedure found objectionable in *Grimley*.

The necessary prerequisite to effect a voluntary change in status from civilian to soldier is a valid enlistment contract or a legitimate constructive enlistment. Previously we have held that "fairness prevents the Government from . . . relying upon a constructive enlistment as a jurisdictional base" where Government agents acted improperly in securing an individual's enlistment. *United States v. Barrett*, 23 USCMA 474, 50 CMR 493 (July 11, 1975). *Accord*, *United States v. Brown*, *supra*. Similarly, the Government would be obligated to terminate an enlistment where a recruiter knowingly enlisted or aided in enlisting an individual who had given timely notice that he was disqualified for military service. *United States v. Brown*, *supra*.

(3) Because fraudulent enlistments are not in the public interest, we believe that common law contract principles<sup>7</sup> appropriately dictate that where recruiter misconduct amounts to a violation of the fraudulent enlistment status,<sup>8</sup> as was the situation here, the resulting enlistment is void as contrary to public policy. Hence the change of status alluded to in *Grimley* never occurred in this case.

(4) Since the void enlistment issue was raised in appellant's testimony at trial, the Government had an affirmative obligation to establish jurisdiction over him. *United States v. Graham*, 22 USCMA 75, 46 CMR 75 (1972); *United States v. Garcia*, 5 USCMA 88, 17 CMR 88 (1954). The absence of controverting evidence on the jurisdictional question either at trial or during the course of this appeal obviates the need for a limited rehearing. *United States v. Barrett*, *supra*.

The decision of the United States Army Court of Military Review is reversed. The findings of guilty and the sentence are set aside, and the charge is ordered dismissed.

Judge Cook and Senior Judge Ferguson concur.

We don't have any specific order of witnesses this morning. Captain Smith, do you want to go next?

#### STATEMENT OF CAPT. JOSEPH F. SMITH, U.S. MARINE CORPS RESERVE, APPELLATE DEFENSE COUNSEL

Captain SMITH. Yes, sir; Mr. Chairman, and Senator Metzbaum, I will explain in a little more detail the effect of recruiter misconduct on court-martial jurisdiction.

Senator NUNN. Where are you currently stationed?

Captain SMITH. I work in the Office of the Judge Advocate General of the Navy Appellate Review Activity as Appellate Counsel. I represent criminal defendants in the appeal of their court-martial conviction before the U.S. Navy Court of Military Review.

Senator NUNN. You see it from the defense attorney's point of view?

Captain SMITH. Yes sir.

<sup>6</sup> *Accord Taylor v. Resor*, 19 USCMA 405, 42 CMR 7 (1970); *United States v. Blanton*, 7 USCMA 664, 23 CMR 128 (1957).

<sup>7</sup> See, e.g., *Steele v. Drummond*, 275 U.S. 199 (1927); *Burck v. Taylor*, 152 U.S. 634 (1894); *Marshall v. Baltimore & Ohio R. Co.*, 57 U.S. (16 How.) 314 (1853).

<sup>8</sup> Article 84, Uniform Code of Military Justice, 10 USC § 884.

Senator NUNN. Are you currently on active duty?

Captain SMITH. Yes, sir. In addition to my appellate duties, now for 1 year, I prosecuted and defended cases with the 3d Marine Division, the Fleet Marine Forces in Okinawa, and I have had experience with the Russo problems both as a prosecutor and defense lawyer at the trial level.

Recruiter misconduct has a substantial impact on the military justice system and, accordingly, on the good order and discipline of the armed services. It is my purpose here to explain this impact in general terms. I am here at the invitation of the subcommittee and do not purport to speak as an official representative of the Marine Corps.

The law in this area is of recent vintage undergoing constant change, and subject to diverse interpretations in many respects. I will explain the governing legal principles, about which there is little disagreement. They will adequately illuminate the problem. Voluntary enlistees become subject to court-martial jurisdiction only if their enlistment is lawful. If it is unlawful, the court lacks jurisdiction and all charges must be dismissed.

In the *United States v. Russo*, the U.S. Court of Military Appeals held that if an applicant is prohibited from enlisting by statute or regulation and the recruiter learns of this, the enlistment is unlawful. Russo suffered from dyslexia, and had told his recruiter. He, in turn, had given Russo the answers to the Armed Forces qualification test. The U.S. Court of Military Appeals is presently considering whether to extend this rule to cases where the recruiter did not actually know of the applicant's disability, but this lack of knowledge was the result of his negligences or knowing failure to follow recruiting regulations specifically intended to discover such disabilities.

Senator METZENBAUM. Would you explain dyslexia for the record?

Captain SMITH. Yes sir. It causes you to see the words you are reading upside down.

The service member fraudulently enlisted by his recruiter has a virtual license to engage in crime, with a guarantee that he will never be brought to justice in the military court. No offense from disrespect to murder is exempt from these jurisdictional principles.

Obviously, this state of affairs has caused strong and mixed reaction in the military community.

L. Cpl. John Sanchez, USMC, was stationed at MCRD, Parris Island, S.C. One evening he forcibly sodomized an enlisted woman marine. In February 1977, he was tried, convicted, given the maximum sentence, and sent to the U.S. Disciplinary Barracks, Fort Leavenworth, Kan., to serve his confinement. Psychiatric evaluations of L. Cpl. Sanchez described him as "explosive" with a "passive-aggressive personality" and predicted a high potential of antisocial behavior when he returned to civilian life. His conviction and sentence were richly deserved.

In November of 1977, the U.S. Navy Court of Military Review set aside his conviction, and dismissed the charges. All rights, privileges and property of which he had been deprived because of the conviction were restored to him. He was administratively discharged and is now eligible for VA benefits.

The conviction was set aside because L. Cpl. Sanchez told his recruiter that he had smoked marihuana in high school. Prior marihuana use made him ineligible to enlist without a waiver of the ineligibility from higher up the chain of command. Without a waiver the enlistment was fraudulent. The recruiter told him to keep quiet about it and not tell anyone. The recruiter's complicity in the fraudulent enlistment barred the military courts from exercising jurisdiction over Sanchez and led to the dismissal of the charges.

The result caused Chief Judge Cedarburg, Chief Judge of the Navy Court of Military Review to observe:

Respect for the law and the consequent inclination to conform to it is eroded by decisions such as we here render in applying jurisdictional standards established by decisional law. The victims of these vicious, depraved and humiliating acts, and indeed the entire community governed by the system of military justice can be excused for expressing skepticism, in this case and other similarly decided, that the law provides redress for wrong. Who will vindicate these victims for degradation they have suffered if the military justice system cannot?

The Government's misconduct, even fully conceding what appellant has asserted, is complicity by a recruiter in concealing a waivable impediment to enlistment. Appellant's act—violent, degrading, and with a likelihood of long lasting psychological effects to their victims—are radical departures from societal norms in need of protection.

Senator NUNN. Was Sanchez charged with any kind of civil offense under the civil authorities?

Captain SMITH. Not as far as I know, Senator.

Senator NUNN. Why not? The civil courts would have had jurisdiction.

Captain SMITH. Sanchez violated two sections of title 18 as well as the State Code of North Carolina. There are only two reasons why he wasn't prosecuted. Either the U.S. attorney wasn't asked or the State's attorney wasn't asked, or if asked, declined to get involved. I don't know which it was.

On the other hand, few people were offended when the dyslexic Russo, a misfit who was as much a victim of his recruiter as his co-conspirator, avoided criminal liability for the purely military offense of unauthorized absence. After all, the recruiter insured that he would be placed in a closed society in which he could not function.

While abroad, the criminal license enjoyed by the recruit is not without limitation, because other sovereigns normally have concurrent jurisdiction over him. For example, most offenses under the UCMJ, with the exception of purely military offenses, are also violations of other portions of the United States Code, as well as State law. Drug offenses are an example. Neither the U.S. attorney nor State prosecutors are barred from proceeding because of recruiter conduct. Lance Corporal Sanchez could have been prosecuted by either State or Federal civilian authorities.

Often, however, State and Federal civilian authorities show little interest in prosecuting service members. Overseas, most of our military offenses constitute a violation of the host nation's law. In some cases, for example, when a military person is the victim, they have little interest in prosecution. In other cases, military authorities are loathe to turn over American citizens to countries with judicial systems that do not provide the sort of protections afforded by our Constitution or laws, and with prison systems that we perceive as "unenlightened".

However, even if another sovereign is willing to exercise jurisdiction over the military "untouchable", our worries are not over. Only the "legal" problem is solved. The problems of the small unit commander have just begun.

The accused does not leave the service immediately upon leaving the courtroom. Instead, he returns to the barracks. Although the military courts have determined that they lack criminal jurisdiction, the services have taken the position that this ruling affects only court martial jurisdiction. The person is still kept around, and treated as a service member.

In most cases, the member is administratively discharged quickly although there is provision for retention under limited circumstances.

Senator NUNN. Have the courts imposed anything on the services that require them to keep this person around? It seems to me the courts would have held by the time the person is tried and they have found no jurisdiction because of fraudulent recruiting, the courts have in effect held this man is not legally a member of the armed services. Why do they keep him around?

Captain SMITH. Senator, the courts don't keep him around. The military courts have taken a position that they have no jurisdiction to order the man's habeas corpus release, if you will, from the service. They are limited to the remedy of dismissing the charge.

The U.S. District Court for Southern District of California, about a year and a half ago, gave habeas relief for a fellow named Savage under similar circumstances, but the Department of Defense, the Navy and Marine Corps, have simply taken the position that the court's writ ends at the courtroom door, from that point on it is an administrative problem.

Senator NUNN. Would there be any legal impediment to the services immediately terminating the particular individual? Is there any legal impediment to that, or is that just a service policy?

Captain SMITH. Well, there is no legal impediment to it, sir. The problem is not normally that the services drag their feet and really get rid of the guy, the problem is paperwork takes time and it doesn't get done as quickly as it might. In any interim serious things can take place.

Senator METZENBAUM. As a matter of fact, Captain Smith, there was an article in the Washington Star recently indicating from January of 1976 to June 1978, approximately 790 marines were discharged due to *Russo*. Aren't there a large number of Marines that are still in the Corps who have asserted that defense, who have not been discharged; and that while they remain in the Marines, they are almost free to commit any crime they want and pretty much have a special kind of immunity?

Captain SMITH. I don't have any knowledge, sir, of about how many people are successful in their *Russo* attempts to get the court martial charges dismissed. I do know that you are absolutely correct, once you walk out of the courtroom there is no way the military authorities can touch you. You can do anything you want and the military authorities cannot touch you.

Now, the problem is, what do you do, for example, if the successful defendant, if you will, goes back to the barracks and the next morning at 5 a.m., his platoon or squad is supposed to go out to the field.

Senator METZENBAUM. What?

Captain SMITH. His platoon or his squad, the small infantry unit, sir, of 12 or 30 people, what do you do if at 5 a.m., our successful litigant just doesn't feel like getting out of bed? There is no way to force him to do it. There are no sanctions available to us.

Senator METZENBAUM. Have any cases come to your attention—I believe that I have seen some indications that some have gone back to the barracks and started a fire in a locker and did various things of that kind.

Captain SMITH. I think Captain Atkinson has an example of that. When I was on Okinawa, we had a young man who was successful in his trial getting the charges dismissed and the overseas problem just exaggerated the problems because we have to discharge our people or separate them within the United States.

When in Okinawa you can't call up Kadena Air Base and say give us a seat for so and so, we don't have jurisdiction over him. There is a lot of paperwork that needs to take place, so the individual goes back to his unit, and when he goes back to his unit the disbursing officer calls him and tells him he is in a no-pay status because the Department of Defense pay manual provides that once an enlistment is deemed to be fraudulent that you no longer receive any pay because you are not in the service.

On the other hand, you live in the barracks and you have to stay on base and it seems everybody treats you like you are still in until they have given you some proper documentation.

Well, once these people's money runs out and they still haven't gotten a plane home, they still haven't been separated, they proceed, in my experience, to engage in a pattern of serious misconduct in order to prod the Marine Corps into administrative speed.

On Okinawa we had a case where a guy during a hurricane sneaked into his company office and simply tore it apart and broke the typewriters, threw the desks about, broke the windows, and so forth. There is absolutely nothing that can be done.

The problem is aggravated even more if one of these people decided that he wants to be disrespectful or disobedient to the noncommissioned officers who are forced to retain some sort of control over him. If a platoon sergeant or platoon commander gives an order and then in front of the entire platoon this man swears at him, disobeys him, acts up, there is absolutely nothing that can be done.

This dilutes, obviously, the senior's authority over the juniors and all their other troops. Obviously nobody can be pleased with that kind of state of affairs.

In short, once these people come into the service the problems are not only a waste of the taxpayer's money, in a man that ultimately turns out to be unfit for service, but the potential for disruption and injury to persons and discipline of small units is unbelievable.

Again, my remarks are not intended to be comprehensive but rather illustrative. I have prepared a more detailed and lengthy discussion of the cases that surround the *Russo* decision in the recruiter misconduct areas.

In addition, I have attached an appendix that constitutes a compilation of about 30 illustrative cases with which I or some of my colleagues at the appellate division have dealt with and I will submit that for the record.

If you have any questions, I would be pleased to answer them.  
[The information follows:]

PREPARED STATEMENT OF CAPT. JOSEPH F. SMITH, U.S. MARINE CORPS RESERVE,  
APPELLATE DEFENSE COUNSEL

LCPL John Sanchez, USMC, was stationed at MCRD, Parris Island, South Carolina. One evening he forcibly sodomized an enlisted woman marine. In February, 1977, he was tried, convicted, given the maximum sentence, and sent to the U.S. Disciplinary Barracks, Ft. Leavenworth, Kansas, to serve his confinement. Psychiatric evaluations of LCPL Sanchez described him as "explosive" with a "passive-aggressive personality" and predicted a high potential for anti-social behavior when he returned to civilian life. His conviction and sentence were richly deserved. In November of 1977, the U.S. Navy Court of Military Review set aside his conviction, and dismissed the Charges.<sup>1</sup> All rights, privileges, and property of which he had been deprived because of the conviction were restored to him. He was administratively discharged and is now eligible for VA benefits.

The conviction was set aside because LCPL Sanchez told his recruiter that he had smoked marijuana in high school. Prior marijuana use made him ineligible to enlist without a waiver of the ineligibility from higher up the chain of command. Without a waiver the enlistment was fraudulent. The recruiter told him to keep quiet about it and not tell anyone. The recruiter's complicity in the fraudulent enlistment barred the military courts from exercising jurisdiction over Sanchez and led to the dismissal of the Charges.

At first blush, one sees little connection between Sanchez's marijuana smoking and the recruiters misconduct on one hand and the forcible sodomy on the other. This led the Chief Judge Cedarburg of the U.S. Navy Court of Military Review to observe:

"[R]espect for the law and the consequent inclination to conform to it is eroded by decisions such as we here render in applying jurisdictional standards established by decisional law. The victims of these vicious, depraved and humiliating acts, and indeed the entire community governed by the system of military justice can be excused for expressing skepticism, in this case and others similarly decided, that the law provides redress for wrong. Who will vindicate these victims for degradation they have suffered if the military justice system cannot? The Government's misconduct, even fully conceding what appellant has asserted, is complicity by a recruiter in concealing a waivable impediment to enlistment. Appellant's acts—violent, degrading and with a likelihood of long lasting psychological effects to their victims—are radical departures from societal norms in need of protection."

To understand why the *Sanchez* case was decided as it was (and it was decided correctly under prevailing law) requires a discussion of recent decision by the U.S. Court of Military Appeals.

A court-martial is a forum of limited criminal jurisdiction. Generally speaking, in subject matter it is limited to cases involving violation of the Uniform Code of Military Justice,<sup>2</sup> and, in the United States, violations which are service connected.<sup>3</sup> Additionally, court-martial jurisdiction extends only to persons subject to the Code.<sup>4</sup> There are twelve categories of such persons, one of which is involved in the subject of this inquiry—the voluntary enlistee.<sup>5</sup>

One way to subject oneself to the Code, and therefore, to the jurisdiction of courts-martial is by effecting a valid enlistment into one of the military services. While an enlistment is effected by contract, the law governing the enlistment's validity is not controlled by contract principles. In the case of *In Re Grimley*,<sup>6</sup> the Supreme Court held that enlistment in the military service involves a change of status. If the change of status takes place via a properly executed contract of enlistment, one becomes subject to the Code, and court-martial jurisdiction attaches. If the change of status does not take place there is no court-martial jurisdiction.

<sup>1</sup> *United States v. Sanchez*, No. 77 1262 (NCMR 9 November 1977).

<sup>2</sup> 10 USC § 801-940 (hereinafter "Code" or "UCMJ").

<sup>3</sup> *O'Callahan v. Parker*, 395 U.S. 258, 80 S.Ct. 1683, 23 L.Ed. 2 291 (1969).

<sup>4</sup> 10 USC § 802, Article 2, UCMJ.

<sup>5</sup> 10 USC § 802(1); Article 2(1), UCMJ.

<sup>6</sup> 137 U.S. 147, 11 S.Ct. 54, 34 L.Ed. 636 (1890); *United States v. Blanton*, 7 USCA 664, 23 CMR 128 (1957).

Various categories of persons are prohibited, by statute or regulation, from enlisting. An example of the former is a person under the age of seventeen years.<sup>7</sup> The latter group includes persons disqualified for physical or "moral" reasons.<sup>8</sup> Physical reasons include poor eyesight, weight control problems, or emotional instability. The so called "moral" disqualifications are generally a result of past acts of misconduct which result in some sort of court action. Disqualifications regulations are sometimes waivable.

Notwithstanding their disqualification, some applicants, through fraud upon their recruiter, or with the recruiter's aid, hide their disqualification and enlist. For these applicants, the execution of the contract of enlistment may not effect the change of status described in *Grimley*, and hence the "enlistment" itself has not made them persons subject to the Code. Their enlistment can be described as "void." This does not mean that the change of status may never take place, but only that it does not do so immediately. What is known as a constructive enlistment may later come about.

If a service member whose initial enlistment was void voluntarily performs his duties and accepts military benefits long enough he will effect a constructive enlistment.<sup>9</sup> This constructive enlistment effects the *Grimley* change of status necessary to make him a person subject to the Code and, hence, subject to the jurisdiction of courts-martial.

The existence of a valid initial or constructive enlistment is a mixed question of fact and law, to be determined based on evidence presented at trial. The burden is upon the government to establish them<sup>10</sup> by a preponderance of the evidence or, under certain circumstances, beyond a reasonable doubt.<sup>11</sup> The question of whether a valid enlistment or constructive enlistment exists can be litigated before the judge in a pretrial motion session and again on the merits of the case. In fact, it can be raised, under our rules of practice, for the first time on appeal through affidavit.

In the past void enlistment/personal jurisdiction analysis was straightforward. It usually arose because a sixteen-year-old fraudulently enlisted. The initial enlistment contract was declared void. The government, in turn, demonstrated that a constructive enlistment had been effected or, unable to do so on the facts, saw the charges dismissed. However, in 1974, in *United States v. Catlow*<sup>12</sup> a new variable was added to this analysis, recruiter misconduct.

Thomas Catlow was coerced into enlisting by a civilian judge. He was given the choice of jail or the Army. His recruiter knew this. Under existing case law neither of these effected the validity of his enlistment. The Court changed this by declaring coerced enlistments void just like underage enlistments. The government fell back on the theory of constructive enlistment. The Court found that one had not been shown on the facts and dismissed the case. Left for another day was consideration of what effect the recruiter's knowledge should have on the validity of the initial enlistment or the government's right to rely on constructive enlistment.

Recruiter misconduct surfaced a week later in *United States v. Brown*<sup>13</sup> John Brown, age sixteen, had a forged birth certificate showing him to be seventeen (obtained by bribing a Bureau of Vital Statistics employee) and parental consent to enlist form with forged signatures. Misleading his recruiter about his true age, he used them to fraudulently enlist. Because of his age, the initial enlistment was void. However, at his court martial for unauthorized absence, the government proved a constructive enlistment. The defense, rather than disclaim its existence, offered a new theory of jurisdictional avoidance.

It was based on the proposition that the services are held to strict compliance with their own regulations when those regulations are intended for the indi-

<sup>7</sup> 10 USC § 505.

<sup>8</sup> 10 USC § 504; See e.g., Marine Corps Order P.1100.74 (3 January 1977), para. 2010-2012.

<sup>9</sup> See generally: *United States v. Russo*, 23 USCMA 511, 50 CMR 650 (1975); *United States v. Brown*, 23 USCMA 162, 49 CMR 778 (1974); *United States v. Graham*, 22 USCMA 75, 46 CMR 75 (1972); *United States v. Overton*, 9 USCMA 684, 26 CMR 464 (1958).

<sup>10</sup> Constructive enlistment not established. *United States v. Catlow*, 23 USCMA 142, 48 CMR 758 (1974); *United States v. Overton*, 9 USCMA 684, 26 CMR 464 (1958); *United States v. Hall*, 17 USCMA 88, 37 CMR 357 (1967); *United States v. King*, 11 USCMA 19, 28 CMR 243 (1959).

<sup>11</sup> *United States v. Bobkock*, 1 M.J. 1083 (NCMR 1977); *United States v. Spicer*, 3 M.J. 689 (NCMR 1977); but see *United States v. Bailey*, NCM 77 1843, where the issue is under consideration *en banc*.

<sup>12</sup> 23 USCMA 142, 48 CMR 758 (1974).

<sup>13</sup> 23 USCMA 162, 48 CMR 778 (1974).

vidual's benefit under fifth Amendment due process principles, and that violation thereof was of jurisdictional significance.<sup>14</sup> Two violations were identified.

First, the defense demonstrated that Brown's recruiter failed to comply with certain recruiting regulations which, it followed, would have led to disclosure of Brown's age. The recruiter had signed a parental consent to enlist form without witnessing the required parental signature or having it notarized (Brown had forged the signature). Second, Brown's company commander had failed to institute separation proceedings when he discovered Brown's true age, as regulations required.

Judges Duncan, Quinn, and Ferguson agreed that the regulations had not been followed and pointed out that adherence by the recruiter would have prevented both the enlistment and litigation, and that adherence by the company commander, the litigation. The Court said that "combining" the government actions "fairness" precluded the government from using constructive enlistment as a jurisdictional base. The Court did not elaborate on whether this "fairness" was compelled by the Fifth Amendment as urged by the defense, statute, or its own supervisory powers over the military justice system.

Significant here is the fact that the recruiter's misconduct was considered only as it concerned the use of a constructive enlistment by the government and not as it effected the initial enlistment, and that Brown's recruiter did not knowingly recruit an underage appellant, although he did knowingly fail to verify the parental signatures. Had the recruiter known of Brown's age, he would have violated Article 84, UCMJ, 10 USC 884, by causing a fraudulent enlistment. The elements of an Article 84 violation are:

- (1) That the recruiter effected the enlistment of the applicant; and,
- (2) That the applicant was ineligible for this enlistment because it was prohibited by law, regulation or order; and,
- (3) That the recruiter *knew* of the ineligibility at the time he effected the enlistment.<sup>15</sup>

Brown's recruiter did not violate Article 84 because he did not *know* that Brown was ineligible. His failure to follow the regulation caused him to fail to discover Brown's age, therefore, he could not have violated Article 84.

The next case was *United States v. Dumas*,<sup>16</sup> with a per curiam opinion. There, as in Catlow, a civilian judge, with the recruiter's knowledge, coerced the accused into the service. Again, the jurisdictional effect of the recruiter's knowledge was not considered because coercion voided the enlistment and a constructive enlistment was not shown on the facts.

*United States v. Barrett*<sup>17</sup> followed. The initial enlistment was coerced and, based on Catlow, void, but Barrett had effected a constructive enlistment. Because the recruiter knew of the coercion and, that because of it Barrett was ineligible, use of the constructive enlistment was estopped. Once again, the Brown "fairness" doctrine was invoked. Because Barrett's recruiter did violate Article 84, his misconduct was more serious than was that of Brown's recruiter. Therefore, it made sense that Brown's estoppel doctrine applied. The Court again did not consider the effect of recruiter misconduct on the initial enlistment.

Then came *United States v. Russo*.<sup>18</sup> There, the recruiter, knowing Russo was dyslexic and unable to read, gave him answers to the Armed Forces Qualification Test (AFQT). All parties agreed that these actions rendered the test scores meaningless. Everyone also agreed that *if* the government had to rely on constructive enlistment as a jurisdictional basis the Brown estoppel doctrine would prohibit this. The problem for the defense was that since Russo was not underage or coerced, there was no void enlistment that would force the government to rely on constructive enlistment. Unless the enlistment was void, the subject of constructive enlistment would not even be reached.

Accordingly, a new theory was advanced. It was that the same sort of recruiter misconduct that gave rise to estoppel in Brown and Barrett should void the initial enlistment. The misconduct would then serve double duty, voiding the enlistment contract *and* estopping the government from showing a constructive enlistment.

<sup>14</sup> Citing, *United States v. Kilbreth*, 22 USCMA 390, 47 CMR 327 (1973).

<sup>15</sup> Paragraph 163, Manual for Courts-Martial, 1969 (Rev.); Military Judge's Guide, D.A. Pam. 27-9, section 4-8; Court-Martial Instructions Guide, AFM 111-2, chapter 3, section 3-1, *United States v. Hightower*, 5 M.J. 717 (ACMR 1978).

<sup>16</sup> 23 USCMA 278, 49 CMR 453 (1975).

<sup>17</sup> M.J. 74 (CMA 1975).

<sup>18</sup> 1 M.J. 134 (CMA 1975).

However, the exact language of the opinion caused some confusion. Chief Judge Fletcher wrote:<sup>19</sup>

"Previously we have held that 'fairness prevents the Government from . . . relying upon a constructive enlistment as a jurisdictional base' where Government agents acted improperly in securing an individual's enlistment. *United States v. Barrett*, 23 USCMA 474, 50 CMR 493 (July 11, 1975). Accord, *United States v. Brown*, *supra*. Similarly, the Government would be obligated to terminate an enlistment where a recruiter knowingly enlisted or aided in enlisting an individual who had given timely notice that he was disqualified for military service. *United States v. Brown*, *supra*.

"Because fraudulent enlistments are not in the public interest, we believe that common law contract principles appropriately dictate that where recruiter misconduct amounts to a violation of the fraudulent enlistment statute, as was the situation here, the resulting enlistment is void as contrary to public policy. Hence the change of status alluded to in *Grimley* never occurred in this case." This language has significance because of what it tells us and what it does not tell us.

It addressed the effect of recruiter misconduct on the initial enlistment for the first time. We were told that recruiter misconduct that violated Article 84 voided the initial enlistment. Accordingly it also gave rise to estoppel, under *Brown* and *Barrett*. It did not tell us whether something less than an Article 84 violation could ever void an initial enlistment. However, the Court spoke of the *Brown* case as if either the recruiter's negligence or the Army's failure to separate *Brown* when it learned of his age would have been enough to defeat court-martial jurisdiction. Whether negligence alone can defeat jurisdiction is a significant question of law because in many cases the recruiter does not know the applicant is ineligible. Rather, the situation is that had the recruiter followed applicable regulations requiring the verification of personal data the recruiter would have known. This issue is before the U.S. Court of Military Appeals in *United States v. Harrison*, USCMA Docket No. 34,956, and *United States v. Valadez*, USCMA Docket No. 34,837. The lower appellate courts have divided on this issue.<sup>20</sup>

*United States v. Burden*,<sup>21</sup> was decided the same day as *Russo*. *Burden* was inducted, but failure to pass the AFQT coupled with illiteracy was a non-waivable bar to induction. *Burden* explained that he was illiterate and was provided with a filled-in test answer sheet. The Court, said, *per curiam*, "For substantially the same reasons we enunciated in *United States v. Russo* [citation], appellant's induction was void."<sup>21</sup> Consequently, the court-martial which tried him lacked jurisdiction." In a footnote the Court pointed out that fraudulent induction was a criminal offense, lending support to the theory that contract voiding activity must be criminal.

Three weeks later, *United States v. Muniz*<sup>22</sup> was decided in a *per curiam* opinion. There the recruiter's actions included providing false documents and giving test answers in return for a bribe. The Court said "For the reasons set forth in *United States v. Russo* [citation] the court-martial which tried appellant lacked jurisdiction." That being the extent of the Courts analysis it tells us little, although it is clear that the recruiters' actions violated Article 84.

Nearly a year went by before another recruiter misconduct case was decided. Again it was by *per curiam* opinion in *United States v. Little*.<sup>23</sup> There, Little claimed that he was illiterate and had been provided AFQT answers by the recruiter. If so, *Russo* was dispositive on the facts. However, the lower court specifically found that he was not given any answers.

Uncontroverted, however, was the fact that the recruiter had explained what some of the words on the test meant, when asked, and that Little's mother had told the recruiter that her son had difficulty reading.

The Court wrote:<sup>24</sup>

<sup>19</sup> At 1 M.J. 137.

<sup>20</sup> See the discussions found in *United States v. Walley*, 76 1001 (NCMR 15 Sept. 1976); *United States v. Johnson*, 76 0332 (NCMR 12 Aug. 1976); *United States v. Harris*, 3 M.J. States v. Skyp, 77 0680 (NCMR 25 July 1977); *United States v. Holloway*, 77 0159 States v. Skyp, 77 6080 (NCMR 25 July 1977); *United States v. Holloway*, 77 0159 (NCMR 2 Aug. 1977); *United States v. Harrison*, 3 M.J. 1020 (NCMR 1977); *United States v. Wiggins*, 77 0320 (NCMR 21 Oct. 1977); *United States v. Valadez*, 3 M.J. 1087 (NCMR 1977).

<sup>21</sup> 1 M.J. 89 (CMA 1975).

<sup>22</sup> 1 M.J. 151 (CMA 1975).

<sup>23</sup> 1 M.J. 476 (CMA 1976).

<sup>24</sup> At 1 M.J. 478.

"Conceding that the recruiters action 'may be a technical violation of the applicable regulation,' the Government suggests that it was not recruiter misconduct sufficient to void the appellant's enlistment. We do not agree. The recruiter's assistance made it virtually impossible to resolve whether the accused could read and write based upon the only objective standard of measurement available. Hence, the recruiters 'technical violation' of the regulation succeeded in destroying the only vehicle available to determine literacy: one of the essential prerequisites for enlistment. The recruiter's impropriety takes on additional significance when it is recalled that he acknowledged having prior notice from the appellant's mother that her son could not read or write and hence was not qualified for enlistment.

"We conclude, therefore, that, as a matter of law, the recruiters self-acknowledged assistance to the accused on the AFQT facilitated a fraudulent by render [ing] . . . meaningless the established minimum test scores for enlistment." *United States v. Russo*. (Footnotes omitted; emphasis added).

Here, the Court did not find knowledge of Little's illiteracy, but rather a knowing violation of the regulation, lending support to the arguments that some sort of negligence, perhaps gross negligence or dereliction of duty, could void an enlistment.

Another 18 months passed before another, and the most recent, recruiter misconduct case was decided. It was *United States v. Lightfoot*.<sup>25</sup> Lightfoot was in much the same situation as Catlow, facing civilian charges and given the option of enlisting to avoid trial. However, there was a difference. Lightfoot and his lawyer came up with the idea, and the recruiter was not apprised of it. Since Lightfoot went voluntarily, and the recruiter did nothing wrong or even negligent, the Court ruled that there was court-martial jurisdiction, the Grimley change of status had taken place.

Where does all of this take us? We know that recruiter misconduct, of whatever degree the courts ultimately require, bars any court-martial from exercising jurisdiction over the service member. Consequently, the service member fraudulently enlisted has a virtual license to engage in crime with a guarantee that he will never be brought to justice by military courts. No offense from disrespect to murder is exempt from the jurisdictional principles discussed. Obviously, this state of affairs has caused strong, sometimes mixed, reactions. Chief Judge Cedarburg's remarks in the Sanchez forcible sodomy case are one example. On the other hand, few people were offended when the dyslexic Russo, a misfit who was as much his recruiter's victim as his co-conspirator, avoided criminal liability for the purely military offense of unauthorized absence. After all, the recruiter ensured that he would be placed in a closed society in which he could not function.

While broad, the criminal license extended to the recruit is not without limitation, because other jurisdictions have concurrent jurisdiction over him. For example, most offenses under the UCMJ, with the exception of purely military offenses, are violations of other portions of the U.S. Code, as well as state law. Drug cases are a good example. Neither the U.S. Attorney nor state prosecutors are barred from proceeding because of recruiter misconduct. LCPL Sanchez could have been prosecuted by either.<sup>26</sup> Often, however, state and federal civilian authorities take little interest in prosecuting service members. Similarly, overseas, most of our military crimes violate laws of the host nation. In some cases, e.g., when a military person is the victim, they have little interest in prosecution. In other cases, military authorities are loathe to turn over American citizens to countries with judicial systems that we view as unfair under our constitutional standards, and prisons we perceive as "unenlightened."

However, even if another sovereign is willing to exercise jurisdiction over our military "untouchables," our worries are not over.

The accused does not leave the service upon leaving the courtroom. Instead, he returns to the barracks. Although the military courts have determined that they lack criminal jurisdiction, the Navy and Marine Corps have taken the position that this ruling affects only court-martial jurisdiction. The person is still kept around and treated as a service member. In most cases, the member is quickly administratively discharge. But what is done with the person until this can be accomplished? Or, if he is overseas, until we can get him a flight home to a

<sup>25</sup> Sanchez violated at least two federal criminal statutes, 18 USC 13 and 113, see *United States v. Holmes*, 414 F.Supp. 831 (D.Md. 1976).

<sup>26</sup> 4 M.J. 262 (CMA 1978).

separation center? As a practical matter, if he doesn't wish to arise at 5:00 A.M. and accompany his unit to the field, there's very little that can be done about it. We have no sanctions available to us. The detrimental effect this can have on the morale and effectiveness of the squad or platoon is obvious. It is compounded when, for example, the member becomes disrespectful to NCO's and officers. They are helpless and cannot impose any punitive disciplinary measures. At the same time, their authority is diluted in front of their troops. Obviously, nobody can be pleased with such a state of affairs.

Problems often arise in this situation because the Marines stop paying the person from the time the charges are dismissed, although he is forced to remain on "duty."<sup>27</sup> Often times, particularly when their money runs out, these people begin a pattern of serious misbehavior in order to accelerate their separation.

In sum, few people have neutral feelings about the judicial decisions concerning the effect of recruiter misconduct. Recruiter misconduct has caused hundreds of Marines to avoid court-martial.

The incidents of recruiter misconduct which results in the enlistment of persons, not qualified for service in the modern day Marine Corps, impacts in many ways. The people involved are subjected to the necessary rigors of military discipline, which most qualified marines find challenging and rewarding. However, they are the ones most likely to be disciplinary problems and it is not until the disciplinary proceedings are underway is it generally revealed there is no amenability to the disciplinary process. The affect upon the individual, fellow marines and the Marine Corps itself can only be deleterious to good order and discipline and the morale and welfare of the military community.

Attached as an Appendix is a summary of recruiter misconduct cases that have come before the U.S. Navy Court of Military Review. It is provided to illustrate the varied nature of recruiter misconduct allegations. Several caveats are in order. First, although most cases are Marine Corps cases, some involve Navy personnel. However, they are representative. Second, these are only cases that have reached the appellate courts. A much greater number of these cases are dismissed at the trial level. The appellate courts generally see only the close cases. Third, this is not a compilation of all cases reaching the Navy Court. Rather it is a summary of cases in which substantial written opinions have been rendered. Many cases are disposed of without written opinion. Fourth, this summary was originally prepared by one of the appellate defense counsel at the Navy Appellate Review Activity, as a research aid. It does not purport to be an official service document of any sort. Like all the previous discussion, it represents one lawyer's best efforts at an impartial review.

#### APPENDIX

##### B. K. Baker, 77 0614, (NCMR 16 Sept 1977) Panel 2

Divided panel addresses instance of "tutoring" by recruiter to help applicant pass AFQT. Appellant testified to being furnished questions and answers to AFQT by recruiter, which assertion went un rebutted. Also, that recruiter had verbally indicated that materials not lawfully provided. Government introduces stipulation establishing recruitment practices of providing sample tests. NCMR affirms conviction, distinguishing Little (1 M.J. 476) on ground that recruiter had "apparently provided [appellant] with a list of examination questions culled from previous applicants . . . as a study aid;" that this material was returned before the exam; that in the present case, unlike Little, no antecedent knowledge of applicant's illiteracy shown in record; and that therefore "although the recruiter may have violated Navy Regulations by providing information about the examination from others who had taken it, in effect, he did little more than render normal tutorial assistance before appellant took the examination." NCMR finds no open misconduct in all this, since Russo construed as limited to Article 84 violations. Article 84 violations construed as limited to effecting the enlistment of a person known to be ineligible for enlistment, and no indication of such ineligibility shown in present case. (In short, Little is totally submerged into Russo, with no extruding parts, coterminous in all respects.) In a footnote the Court appears to rest its former willful ignorance and gross negligence cases (Walley, NCM 76 1001; Johnson, NCM 76 0332) on a voidable enlistment theory,

<sup>27</sup> Department of Defense Pay Manual, Part 2, Chapter 4, section 10401 and table 1-4-1.

permitting constructive enlistment unless "the disqualification is a non-waivable or continuing bar to the enlistment," in which case the Government would be estopped from pursuing constructive enlistment. The concurring judge (Newton) concurs in the result, but not in the rationale, arguing that Little concerned with concealing illiteracy, not falsifying test scores, and that when other indicia suggest illiteracy, Little should be applied to void enlistment. The dissent also parts company with the majority in its limitation of Russo to Article 84 violations, as well as the corollary that Russo precludes constructive enlistment in all cases where initial recruiter fraud shown. Specifically, the dissent would find recruiter misconduct present, but not of a nature overcoming the "basic necessary qualifications for enlistment." Accordingly, especially in light of the two years' service, the concurring judge would find constructive enlistment despite recruiter misconduct and concurs in the result.

*United States v. Bobkoskie*, 1 M.J. 1083 (NCMR 19 Jan. 1977), Panel 1

Appellant on six months probation for felonies committed as juvenile at time of enlistment. At trial relates that he apprised one of his recruiters of police record and was advised to conceal facts in application forms. Mother of appellant testifies that some recruiter had asked for probation officer's phone number. Recruiters deny all. NCMR disbelieves appellant, believes recruiters, accordingly finds Government "not a party to appellant's fraudulent enlistment." However, appellant also testified that after two months at boot camp he informed Marine Corps captain of breaking and entering charge and probationary status. Officer took no action. NCMR distinguishes this situation from Brown (23 USCMA 162) on basis that Bobkoskie's probationary period had already terminated at time of conversation with Marine Corps captain, and thereafter continued to receive benefits. In second part of opinion NCMR addresses standard of proof and holds that preponderance of the evidence governs in an interlocutory question, the resolution of which does not entail a finding on the ultimate question of guilt or innocence.

S. W. Crowe, NCM 77 0552, 22 July 1977, Panel 2

Appellant claims recruiter induced him to omit disqualifying drug use and criminal record information from application. Disputed by recruiter. NCMR refuses to resolve controversy and, instead, latches onto superseding enlistment theory, based on 24 days in Marine Corps J program, a deferred enlistment program temporarily enlisting recruit in Marine Corps Reserve. States, "[w]e cannot impute that recruiter's alleged earlier misconduct to whomever recruited appellant into the regular Marine Corps . . . [24 days later] . . ." (citing Air Force precedent). This despite fact that "discharge" from program for express purpose of enlisting recruit in regulars.

G. E. Engle, 77 0160, 18 April 1977, Panel 2

Appellant entered service as result of being arrested for assaulting Oklahoma cop. Appellant's friend, the judge, personally released him from confinement and suggested enlistment before charges filed. The foregoing related to recruiter, as well as information of pending Ohio felony charges and "3 or 4" misdemeanors. After recruiter advised of above, appellant makes deal permitting clean police check of felony locale (warrant for arrest dismissed). Thereafter appellant's charges dismissed. NCMR finds no recruiter misconduct, since no "connivance by Government agents to violate applicable recruiting regulations in order to procure fraudulent enlistment." Catlow totally ignored in decision.

O. Gallardo, NCM 77 0272, 30 June 1977, Panel 1

Conviction at GCM for violation of 90, 108, and 128. Two bases for motion to dismiss: First, appellant charged with burglary in Texas, which charge pending when enlistment processing began. Assistant D.A. advised by recruiter in letter that Gallardo would be enlisted as soon as charge disposed of. Assistant D.A. moves to dismiss specifically to permit Marinehood, which done by judge. NCMR concedes that Marine Corps Regs. barred both those against whom charges pending and those who are released by civil court to facilitate enlistment, but notes that no charges pending after dismissal. As for release for purpose of joining Marine Corps, NCMR holds that "no indication that the dismissal was conditional

on appellant's application to and acceptance into the Marine Corps . . . [but that dismissal of charges final as of date of issuance]." On that basis, NCMR affirms on that prong. Second, straight Little [1 M.J. 476] situation: recruiter told appellant illiterate (according to appellant), recruiter supplies AFQT answers before appellant takes test at AFEES. NCMR believes recruiter, who states that had culled 20-24 questions from prospects returning from AFEES test, and had employed in preparing own test sample questions, which he used to tutor appellant. This, the NCMR finds, did not render AFQT meaningless, but "merely provided the opportunity for study and preparation, a reasonable course to follow for any examination."

*United States v. Graham*, 3 M.J. 962, 29 July (NCMR 1977)

Two-fold jurisdictional attack on Article 86 conviction denied, on both prongs. First theory rested on evidence showing applicant on supervised probation (5 years suspended sentence) for larceny. Appellant claims recruiter advised him to suppress information; recruiters (2 of them) deny any wrongdoing. Spicer (3 M.J. 689) standard employed; recruiters believed. Second theory advanced from Brown (23 USCMA 162)—Marshall (3 M.J. 612) precedent urging that Government's failure to process appellant for administrative discharge upon being advised of probation status during boot camp constituted misconduct sufficient to preclude Governmental reliance on constructive enlistment. NCMR rejects aforesaid theory on two main grounds: (1) 1P6018 of MCP P 1900.16 not mandatory but discretionary; (2) constructive enlistment not relevant when enlistment not void but only voidable at option of Government. This latter hypothesis advances from proposition that constructive enlistment is a doctrine limited to void ab initio situation in which the initial impediment has been removed by the passage of time or events, and proceeds to the conclusion that the contrary direction taken by the NCMR in Marshall, applying Brown to a drug use impediment, was wrongly decided, since that enlistment was also not void, but only voidable.

J. L. Greene, 77 2060, 17 August 1978, Panel 1

Appellant on probation for civilian offense at time of initial enlistment. Motion raised at court-martial during subsequent enlistment (legitimate, not J program "reenlistment") period. NCMR affirms denial of motion to dismiss at trial on alternate grounds that (1) subsequent enlistment (COOK cited) attenuated original taint, and (2) initial enlistment not void anyway, but only voidable. Second rationale addresses defense contention that command placed on notice prior to re-enlistment of appellant's disqualifying probationary status at time of first enlistment. NCMR distinguishes Brown (23 USCMA 162) on ground that disqualification Brown's command was alerted to was a statutory one (minority) which rendered his enlistment void ab initio, whereas Greene's disqualification was, as in Marshall, 3 M.J. 612 (NCMR 1977), merely an impediment under existing recruiting regulations. The latter type, the NCMR rules, rendered his enlistment only voidable, and voidable only at the option of the Government. Consequently, the Government had no obligation, as in Brown, to take affirmative action once notified of the appellant's disqualification. Marshall is again stated to be defunct by Panel 1. The court relies on *Graham*, 3 M.J. 962 (NCMR 1977), which had ruled that in such cases, where an enlistment is voidable at the option of the Government, no further consideration be given to estoppel arguments, since the Government need not rely on constructive enlistment, but has a valid initial change in status. (In a footnote the NCMR hedges its bets by distinguishing Marshall on the ground that Marshall had brought his drug use disqualification to the attention of the command while still in boot camp, unlike the situation here; this of course speaks to precisely those theories of constructive enlistment which *Graham* eschews.)

R. L. Gump, 77 1879 (NCMR 7 Feb. 1978) Panel 1

Appellant convicted of seven counts of unauthorized absence. He enlisted at age seventeen, using in lieu of parental consent that of uncle with whom appellant was then living, but who was not the legal guardian and, in view of the fact that both parents still lived, could not be considered the "nearest living relative." Recruiter informed of true state of affairs prior to enlistment. The NCMR held (the recruiter did not testify) that "on the basis of the available evidence, we

are not convinced beyond a reasonable doubt that appellant's recruiter was justified in allowing [the appellant's uncle] to grant consent for appellant's enlistment as 'the nearest living relative' without at least some effort at personal contact with appellant's parents." However, the Court cautions that it does not make an affirmative finding of recruiter misconduct, but only holds that "where the available evidence does not affirmatively establish recruiter misconduct, but merely leaves open the reasonable possibility that it may have occurred, the Government would not be precluded from attempting to establish a legitimate constructive enlistment and, thereby, satisfy the necessary prerequisite to effect a voluntary change in status. United States 1. Loop, 4 M.J. 529 (NCMR 1977)." In the present case, appellant's request for discharge prior to attaining the age of 18 prevented the establishment of a constructive enlistment.

S. P. Harris, 3 MJ 627 (NCMR 22 April 1977) Panel 1

Appellant obtained commission under Enlisted Commissioning Program in Marine Corps through false representations of educational attainments, as also his entrance into Marine Law Program. Upon discovery of foregoing, claimed void enlistment as result of gross negligence of government in failing to uncover fraud. (!) NCMR finds commission falsely obtained without complicity of government agents: repulses argument that BROWN (23 USCMA 162) condemns gross negligence alike with recruiter fraud by holding that BROWN concerned with misconduct, not negligence. Thus [deleted] the NCMR finds that Government not estopped from claiming jurisdiction by "reversion of appellant to his former enlisted status by reason of his failure to qualify for a commission." However, while it so finds, it rests its disposition of the case on the alternative theory that commission not void but voidable at option of government, with appellant bereft of standing to object. In this respect the NCMR quotes at length from *In Re Grinley*, 137 US 147 (1890), which it finds apropos in light of its own conclusion that the impediment to a valid commission, overborne by the claimed negligence, was one intended for the benefit of the Marine Corps, not the accused, thus avoiding *RUSO's* departure from *GRIMLEY* on *ACCARDI* [*United States ex rel Accardi v. Shaugnessy*, 397 US 260 (1954) grounds].

*United States v. Harrison*, 3 M.J. 1020 (NCMR 18 Aug. 1977), Panel 3

16 year-old enlistment without parental consent. Although parents favorably disposed after being advised of enlistment, appellant never informs superiors of minority status and performs military duties voluntarily after 17th birthday. NCMR finds constructive enlistment. Appellant contends that government estopped from relying on constructive enlistment to support jurisdiction, since recruiter had either actual or constructive knowledge of applicant's iminority, the latter based on supposition that a reasonable inquiry and/or compliance with age verification procedures set forth in Manual would have disclosed statutory ineligibility (under 16), NCMR finds that recruiter did not have actual knowledge and that recruiter did not further appellant's enlistment while cognizant of a fact rendering appellant ineligible in a manner amounting to a violation of Article 84, and that *this alone* constitutes recruiter misconduct within purview of *Russo*. From this conclusion the NCMR reasons backwards and holds that "[t]o the extent that Court of Military Appeals cases decided before and distinguishable on their facts from *Russo* can be interpreted as having held that recruiter misconduct which does not violate Article 84, UCMJ, is capable of preventing the exercise of court martial jurisdiction over an improperly enlisted accused, we believe they no longer reflect the present state of the law." This panel of NCMR having overruled *Brown* (23 USCMA 162) emphatically rejects argument that recruiter negligence can void an enlistment even when that negligence is deliberate nonfeasance, finding that in neither *Russo*, *Barden* (1 M.J. 89), or *Mumiz* (1 M.J. 151) was it the "mere fact of recruiter misconduct which voided the resulting enlistments . . . [but] because each one amounted to a 'fraudulent enlistment' procured with the active participation of an agent of the government who thereby violated Article 84 and by so doing transgressed against the public interest." In *Harrison*, the NCMR finds, the recruiter did not know his prospective recruit was 16, and "[w]hether the recruiter should have known or otherwise should be held responsible for his failure to discover appellant's true age does not concern us here."

## G. W. Holloway, 77 0159 (NCFMR 22 August 1977) Panel 1

Involved 86 Violations. Holloway had juvenile record with more than one non-minor adverse juvenile adjudication which prohibited enlistment without waiver. His probation officer, by stipulated testimony (from Louisville, Kentucky), corroborated record. Accused truthfully answered the Fraudulent Enlistment Warning and stated existence of prior record. So recruiter on notice. Police check should have disclosed the extensive juvenile record which was furnished to the TDC by same office allegedly approached by recruiter accomplishing check. Recruiter denies that juvenile record showed more than 2 minor offenses not amounting to (even) a waivable bar.

Court notes: (1) Recruiter's testimony no more than outline of SOP, therefore not given the same weight accorded an actual refutation of testimony; (2) Recruiter testified as to (non-existent) police check, which he claimed would justify him, but which was not in residual files; (3) Court was apprised of what recruiter's check should have discovered, but hadn't; (4) Local practice permitted "filing away" of juvenile records which entailed a retroactive dismissal upon request of recruiters and probation officers; (5) Clerk of juvenile court testified such request had been made in present case by "a recruiter"; (6) Recruiter admitted that he might have made such request in case of non-disqualifying offenses.

Court concludes the Government failed to show recruiter unmindful of facts which posed waivable bar, and (2) that this conduct did not violate Article 84.

## C. E. Johnson, 76 0332 (NCFMR 12 August 1976) Panel 1

Appellant enlisted although blind in left eye since age nine. Blindness not discovered at AFEEES physical, but became apparent at boot camp. NCFMR notes that much of appellant's detailed account could easily have been refuted by the Government, if desired. The Government, however, presented no rebuttal evidence. Blindness in one eye was at that time a non-waivable defect. NCFMR concludes that "the fact that [the appellant] passed the physical examination can only be explained through gross negligence. . . . Only a grossly negligent procedure would have failed to reveal that appellant possessed no sight in his left eye." Want of sight in one eye would be disabling in a combat environment. "Although appellant did not make his visual defect known to the recruiter, the mal-administered tests have the same significance in this case as did the assistance given to Russo by the recruiter in actively evading the predictable outcome of the visual test in that case. . . . Inasmuch as it was the duty of the Government . . . the Government is estopped from the assertion of constructive enlistment."

## A. L. Krejce, 78 0196 (NCFMR 18 July 1978) Panel 1

Appellant and sister informed recruiter of appellant's extensive criminal record, including robbery, aggravated assault, possession of marijuana, for which he was on probation at the time. Recruiter advised appellant to conceal his record. Recruiter assume standard position: doesn't remember, but wouldn't do a thing like that. DC requests five witnesses on motion, presenting synopses of testimony which would establish that recruiter lied about his recruiting practices. MJ denies, on theory that recruiter's pattern song only "collateral" to issue of appellant's enlistment. NCFMR finds that the linchpin of recruiter's testimony ". . . was his categorical assertion that . . . he had conformed to regulations and had never told any applicant to lie or conceal disqualifying impediments." Testimony on a regular course of action constituted evidence of facts which are independently provable and therefore not collateral. The NCFMR found the witnesses improperly denied and ordered a rehearing.

## J. H. Leonpacher, 77 1293 (NCFMR 21 Sept. 1977) Panel 1

Appellant convicted of 86, 91, 116, 136. Claimed invalid enlistment on grounds of recruiter misconduct. Appellant testified that he had informed recruiter of history of mental problems, as well as criminal records, and had been advised to conceal these defects. Recruiter denies it. Recruiter believed despite certain inconsistencies, employing proof beyond reasonable doubt standard.

T. Lewandowski, 78 0042 (NCMR 22 June 1978) Panel 2

Appellant contended that his enlistment was void because of recruiter misconduct. But subsequent enlistment intervened, attenuating taint of Cook (1 M.J. 682). However, NCMR goes further and, assuming Cook not applicable, finds that appellant not suffering from a basic disability which would bar his enlistment, since probation had actually run by time of enlistment. Thus, since recruiter's advice to conceal this fact was both gratuitous and unnecessary, no violation of the fraudulent enlistment statute arose.

*United States v. Locke*, 4 M.J. 714 (NCMR 22 Dec 1977) Panel 2

Appellant had adverse juvenile adjudication for felony offense as well as misdemeanors which disqualified him for enlistment without waiver from Commandant of the Marine Corps. Appellant listed these offenses in his application, but no waiver executed, nor could recruiter recall appellant's enlistment. NCMR appears to find the appellant's enlistment void ab initio. "In this case, appellant, who without a waiver was ineligible for enlistment, was enlisted contrary to regulations. Therefore his enlistment was invalid and did not effect a change in status." Consequently the Court turns to the issue of constructive enlistment, citing *Russo*, *Callow*, and *Little* as cases setting forth the governing principle for the determination of constructive enlistment problems. Panel 2 then goes on to state that this principle, preventing reliance by the Government on constructive enlistment theories, rested on two alternate factual foundations: (1) a showing of recruiter misconduct sufficient to violate Article 84; and (2) instances in which the Government's agents "through negligence smoothed the enlistment path for an ineligible, if a non-waivable bar to enlistment subsists." In the absence of such a non-waivable bar, negligence would not by itself prevent the Government from asserting constructive enlistment, because of "the strong public policy" operative in straight *Russo* cases being absent in such instances. This Panel specifically parts company from the Harrison (3 M.J. 1020) panel in its view of the type of misconduct contemplated by *Russo*, holding that reference to Article 84 is illustrative only, and "does not encompass every situation" in which the Government will be estopped from asserting constructive enlistment. The *Locke* Court views the problems as one of competing policies: there is a strong policy "which dictates that offenders be brought before the bar of justice," there is a strong policy "against reliance on [the fruits of] criminal conduct of Governmental agents," and there may be strong policies "underlying various non-waivable bars to enlistment." Either of the latter can overcome the former, but mere ineligibility overborne by negligence on the part of recruiters, when not coupled with such a policy as may be embodied in a non-waivable requirement will not overcome the policy in favor of exercising jurisdiction. In the present case, neither a non-waivable bar overborne by negligence, nor Article 84-type misconduct was present; consequently the jurisdiction of the trial court was affirmed. (One caveat in any case expressed by Panel 2 was that the policy embodied in the non-waivable requirement must still be in effect in light of the factors operative at the time the motion is raised.)

D. B. Long, 78 0446 (NCMR 11 Aug 1978) Panel 1

Appellant enlisted in J program 15 Jan., discharged 10 Feb., enters Regular 11 Feb. At initial enlistment was provided with list of answers to AFVAT; these allegations not refuted since prosecution doesn't call recruiter. While NCMR claims it is skeptical in light of a lack of any other signs of invincible ignorance on part of appellant, assumes recruiter's assistance "rendered meaningless the established minimum scores for enlistment," citing *Little* (1 M.J. 476). No showing that Dallas recruiter (regular enlistment) aware of Weatherford (reserve enlistment) recruiter's assistance on test. Government relies on Cook (1 M.J. 682) and Crowe (No. 77 0552). NCMR distinguished Cook and reverses itself on Crowe. (The actual words: "Crowe is too broad in its sweep.") NCMR finds that it may distill two limitations to the intervening enlistment rationale of Cook from the logic of that case: (1) If the disqualification is still in existence (or the effects of the recruiter misconduct) when the second enlistment contract is executed, or (2) the second enlistment contract is not purely voluntary, then

no change of status occurs. Reviving an older decision, McGee [75 1328 (NCMR 20 Nov 75)], the NCMR notes that no right of refusal exists to an applicant enmeshed in the Marine Corps J program. As to Crowe, "[i]n lumping together all prior enlistments of whatever duration and of whatever circumstances surrounding their inception (sic), we believe Crowe ignores the true impact which recruiter misconduct may have on a subsequent enlistment." In Long, the 27-day interval was intended to place appellant into a "holding pattern" only; the "only enlistment examination taken by appellant during his enlistment process was that given prior to the initial Reserve enlistment." The record permits "a fair inference . . . that the second recruiter relied upon the results of that examination in effecting appellant's current enlistment. . . ." The alleged misconduct would therefore still be in effect. The Government has not met its burden to show a valid change in status.

*United States v. Loop*, 4 M.J. 529 (NCMR 29 Sept 1977) Panel 1

Appellant enlisted in Navy, had prior discharge from Marine Corps of type requiring waiver for re-enlistment, was told by Navy recruiter to tear up discharge papers. Recruiter claimed to recall appellant, but could not recall any discussions of prior enlistment. NCMR finds that "[t]he evidence before us is insufficient to support an affirmative finding that the recruiter in question was guilty of misconduct amounting to a fraudulent enlistment. We merely find that the Government has not sustained its burden to establish personal jurisdiction by proving beyond a reasonable doubt that recruiter misconduct of the requisite nature did not occur." Court proceeds to state that under these circumstances it would accept a showing of constructive enlistment, noting that this showing would be barred under Russo if actual misconduct evident, but finds that "[t]he Government made no effort at trial to establish a constructive enlistment; instead reliance was placed upon establishing a valid enlistment from the beginning." Since the Government did not succeed in showing either, the charges were dismissed for want of jurisdiction over the appellant.

*United States v. Marshall*, 3 M.J. 612 (NCMR 31 March 1977) Panel 3

Appellant contended that at time of enlistment, he had disclosed to recruiter (absolutely) disqualifying marijuana usage. This issue controverted, and not resolved by NCMR. Rather, NCMR focuses on subsequent disclosure of disqualifying feature, accepted by Government as correct, during boot camp, two days into training. The information was taken by a clerk in the Training Regiment, but never reported to persons competent to act on the information, and never acted on despite a Marine Corps Order authorizing discharge of members discovered to be incorrectly recruited. The NCMR "[found] that it is unreasonable that the disqualifying information, made an integral part of the appellant's service record, was not acted upon when it came to the attention of the Marine Corps. . . . Such duty is imposed not only by case law, i.e. Brown, but by Navy Regulations which prohibit failure to report violations of the Code, including fraudulent enlistment." The Court notes that notice was received before appellant had rendered any real service, undergone any formal training, or received pay or other benefits. The Court concluded that permitting the government to raise constructive enlistment would encourage recruits to conceal disqualifying information and superiors to ignore such information when it came to their attention. "Failing in its affirmative duty to act upon such notice, the government cannot now invoke a theory of constructive enlistment."

L. J. McCoy, 77 1736 (NCMR 28 Feb 1978) Panel 2

Appellant found fraudulently enlisted by NCMR. Basis of fraud was falsification of "Odds for Effectiveness" scores, which were rendered acceptable by computing in a non-existent high school graduation, which the recruiter conferred upon appellant despite appellant informing him that he was a tenth-grade dropout. The prosecution in rebuttal claimed at trial to have sighted a diploma, of which, however, he could produce no evidence. NCMR resolves issue in favor of appellant, since [d]ocuments that would ordinarily be available to verify that the recruiter had sighted the accused's high school diploma . . . here a false document if it existed at all . . . have been removed from files, by persons unidentified, on the basis of provision unspecified in a statutory enactment entitled the Privacy Act." (The recruiter had resorted to that Act to explain the absence of

any diploma records in the residual files.) The NCMR concludes by remarking: "We know not who lied. Without that determination, it is impossible to determine whether court-martial jurisdiction exists."

S. McGowan, 78 0518 (NCMR 23 Aug 1975) Panel 1

Appellant disclosed information at boot camp about prior drug use which would have disqualified him for enlistment. On appeal Brown (23 USCMA 162) and Marshall (3 M.J. 612) raised by ADC in support of contention that Government estopped from asserting jurisdiction. NCMR affirms MJ denial of motion at trial on theory that since original enlistment was not void, but only voidable at option of the Government, Brown and Marshall irrelevant; the Government did not have to deal with constructive enlistment at all, since a valid change of status had occurred on the day of enlistment. In a long digression, the NCMR analyzes Brown, Marshall, Catlow, and Russo, the first and third of these in terms of volition, noting that in Brown a statute barred any voluntary entrance into the service, and that in Catlow a civilian judge had precluded much exercise of volition on the part of the appellant by the odious choice he presented the incarcerated Catlow. The NCMR concludes by stating that "[w]hether a service recruiting regulation deems an enlistment defect waivable or non-waivable is determinative. Rather an enlistment may be found void when it is shown to be an involuntary enlistment, whether by statute, as in Brown . . . or as the result of factual compulsion, as in Catlow, *supra*, or when it is shown that the enlistment is contrary to public policy because of recruiter misconduct which amounts to a violation of the fraudulent enlistment statute." Since the facts of the McGowan case presented neither the one (involuntary enlistment) or the other (misconduct) situation, jurisdiction was upheld.

*United States v. Robinson*, 1 M.J. 914 (NCMR 11 March 1976)

Appellant's probation for burglary offense was terminated for the express purpose of permitting his enlistment into the Marine Corps, through an arrangement between recruiter and probation officer. Enlistment eleven days later, fully listing criminal record. Waiver required by Commandant, but not submitted to Combar to court martial jurisdiction, citing Dunks, (1 M.J. 254) and Russo. NCMR holds failure to obtain waiver at proper level not recruiting misconduct since "appellant was not absolutely disqualified from enlisting," being only "conditionally ineligible." The Court notes that while the waiver requirement is per se intended "for the benefit of the felon as well as the armed forces" the level at which the waiver must occur is clearly an in-house concern. The subsidiary Catlow issue was brushed aside on the basis of the eleven-day time interval between termination of probation and enlistment on the assumption that "there was nothing anyone could do to him if he failed to enlist."

*United States v. Ruggiero*, 1 M.J. 1089 (NCMR 19 Jan 1977) Panel 2

Appellant enlisted into the Marine Corps despite criminal record without the requisite morals waiver having been granted, even though the necessary information was disclosed by appellant, and the package prepared by the recruiting officer. Three years later, at trial for rape, appellant raises defect in enlistment as bar to court martial jurisdiction, citing Dunks, (1 M.J. 254) and Russo. NCMR holds that, "[t]he defect complained of is no more than an administrative oversight in failing to obtain a waiver of a juvenile misdemeanor adjudication. The original defect paled and became insignificant through the passage of time during which appellant accepted pay and emoluments." Thus, even if the original enlistment was invalid, which the Court assumes without deciding, a legitimate constructive enlistment was established.

J. M. Sanchez, 77 1262 (NCMR 9 Nov. 1977), Panel 1

Appellant testified at trial in support of Russo motion to the general effect that he had disclosed prior marijuana usage to recruiter enroute to AFEES, and was advised to conceal same. Government rebuts solely by use of brig inmate who had discussed Russo motions with appellant, and had thereafter (successfully) raised Russo motion very similar to appellant's. NCMR not convinced Government met its burden and established jurisdiction. Decision noteworthy chiefly for fulminations on necessity for releasing criminals without punishing them, including lines such as, "Who will vindicate these victims for the degrada-

tion they have suffered if the military justice system cannot?" (Appellant convicted, *inter alia*, of forcible sodomy and indecent assault.)

A. F. Silva, 78 0230 (NCMR 28 June 1978) Panel 3

Appellant's father lacked legal custody over him when he signed the parental consent form, and so informed the recruiter. NCMR majority rests affirmance on alternative ground that recruiter was not in fact told (as the recruiter contended), or that if he were informed, a constructive enlistment was effected when appellant reached age 18 without the lawful guardian (the mother) having acted to void the enlistment. The dissenting judge (Newton) notes that appellant attempted to secure own release by himself prior to attaining age 18, that his mother on inquiring was told he would not be released, and that appellant at most acquiesced in a state of affairs he could not alter, until his mother's illness (with cancer) precipitated the absences charged against him. The dissent contends that "[u]pon notice that a member is underage, Government agents have the responsibility to make inquiry to determine eligibility;" and that such a minority enlistment "could not ripen into a constructive enlistment, absent a showing of voluntary service upon reaching the required age." The dissenting judge was taken from another panel (2) for this particular case, and reflects the rather more liberal view of that panel, in contrast with the ultra anti-Russo sentiments of Panel 3.

S. Skryp, 77 0680 (NCMR 25 July 1977) Panel 2

Appellant enlisted in Marine Corps at age 17 with invalid consent of parent without custody. Custodial parent told by recruiter could do nothing, but eventually Recruiting Branch and CG recommended enlistment be voided, which Commandant declines on (false) ground that 18th birthday passed before age discrepancy discovery (presumed by Commandant). NCMR applies beyond reasonable doubt standard, since accused charged with UA. Marine Corps regulations and federal statute prescribe release if timely application made (within 90 days of enlistment), with provision for extension of time if parents unaware until later enlistment. Court holds enlistment not void "but merely voidable" and applies estoppel against Government's assertions of constructive enlistment on twofold ground that (1) recruiter failed to follow correct administrative procedures in verifying which parent had custody, and (2) that "military authorities turned deaf ears when appellant revealed discrepancy in his enlistment" with no investigation until it was compelled by Congressional inquiry. NCMR concluded by stating that Government "has not established beyond a reasonable doubt that the negligence of the recruiter which smoothed the path for appellant's enlistment contrary to the statute and regulations and other actions of Government agents were not tantamount to misconduct which would prevent its reliance on that enlistment. Therefore, the Government's burden of proving jurisdiction has not been satisfied." (The Court deliberately avoids resting its decision on affirmative obligation of Government to waive time limitations and implement discharge under regulation, on which point it footnotes Dunks, 51 CMR 200, and notes that the statutory requirement for parental consent is one addressed to "the protection of personal liberties or interests.")

*United States v. Spicer*, 3 M.J. 689 (NCMR 3 May 1977), Panel 1

Appellant testified at trial that 3 recruiters helped him prepare for AFQT, recalls names of all of them, 2 called and deny any wrongdoing. Their testimony believed beyond reasonable doubt, which NCMR declared is the standard in UA cases under Paragraphs 57(b) and (g) of the MCM.

M. D. Stengel, 77 2128 (UCMR 23 June 1978) Panel 1

Appellant at the time of his enlistment was facing charges which included assault upon a police officer. The NCMR found the charges were dismissed "in order to allow appellant to join the Navy, and could have been reinstated if he had failed to do so," but also found that "the moving force behind this disposition came from the appellant and his family and the attorney representing him on civilian charges." The NCMR therefore distinguished Catlow on the ground that no compulsion was exercised upon appellant other than that of perceived opportunity. Equally, the NCMR concludes that the recruiter's instruction to

falsify enlistment application with respect to charges originally pressed was devoid of significance, since charges in fact dismissed. "Under these circumstances, any improper action on the part of the recruiter would certainly not rise to the level of a violation of the fraudulent enlistment statute, Article 84, UCMJ, as discussed in *United States v. Russo*." Accordingly, a constructive enlistment had been effected.

R. P. Tamialis, 76 1167 (NCMR 24 May 1977) Panel 1

Cache Program enlistment. During Reserve period appellant thrown into civilian confinement on breaking and entering and bad check charges. Pending charges "dismissed," appellant enlisted Reg. Navy; extending while in first year of service. At trial shown dismissal of charges result of deal with State's Attorney, committing state to non pros in contemplation of 4-year enlistment. Recruiter's involvement in deal disputed; appellant says yeah; recruiter claims thought charges dismissed without strings attached. NCMR finds no convincing evidence refuting recruiter's assertion; admits that while "a more complete check would have revealed . . . deal had been made and the appellant's enlistment at that time improper." However, NCMR not troubled by might-have-beens, content that record not show recruiter party to deal.

C. J. Torres, 78 0332 (NCMR 10 Aug 1978) Panel 1

Appellant enlisted in Marine Corps J program on 23 July, 1974, into Regulars twenty-two days later. Initial enlistment barred by recruiting regulations because of marijuana use, which appellant denied, pursuant to recruiter's instruction. Prosecution relied solely on *United States v. Crowe*, 77 0552 (NCMR 22 July 1977), and made no effort to rebut allegations. NCMR overrules Crowe and limits Cook (1 M.J. 682) rationale to situations where the following factors do not appear: "where the lapse of time between enlistments is very brief, the enlistments are interrelated, and the recruiter misconduct involved in the first enlistment paves the way for entry into the second enlistment." In present case, J program only placed appellant in holding pattern until brought on active duty. The alleged recruiter misconduct carried over into 2nd enlistment. The NCMR concludes that the Government should not be allowed to profit from its own wrongdoing, which it had not refuted.

W. L. Wakeland, 77 1805 (NCMR 31 Jan. 1978) Panel 2

Appellant requested DuBay hearing at review level on basis of affidavit alleging principally that he had received all the answers to the AFQT after flunking it once, which enabled him to pass the test the second time. NCMR decides no Little (24 USCMA 328) issue raised in absence of averment of illiteracy, or some other debility preventing enlistment. NCMR finds no recruiter misconduct in the mere provision of "sample test questions and answers." Dissenting Judge Gladis declares that if averments taken as true, Little defect made out, since furnishing answers would be misconduct which would make "it impossible to determine whether the accused was eligible for enlistment."

J. E. Walley, 76 1001 (NCMR 15 Sept 1976) Panel 2

Appellant convicted of 86, 91, and 134. Appellant at time of enlistment had suspended sentence to confinement for 10 years for theft, and was on supervised probation until 9 Jan 1975. Nineteen days later enlists in Navy, despite prohibition against enlisting those given early termination until the passage of six months (or until complete term adjudged would have normally expired) in time subsequent to release. Recruiter testifies to ignorance of above rule; Government concedes appellant ineligible to enlist. NCMR finds purpose of rule requiring wait after early release one of deterring civil officials from terminating probation early to permit enlistment. That purpose circumvented in Walley, since early release obtained for precisely that reason by probation officer. Appellant informs enlisting recruiter that he had been rejected by another recruiter. Recruiter 2 admits reviewed court records obtained by Recruiter 1. Therefore, NCMR reasons, Recruiter 2 should have known that appellant had been rejected for cause. Recruiter 2 makes no investigation of admitted earlier probation status, of which he had some knowledge. NCMR finds: "Appellant's enlistment was clearly voluntary . . . the recruiter and his associates should have

known appellant was ineligible. An enlistment in violation of recruiting regulations is illegal even though it has not been procured by active misconduct of agents of the Government . . . The negligence and non feaseance of agents of the government who had reasonable notice that appellant was ineligible to enlist smoothed the enlistment path for him. . . . To sanction a constructive enlistment during the six month period that appellant was ineligible to enlist would place a premium on the ignorance of those who are entrusted with the recruiting mission and encourage failure to take reasonable steps to ascertain the applicable regulations and ensure compliance." (The NCMR supposes that a constructive enlistment could have been effected after the expiration of the disqualifying period, but notes appellant served only two weeks beyond that point before the beginning of his charged unauthorized absences.) Accordingly, finding no valid enlistment contract, the court-martial was without jurisdiction.

L. A. Westphal, 77 1259 (NCMR 23 Nov 1977) Panel 2

Appellant attacks jurisdiction on three theories, all of them pertaining to same facts of enlistment. Appellant on probation for cattle rustling, probation officer recommends to court that petition to have appellant rendered ward of the state be dismissed in favor of induction into the Marine Corps on a specific date, pursuant to application appellant had already initiated in accordance with his probation officer's advice. Court does so, permitting probation officer to state to CO of recruiting station that no adjudication of responsibility made on any criminal matter within jurisdiction. (1) NCMR distinguished Catlow on ground that appellant had made first overtures, was not recruited out of jail, and was not thrust into choice of alternatives by Judge himself. (2) Appellant also contended that enlistment contravened proscription against enlistment of persons "who as an alternative to further prosecution, indictment, or trial, or incarceration . . . are granted a release . . . on the condition that they . . . [enter the Marine Corps]." NCMR finds dismissal order final and not conditional, no charges pending at time of actual signature by appellant. (3) Lastly, appellant contended that recruiter had told him to conceal one juvenile offense, which NCMR disbelieves, but for purposes of argument distinguishes Russo type misconduct by holding that "[a]ny concealment in the case at bar did not enable appellant to effect a fraudulent enlistment, as he was qualified to enlist despite that arrest." Concurring Judge Newton would rest his affirmance solely on the ground that original recruiter misconduct had no effect on appellant's change in status.

O. C. Wiggins, 77 0820 (NCMR 21 October 1977) Panel 1

Appellant convicted of 86 and 92 violations. At trial motion for dismissal disclosed that at time of enlistment appellant had record of non-minor misdemeanors requiring waiver under applicable provisions of Recruit Command Instruction 1130.8. Appellant had accurately listed information of criminal past in Personal History Statement. Probation officer had instructed appellant to see recruiter as an alternative to going to jail. Appellant was adjudged only a small fine of \$5.00; probation officer did not recall deal, but "assumed" he had spoken to recruiter at some point; the court files did not disclose what effect, if any, appellant's willingness to join Navy had on ultimate disposition, although the sentence appeared a little light for the gravity of the offense (passing bad checks). On the other hand, the public defender testified that the judge ordered a pre-sentencing investigation which concluded with a report that stated, "Not assigned. Fined \$5.00 so he could enlist in the Navy." This was substantially corroborated by the attorney's own notes reflecting conversations with judge on Navy alternative. NCMR finds no Catlow problem, since final disposition of case prior to actual enlistment. No recruiter misconduct found despite absence of waiver, since there was "no evidence of any deliberate attempt to conceal appellant's misdemeanor conviction," leading to the conclusion that the omission was not willful, but only a negligent failure. Such negligence, citing Harrison, does not arise to recruiter misconduct, especially when appellant conditionally eligible to enlist.

Senator NUNN. Thank you very much, Captain Smith. I think we will come back to the questions.

I would like to hear from Captain Atkinson. We may have some questions for all of you.

## STATEMENT OF CAPT. JOHN B. ATKINSON, U.S. MARINE CORPS

Captain ATKINSON. Mr. Chairman, Senator Metzenbaum has been kind enough already to place my affidavit in the record and I will highlight it for you, if I can. [See p. 157.]

Presently, I am assigned to the 1st Marine Brigade, Fleet Marine Force, at Kaneohe, Hawaii, as a defense counsel. I have acted in the past 2 years as both a trial counsel and a defense counsel, and have seen the *Catlow-Russo* issue from both sides of the fence. I would like to highlight some of the more serious cases I have dealt with during that period of time because I think in discussing the particulars of those cases, we begin to see the problems that this defense raises for military justice and the military community as a whole.

When I was serving as a prosecutor for the initial 7 months of my tour, I only saw two criminal cases in which the *Catlow-Russo* issue developed to fruition. That was *U.S. v. Harrington* and *U.S. v. Helton*.

The *Helton* case provides a dramatic example of what can and sometimes often does happen with individuals who raise this defense and are subsequently separated from the service.

Mr. Helton, a private in the Marine Corps, was charged with various crimes of violence, including attempted murder. This particular individual had performed the act of placing a service .45 to a fellow enlisted man's person and pulling the trigger three times. Only the fact that the ammunition was defective and the weapon was not functioning properly saved that victim from dying.

Helton raised the issue of fraudulent enlistment due to recruiter misconduct. In this particular case the recruiter knew that the individual had attempted to commit suicide on two previous occasions and had known of prior marijuana involvement. Not only the serviceman Helton testified as to that prior knowledge but also members of Helton's family came forward and said that the recruiter had had knowledge of these prior disqualifying factors at an interview conducted by the recruiter in the Helton household prior to the individual coming on to active duty.

This case was dismissed at the motion level by a general court-martial judge at Pearl Harbor, Hawaii. Helton later became involved in several minor disciplinary matters within his unit when he had not yet been separated from active duty.

There were various administrative cases in which fraudulent enlistment due to recruiter misconduct occurred during those first 7 months of my tour in Hawaii. However, I cannot remember the exact specifics. They were handled, relatively expeditiously and with little apparent effect on the individual units.

However, when I became a defense counsel, in November of 1977, I noticed a marked increase in the number of recruiter misconduct cases that appeared at the motion level at special and general court-martials, and in working with both accused recruiters and small unit commanders, as well as speaking to numerous convening authorities. They are commanders who are in charge of referring cases to court-martial.

I found that, one, there is a very real problem regarding recruiter misconduct as it reflects on the military justice system, and two, that this can have a very serious and corrosive effect on the morale and the ability of a unit to perform its particular mission.

Let me give some examples of some of the most egregious cases which I had to deal with as a defense counsel.

In one particular case, the first case that came to my attention, *U.S. v. Blackketter*. The individual was charged with selling large quantities of marihuana to Government informants as well as unauthorized weapons. The Government had a factually sound case. They had both tape recordings and film of this individual performing the acts. However, not only was the individual allowed to go free, there simply wasn't any hearing, there was no justice in this particular case. Because the individual raised the motion at trial, the judge never passed on this motion, because the individual's commander was satisfied that in fact the enlistment was fraudulent, that the recruiter knew of such fraud and he wanted the individual expeditiously separated from the service. That was done approximately 1 week after the trial was scheduled.

Senator METZENBAUM. I am a little concerned about one aspect of this. Some of these men are charged with criminal activity, murder, rape, sodomy, burglary, other things. They have now been in the Marine Corps for anywhere from 1 month, 6 months to a year, and they have received training with deadly, lethal weapons. The Marine Corps doesn't play games, you are there to learn how to defend yourself and how to be effective in time of war.

What about the problems of sending these trained men—almost lethal weapons themselves because they come out much better equipped to commit crime than when they go in—back into society?

Captain ATKINSON. Well, Senator, I guess it could be said that any individual who spends time in the service comes back as an individual who is more highly trained in the art of warfare. I don't think actually that is quite the problem.

Let me use Blackketter as an example. When his case was dropped by the commander, he was simply taken back away from the court martial. One, Blackketter never shows up as a fraudulent enlistee through military statistics.

Senator NUNN. He does not?

Captain ATKINSON. No. I am sorry, Blackketter does. I will give you later cases where the individual does not show up as a fraudulent enlistee. But Blackketter was separated expeditiously. He was almost immediately returned to his hometown in Missouri. This individual was never prosecuted and is a member of the civilian community today, for the offenses which took place back in Hawaii.

The problem you have is (1), almost every member of Blackketter's unit knew of the circumstances regarding the alleged offenses. They knew of the type of evidence that the Government had. They knew that Blackketter was a known drug dealer. They saw their commander refer this individual to trial by court-martial, seeking a form of justice in which this individual could face appropriate punishment. And what in fact happened was anything but justice. The individual literally left the courtroom and was separated from the service.

He did not receive any discharge at that time. Because, as Mr. Romano indicated, prior to this calendar year, the policy was that that individual would simply be separated, he would not be given a discharge.

However, these individuals were also advised by their counsel that because defense attorneys knew that the military would be changing its procedures, that they should request through petition to the Navy board that their petition or their discharge be entered as a general discharge, because the services would then change their policy. They were going to be granting discharges and that these individuals had been denied a discharge when individuals now in calendar 1978 are being granted discharges.

So in effect, if this individual were to petition the Navy's discharge board, he may well be successful in getting a general or honorable discharge and probably would qualify for his veterans benefits.

But look behind it and see that in this particular case the morale of the battalions in which Blackketter was a member was damaged greatly. Here the privates, the lance corporals, PFC's, all knew of this individual, they knew of the facts behind it, they knew their commander had in effect put his reputation behind referring this to a form of justice, and in the end Blackketter—I can say this honestly—literally walked down through the corridor of his battalion disrespecting officers and treating the entire military system as if it were a joke.

Subsequent cases of *U.S. v. Lemley* and *U.S. v. Estrada* show individuals who performed various acts of misconduct and were found to be beyond military jurisdiction.

In the spring and summer months of 1978 there seemed to be an almost rash of recruiter misconduct issues coming before special courts-martial. There are two cases which I would like to point out in particular. *U.S. v. Ritter*, and *U.S. v. Madden*. In *U.S. v. Madden*, an individual was charged with unauthorized possession of explosives and larceny of these explosives from his particular unit. The individual raised a fraudulent enlistment issue in that his recruiter had procured a fraudulent diploma from a Wisconsin high school. There was no question that this was a fraudulent diploma.

The trial counsel himself knew it to be fraudulent, even when we went into the motion session.

However, the case was so strong against Madden's recruiter, and Madden's recruiter persisted in saying that he had done nothing unlawful, that the Government brought that recruiter out to Hawaii and placed him on the witness stand, because they felt that if this individual were to persist in his truthfulness then an appropriate record and foundation could be laid and sent here to Washington for appropriate disciplinary consideration regarding that particular recruiter.

The judge dismissed the case against Madden and subsequently Madden returned to his barracks. Within several days, Madden, still a member of his particular battalion, broke in at night to the Office of the First Sergeant, and he jimmed the lock on that individual's wall locker, took out the dress uniforms belonging to that individual, and ceremoniously burned them in the center of that individual's office.

There was no disciplinary action taken against Madden regarding that act. None could be taken because the individual was simply beyond military jurisdiction.

In *U.S. v. Ritter*, Lance Corporal Ritter had an extensive criminal record, including armed robbery of a nursing home and larcenies and auto theft. This particular man was charged with a simple status of-

fense, that of disrespect, disobedience, and unauthorized absence at the time of court-martial.

His particular recruiter was shown to have enlisted him directly out of a juvenile boys home, Totem Town in Ramsey County, Minn. Fortunately, the probation officer from that particular jurisdiction was most cooperative in forwarding all the necessary records and testimony regarding that particular recruiter's association with the boys home and Lance Corporal Ritter.

In Ritter's case, this individual was a proven nonperformer and disciplinary problem within the civilian community. He had been treated twice for alcoholism and once for mental disability. This individual was brought into the service, countless taxpayers' dollars were spent in training this individual and trying to get him to perform as a productive member within the Marine Corps. He was given every chance to come to grips with his personal problems and had gone through every rehabilitative agency that the First Marine Brigade could supply to an individual, including counseling, drug abuse, and alcohol rehabilitation.

However, when the court-martial arose this individual then came forward with his fraudulent enlistment. No justice was had and this individual was sent back to the civilian community with the exact same problems he had when he left. The only difference was he had squandered a great deal of money and time within the service.

Senator NUNN. Captain, I think you made a very vivified point of what is happening in these cases. Let me ask you this question. What happens to recruiters in these cases where they have been clearly shown to have committed recruiter fraud?

Captain ATKINSON. Sir, I am not a commander so I really can't say what my policy would be or what any commander's policy would be. Obviously, the commander for that particular individual would have to make an initial determination as to what, if any, disciplinary action would be taken. However, in Tuesday's session I think we heard testimony regarding the language of a number of these cases at article 15 punishment, nonjudicial punishment.

As a personal opinion, based on my experience in these cases, I feel that woefully inadequate. The recruiters who are found to be doing this particular conduct, I have no idea how small or how great their numbers may be, but when they perform this type of misconduct they are making a conscious decision to engage in an act of moral turpitude. I do not feel that this can be appropriately addressed at the administrative form of punishment.

I have included in my affidavit a recommendation that one of the ways to deal with this and to root it out, in the long run, is by vigorous and enthusiastic prosecution of recruiters where appropriate cases have been laid indicating that these individuals have engaged in such misconduct.

Senator NUNN. Based on your experience, you don't believe they are being vigorously prosecuted at the present time, or at least they are not being appropriately punished?

Captain ATKINSON. Sir, I can't speak in broad terms along those lines because my association with the case literally ends when the individual is successful with the fraudulent enlistment or is not successful. I really have not followed up in any of my particular cases to see what, if any, disciplinary action has been taken regarding those recruiters.

Senator NUNN. We have a vote on. I think we have about 5 minutes left to get to the floor to vote. Could you, Captain Atkinson, summarize your recommendations as to what should be done both as to the *Russo* decision, if anything, and also what should be done by Congress or by the military services in terms of the recruiting problem?

Captain ATKINSON. Thank you, Mr. Chairman.

I believe that one of the greatest services Congress could perform to the military justice system and to the morale of the military in general, would be to preempt the area of the *Catlow-Russo* motion and allow these individuals to face appropriate military justice forums for criminal acts they have performed. I think that I am not being too broad in stating that almost all attorneys feel that is a loophole, a status type loophole which has no bearing whatsoever as to the ultimate issue of justice.

Second, as to a personal recommendation, I would hope that, as I said, recruiters would be thusly and vigorously prosecuted in appropriate cases.

Following up a third recommendation, I have had personal conversations on an informal basis with numerous staff noncommissioned officers, and they have indicated there have been severe pressures during their tenure as recruiters. One individual specifically pointed out the ability of the various services to administratively discontinue proficiency pay, that is, pay afforded a recruiter above and beyond his normal base pay, simply because he is incurring additional expenditures as a recruiter. This can be terminated administratively if an individual is not being productive. This has an effect of cutting off up to \$150 of the individual's pay, simply because he is not making the quota, if such an administrative determination is made.

Last, you posed some questions regarding whether or not some of the individual's who go through the court system and have fraudulent enlistments would not show up in the military statistics, regarding fraudulent enlistees. The answer to that is absolutely yes. Presently, military commanders are reluctant to keep individuals within their command when they know that the individual, at least to their satisfaction, has a fraudulent enlistment regarding recruiter misconduct and will never be made to answer to court-martial.

So, knowing the problems that I have related, for example, in the *Madden* case, of an individual performing subsequent misconduct, having a corrosive effect on their particular unit's morale and discipline, they choose to seek an expeditious discharge for this particular individual. By expeditious I mean fast, not the designation of discharge.

What is being done in numerous cases is granting an individual a good of the service discharge to escape trial by court martial in more cases than not. It is a general discharge. The reason it is a general discharge is at least in my feeling the commanders are saying that if we are to go through with the court martial the individual would escape at the motion level. Then he would be processed for administrative discharge and more often than not, simply on the ground of fraudulent enlistment due to recruiter misconduct the individual would be granted a general discharge at that forum. So why would we prolong this particular situation, why should we leave ourselves open for continued misconduct, why not separate this individual quickly, sort of compress the period of time, the administration and the paperwork?

Senator NUNN. You are basically saying, when we have statistics presented to us that show how many have been separated from the services on recruiter fraud, that those statistics are going to be—I don't know whether I should use the word, substantial—at least those statistics are not going to be entirely accurate?

Captain ATKINSON. That would be correct, Senator. Either I don't know, I don't know this, I have been, as a defense counsel I have been fortunate enough to press for this in a number of situations in which both the commander and the individual accused wanted immediate separation and it has gone through.

Senator NUNN. If you were in charge of a unit, I suppose you would do exactly what the unit commanders are doing, you would get rid of them before the problem rather than after?

Captain ATKINSON. I would be awfully concerned about my good Marines.

Senator NUNN. Let me ask you a question Captain, and then I will ask the other two, if they care to comment on this.

The overall question basically is will the volunteer force work, or is this part of the problem? What is your view of that?

Captain ATKINSON. Well, Senator, any recommendations I would have on that would be purely personal and a reflection, I guess, on not only my experience within the service but also my political views. I guess if you are asking for my personal opinion I have grave doubts and reservations based on my experience within the service, both as a prosecutor and a defense counsel and seeing the types of fraud that have been perpetrated and the geographical expanse from which these particular cases come. There seems to be no limit to geographical area. I have seen them as broad as Kansas City, Mo., to Winter Park, Fla., from Iowa, North Dakota to California.

Senator NUNN. Thank you very much.

Mr. Romano, would you give me a brief answer to that. If you don't feel qualified to answer that, I don't want you to answer it. Don't feel compelled to. I would like to get your views since you have had so much experience in the legal end of this situation.

Mr. ROMANO. Well, the answer is twofold. I do have a personal opinion but I am not qualified to give any kind of answer other than a personal opinion.

Senator NUNN. That is really what I am asking.

Mr. ROMANO. I think we need to move away from the all-volunteer system. I don't see it as a necessary total working type system. I think it has to be done in conjunction with another system, perhaps a forced type of system to some extent.

Senator NUNN. Captain Smith?

Captain SMITH. I don't think there is any question that recruiter misconduct of the sort we have been talking about has taken place in all the Departments of Defense services for probably as long as we have had a Department of Defense or a military service, because everybody knows about somebody who went off to fight with the Navy when they were 16 in World War II and a recruiter helped them falsify the documents. I am confident that the quota system that has resulted from the All Volunteer Force personnel requirements has aggravated the system considerably.

Senator NUNN. Thank you very much.

Senator Metzenbaum will be back in just a minute, then I will be coming back. We will take a 5-minute break and he may have other questions for us.

[A short recess was taken.]

[The affidavit of Captain Atkinson follows:]

SWORN STATEMENT OF JOHN B. ATKINSON

AFFIDAVIT

Comes now the affiant, Captain John B. Atkinson, 178 38 28 73, U.S. Marine Corps, being duly sworn, deposes and says:

I am the affiant as described above. I am presently on active duty with the U.S. Marine Corps and assigned as an attorney with Headquarters Company, 1st Marine Brigade, Fleet Marine Force, stationed at Marine Corps Air Station, Kaneohe Bay, Hawaii 96863. From April of 1977 until November of that year, I was a prosecutor for the 1st Marine Brigade. The incidence of recruiter misconduct surfacing in criminal and administrative cases was rather rare. During said time frame I saw but two criminal cases of fraudulent enlistment via recruiter misconduct where an accused was not tried on the merits (*U.S. v. Harrington; U.S. v. Helton*). The Harrington case alleged charges of a conspiracy to sell and sale of marijuana, in addition to wrongful confinement of, a threat communicated to, and an aggravated assault against a fellow serviceman. The Helton case involved extremely serious charges alleging communication of a threat, weapon violations, and an attempted murder by the accused upon a fellow serviceman. Both cases were dismissed by a military judge at a preliminary hearing because the court lacked *in personam* jurisdiction over the accused. In both instances, wrongful conduct of a recruiter years before allowed a criminal act to go unpunished within the military justice system. There were other criminal and administrative cases in which this issue arose while I was acting as a trial counsel but I cannot recall any details regarding names, dates or places.

In November of 1977, I was reassigned duties within the 1st Marine Brigade as a defense counsel. Almost immediately I saw a market increase in the number of fraudulent enlistment cases in which recruiter misconduct became an issue. These cases ran the gamut from simple status offenses, such as unauthorized absence from a unit, disrespect and disobedience to superior noncommissioned and commissioned officers, to crimes of moral turpitude and violence, including larcenies, intentional destruction of government property, drug sales, assaults, threats and weapon offenses. It would be impossible for me to chronicle in this sworn statement the specific facts of each and every case of fraudulent enlistment which has been handled through our two-man defense section during the last ten months. To do so, would entail a chronicle of two dozen criminal cases as well as countless administrative matters. In an attempt to compress my experiences in this area into a reasonable and rational discussion, I have enclosed the special court-martial convening orders and appropriate charge sheets for all of the criminal cases in which the issue of recruiter misconduct has directly led to an individual's escape from the military justice system.

In each one of the cases attached hereto, the individual was charged with a criminal offense under the Uniform Code of Military Justice (the guidebook for the legal system within the United States military establishments) punishable by confinement at hard labor for up to six months, reduction to pay grade E-1, forfeitures of two-thirds pay for six months, and discharge from the service with a bad conduct discharge.

Once the issue of fraudulent enlistment via recruiter misconduct arose in these cases all were disposed of without trial on the merits, conviction, or punishment being assessed against the accused. This statement will later discuss the various ways in which these individuals did leave the service. Also attached hereto are copies of a log book kept at the Legal Services Center, Marine Corps Air Station, Kaneohe Bay, detailing all fraudulent enlistments arising out of criminal cases or administrative matters since 9 August 1978. It should be noted that up until 9 August 1978 no comprehensive log was kept by the defense counsel at our command regarding administrative matters in which fraudulent enlistment via recruiter misconduct arose and later led to the separation of the said individual from the U.S. Marine Corps.

As a defense counsel, my first exposure to recruiter misconduct developed in *U.S. v Blackketter*. The charge sheet attached hereto reflects that Lance Corporal Blackketter was alleged to have sold an unregistered weapon and approximately one-half pound of high quality marijuana to a government informant aboard the Air Station in early December of 1977. Investigation by the Defense disclosed that the marine recruiter, Sergeant Brown, knew that the accused had been the subject of several juvenile adjudications prior to his enlistment. He also knew that, pursuant to these adjudications, legal guardianship had been transferred by a state court in Missouri from the individual's natural father to Mr. Matt and Mrs. Nelda Green (Rt. 1, Creighton, MO; tel: XXXXXXXXXXXX), the accused's foster parents. The recruiter had spoken to the Greens on several occasions prior to Blackketter's leaving for active duty. He was aware that the legal guardians of the boy were opposed to his coming on active duty prior to graduation from high school and would not sign the consent form required to allow his induction into the Corps. Undaunted by the guardians' refusal, the recruiter instructed the enlistee to conceal his juvenile involvement and then traveled some 60 to 80 miles to secure the signature of the natural father consenting to the enlistment. The effect of this fraud, perpetrated in 1974, was frustration of the military justice system by placing Lance Corporal Blackketter beyond the jurisdiction of the court-martial. The charges were subsequently withdrawn and the individual administratively separated from the service without conviction, punishment, or adverse discharge.

The next cases in which this issue developed were *U.S. v Estrada* and *U.S. v Lemley* (January, 1978). In both cases, the defendants were aware of the recruiter misconduct which allowed them to enlist. They had a vague comprehension that this misconduct would frustrate any attempt by the government to prosecute them for any offenses committed during their tour with the Marine Corps. Private Estrada was charged with several status offenses ranging from failure to obey lawful orders to minor unauthorized absences. Here, a recruiter from Santa Ana, California, saw that Estrada's scores on the Armed Forces Entrance Examination Test were too low to secure admission for a non-high-school graduate. The recruiter, with the help of Private Estrada, secured a diploma from Estrada's next-door neighbor and arranged to have a copy of said diploma manufactured in such a way that the true recipient's name was covered over with the typed-in name of Private Estrada. This gave the appearance that Estrada was a high school graduate. His records for application to the U.S. Marine Corps reflected this false diploma and he was made eligible for enlistment.

In *U.S. v Lemley* the recruiter had been told by both the serviceman and his mother that the boy had extensive involvement with juvenile authorities in Decatur, Alabama, prior to his application for enlistment. These disclosures included grand theft auto, larcenies, and several minor assaults. The recruiter was also told that Lance Corporal Lemley did not always go by that surname. His mother and natural father had divorced just prior to his birth and the mother had indicated on the birth certificate the name of the child as Lemley, her maiden name. However, during his childhood and adolescence this individual has used the name of Wheatley, the name of his natural father. Neither the mother nor the son knew exactly which name appeared on the juvenile records. The recruiter then drew up two applications for enlistment, one under the name of Lemley and one under the name of Wheatley. He had the mother sign a consent authorization for both documents and then ran a police record check under both names. The name of Lemley showed no police record so the man was inducted into the U.S. Marine Corps under that name despite his criminal record under the name of Wheatley. Estrada and Lemley were both released from active duty without conviction, punishment or adverse discharge.

Parenthetically, it should be noted that up until March of 1978, the U.S. Marine Corps could separate individuals who had been fraudulently inducted into the service via recruiter misconduct without designating a discharge for said individuals. They were simply released from active duty and allowed to return home. It was as if they had never served in the Corps. During the early months of 1978, defense counsel here had been advised that the Marine Corps would be changing its policy and requiring administrative determination in cases such as these. This occurred in late March. This change could lead to an individual coming before an administrative discharge board for a misconduct discharge based on fraudulent enlistment. At this forum an individual could suffer an administrative discharge under other than honorable conditions. However, he could and usually does receive a general or honorable discharge without any

adverse effects on his rights and benefits. Blacketter, Lemley and Estrada were all advised that they should petition the Navy Discharge Review Board for general discharges after their separation on the grounds that they should have received a hearing by an administrative board prior to separation and since they did not they should be awarded nothing less than general discharges under honorable conditions.

The spring months of 1978 saw the cases of *U.S. v. Ritter* and *U.S. v. Madden* develop. Each of these cases, for separate and distinct reasons, demonstrate the extent of recruiter misconduct and its adverse effects on justice, discipline and morale within the Marine Corps. In *U.S. v. Ritter*, the serviceman was processed for enlistment despite the recruiter's knowledge that the individual had been hospitalized for alcoholism and drug abuse and had an extensive juvenile record. It seems that the recruiter from Minneapolis, Minnesota, actively sought the enlistment of Ritter while he was in a juvenile home known as Totem Town (Ramsey County, Minnesota). This was in direct violation of Marine Corps regulations. He knew of Ritter's extensive juvenile background including adjudications of armed robbery, assault and weapon violations. He was told of his hospitalization for alcohol rehabilitation. Despite all this, Lance Corporal Ritter was processed for induction. The case of *U.S. v. Madden* also involved recruiter complicity in concealing a juvenile criminal record. Madden also had numerous adjudications before a juvenile magistrate in Wisconsin and had been placed on probation on several occasions. His contact with authorities as a juvenile ranged from simple status offenses as a delinquent to crimes of moral turpitude including assaults and larcenies. Further investigation disclosed that his recruiter had manufactured a bogus high school diploma to secure this individual's enlistment.

Lance Corporal Madden's case was unique because the individual was charged with the theft of TNT from his unit and the unauthorized possession of said explosives in his living area aboard the Air Station. Again, neither Madden nor Ritter were convicted or suffered any punishment for their misdeeds. In fact, both individuals received general discharges from the service and would later be entitled to the full range of their veterans benefits. In the case of Lance Corporal Madden, after the military judge had announced that the accused was beyond the jurisdiction of the military justice system, he broke into the office of his company First Sergeant. There he destroyed the First Sergeant's dress uniforms by burning the same on the office floor. These charges were not processed through the military disciplinary system since the individual had already been determined to be beyond court-martial jurisdiction.

Lance Corporal Ritter was a classic example of an individual who could not and should not be allowed into the service. Here was an alcoholic, known drug offender and criminal, who could not be salvaged through specialized programs available in the civilian correctional system. Once in the Corps, he became an immediate administrative and disciplinary burden on his unit and a bad influence on his fellow Marines. He ran through almost every in-service treatment available for alcohol and drug abuse. In looking back, we can see that the fraudulent act of his recruiter wasted countless taxpayers' dollars and government manhours trying to train and rehabilitate an individual who should never have been allowed into the service. This fraud did nothing for the recruit, nothing for his country, and actually injured the Marine Corps.

The frequency of fraudulent enlistment/recruiter misconduct cases increased in early summer. Careful examination of the charge sheets attached hereto will indicate that the great majority of these cases have developed since May of this year. The types of fraud which were developed in these cases range from falsifying medical records (*U.S. v. Cox*), falsification of educational records and test scores (*U.S. v. Nelson*, *U.S. v. Huerta*, *U.S. v. Todd*, *U.S. v. Austin*), concealment of alcohol and drug abuse (*U.S. v. Morales*, *U.S. v. Roston*, *U.S. v. Dragon*), to concealment of juvenile records (*U.S. v. Harris*, *U.S. v. Neal*). During the last eight weeks, the two defense counsels at our command have discovered approximately 25 recruiter fraud cases. The increasing frequency of such cases is very distressing.

A commanding officer depends upon the military justice system for two purposes. First, he expects some semblance of justice in processing an alleged criminal violation; and, second, he expects the junior members in his command to hold such a system in high regard. When these goals are attained respect for the military justice system grows stronger and the commanders' ability to lead is enhanced. A jurisdictional motion for lack of *in personam* jurisdiction based upon recruiter misconduct frustrates the criminal justice system in the

military and deals a stinging blow to the command. It should be painfully clear that there is no correlation between ultimate justice and the ability of an accused to escape responsibility for his wrongful conduct simply because a recruiter helped to fraudulently induct him into the service. Why should the falsification of a high school diploma, test scores, or concealment of juvenile records allow an individual to escape culpability for criminal conduct? The Court of military Appeals, in *U.S. v. Russo*, 50 CMR 650 (1975), and subsequent related cases, has fashioned a type of exclusionary rule unique to the military justice system. In essence, they have stated that there is a public concern and interest to be fostered in protecting both the government and prospective recruit from induction of an individual into the armed forces whom the recruiter knows to be unfit. Presumably the court feels that where recruiter misconduct exists the individual never attains valid status as a serviceman and is, therefore, beyond the jurisdiction of military courts. Thus, such individuals cannot be tried by court-martial for offenses committed while they serve on active duty. In effect, the court has created a class of criminal untouchables within the military. The court has reasoned that, in theory, this should have a remedial effect in preventing subsequent cases of recruiter misconduct, similar to the effect sought by the exclusionary rule in controlling acts of police officers performing searches pursuant to the guidelines set forth under the Fourth Amendment of the Constitution.

However laudatory the court's aim, fundamental differences exist between conduct of police officers sought to be controlled under the exclusionary rule and the conduct of recruiters sought to be controlled by Catlow/Russo motions. In a case where a police officer violates a citizen's Fourth Amendment rights by performing an unauthorized search, he has direct feedback from the prosecutor's office within several days or months indicating that his actions were not proper and that the evidence obtained is not legally admissible at trial. In the case of a recruiter who performs misconduct inducting an individual into the armed forces, he may go years without knowing what effect, if any, his fraud has had upon the service. The recruiter may never see the result of his fraud because the great majority of individuals fraudulently inducted will never raise such an issue administratively or face court-martial.

So much for theory, what is the practical effect. In *U.S. v. Blackketter* virtually every member of the accused's battalion was aware of the criminal charges faced by the individual. There was widespread knowledge that certain films and tape recordings were in the hands of government prosecutors showing the accused performing the alleged criminal acts. The commander had these charges referred to trial by court-martial. No trial ever took place, however, because the defense discovered the recruiter misconduct in Blackketter's enlistment. Here, the troops saw only that a known drug dealer had been apprehended and charged but could not be tried. The command was embarrassed and the troops were dismayed. In short, the prevailing feeling within the battalion was that this individual had thoroughly frustrated the criminal justice system. How could that line commander explain to junior troops that a legal technicality regarding the accused's enlistment had placed that individual above the law?

In the case of *U.S. v. Madden* the jurisdictional defense had the unsavory effect of putting the individual on notice that he was beyond the law and in effect telling him that the military could not punish him for any criminal act. This is very different from the exclusionary rule applicable in search and seizure cases. In those instances, the defense only applies to the particular evidence which is seized by the police officer. An indication within the military that an individual is beyond the *in personam* jurisdiction of a military court is a virtual license to perform offenses against the Uniform Code of Military Justice without concern for future punishment. The frustration of justice and the adverse effect such cases have on discipline and morale within the armed forces is self-evident. Today, the effect of recruiter misconduct tears at the very fabric of law and order within the military community.

Can anything be done to these individuals where the military believes a criminal offense has been committed but lacks jurisdiction over the individual? For status offenses such as unauthorized absence, disrespect, disobedience, there is no recourse open to the military. Such offenses cannot be tried in civilian courts because they are uniquely military. In cases involving traditional criminal offenses the military does have recourse. But, more often than not, this is an option which exists in theory only. In such cases the military can look to the civilian courts, either at the state or federal level, to effectuate a prosecution. However,

in many instances state and federal prosecutors are reluctant to take cases that do not involve the most serious of offenses. For example, our command has had little success in having individuals prosecuted for sale of marijuana by the U.S. Attorney in Honolulu. Here, the problem is one of perspective and priority. Most U.S. Attorneys are already overburdened with an almost unworkable docket. They see little, if any, reason to prosecute minor criminal violations through the federal system because of the time, manpower and money expended in handling such matters. Also, their interest in something that happened in a uniquely service connected environment is different from that of the field commander. In the attempted murder case of *U.S. v. Helton*, the U.S. Attorney did secure an indictment against the individual. The accused later pled guilty and was placed on probation. This did lead to an accountability by this individual for his criminal act but was far lower than any military tribunal would have assessed for such conduct.

As stated before, a defense counsel has several options when handling a case of recruiter misconduct within the court-martial system. If the misconduct can be substantiated to the satisfaction of the commanding officer and prosecutor, often the case will never go before a military judge. The rationale behind this is that the command does not want an individual told point blank by a judge, that he is beyond the scope of military law and is untouchable within our system. In cases such as these, the defense counsel will normally have the defendant and the various witnesses produce affidavits which are submitted to the command with the request that the case be withdrawn and the individual administratively processed out of the service. In cases which are questionable regarding this issue or where expedience is viewed to be in the best interest of the accused, affidavits from the defendant and his counsel can be submitted in conjunction with a request for a good of the service discharge to escape trial by court-martial. In most instances, the discharge awarded will be a general discharge under honorable conditions. It has been my experience that a very small minority of the individuals who raise such an issue, either administratively or via the court-martial system, ever suffer an adverse administrative discharge. Of the 35 cases seen by me during my tenure as defense counsel from November 1977 until the present, less than half a dozen individuals have received an administrative discharge under other than honorable conditions. The reluctance of commanding officers to have judicial hearings in these cases is further evidence of the detrimental effect such matters have on the military justice system.

Nationwide, how many cases of recruiter misconduct in enlisting individuals into the U.S. Marine Corps are we talking about? To this defense counsel it seems absolutely impossible to give an accurate estimation of what percentage of the Marine Corps may be enlisted fraudulently due to recruiter misconduct. As evidenced by the log submitted with this affidavit, these cases are not restricted to one geographical area. They come from such diverse places as rural Wisconsin; Cleveland, Ohio; Brownsville, Texas; North Dakota; California; Iowa; Illinois; Connecticut; Indiana; Oregon; Georgia; Missouri; Florida; and Minnesota. The log submitted with this affidavit would correlate to approximately 40 per cent of all individuals seen by me during such time frame. In my own estimation, there is no conceivable way of determining how many individuals presently on their first enlistment with the U.S. Marine Corps are a product of a fraudulent enlistment via recruiter misconduct, without detailing a special task force of attorneys to systematically interview individuals within that class and review their service records. My experience as a defense counsel leads me to believe that a mere review of the service records for an individual will not disclose the vast majority of recruiter misconduct cases. I believe interviews by line officers or senior staff noncommissioned officers will not produce an adequate discovery regarding these matters because individuals will be less than frank and candid in discussing such matters with individuals who are senior to them in rank and unable to advise them regarding the legal consequences which may follow. Once such a worldwide search is completed the Marine Corps could have recruits screened by attorney counsel at recruit depots.

What, if anything, can be done to alleviate what appears to be a real problem within the recruiting system of the U.S. Marine Corps? First, legislative action can be taken by the Congress to preempt the Court of Military Appeals decision in *U.S. v. Catlow*, 48 CMR 758, and *U.S. v. Russo*, 50 CMR 650, and their progeny. Such action would greatly benefit the service of justice within the military community and enhance the ability of a commander to effectively promote discipline and morale within his unit. However, this action should be taken with the

knowledge that an issue may be brought before federal courts of appropriate jurisdiction challenging the right of the military to try individuals who have not rightfully attained status within the armed forces. This is certainly a very real problem for the future but one which I feel should properly be determined by the federal courts at a later time. If this is done, the military must screen enlistees because the majority of recruiter misconduct is discovered by an attorney when interviewing a client facing court-martial. If legislation is passed to preempt the cases of Catlow and Russo without providing for screening of enlistees and without tightening the regulations applicable to recruiters, the Marine Corps will continue to have a recruiter misconduct problem.

Second, I believe enthusiastic and vigorous prosecution of recruiters who perform such misconduct should be diligently pursued. The conviction and punishment of such individuals will have a direct effect on recruiting practices within the Corps. It will publicly demonstrate that such conduct cannot and will not be tolerated. Here, again, I believe the information secured by attorneys screening first term enlistees could be invaluable. Third, legislative action by the Congress could be taken to ensure that recruiters have access to juvenile records despite the guidelines laid out by several state jurisdictions protecting the confidentiality of the said records and the anonymity of the juvenile. This could then be followed by appropriate regulations within the service directing individual recruiters to produce copies of police and juvenile records on every enlistment. This would greatly discourage the enlistment of individuals who have had serious criminal involvement.

I have been approached by several senior staff noncommissioned officers who have indicated great concern regarding the tremendous pressures placed upon recruiters to meet their enlistment quotas. They have stated that a recruiter knows his ability to perform with respect to the quotas assigned will greatly affect his career within the service. They have expressed deep concern regarding adverse fitness reports and the transfer of recruiting personnel from one duty station to another upon a determination that the individual recruiter has simply failed to meet the quotas established for him. Lastly, they have complained very strenuously regarding the ability of the service to administratively terminate proficiency pay (which may amount to \$150.00 per month in addition to normal pay and allowances). This proficiency pay is meant to compensate recruiters for the additional expenditures they incur regarding the maintenance of uniforms, the absence of commissary and post exchange privileges at most recruiting stations and the ancillary expenses incurred in traveling great distances to secure the enlistment of appropriate personnel into the service. I have been told by more than one senior enlisted man that failure to meet their quotas almost certainly will result in pressure to increase productivity with the threat that, if additional recruits were not produced, an administrative termination of proficiency pay would follow. In this regard, I believe a fourth measure should be taken to insure that the Marine Corps reduces the administrative pressures placed on recruiters to meet fixed quotas.

I would have to state in closing that my experience in this area has led me to question the wisdom and viability of the all-volunteer service in the 1980's. This is strictly a personal opinion but one that reflects my experience as related above and my contact with numerous enlisted men, recruiters, and officers within the U.S. Marine Corps. Recruiting personnel constantly complain of pressures being placed on them to meet their quotas. Individuals of higher rank indicate that the Congress wants the all-volunteer army to work and that, therefore, every effort will be made by the service to insure that it does work. At the same time, recruiters complain of a shrinking number of individuals who fall within appropriate age categories and who are not disqualified for one reason or another and a less than sympathetic civilian community. Under present conditions, I cannot help but personally wonder whether sufficient qualified individuals can be enticed into military service regardless of what monetary or fringe benefit incentives are provided.

This affidavit has not catalogued each and every administrative case or court-martial in which the issue of recruiter misconduct has been or can be raised. It is aimed at highlighting some of the more egregious instances of recruiter misconduct as they have occurred during my tenure as a defense counsel within the 1st Marine Brigade and establish some of the effects these matters have had on the integrity of the military justice system and the military community as a

whole. Opinions and suggested actions expressed by the affiant are personal and not to be considered as official Marine Corps positions.

JOHN B. ATKINSON.

State of Hawaii, city and county of Honolulu.

Subscribed and sworn to before me, this 2d day of October 1978.

Florence L. McCue, notary public. First Judicial Circuit, State of Hawaii.  
My commission expires: July 15, 1979.

Senator NUNN. The subcommittee will come to order.

Senator METZENBAUM. Mr. Chairman, I do have some questions but I am looking at the clock. I wonder if it would not serve the purposes of the hearing if we heard from the Marine Corps and the head of recruiting for the Armed Services, put them on and give them adequate time to be heard.

Senator NUNN. I think that is a good suggestion. We are going to run out of time if we don't. I think we have greatly benefited by the testimony of all of you this morning, Captain Smith, Mr. Romano and Captain Atkinson.

I would like to ask one other question of Captain Smith. It is my understanding that the U.S. Court of Military Appeals is considering whether or not to extend the *Russo* ruling that would go further than the question of fraud and basically also say that if there was gross negligence or some kind of failure to follow recruiting regulations, even if it was not fraudulent this would have the same implications as the *Russo* decision. Is that the correct information?

Captain SMITH. Yes, sir, with the caveat that I represent one of the litigants in the case, *United States v. Harrison*. There is another case called *U.S. v. Sanchez*. I framed the issue, as Harrison's lawyer, to read that the recruiter's gross negligence and failure to discuss Harrison's true age amounted to gross negligence and resulted from his knowing failure to follow recruiting regulations that would require him to get a copy of Harrison's birth certificate. I have asked them to extend the *Russo* rule to such case.

Senator NUNN. That is your position as a lawyer?

Captain SMITH. Yes, sir. If they analyze the case as I do, perhaps they will, but I can't predict that they are going to buy Joe Smith's approach.

Senator NUNN. I don't want to ask anything that will prejudice your case. I am aware of your obligation and duty to do everything you can as a lawyer for your client. We had a suggestion made by Captain Atkinson that Congress take a close look at legislating, in effect overriding the *Russo* decision. What would be your view on that? If you would rather not comment I would understand.

Captain SMITH. Sir, I don't know that Congress can. I think that although the underlying currents that express the *Russo* case and some of the other cases have not been extensively articulated by the court, they may involve a question of constitutional interpretation. They may not be subject to the legislative remedy.

Senator NUNN. Was the *Russo* decision originally based on a constitutional interpretation?

Captain SMITH. The court was presented with some constitutional arguments and some other arguments. It simply said basically that fairness required the result. It is the kind of opinion that you have to read and you get the feeling that they knew there was something wrong there and that they reached the result without articulating as well as they might have.

Senator NUNN. What would be the constitutional grounds for challenge? Let us assume Congress attempted to override the *Russo* decision with legislation. What would be the constitutional grounds of challenge? Equal protection?

Captain SMITH. A couple that I have suggested in briefs. One is that to become subject to court-marital jurisdiction, you must be in the military, a person subject to the code. You do that by executing a valid enlistment contract. If your contract is not valid, you do not become a person subject to the code, and your case does not arise within the armed services under article 2.

Another one is *Accardi v. Shaunnnessy*, a fifth amendment due process doctrine that a Government agency is required to abide by its own rules and regulations when those rules and regulations are intended for the benefit of the individual to protect individual liberties. Consequently, as long as a recruiter violates regulations, a litigant can argue that *Accardi v. Shaunnnessy* entitled him to relief on due process grounds. You can change the regulations and do away with that.

Senator NUNN. What would be your opinion, Captain Atkinson, if Captain Smith is successful in his lawsuit?

Captain ATKINSON. Mr. Chairman, in responding to that question, I think most attorneys who are serving on active duty with the military realize that there are constitutional questions regarding the status or lack thereof of individuals who are products of fraudulent enlistment when they are brought to trial by special or general court-martial. But I feel, and I think most of the attorneys with whom I serve feel, that this is an area, one that could be preempted by legislation, and then, too, if there are constitutional grounds which would come forward, that these should be appropriately addressed in the Federal district court in conjunction with various motions raised within the military system, but that these can be addressed within the Federal district court.

Senator NUNN. Thank you very much. We appreciate all of you being here.

Senator METZENBAUM. Captain Smith, you and I were discussing this matter before. If Congress vitiates the impact of the *Catlow-Russo* decision, what do you think that will do vis-a-vis the question of improper recruiting practices? Will it help or hurt?

Captain SMITH. In my opinion, Senator, very few recruiters contemplate the ramification of *Catlow-Russo* when they recruit people out of juvenile detention centers or anywhere else. You solve the Marines' problems, court-martial problems, with legislative remedies, but I don't think that will cause the recruiters to keep bringing in sexual deviates, misfits, criminals, mental defectives and so on because *Russo* is not the impetus that causes them to engage in the things they do.

Senator METZENBAUM. It won't help the practice? It won't hurt it? It won't have much impact?

Captain Smith. I don't think it will impact on the recruiters. It will help the recruit commander, battalion commander, to have a disciplinary tool to handle all the people that are thrust on him improperly. I don't think it will do one thing to affect the recruiting practices in the field.

Captain ATKINSON. Senator, one of the recommendations I put in as a personal recommendation I did not enunciate this morning, and that was along the lines of your question, if Congress were to pass appropriate legislation preempting the *Catlow-Russo* defense, the immediate effect would be that you would not have a forum in which recruiter misconduct would be brought to light, where it does exist. I think you have to balance that because somehow this has got to be uprooted because there are hundreds, possibly thousands, of people in the various branches of the armed services who are presently serving who are fraudulent enlistees and we have recruiter misconduct.

One of the suggestions I have for consideration is that these individuals have to be screened, and they have to be screened on a 1-to-1 basis. It entails a lot of work, but I think the status of the problem and the gravity of the problem is such that all individuals on their first-term enlistment have to be screened regarding this area. I think the Senators have seen that this is really ripping—

Senator METZENBAUM. At what point do they have to be screened?

Captain ATKINSON. Two levels at the present time. One would be at their respective command at the present time. In other words, all first-term enlistees would be screened by counsel, be aware of what can happen to them regarding these enlistments, and that they could be separated, the terms of separation, what-have-you. You could develop a case along those lines. This would provide a free field of evidence and documentation for actually coming back to the recruiters who have perpetuated this fraud.

Senator METZENBAUM. Could you do this at the Marine Corps where the individual is stationed?

Captain ATKINSON. Say, the 1st Marine Brigade; yes, sir.

Senator METZENBAUM. You could say, "Were there any improprieties or frauds or misrepresentations made to you at the time you were recruited?"

Captain ATKINSON. Yes, sir. Basically, you would have to systematically go through each of the companies and the battalions. You would bring the individual in and say, "Pfc. So-and-so, we are going to talk about your enlistment in the service and any irregularities that may have occurred," and simply go through that application with him, and with the knowledge of the attorney go through each particular qualification or disqualifying factor and investigate that as to what occurred at the time of his enlistment.

Now, this takes a lot of time and a lot of man-hours, but from my point of view as defense counsel, we have a real problem. We have people out there who are accidents waiting to happen. When criminal involvement does come to light, then they are not going to face any type of judicial forum in having to answer for these transgressions. I think in conjunction with going through the various commands, then the branch services could station appropriate either paralegal or legal personnel at the various recruiting depots and screen individuals within the first 90 days, 120 days, that they are on active duty before they actually leave those depots. So that once you have cleaned the services, laundered these people out, then you probably could direct at least the main thrust of your investigation at the recruit depot level.

Senator METZENBAUM. In a court-martial case, after you have done that, it is likely that the individual would be estopped or would have waived any opportunity to assert a *Catlow-Russo* defense.

Captain ATKINSON. That is certainly an argument. That could be put forward by a good trial counsel, sir.

Senator METZENBAUM. One more question. Maybe either of you can answer this or perhaps Mr. Romano. Does the Corps maintain attrition lists to show the extent of poor performance on the part of *Catlow-Russo* recruiters?

Captain SMITH. It does to a certain extent, Senator.

Senator METZENBAUM. If it has those lists, should that not be a tipoff to the corps on the problem areas, and give them a situation where they could move in on certain recruiters who are producing more of the *Catlow-Russo* cases?

Captain SMITH. I have personally used the lists for precisely that purpose in an effort to gain evidence to cause court-martial charges to be dismissed.

Senator METZENBAUM. And as a defense?

Captain SMITH. Yes, sir.

Senator METZENBAUM. In the Corps area, couldn't the Marine Corps do a job of cleaning up its own house by using those same attrition lists in order to either bring court-martial proceedings against the recruiters, if that be the case, or at the very least, reassignment to some other kind of responsibility?

Captain SMITH. Absolutely, sir.

Senator METZENBAUM. Do you have anything further on that?

Captain ATKINSON. There are just two comments I would like to make in closing. One as an attorney out with a field unit, I have seen a distressing pattern recently of individuals coming forward with accusations of fraudulent enlistment due to recruiter misconduct when they are about to be deployed, that is sent out on specific missions. At the First Marine Brigade we are tasked with sending individuals afloat in the Pacific as a force-in-readiness. Many times individuals don't want to serve this because it is a hardship; they will spend 5 or 6 months afloat away from families, friends and any part of the United States.

The last time a float went out from Marine Air Station at Kaneohe there were a lot of individuals who came forward in the last months that their unit was assigned to the First Marine Brigade at Kaneohe with allegations of fraudulent enlistments. I inquired as to what might happen should we ever mount out as a force-in-readiness an entire group, what would happen if we took the entire brigade or entire branch of the Armed Forces and mobilized them, how many individuals would come forward with this type of thing? What would the possible civil liability be that the Government would face or individuals that have placed the Government on notice that they are fraudulent enlistees and are simply brought along with the unit because of time constraint and administrative restraint during a time of action with that branch of service.

I think that is a real question.

Senator NUNN. If they were ordered into battle under some conditions that would certainly increase the incentive to bring forth fraudulent recruitment charges?

Captain ATKINSON. Certainly it would be an avenue that someone could pursue.

Senator NUNN. Is it significant enough in numbers to cause you concern about the overall readiness of the units?

Captain ATKINSON. Sir, the information regarding *Catlow-Russo* and its effect on individuals continuing or not continuing service is beginning to filter down to the very lowest level of the enlisted ranks and they are becoming increasingly schooled and educated as to what these problems are and what effect they may have. Yes, the numbers have been increasing in our particular command.

Senator NUNN. To the extent that you would be concerned about the readiness of the unit in terms of their willingness and ability not the whole unit but a substantial number of them, that could affect the readiness?

Captain ATKINSON. I could not comment on readiness of the whole unit because I am not an infantry commander.

Senator NUNN. I am speaking of just this factor, not the overall.

Captain ATKINSON. Yes, sir, it could be a real administrative problem and disciplinary problem in that light.

Senator NUNN. If anybody made the allegation before they were being shipped out to some kind of war scenario, if a large percentage of the unit, let us say 10 or 15 percent of the unit were to say, "We have fraudulent enlistments," and it was before they went, what would the Marine Corps be able to do?

Captain ATKINSON. I don't know, sir. That would certainly be cause for concerns. It would certainly keep me up nights if I were a commander.

Senator NUNN. Suppose the 60 percent that the national statistics say smoke marijuana all of a sudden popped up and said "All our applications were wrong, we did smoke marijuana, the recruiter told us not to mention it"?

Captain ATKINSON. As I said, sir—

Senator NUNN. It is a fraudulent enlistment?

Captain ATKINSON. It would be a very large problem for a commander.

Lastly, there were questions earlier regarding the ability of the various forums, judicial forums, to address an individual who has committed an offense. Captain Smith and I have seen cases where serious offenses have gone to the Federal district court and have been prosecuted.

But I would like to tell the Senator of one particular case that was not prosecuted further because of the uniqueness of its facts and I think it graphically displays the horror in this particular area.

There was an individual serving on active duty with the U.S. Navy who was alleged, while aboard ship off the island of Guam, to have taken a knife and attacked a fellow crewmember and cut the individual's face quite severely. As the victim fled the assailant placed that knife in the individual's back with the words that he was going to kill him. Subsequently that individual, when the ship returned to Pearl Harbor, was brought up to trial and his enlistment was found to have been fraudulent with recruiter misconduct. The charges were subsequently dismissed and that individual has never answered, to the best of my knowledge, for the act that occurred on that ship off the island of Guam. I think the Senators now, knowing the problems of jurisdiction

in this particular area, can see that this is one that has truly slipped through the fingers of the military and also the various civilian areas of judicial recourse.

Senator NUNN. Thank you very much, Captain Atkinson.

Do you have anything else you would like to add?

Captain ATKINSON. Nothing further.

Senator METZENBAUM. I think these men have performed a very useful public service. I want to say we are very grateful to you.

Senator NUNN. We are grateful to each of you. I think the information you have provided this morning will be very useful to the subcommittee and to the full committee and the Congress.

Thank you.

Captain SMITH. Thank you.

Senator NUNN. Our next witness is Maj. Gen. William L. Mundie, commanding general of the Military Enlistment Processing Command, which runs the Armed Forces Entrance and Examination Stations. These stations have the responsibility for quality control of military recruits for all services and they also administer the physical examination. General Mundie also is commanding general of the Army Recruiting Command.

I am happy to welcome you to the subcommittee this morning. We will be interested in your observations on both aspects of your command and duty.

**STATEMENT OF MAJ. GEN. WILLIAM L. MUNDIE, COMMANDING GENERAL, U.S. ARMY RECRUITING COMMAND, U.S. ARMY AND U.S. MILITARY ENLISTMENT PROCESSING COMMAND, ACCOMPANIED BY REAR ADM. CHARLES E. GURNEY III, DEPUTY COMMANDER, U.S. MILITARY ENLISTMENT PROCESSING COMMAND**

General MUNDIE. I am accompanied by Rear Adm. Charles E. Gurney III, deputy commander of MEPCOM.

Senator NUNN. We are glad to have you, Admiral. Do you have a statement with you?

General MUNDIE. Yes, sir. I am Maj. Gen. William L. Mundie, U.S. Army, commander of the U.S. Army Recruiting Command—USAREC—and the U.S. Military Enlistment Processing Command—MEPCOM—both headquartered at Fort Sheridan, Ill.

The U.S. Military Enlistment Processing Command, generally referred to by its acronym, MEPCOM, became a separate command on July 1, 1976. It is a jointly staffed command under the supervision of the Deputy Chief of Staff for Personnel, Headquarters, Department of the Army, the executive agent for the Department of Defense.

The mission of MEPCOM is to serve all components of the Armed Forces, including the U.S. Coast Guard, by providing mental and medical examinations of applicants for enlistment in the Armed Forces. Those applicants found to be qualified for enlistment in a specific service are administratively processed and enlisted by this command.

MEPCOM was organized to remedy a perceived lack of quality control in the enlistment of personnel for the Armed Forces. Prior to the establishment of MEPCOM, the enlistment of personnel was decentralized under the military departments. Testing of applicants for mental qualification and sometimes for medical qualification was under the jurisdiction of the individual recruiting services.

Most applicants, however, were examined medically in the Armed Forces Examining and Entrance Stations, or AFEES. These AFEES were part of the U.S. Army Recruiting Command. The other services—and, I think, quite properly—perceived a bias in favor of the Army on the part of personnel in the AFEES.

MEPCOM consists of a command headquarters, three sector headquarters, 66 Armed Forces Examining and Entrance Stations, or AFEES, and three substations. The location and number of these AFEES is under constant review. The operations at some AFEES are reduced and additional AFEES or substations are established in other centers of population. Very recently, a substation of the AFEES in Los Angeles, Calif., was established in San Diego because the area surrounding San Diego has become a magnet for military age persons.

MEPCOM is staffed by 1,074 Department of the Army civilian employees and 1,807 military personnel of all the Armed Forces. The military personnel are assigned in proportion to the number of personnel from each service processed in the AFEES. The command is funded through the Department of the Army and receives its policy direction through DCSPER, DA, from the Department of Defense, Office of the Assistant Secretary of Defense, Manpower, Reserve Affairs, and Logistics. The joint staffing of the command insures an equitable sharing of the day-to-day workload as well as of the responsibility for quality assurance for the entire military enlistment system.

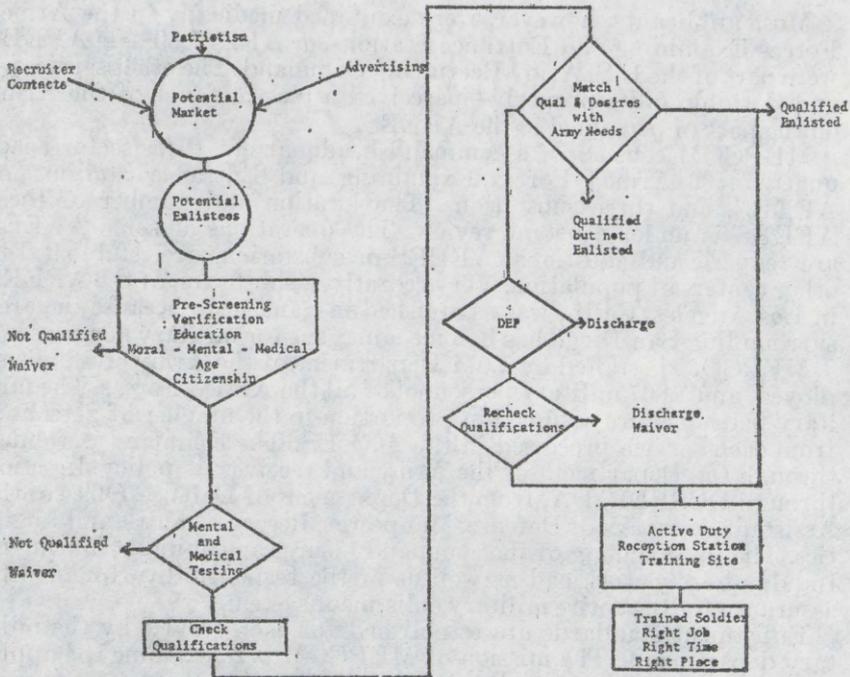
Enlistment standards are established for each service by the military departments. The mission of MEPCOM is to examine the applicants, fairly and impartially, in order to provide the most accurate mental, physical, and moral description of each applicant to the recruiting services.

The personnel of MEPCOM do not decide whether or not an individual is acceptable for enlistment in a particular Armed Force. They apply test results against the standards set by the military departments. Only in the area of medical qualification is a judgmental factor applied by AFEES personnel—the Chief Medical Officer—because of the necessity for professional evaluation of each individual applicant. Even in the event of medical disqualification, the military department concerned may choose to waive the disqualifying condition if such a waiver is in the interests of the military and the individual applicant.

As I previously stated, I also command the U.S. Army Recruiting Command, generally referred to by its acronym, USAREC. The mission of USAREC is to recruit men and women in the quantity, quality, and skill level necessary to maintain Army end strength.

USAREC consists of a command headquarters, 5 region headquarters, 57 district recruiting commands, and 1,560 recruiting stations. USAREC is staffed by 1,168 Department of the Army civilians and 7,708 Army personnel. The command receives its funding from the Department of the Army and receives policy guidance from DCSPER, DA.

I now want to place USAREC and MEPCOM in perspective by describing how they interact in one applicant's enlistment processing, a fictitious John Jones. John is basically influenced either by patriotism or inclination to serve his country, or advertising which points out the advantages and disadvantages of a military career, or a recruiter contacts him.



Recruiter contact—or the presence of an Army recruiter in a community—is an impact on John that is extremely difficult to quantify. The fact that the Army recruiter lives in a community and participates in community activities affects the community's and John's perception of the military.

For the most part, the recruiter must use his or her ability to convince John to enlist in the U.S. Army, or John may just walk into a recruiting station because of one or several other motivating factors. At this point, prescreening and verification of important enlistment criteria begins. This is done by interview and gives John and his recruiter a feel for the feasibility of continuing the enlistment process. John's prescreening includes completion of a medical worksheet which addresses matters such as height, weight, injuries, missing or deformed extremities. Next John takes the enlistment screening test—EST. Both will give indications of John's probable success on the qualifying medical and mental examinations.

As a part of this screening, John's education, age, citizenship, and moral qualifications are verified. If a waiver is required, it is initiated at this point. After this prescreening and verification process is complete, the enlistment packet is checked by his recruiter's supervisor—the recruiting station commander—for correctness and completeness.

Senator NUNN. What is the enlistment packet? Is it an application?

General MUNDIE. It is an application, also a MEPCOM form, which authorizes continuing on with his processing.

[Additional information follows:]

General MUNDIE. It is an application, also a MEPCOM form, which authorizes continuing on with his processing. More specifically, an enlistment packet is a

grouping of forms which accompany the applicant throughout his enlistment processing and which ultimately become the basis for a soldier's official military record. The packet consists basically of the DD form 1966 (a six-page application for enlistment), the DD form 4 (enlistment agreement), and the standard forms 88 and 93 (report of medical examination and medical history) with accompanying moral, identifying, and other supporting documents prepared at various stages of the processing. Where special options or unique situations are involved, particular supporting documents are a part of the individual pack as well.

Senator NUNN. Is the recruiter supposed to help with the application?

General MUNDIE. Yes, sir; he is supposed to sign parts of it.

Senator NUNN. It is filled out jointly?

General MUNDIE. Yes, sir, and in some cases with the applicant's parents if he is underage.

John is now ready for processing within the MEPCOM or AFEES system. He and his recruiter have two choices. If John lives some distance from an AFEES his recruiter will take or direct him to the nearest mental testing site. Here he is identified and undergoes the Armed Services Vocational Aptitude Battery, or ASVAB. Two versions, each having four variations of the same questions, are available. He is randomly issued one version on which he is tested. John then returns home and awaits the results of that examination, a process which takes 24 hours. The test is sent to the AFEES for double scoring of the results. The results are forwarded by the AFEES to John's recruiter, who informs John. If he passed, he is taken or directed to the AFEES on a convenient date to continue his processing. If he fails, he is apprised of his scores and told when he is eligible for retesting.

Senator NUNN. General, you say two versions, each having four variations of the same questions, are available. How much duplication is there between the two versions? In what percentage are the two tests the same?

Captain RUX. There may be three or four anchor questions in each test. Psychologists developed the tests so there might be three or four questions that are the same, but these psychologists do that. The two basic test versions ask different questions. In the variations of each basic test, sir, the questions are identical.

Senator NUNN. What you are saying is that there are two different tests and those two tests have three or four questions that are identical?

Captain RUX. They may. They have a common technique. They are two different test versions.

Senator NUNN. But each one of the two tests has two versions?

Captain RUX. For the purpose of the committee the two test versions are not the same at all; they are entirely different test questions. The only reason we can't say for sure there are no questions that are duplicative is that there is a possibility that a few test questions might be anchor questions; it is a common psychological test development technique where two different versions of the test battery would have identical questions.

For your purpose, however, they are two different tests. If he took one test, he ends up with ASVAB-6; the other test, the ASVAB-7.

Senator NUNN. Thank you.

General MUNDIE. If John lived in the vicinity of an AFEES his recruiter would take or direct him to the AFEES rather than a remote testing site. At the AFEES he first is identified by signature or photographic means. Once his identity is established he is administered the ASVAB and in the same manner as at the remote site. If he passes he is ready for further processing.

He then joins others who were successfully tested at remote sites and at the AFEES and begins medical processing, where he is again identified. His examination is conducted by a physician. If he passes he begins his administrative processing. If there is a potentially disqualifying condition, John is either referred to a specialist for consultation, found to be disqualified and/or a waiver may be requested by the service concerned.

John now is directed to the Army guidance counselor, who is located in the AFEES but is not part of the AFEES. Here John's medical and mental qualifications are reviewed to determine his eligibility for specific training. John now has the option, based on his desires and training availability, to immediately enter on active duty or enter the delayed entry program—DAP—for up to 365 days. This latter course enables him to finish school or await a specific skill training date. Once John and his guidance counselor reach agreement, he returns to AFEES control to complete his processing.

John is now privately interviewed and fingerprinted by a specially trained individual who is a member of the AFEES staff. This is the ENTNAC—the Entrance National Agency Check—interview.

Senator METZENBAUM. You mentioned fingerprinting. Is fingerprinting done with all recruiters?

General MUNDIE. Of all the recruiters?

Senator METZENBAUM. Of all recruits.

General MUNDIE. Yes, sir.

Senator METZENBAUM. How do you get these cases that were ringers to sit in and take the test?

General MUNDIE. They would have taken the test before they were fingerprinted. A prerequisite to the ENTNAC interview is successful completion of the guidance counselor interview, of the medical examination and the mental test.

Senator METZENBAUM. Is it possible that maybe some change should be made as to when the fingerprinting takes place?

General MUNDIE. No, sir, I don't think so. The admiral and I have a solution to solve that problem.

Senator METZENBAUM. Pardon?

General MUNDIE. I think we have a solution that will help solve the problem of ringers. It is not a system by which one destroys the henhouse to get at the fox. We believe we can establish a system of signature trail on the back of the MEPCOM 714 which will cause at each stop the individual to sign his name and the individual who is either testing or interviewing or what to sign alongside of it. That will eliminate many of the problems to which you allude. We have not done that in the past. We have required signatures but not a signature trail. This new change effective in December will correct that.

Senator METZENBAUM. That assumes that the recruiter would make a visual observation that the signatures were different?

General MUNDIE. No, sir; the recruiter would have nothing to do with this. This would be in the Armed Forces examining and entrance station. This is a DOD activity. I am now wearing my DOD hat when I speak of this particular case.

The first signatures that would appear on the form, as the admiral and I propose it, would be the signature of the recruiter and the signature of the applicant. When the individual goes for testing he would sign again and the tester would also sign.

Senator METZENBAUM. Would it not be helpful if there were also a photo taken at the various steps?

General MUNDIE. It might. It would be an expensive process and I think it would alienate people.

Senator METZENBAUM. Why do you say it is expensive? It would cost about 60 cents a picture.

General MUNDIE. The equipment is expensive.

Senator METZENBAUM. You could use Polaroid or Kodak. They all have cheap cameras now.

General MUNDIE. I don't think it is necessary, No. 1, but we are looking at it; we are looking at the two alternatives—photograph and signature trail. We believe that it is less complicated and a good deal less expensive to go with the signature trail. We have not closed the option on either one. I do believe the signature trail will eliminate all but the determined fraud, and I don't know of any system that will avoid that.

Senator METZENBAUM. Compared to the cost of eliminating *Catlow-Russo* recruits, as compared with the cost of buying some rather expensive photographic equipment and putting a picture on it at the inception, it seems to me you are talking about pennies.

General MUNDIE. I think the next part of my testimony directs itself specifically to *Catlow-Russo*.

Senator METZENBAUM. I didn't mean to interrupt.

General MUNDIE. I agree that we should not foreclose the possibility of the photograph. We are looking at it. But we can much more quickly impose the signature trail. We can do it almost immediately and we intend to. We are doing this as a result of some of the things you have brought up.

John is now privately interviewed and fingerprinted by a specially trained individual who is a member of the AFEEES staff. This is the ENTNAC—the entrance national agency check interview. During the one-on-one interview, John is given every opportunity to reveal previously undisclosed facts concerning his background, medical history, possible criminal record, drug or excessive alcohol usage, or effort on the part of his recruiters to improperly assist or counsel him. John is also asked at this time if he fully understands the terms of his pending enlistment and if he has been promised anything not recorded on his enlisted agreement.

I think that date is important in some of the testimony you have listened to. I emphasize here that the individual conducting this interview is not a member of any of the recruiting services. He is an agent of the Government and represents the DOD.

If John makes disclosures not implicating his recruiter or other persons, he is returned to his guidance counselor or the AFEEES physician for further determination of eligibility. If John makes disclosures

implicating his recruiter or others, a report of additional information (MEPCOM form 701) is immediately completed and John completes a sworn statement. If John refuses to do so, the interviewing NCO makes a sworn statement attesting to the facts disclosed to by John. In this case, the form is sent to the Army Recruiting Command for investigation and action as appropriate. John's processing is stopped and he is returned to his counselor pending resolution of the alleged irregularities.

Upon successful completion of the ENTNAC process, John completes appropriate enlistment forms, is given a pre-enlistment briefing which stresses the consequences of fraudulent enlistment, and then is sworn into the Army by a commissioned officer.

Senator NUNN. What are the consequences of fraudulent enlistment? It seems to me if you get into trouble later on you cannot be prosecuted successfully.

General MUNDIE. They cannot be prosecuted.

[Additional information follows:]

General MUNDIE. They cannot be prosecuted. By this, I mean that if a soldier is fraudulently enlisted by means of recruiter connivance, enters onto active duty and subsequently commits an offense under the UCMJ, a court-martial lacks jurisdiction to try that soldier. Now, if during any portion of the enlistment screening process prior to actually being sworn in the applicant is found to be attempting to enlist fraudulently, he or she is denied enlistment and is entered into the AFEES Reporting System (ARS) as being disqualified. Further, a report of attempt to fraudulently enlist is forwarded to higher headquarters. An attempt is also made to determine whether or not the recruiter was aware of the attempt to fraudulently enlist, and every such allegation is investigated.

If, after being sworn in to Active Army but prior to departing from AFEES to the reception station it is discovered that an applicant has enlisted fraudulently his or her enlistment is voided by the AFEES commander and the same actions as above are taken.

If an applicant is enlisted, he or she proceeds to the reception station and is then discovered to have enlisted fraudulently, action will be taken by the commander who then exercises general courts-martial jurisdiction over the soldier, who may discharge the soldier, void the enlistment, or retain the soldier if the case is meritorious. In addition, and I'll go into more detail later, in appropriate cases, the soldier could be court-martialed under the provisions of Article 83, UCMJ (Fraudulent Enlistment or Appointment).

Senator NUNN. Is that what you explain to them. Do you explain the *Russo* decision?

General MUNDIE. I am sure we do not.

Senator NUNN. What kind of consequences do you explain to them? What are the sanctions if they have enlisted fraudulently?

General MUNDIE. Well, it is a civil offense.

[Additional information follows:]

General MUNDIE. Well, it is a civil offense. By this, I mean that making a knowing and willful false statement on the application for enlistment (DD Form 1966) can be punished under 18 USC Section 1001. Also, we explain the general meaning of Article 83, Uniform Code of Military Justice, and the provisions for administrative discharge due to fraudulent entry are explained before the Oath of Enlistment ceremony. Article 83 makes it a crime under the Uniform Code of Military Justice to procure one's own enlistment into the Armed Forces by knowingly false representation or deliberate concealment as to one's qualifications for enlistment and to receive pay or allowances under the enlistment. We have a programmed text for Training Enlistment Briefings which deals with the subject of the enlistment briefing at the Armed Forces Examining and Entrance Stations (AFEES). This programmed text is designed for completion by all officers who conduct enlistment ceremonies/briefings and by all enlistment personnel who conduct enlistment briefings. A typical AFEES "Script" is as follows:

## PREENLISTMENT ORIENTATION

Good morning, ladies and gentlemen, I am ————. Prior to your enlistment today, there are several things we must explain to you. If you have any questions, please wait until I have completed this briefing and I will answer your questions at that time.

First let me explain Article 83, of the Uniform Code of Military Justice. The Uniform Code of Military Justice are the laws and regulations that we in the military must abide by. Article 83, Fraudulent Enlistment, states that if you accept an appointment or enlistment into the Armed Forces and receive pay for that appointment or enlistment by falsifying or withholding any information that pertains to an arrest record, your educational background, medical history, the use of drugs or alcohol, prior military service or attempts to enlist into the Armed Forces, or any information of a derogatory nature, you may be tried by courts martial (criminal trial). Therefore, if you have been told to withhold or to falsify any information, you should notify us at this time. You should understand that an investigation will be completed on each of you by the Defense Investigative Service or the Federal Bureau of Investigation. All records of previous adjudications will be made available to the Defense Investigative Service or the Federal Bureau of Investigation, regardless of whether they had previously been closed by the courts. If any derogatory information is discovered during this investigation, you may be tried by courts martial (criminal trial) and if convicted, punishment may be a \$10,000 fine, 5 years imprisonment, reduction to the paygrade E-1, forfeiture of all pay and allowances and something less than an honorable discharge. If you feel that you may have withheld or falsified any information, we will discuss it with you privately and a determination on your enlistment status will be made. Depending on the offense, if possible, we will seek a waiver for you. If granted, you may be enlisted either later today or in the near future.

You should be aware that a computer file search will be conducted to determine if you have ever processed for an enlistment anywhere nationwide. If you have, you will be identified and not allowed to process any further. If you have enlisted, we will be able to notify the recruit reception station of such and you may be tried by courts martial for fraudulent enlistment.

Now, Senator Nunn, let me answer the second part of your question, what are the consequences of fraudulent enlistment.

Fraudulent enlistment is the procurement of an enlistment, reenlistment, or period of active service, and acceptance of pay and allowances therefore, through any deliberate material misrepresentation, omission, or concealment which, if known and considered by the Army at the time of enlistment or reenlistment, might have resulted in rejection. This includes all conditions that would have been disqualifying without a waiver. Some examples of the types of items concealed are: true citizenship status, records of convictions by civil and juvenile courts, and medical defects. If it can be established that the fraudulent enlistment was aided by a recruiting official, then recruiter connivance/misconduct is involved.

Pursuant to the Court of Military Appeals decision in *United States v. Russo*, (1975), when recruiter misconduct is established the resulting enlistment is void as contrary to public policy. Consequently, those soldiers are not subject to military authority including the Uniform Code of Military Justice. Alleged criminals who escape prosecution under the Uniform Code of Military Justice are still subject to prosecution by civilian authorities. However, as a practical matter, the US Attorneys and state civilian authorities are generally too overburdened to prosecute the cases.

Where court-martial charges are not pending or contemplated and recruiter connivance is established, the soldier's enlistment is normally voided. However, in some cases the general courtmartial convening authority can retain the soldier if the soldier desires to continue military service.

When a fraudulent enlistment occurs and recruiter connivance is not involved, there normally is Uniform Code of Military Justice jurisdiction over the soldier. The soldier who fraudulently enlists could be charged with violation of Article 83, Uniform Code of Military Justice. Article 83 makes it a crime under the Uniform Code of Military Justice to procure one's own enlistment into the Armed Forces by knowingly making a false representation or by deliberate concealment as to one's qualifications for enlistment and to receive pay or allowances under the enlistment. If a courtmartial is not pending or contemplated there are specific

situations in which the soldier can be retained with the soldier's consent, even though there was a fraudulent enlistment.

When it can be established that recruiter connivance is involved in a fraudulent enlistment, the recruiter is subject to the full range of actions described under the discussion of recruiter malpractice.

The Application for Enlistment—Armed Forces of the United States (DD Form 1966) informs applicants that making a knowing and willful false statement on the application can be punished by fine or imprisonment or both under Section 1001 of Title 18, United States Code. If an attempted fraudulent enlistment is caught before the enlistment, the individual is not permitted to enlist. I am not aware of any Army applicant being prosecuted for false statement on the DD Form 1966. This Command has never asked a US Attorney, to the best of my knowledge, to prosecute fraudulent enlistees for false statements. We do not know how receptive the US Attorneys would be to prosecuting such cases. Our resources have been directed to bringing individuals into the Army rather than on attempting to see that a relatively small number of dishonest individuals are prosecuted in Federal Court for false statements on DD Form 1966.

Senator NUNN. What happens to them? How many people have been civilly prosecuted?

General MUNDIE. I know of none, sir.

Senator NUNN. Why?

General MUNDIE. Sir, I can't answer that. I don't know.

Senator NUNN. If you don't, who would, General?

General MUNDIE. I don't know, sir, but I will get you the answer.

Senator NUNN. Somebody in your command would have to refer it to the civil authorities and there would have to be some civil mechanism set up to pursue these offenses, wouldn't there?

General MUNDIE. I have not pursued it, sir. I will look into it.

Senator NUNN. What other sanctions would be available for fraudulent enlistment as it pertains to the enlistee besides civil penalties?

General MUNDIE. If we catch the fraud at the point of enlistment in my case he can be turned over by the AFEES commander to the U.S. attorney. If it was fraudulent enlistment found after enlistment it is then the function of the commander under whom the individual is serving at the time.

Senator NUNN. How many have you turned over to the U.S. attorney for fraudulent enlistment? Do you know of any?

General MUNDIE. I know of none, sir.

Senator NUNN. What is the reason for that? Have you never had one that has been—

General MUNDIE. Sir, the case has never come up to me. I will look into it.

Senator NUNN. You have never had one that you caught in this rigorous screening process?

General MUNDIE. I am saying that the agent has never been brought to my attention. I have personally not become involved. I will become involved in it.

Senator NUNN. You have had people who you have caught in this rigorous screening process who have been guilty of fraudulent enlistment, have you not?

General MUNDIE. Yes, sir, they have admitted to it and been stopped at the ENTNAC process. They have not gone through the act of enlistment.

Senator NUNN. Then you have named two sanctions. One is a possible civil violation and the other is possible referral to the U.S. at-

torney. You have said there has never been either one of those steps taken?

General MUNDIE. To my knowledge that is correct. I speak only of my personal knowledge.

Senator NUNN. Any other sanction?

General MUNDIE. I know of none other. We deny enlistment if we catch it beforehand. It is between the commander and the individual after that.

Senator NUNN. Does anyone here on your staff want to address the first two? Have any civil penalties been assessed from fraudulent enlistment or any case been referred to the U.S. attorney? Is there anybody on your staff that knows of an instance of either of those?

General MUNDIE. I will get an answer for you, sir.

Colonel McSPADEN. It is my understanding from the legal point of view it is terribly difficult in those cases to prove the intent to defraud the Government. They are normally not pursued.

Senator NUNN. In effect there would be really no sanction except if you are ever caught you will be kicked out of the service, is that right?

Colonel McSPADEN. Basically that is correct, sir. However, a young man is probably impressed with the fact that he is told that he can be tried and if found guilty would suffer up to a \$25,000 penalty, if I recall the amount correctly. I think that is probably impressive to him.

Senator NUNN. I suspect the word spreads pretty well among people that nobody has ever been tried in the history of the recruiting command.

General MUNDIE. I would suspect so.

Senator NUNN. What we are talking about is that we really have no effective remedy so far as the applicant is concerned if he has himself committed fraud?

General MUNDIE. At the point of enlistment, that, I think, is true.

Senator NUNN. Suppose he gets into the service and he is doing a good job. He is a good man and so forth, somehow the military finds out he committed fraud in his enlistment. What would happen to him?

General MUNDIE. The general court martial authority has authority to waive it under certain circumstances. I have in my previous assignment done that in a case where a soldier had served honorably and in the following processes which follows the act of enlistment when a formal national agency check takes place, the thing surfaced, in this case a justifiable offense which was not available to the recruiter. I waived that.

To my knowledge, that individual is still serving honorably. He did for 2 years. That is up to the commander.

Senator NUNN. The only time they would be kicked out for fraudulent enlistment is if they had done something wrong and they had not had a good career?

General MUNDIE. That is right. At the point that the general court martial authority acts on the case I think it also obviates any future legal sanction under *Catlow-Russo*. He is then serving honorably under a proper enlistment.

Admiral GURNEY. I think before we pass the ENTNAC and make the sweeping comment that it is not really a very good screening process we could put some perspective to it by giving you some numbers.

Senator NUNN. I did not say it was not. I said it is a rigorous screening process. I asked if you told him what would happen if he committed fraud, after going through this rigorous process you did find he committed fraud, what happened to him and your answer is nothing.

Admiral GURNEY. That is true.

Senator NUNN. I did not say it was not a rigorous process.

Admiral GURNEY. The effect of it is to bar enlistment in thousands of cases. Therefore, it does perform that function.

Senator NUNN. I am sure it does.

Admiral GURNEY. It is a scary thing for a youngster who might be inclined to fib a little bit. I don't think it deters the hard line fraud you are talking about.

As an example, of the 249,091 processed through the AFEES since October 1977, 19,571 of them disclosed additional information during this national agency check interview. Of those, 3,879 disclosed information which was severe enough that they were disqualified and not enlisted.

Senator NUNN. Out of those how many indicated that their recruiter had participated in their misrepresentation or fraud or whatever the case might be?

Admiral GURNEY. I can find out.

General MUNDIE. I have it sir, for the Army.

Admiral GURNEY. I don't have it for all services but I can get that. [The information follows:]

Admiral GURNEY. The figures quoted were for all branches of the service for fiscal year 1978, from 1 October 1977-31 August 1978. There were a total of 249,091 ENT/NAC/NAC's processed through AFEES. 19,571 applicants disclosed additional information and of this figure, 3,879 applicants were denied enlistment by their branch of service, at that time, as a result of the information disclosed. Out of 19,571 disclosures, 343 applicants indicated their recruiter had participated in the concealments.

General MUNDIE. In fiscal year 1977, 454, in fiscal 1978, 343.

[The information follows:]

General MUNDIE. For all branches of services during fiscal year 1977 (18 October 1976-30 September 1977), there were 39,830 disclosures of additional information. Out of those disclosures, 454 applicants indicated their recruiter was involved in the concealment. For all branches of the services during fiscal year 1978 (1 October 1977-31 August 1978), there were 26,251 disclosures of additional information. Out of those disclosures, 343 applicants indicated recruiter involvement. Here is the specific breakout:

	Army	Navy	Air Force	Marine Corps	Other	Total
Fiscal year 1977.....	194	125	50	76	9	454
Fiscal year 1978.....	108	74	21	71	69	343

<sup>1</sup> 69 cases pending action within MEPCOM.

Senator NUNN. Out of those 454 do you have any track record as to what happened to the allegations against the recruiter himself?

General MUNDIE. I can look each one of them up for you, sir. We formally investigate every allegation. We formally investigate it in the command. Over 90 percent of those are referred for both opening and closing to the Criminal Investigation Division, CID, and in some cases also investigated by the IG. They are formal investigations.

Senator NUNN. If you could furnish that for the record, General, it would be helpful.

[The information follows:]

General MUNDIE. As I explained earlier, those 454 were for all services for fiscal year 1977, and for fiscal year 1978 there were 343 allegations of recruiter connivance revealed during the ENTNAC interview for all services. Each service reports back to MEPCOM whether their investigation showed the allegation as substantiated, unsubstantiated, or not investigated for some reason. The services do not provide data as to any kind of adjudicatory proceeding or punishment of the recruiters involved. Those matters are entirely within the jurisdiction of the service concerned and we do not collect such data.

The information reported by the services on cases closed as is follows:

	Army	Navy	Air Force	Marine Corps
<b>Fiscal year 1977 (254 closed of 454 reported):</b>				
Substantiated.....	6	14	1	1
Unsubstantiated.....	130	41	4	16
Processing error.....	34	2	4	8
Unknown.....	0	0	2	1
<b>Total.....</b>	<b>160</b>	<b>57</b>	<b>11</b>	<b>26</b>
<b>Fiscal year 1978 (131 closed of 343 reported):</b>				
Substantiated.....	4	2	0	2
Unsubstantiated.....	95	1	4	6
Processing error.....	6	0	0	3
Unknown.....	3	0	1	4
<b>Total.....</b>	<b>108</b>	<b>3</b>	<b>5</b>	<b>15</b>

General MUNDIE. Upon successful completion of the ENTNAC process, John completes appropriate enlistment forms, is given a pre-enlistment briefing which stresses the consequences of fraudulent enlistment, and then is sworn into the Army by a commissioned officer.

At this point he either ships to training center or returns home as a member of the delayed entry program or DEP. If he entered the DEP, he returns to the AFEEs on the appropriate date for initial active duty screening. The screening consists of a medical inspection—not an examination—his enlistment packet is checked and he is formally enlisted into the Active Army.

Senator METZENBAUM. Mr. Chairman, I have been advised that a matter has come up on the floor that requires me to be there. I am leaving not for lack of interest in this hearing, I do not mean to be rude to you, General, or the next witnesses, because I do have some questions, but I must be on the floor.

Senator NUNN. Thank you.

Go ahead, General.

General MUNDIE. In either case this completes John's MEPCOM and USAREC processing.

During fiscal year 1978, USAREC enlisted 134,428 men and women through this process against a requirement of 137,000. During the same period, 1,316 allegations of recruiter irregularities were made; 148 have been substantiated, involving 117 recruiters. This chart compares fiscal year 1978 with fiscal year 1977:

*History—Malpractice Allegations*

Fiscal year 1977:	
Enlistments .....	181,010
Allegations .....	1,968
Allegations as percent of enlistments.....	1.08
Number substantiated.....	155
Substantiated as percent of enlistments.....	.08

Fiscal year 1978:

Enlistments .....	134,748
Allegations .....	1,316
Allegations as percent of enlistments .....	.98
Number substantiated .....	148
Substantiated as percent of enlistments .....	.11

Senator NUNN. What happened to those 117? Do you have that?

General MUNDIE. In each case, sir, they either have been relieved or the relief is in process.

Senator NUNN. Could you follow up on the 117 and furnish to us, for the record, what happened to each one of those that has been completed or, if not completed, the pending cases?

General MUNDIE. Yes, sir, I will do so.

[The information follows:]

General MUNDIE. Of that 117, one recruiter was tried by special court-martial and acquitted. Thirteen received nonjudicial punishment under Article 15 of the Uniform Code of Military Justice including two reduced in grade. Twelve received letters of reprimand, one received a verbal reprimand, nineteen are still pending and our records show no action other than relief as to the remaining seventy-one.

I should point out that when a recruiter is relieved for malpractice, the basis for the relief is made a permanent part of his official record. Additionally, his reassignment to recruiting duties is precluded by the permanent reclassification out of the recruiting job field.

General MUNDIE. This chart depicts the 95 cases currently pending resolution and the sources and nature of the allegations.

PENDING MALPRACTICE ALLEGATIONS—SEPT. 30, 1978

Category	Number of cases	Sources
Concealed police record.....	23	TNG/CTR/Liaison NCO (12), MEPCOM (4), Region/DRC (3), CID (2), and other units (2).
False promise.....	26	TNG CTR/Liaison NCO (11), DA (6), region/DRC (6), and other units (3).
Irregular testing.....	4	Region/DRC (2), MEPCOM (1), and CID (1).
Not qual for option.....	2	TNG CTR/Liaison NCO (2).
Concealed prior service.....	4	TNG CTR/Liaison NCO (4).
Concealed medical information.....	6	TNG CTR/Liaison NCO (1), region/DRC (1), MEPCOM (3), and other units (1).
Other.....	24	TNG CTR/Liaison NCO (8), region/DRC (7), DA (4), CID (2), and other units (3).
Inspector general complaints.....	6	IG (6).
Total.....	95	

MEPCOM and USAREC, during the past year, have taken positive actions to correct the following irregularities in processing and recruiting applicants:

*Corrective actions*

1. Concealment of police records
2. Falsified documents:
  - A. Age
  - B. Citizenship
  - C. Education
  - D. Marital status/dependents
3. Unfulfilled promises or guarantees
4. "Request" abuses
5. Irregular testing
6. Systems failures:
  - A. 91C10—length of training
  - B. Bonus—disbursing authority
7. Quality checks.

## CONCEALMENT OF POLICE RECORD

Recruiters ask applicants if they have ever been arrested, charged, cited or held by law enforcement or juvenile authorities. Guidance counselors also discuss law violations with the applicant. An Entrance National Agency Check (ENTNAC) is processed on each applicant. The applicant is asked questions regarding any law violations by the ENTNAC interview. Thus, law violations are discussed on three separate occasions during the enlistment process. Police records checks are processed on applicants who claim to have law violations that would need a waiver to enlist. Department of Justice order 601-75, effective June 19, 1975, precludes noncriminal justice agencies from having access to criminal records except that recruiting services are entitled to adult felony conviction records. This poses a problem for recruiters—unless an applicant admits to a juvenile offense, recruiters have no way of knowing for certain if the applicant has a juvenile record. Often soldiers admit to a juvenile record after they are on active duty.

## FALSIFIED DOCUMENTS

During the interview with each applicant the recruiter determines the status of the individual with regard to the above areas. Documentation must be provided to the recruiter to substantiate the basic enlistment requirements. These documents are again reviewed by the Army guidance counselor and later by the ENTNAC interviewer. Any documents which appear suspect are brought to the attention of the appropriate commander. USAREC Liaison NCO's are located at each basic training center. When irregularities as a result of processing are brought to their attention the enlistee is interviewed by the USAREC liaison NCO. If the case is considered questionable or it is determined appropriate, sworn statements are taken and forwarded to HQ, USAREC, where a formal investigation is initiated.

## UNFULFILLED PROMISES OR GUARANTEES

Guidance counselors discuss the qualifications required for enlistment in particular skill with the applicant. For example, the guidance counselor insures that the applicant has taken algebra if the skill requires, meets the vision standards or height requirements for the skill, et cetera. If the applicant meets the qualifications for the skill, the guidance counselor has the applicant read the school course description and duties required in the performance of that skill. We realize the importance of "telling it like it is" and of precluding the possibility of selective listening on the applicant's part. We, in conjunction with DCSPER and the U.S. Army Training and Doctrine Command (TRADOC) are developing the catalog of school course descriptions and duty descriptions for each Army skill. The descriptions will be written at an eighth grade level and will be written with the new enlistee in mind. Unique duties associated with each skill will be addressed and will include pictures of soldiers in training and in performance of various skills. The publication is expected to be available on or about December 10, 1978. We also provide each applicant a copy of a memorandum entitled "The Army Wants You To Know" that covers pertinent information on the option chosen by the applicant and a general briefing on Army life.

## REQUEST SYSTEM ABUSES

As an outcome of the problems encountered in the Albany DRC in early 1977, we have instituted detailed checks to preclude false counting of accessions in the U.S. Army Recruit Quota System (REQUEST). While REQUEST is not the official source for the accession base for the Army, it is the means by which district recruiting command/region recruiting command performance is measured. A system of checks and inspections is made to insure each REQUEST reservation is matched against the signed enlistment agreement and packet (DD form 4). In addition to the procedures designed to prevent bogus or fictitious entries in REQUEST, other items, such as duplicate reservations, improper cancellations, shipping without a reservation, and advance reservations are prohibited. The system has programs designed to prevent some of these items from occurring in addition to inspections and spot checks by the USAREC staff.

## IRREGULAR TESTING

The Testing Directorate of MEPCOM, with the cooperation of the behavioral scientists in the personnel laboratories of the military departments, inaugurated a number of innovative measures that increased the level of reliability of mental test results. For example, test answer sheets are now scored two times, by two individuals computing the scores independently. In order to detect possible unauthorized assistance by recruiters to the applicants, a comprehensive statistical technique has been developed to identify applicants who should be retested in order to verify their test scores. The technique is based on a predictable correlation among the scores obtained by the applicant on the 13 test batteries making up the ASVAB. Automated test scoring devices are being evaluated for full operation in 18 months. These devices will permit statistical checks for internal consistency within each test battery and computerized tracking of anomalies by recruiter.

## SYSTEMS FAILURES

As an example of systems failure creating false promises, the following example is provided. On June 1, 1977, the course length for military occupation specialty (MOS) 91C10 was reduced from 54 weeks to 24 weeks. Effective August 9, 1977, the successful completion of the course did not qualify an individual as a licensed practical nurse.

On June 3, 1977, this headquarters informed the recruiting force of the change in course length and duties of MOS 91C10. However, the Army recruiters were not provided with updated course scope and duty descriptions for MOS 91C10 indicating it no longer qualified an individual as a licensed practical nurse. When the guidance counselors had applicants read the school course description and the duty description for the MOS, they were both outdated. Even though the REQUEST system information was correct and was the authoritative source for course and skill descriptions, in many cases, the changes affecting MOS 91C10 were not properly conveyed to the applicants.

As a consequence, based on what soldiers perceived as a commitment on the Army's part, the extensive training which failed to materialize generated numerous complaints of unfulfilled enlistment promises.

Another example of systems failure which reflects on recruiter credibility is the current absence of an appropriations act or continuing resolution authority for the Army budget. Many enlistees presently in the DEP and about to enlist perceive very real commitments for a promised enlistment bonus. Lacking congressional approval of the budget, bonus payments cannot be made and many resultant claims of false promise by soldiers can be anticipated.

#### QUALITY CHECKS

Any questionable or disqualifying conditions discovered during the ENTNAC interview terminate the processing of the applicant until the situation has been resolved in a written report by the recruiting service concerned. The procedure culminates with a computer check to determine if an applicant has processed before in the same or another AFEES.

In closing, it is my belief that enlistment irregularities are no more prevalent at the present time than were irregularities in induction or enlistment during the period when the draft was in effect. Moreover, the individual reasons for concealment are the exact opposite now when compared to the draft era. During the draft era, the major objective of deception was to avoid military service. For that reason, false medical, dependency, or moral conditions were presented by registrants attempting to avoid military service.

At the present time, the objective is to gain enlistment into one of the military services. Disqualifying medical conditions, as well as arrest and conviction records are sometimes suppressed. We have instances where answers to mental examinations were provided to applicants by recruiters in order to give the qualifying scores on the test batteries. There have been instances of falsification or fabrication of documents related to educational status or citizenship. When these situations have been identified, all affected recruiting services have been responsive in their investigations.

My conversations with military personnel who are familiar with the system prior to the establishment of the MEPCOM and who are familiar with the situation now, lead me to conclude that MEPCOM and USAREC are fulfilling their mission. In my judgment, a high degree of quality assurance in the enlistment process is being provided to and by the military services.

I am prepared to answer your questions.

Senator NUNN. The general tone of your statement is that there is no problem, is that right?

General MUNDIE. No, sir, I do not intend to imply that at all.

Senator NUNN. You are basically saying, "In closing, it is my belief that enlistment irregularities are no more prevalent at the present time than were irregularities in induction or enlistment during the period when the draft was in effect."

General MUNDIE. Sir, that does not imply there is not a problem. I don't think the problem is any more serious now than it was then but

we do have a problem. It is a problem I actively work on on a daily basis.

Senator NUNN. Your conclusion then was that you are fulfilling your mission. That does not imply there is no problem either?

General MUNDIE. No, sir, I don't want to leave you with that impression at all.

Senator NUNN. One question about the comparison with the draft era. I believe you say here, "Moreover, the individual reasons for concealment are the exact opposite now when compared to the draft era." You are speaking of the recruits themselves.

General MUNDIE. The individual applicant applying for military service.

Senator NUNN. That does not take into account the vast difference between the recruiters and the incentive of the recruiters now compared to the present draft era.

General MUNDIE. That is partially correct, sir.

Senator NUNN. Certainly you wouldn't say that there is no difference between the two there?

General MUNDIE. No, sir, because the draft board and the recruiter perform two different functions.

Senator NUNN. I am speaking of recruiters prior to the Volunteer Force as opposed to recruiters now.

General MUNDIE. I don't know, sir. I can't answer that. I have never reviewed any of the records that date back to that period.

Senator NUNN. You don't really have a comparison then of recruiter abuse before the Volunteer Force as compared to after?

General MUNDIE. No, sir. I am not sure those records are available. Let me check. I don't think they are even available, sir.

Senator NUNN. You have a lot more recruiters now for one thing.

General MUNDIE. Indeed we do, sir. I would suspect three-fold but that is off the top of my head.

[Additional information follows:]

Authorized Army recruiter strength during selected years of the draft was 2975 in 1968; it rose to 6080 in 1971; and it rose again to 6983 in 1973.

Senator NUNN. You have to procure 100 percent of your men and women now as opposed to before. What percentage of your people were recruited prior to the Volunteer Force?

General MUNDIE. I don't know. I can get that for the record.

[The information follows:]

General MUNDIE. In 1971, of a total of 308,509 non-prior service (male) accessions, 49.4 percent (152,434) were recruited. In 1972, the percentage increased to 85.1 percent (154,459 of 181,523), while in 1973 it dropped slightly to 82.7 percent (170,413 of 206,091).

Senator NUNN. Do you have any idea?

Admiral GURNEY. It depends on what year. I think toward the end the pressure of the draft resulted in I would say 75 to 85 percent in being volunteers. You never know what the voluntary aspect is because of the pressure of the draft.

Senator NUNN. Senator Morgan.

Senator MORGAN. Thank you, Mr. Chairman.

General, were you in your present position in August of this year?

General MUNDIE. Yes, sir, I assumed command on the 14th of June.

Senator MORGAN. General and Mr. Chairman, let me say in the beginning that I was interested in your observations in the report implying that really the problems are no greater than before. I must say in all candor to you that I don't think there is any man so blind as a man with eyes who refuses to see. Now in the fall of 1977 I received a telephone call from Wilmington, N.C., from a sergeant relating to me all kinds of recruitment practices, improper and illegal, that were going on there. Now you know we often receive complaints that aren't justified. I made no mention of this until I returned to Washington. I asked Col. John Stirk on my staff, who is my military advisor, a retired Air Force JAG, a highly competent man, to make a trip to Wilmington, N.C., and make an investigation of his own to see if there was any credible evidence to indicate any wrongdoing before I even bothered to turn it over to the Army. After his trip he came back and he told me that he thought there was substantial indication that there were improprieties.

Desiring to make no public issue out of it, we turned it over to the Army and asked that you investigate. It was a Sergeant Terry—does that name sound familiar to you at all?

General MUNDIE. Terry, sir?

Senator MORGAN. Yes, sir.

General MUNDIE. I acted on a case recently of a man by that name.

Senator MORGAN. Let me tell you a little bit about Sergeant Terry. In August 1977 just shortly before he made the phone call to me and before I sent Colonel Stirk to Wilmington and before I turned it over to the Army this was his fitness report:

In my association with S/Sergeant Terry since assuming the duties of station commander 21 December 1976 I have been extremely impressed with his devotion to duty and his expertise as a field recruiter. During the first quarter of January-March 1977 he enlisted 13 NPS males for an objective accomplishment of 325 percent and 11 high school seniors for an objective accomplishment in that category of 225 percent. He is furthering his career potential by attending college courses during his off-duty hours in pursuit of a bachelors degree in business administration. Staff Sergeant Terry's productive record as a field recruiter is truly commendable. His efforts and desire to excel mark him as a man of great talent. He possesses a genuine concern and understanding for the welfare of his applicants. His drive and his enthusiasm in all endeavors contributed immeasurably to the overall efficiency and achievement of this organization. His outstanding production record has marked him as one of the top procurement producers in USAREC.

That was signed by Charles R. Patterson, SFC, U.S. Army, Raleigh District Recruiting Command and by Charles White of the recruiting command who was another supervisor. It was apparently approved at the bottom by Joseph F. Hunt, the captain.

Now it was shortly after that he called me and told me that enlistment tests were being used, that applicants were being tutored, that the tests having to do with PAY—I don't know the acronyms you use—were being used. Now after that an investigation was made. He stated to the CID investigators that he had been given a copy of each of the tests I believe, that he had taken them and put them in a safe and locked them up. He pretended to go along in order to get along. He also reported that a Sergeant Williams on the staff had used these tests repeatedly, giving names of Navy recruiters in the area who raised questions about why the sergeant had potential applicants in the car before he took the examinations, and so forth.

He made a pretty substantial statement. What did it get him? It got him kicked out of the Army by you refusing to allow his reenlistment notwithstanding that the colonel for whom he was working at Sunny Point recommended him as one of the finest soldiers he had seen. I want to tell you about your investigation.

The CID investigated three recruits named Jordan. All three of them acknowledged that Sergeant Williams had assisted them with tests:

Do you know if Sergeant Williams helped your brother or nephew to pass the test?

Yes, because Sergeant Williams gave my brother and nephew papers which contained questions and answers which were in the main tests we took the second time. I saw the test, also.

What did Sergeant Williams tell your brother to do with the test?

We studied the test in his office and gave it back to him.

Was there anyone else around?

No, sir, the door was closed.

All three of the Jordans were interviewed and all three of them, made substantially the same statements that they were given tests.

When the CID interviewed the colonel in Raleigh I want to read you what they had to say:

The undersigned special agents left for Raleigh for a meeting with Colonel Savard of the Raleigh Recruiting District. Upon arrival in Raleigh the above mentioned agents were met by Colonel Savard who is a commander, et cetera.

He was briefed on all aspects of the investigation. During the course of the briefing Savard produced two tests which he stated were given to him by his confidential source and that they were obtained from the Durham and Raleigh recruiting stations. He further related one of the test booklets was found in the ceiling and the other in the desk drawer.

General, that is all the investigation that was made of where those tests came from. If my reports are complete, as a matter of fact no investigations were made. No effort was made to ascertain the confidential source. As I understand the law, and I think I understand it pretty well, he had no privilege. He certainly had no right to claim privilege of a confidential source. Yet nothing was done.

Let me tell you what else happened. He told all of his recruiters that if they had any of this stuff, test material or other devices, to get rid of them in the course of the investigation. Now several other indications that what Sergeant Terry told me was true are contained throughout this report and it is clear to me that no exhaustive effort was made to run them down. So what happened?

No disciplinary action was taken against anybody but Sergeant Terry. What do you do? You come back and you say:

Well, he committed adultery with a lady who had applied to join the Army.

When in the name of God was it committed? Your man Williams in his statement said he talked with him about it in June 1966 and said:

Terry told me then he was doing it but no action was taken.

He was given a highly satisfactory report. Nothing was done about it. You come back "recruitment malpractice."

Yet here less than 3 months before he called me you commended him as being one of the finest recruiters in the service, or your subordinates had. You charge him with wrongful possession, use, and disclosure of military test material and not one word of evidence has indicated any-

where in this record he ever used it. He admitted he had them. He put them in a safe.

No investigation was made to determine whether they were there or not.

You say another reason you refused to let him reenlist is because of a fistfight with a fellow recruiter and difficulty with his fellow soldiers. He was involved in a fistfight. You transferred the other man and you left him in Wilmington, and this happened long before this fitness report was signed. Then the next reason you say is "wrongful possession and use of U.S. Army enlisted MOS proficiency test." Again no evidence of misuse. Now this is not to condone his possession of them. He ought to have blown the whistle when they were given to him. What I am talking about is what followed after that—

The recommendation to bar Staff Sergeant Terry from re-enlistment was approved by the U.S. Army Recruiting Command on August 7, 1978, following review of all facts in the case to include due consideration of statement submitted by Sergeant Terry. He is scheduled for discharge on August 25.

Every single thing that you charge him with was committed and known, according to the statements, prior to this commendation.

General, I can't help but conclude anything else except he was a whistle blower and he suffered. The colonel in Raleigh who admitted he had copies of the tests was never asked where he got them. No effort was made to ascertain where he got them. Sergeant Williams, who was there at the Wilmington Recruiting Office, stated to Terry: "Use these tests."

Nothing was done with him even though three recruits made statements to you or to the CID that they were given tests, that some of the same questions and answers were on those tests that were on the main test that was shown to them. No effort was made to interview the naval recruiters who had suspicions and raised questions. No effort was made to interview any of the recruits that Sergeant Terry had recruited, and he invited you to do so, to see if he had ever in any way assisted.

General, I must say in all candor—and I want to preface it by saying that I never intended to report this to the public; that is the reason I asked Colonel Stirk to go down there. We turned it over to the Army. We never mentioned it. It has never been mentioned in the North Carolina press.

But when I get back a report that is obviously a whitewash and where the whistle blower got kicked out of the service notwithstanding the fact that the colonel for whom he was working at Sunny Point recommended that he be reenlisted and saying that he was one of the finest soldiers he had ever worked with and especially in light of this fitness report just a month or two before he came to me; I can conclude that there is nothing so blind as a man with eyes who won't see. We are not going to clean up this mess until something is done about it.

Now, would you tell me why you recommended kicking this man out of the Army after he talked to me, when you knew or at least your command knew of the so-called man's adultery and when they knew of the so-called alleged fistfight and the sergeant who was involved, who says he struck him first, was transferred and this man was left in his post and commended for doing a good job?

I can conclude only that he was a whistle blower and he got penalized for it and this ought to be notice to everyone else that we are not going to tolerate it. Could you give us your justification for kicking him out of the service?

General MUNDIE. Yes, sir. I also would like to set the record straight. Sergeant Terry went to you after he had been relieved, not before.

Senator MORGAN. When did you relieve him?

General MUNDIE. I will have to get the dates. I am prepared to provide the committee with a complete investigation. I don't know the exact date.

Senator MORGAN. Sir?

General MUNDIE. I don't know the exact date.

Senator MORGAN. How do you know that he went to me after?

General MUNDIE. I am talking to you from notes. I found out, just before you came back in the room, the name involved, and what date I have is by telephone. I personally read the entire case.

Senator MORGAN. Then that puts the responsibility squarely on your shoulders.

General MUNDIE. And no one else, yes, sir.

Senator MORGAN. Mr. Chairman, I hope that we will have a thorough investigation of this.

Let me ask you: Wasn't the adultery fact known and wasn't it shown in these statements that the sergeant's superiors knew about it in 1976?

General MUNDIE. I believe you are correct, yes, sir. I don't remember the exact dates but I think you are correct.

Senator MORGAN. Doesn't the record reflect a fight between him and Sergeant Williams occurred prior to this commendation statement in July 1977?

General MUNDIE. I don't recall that, sir.

Senator MORGAN. I ask you, when you get an opportunity, to review the record and look.

General MUNDIE. Yes, sir. I will be happy to provide the record to you.

Senator MORGAN. The only thing that this record reflects that took place after he talked to me was his admission for the official record that he had copies of these reports.

Mr. Chairman, I apologize for making the statement, but I have to confess that in my time in the Senate, in my 6 years as attorney general of the State, in my 20 years of practicing law, I have to say this is the most incomplete investigation and the clearest sign of what happens to whistle-blowers that I have seen since I have been in office, sir.

Senator NUNN. Senator Morgan, do you want to get General Mundie to provide a complete report answering each one of these charges?

Senator MORGAN. Yes, sir, and specifically addressing himself to whether or not these facts were known by his superiors prior to the commendation which was finally approved, as I read the date, August 1977, and why suddenly these acts which were purportedly committed suddenly became so relevant after he talked to me.

General MUNDIE. I will be happy to sir.

[Additional information follows:]

## SENATOR MORGAN'S CHARGES CONCERNING SSG TERRY

General MUNDIE. I will specifically address each charge.

Senator Morgan pointed out that SSG Terry received an outstanding EER in August 1977 even though his superiors had already known about various acts of misconduct allegedly committed by SSG Terry. Senator Morgan implied that this Command winked at SSG Terry's misconduct until it was learned that SSG Terry had contacted Senator Morgan.

Senator Morgan stated that the EER "... was apparently approved at the bottom by Joseph F. Hunt, the captain ..." Senator Morgan's conclusion is erroneous. In fact, CPT Hunt, who was the reviewer, submitted in response to the EER prepared by SEC Patterson, the rater, and MSG White, the indorser, a statement which expressed disagreement with the opinion expressed by the rater and indorser, CPT Hunt could not properly have demanded that Sergeants Patterson and White change their evaluations of SSG Terry. Accordingly, CPT Hunt took the appropriate action of checking on the EER itself, the box which indicated that his review resulted in action indicated by inclosures. CPT Hunt's statement was attached. Thus, his signature on the EER form in no way implies agreement with, or approval of, the opinions expressed by Sergeants Patterson and White.

Further, Senator Morgan implies that SSG Terry was relieved and barred from reenlistment because he "blew the whistle" on his Command by contacting Senator Morgan.

There was no penalizing a whistle blower by any member of this Command. In fact, SSG Terry was relieved on 4 October 1977 as a result of two investigations concerning him which had been completed in April and September of 1977. SSG Terry gave an interview to Mr. Stirk on 12 October 1977 which was 8 days after he was relieved from duty. By letter dated 31 October 1977, Senator Morgan advised the Secretary of the Army of the Terry case, and a copy of this letter was received at HQ USAREC on or about 9 November 1977. The allegations made by SSG Terry to Mr. Stirk of Senator Morgan's office were also investigated.

Senator Morgan also mentioned the case of the Jordans, who were applicants for enlistment and who acknowledged that SFC John Williams had assisted them with "tests". Senator Morgan assumed that SFC Williams had provided unauthorized test assistance to the Jordans and asked why SSG Terry was the only individual against whom adverse action was taken.

At the time the Jordans were processed for enlistment, a recruiter could properly conduct preenlistment training of applicants by using the Enlistment Screening Test or the ASVAB Time For Decision Booklet. It was and is now prohibited to use the actual ASVAB test, or copies thereof, for such preenlistment training. In the case of the Jordans, it could not be determined which of the above mentioned items were used by SFC Williams when he conducted preenlistment training. SFC Williams denied providing copies of the ASVAB to the Jordans. The statements of the Jordans are not incompatible with SFC Williams' denial. There was no other credible evidence that SFC Williams had provided unauthorized preenlistment training to the Jordans. Hence, SSG Terry's allegations against SFC Williams were not corroborated.

Senator Morgan mentioned two tests which had been obtained from the Raleigh and Durham Recruiting Stations and were subsequently given to LTC Savard by a "confidential source". Senator Morgan attempted to attack the thoroughness and impartiality of the investigation by stating that no apparent effort had been made to ascertain the identity of the confidential source.

As a result of providing these tests (which were determined to be actual copies of the ASVAB and not Enlistment Screening tests or the Time For Decision booklet) to LTC Savard, two additional investigations were conducted. During the first of these two investigations, MSG Kim Kendle stated that he had found the two tests in December 1977 in the Raleigh and Durham Recruiting Stations and had then delivered them to LTC Savard. As a result of these two additional investigations, two recruiters, SFC Robert Dozier and SFC Elmer Williams, were relieved from duty for recruiter malpractice. In addition, LTC Savard was directed to admonish five other recruiters, against whom there was no substantial evidence of malpractice but against whom a strong suspicion of malpractice existed.

Senator Morgan implied that the only evidence of SSG Terry's adultery with a female applicant consisted of SFC John Williams' statement that he and SSG Terry had discussed it in June 1976. Senator Morgan also asked when this adultery was committed.

Mere knowledge by SFC Williams of this adultery should be distinguished from evidence that would support a relief action. Such evidence was obtained when the female in question made a sworn statement on 6 and 7 April 1977 in which she detailed acts of sexual intercourse with SSG Terry, a married man. She stated that these acts occurred at her home around April 1976; in Fayetteville, NC, at the Golden Eagle Motel around April 1976; in Fayetteville, NC, at the Ramada Inn in May 1976; and again in her home sometime after Christmas 1976. The lady's testimony was corroborated by receipts which were subsequently obtained from the Golden Eagle Motel. These receipts showed that the lady and SSG Terry had in fact rented two rooms, numbers 227 and 228, at that motel on the night of 12/13 April 1976. The reverse side of these receipts show that SSG Terry and the lady had checked in at 5:49 pm and 5:50 pm on 12 April 1976. The lady further testified that she and SSG Terry drove together in his car to the Golden Eagle Motel. This part of her testimony is strengthened by the fact that the motel registration receipts show only automobile identification for SSG Terry's car. It is noted that in his response of 17 October 1977 to the 4 October 1977 relief notification, SSG Terry denied having ever been in a motel with the lady.

Senator Morgan commented upon the propriety of accusing SSG Terry of recruiter malpractice.

In several sworn statements, SSG Terry testified that in mid-November 1976, SFC Williams gave to him copies of the MET (ASVAB) test and instructed him on how to use the booklets in helping applicants pass that test. Further, on 12 October 1977, 8 days after he was relieved, SSG Terry stated to Mr. Stirk that up until that time he had no knowledge of the test at all. Later SSG Terry testified that he had witnessed many situations wherein SFC Williams had used these test materials and specifically SSG Terry cited the case of the Jordans. However the three Jordans enlisted during September and October 1976. Furthermore, the applicant with whom there is substantial evidence that SSG Terry committed adultery, gave a sworn statement that she had received unlawful pre-enlistment training materials from SSG Terry sometime around July 1976. The above facts tend to discredit SSG Terry's claim that he had obtained copies of the ASVAB from SFC Williams. SSG Terry admitted that he had in fact possessed copies of the ASVAB and told Mr. Stirk that he had used copies of the test to help applicants pass the ASVAB test.

Senator Morgan attacked the propriety of using the charge of wrongful possession and use of the US Army enlisted MOS Proficiency test as a ground for imposing the Bar to Reenlistment against SSG Terry, and stated that there was no evidence of misuse.

SSG Terry told Mr. Stirk that he had used a copy of the Proficiency Pay test in preparation for the formal administration of that test on him on 15 December 1976.

Senator Morgan concluded that SSG Terry was punished because he was a whistle blower.

Our recruiters deal with the public. The public, specifically those impressionable young men and women seeking enlistment in the Army, has a right to be treated honestly and fairly by our recruiters. Female applicants should not be subjected to male recruiters to requests and pressures for sexual favors. In order to keep only the highest quality NCO in the recruiting force, it is essential that recruiters against whom there is substantial evidence of serious misconduct be relieved of duty. In SSG Terry's case, the wrongdoing was of sufficient magnitude to warrant a bar to his reenlistment. Army policy on this point is set forth at para 1-32, AR 601-280. The cited reference declares that it is HQDA policy that only personnel of high moral character, professional competence and demonstrated adaptability to the requirements of the professional soldier's moral code will be extended the privilege of reenlisting the Regular Army. Para 1-33a, AR 601-280 provides that while an individual may have served honorably for a number of years such does not prohibit the initiation of bar to enlistment procedures, if such action is otherwise appropriate. The fact that SSG Terry had contacted Senator Morgan's office was not considered in determining what action should be taken against SSG Terry. This Command had to take appropriate action against SSG Terry without regard to any concern that such might result in an appearance that this Command had unfairly penalized a whistle blower. The bar to reenlistment was initiated by the district commander who was convinced that such action was appropriate. It had nothing whatsoever to do with SSG Terry's apparent "whistle blowing". All of SSG Terry's allegations were investigated and disposed of appropriately based on the facts as derived from evidence and based on legal advice concerning that evidence.

Senator Morgan stated that the investigation of SSG Terry was the most incomplete he had ever seen in his 20 years of practicing law.

It should be noted that four separate investigations were conducted on SSG Terry and as a result of allegations subsequently made by SSG Terry. Two additional investigations were conducted as a result of MSG Kendle's provision to LTC Savard in December 1977 of copies of the ASVAB test. These investigations, taken together, were adequate.

Senator Morgan made reference to an unnamed male having told all of his recruiters, during the investigation, that if they had any test materials or other devices, to get rid of them.

From a CID report dated 9 January 1978, it appears that Senator Morgan was referring to LTC Savard. In this report, LTC Savard was quoted as telling SA's Swindell and Von Jennings of CID that he had told his recruiters, when the CID investigation was initiated, that if they had any of this stuff (test materials or other prepping devices) to get rid of it. Inquiries on this issue by personnel at HQ USAREC have revealed that on one occasion LTC Savard did tell his recruiters that there were rumors that they were conducting unlawful preenlistment training and that if this were true, that they had better stop. LTC Savard then told his recruiter that if they had the materials, they were to get rid of them. LTC Savard meant that he would tolerate no cheating in his command. Guidance on this issue was set forth in recruiting regulations.

Senator Morgan said earlier, "You say another reason you refused to let him reenlist is because of a fistfight with a fellow recruiter and difficulty with his fellow soldiers. He was involved in a fistfight. You transferred the other man and you left him in Wilmington, and this happened long before this fitness report was signed."

Although Terry's version of what took place during his incident differs greatly from MSG White's, MSG White did accompany CPT Hunt, the Area Commander when he investigated this incident. The following is a quote from MSG White's statement given to the CID on 19 December 1977 at Fort Bragg, N.C. ". . . Again, approximately some time around the 15th or the middle of December, all the recruiters in the Raleigh DRC went to Raleigh, N.C., where we spent the night and had a training session on the Pro-Pay Test and the following morning took the Pro-Pay Test. At the completion of the Pro-Pay Test, the recruiters were to report back to their duty stations. At approximately 1500 at the same afternoon I got a call from Williams that he and Terry had got in a fight. I informed my superiors in Raleigh and CPT Hunt, who is my area commander, and myself immediately drove to Wilmington to see if we could get to the bottom of this quarrel. Upon our arrival there, we found Terry with the uniform messed up, no apparent bodily damage done to him even though he said that Williams had knocked him down and kicked him; but that was not apparent by looking at him even though his uniform was badly messed up. CPT Hunt interviewed Terry and he said that he had got out of the car and for no reason Williams walked around to his rear, hit him in the back of the head, knocked him down and kicked him. We sent him out of the building and got Williams over. Williams said that he had been arguing all the way back from Raleigh over various things, to include Terry's using the government car and other things, and when they got out of the car Terry told him, "you're nothing but a dumb nigger." At that time, Williams admitted that he did hit Terry and that Terry fought back. On the following morning, both Terry and Williams were ordered to report to our commander, LTC Savard, in Raleigh, N.C., and the commander listened to both stories and determined it was either court martialing both or not court martialing either one of them and chose to transfer them both from Wilmington to other positions, either within the DRC or somewhere in the Southeast Recruiting Command. Williams accepted this; Terry told the commander that he was having serious problems with his wife, there was a possibility that he might lose his home and that if he would let him go back into the recruiting station and recruit for a month until he got his family problems solved, that he would then put in a request to be transferred to West Virginia. The commander believed the story and let Terry go back to work in the Wilmington Station. When the time came for him to put in the statement, he did not, in fact, put in the statement. The commander told me to go to Wilmington and talk to Terry to find out why he had not put in his statement. I did this, again, the dates I do not recall. Terry told me at that time he had no intentions of leaving Wilmington, that he felt that he got a bum deal, that he was going to stay there and do his job and if they wanted to get rid of him they would have to get rid of him some other way. The commander, I believe was in a position

where he could not move Terry due to the fact that he didn't do it when the fight was first involved, so, he elected with some reluctance to leave him where he was at . . ."

In short, the fact that Williams was moved out of Wilmington in no way indicated that Williams was the guilty party in the fistfight.

Senator NUNN. I might also at this point in the record say to the Marine Corps that I would like a similar report on Sergeant Thompson, who testified yesterday. He was court-martialed for basically putting the wrong address on an applicant's record. We have heard instance, after instance, after instance, after instance, of much, much more serious offenses. Sergeant Thompson came forward and tried to report to his superiors what was happening. I won't come to any conclusions until I see the report.

[Report retained in subcommittee files.]

Senator NUNN. I will say that we had here with Sergeant Thompson Tuesday a prima facie case of a similar thing happening to what Senator Morgan has just detailed in the Army. I think it is disturbing enough that we have these kinds of problems. I am sure we are always going to have some fraud, some corruption; that is not avoidable. But when people who observe it and try to do something about it in the chain of command are then punished, it seems to me that it demoralizes the whole military force.

It also sets up a system where fraud is encouraged and corruption is encouraged and people who are honest are penalized. That is the prima facie case set forth here by Senator Morgan in the Army case and by Sergeant Thompson in the Marine Corps case.

I will reserve judgment until I hear the response. There are two sides to every story. The offense that Sergeant Thompson is supposed to have committed, although possibly it could be called misrepresentation, is minor compared to the other types of fraud and abuse that he was reporting. So he is punished by reason of an offense which, by any measurement, is certainly not as grave as the one he was trying to bring to the attention of the Marine Corps, which was the availability of tests, a very similar situation.

I don't know if you were here for all of that, Senator Morgan, but this to me is extremely serious. Of course, Sergeant Thompson also testified that on two or three occasions he tried to have an audience with the Commandant. I know the Commandant can't see everyone who requests that he be seen but it seems to me when people go through the chain of command and get absolutely no result, whether they are accurate or not, if they think fraud exists of this nature, there should be some way that they can get information to the person who will at least investigate it and look into it.

Senator MORGAN. Mr. Chairman, I want to say one other thing. I know that it is a natural inclination, a natural tendency, when someone complains who is in trouble, assuming Sergeant Terry was in trouble, to discount and discard what he had to say about any accusations that he might make.

But in my years of experience I have found that you don't convict criminals. Mr. Chairman, and I think you know from your experience, that district attorneys, U.S. attorneys, can't depend on Sunday school teachers to bring evidence against criminals. If you did, you would not have many people to try to convict.

By the same token, I think this tendency—and I am inclined to do it—to discount what someone said because he may be in a little bit of trouble right then can lead us all into trouble—that is one of the reasons I was so careful on this one. I just think we can't afford to discount what everybody who happens to be in a little trouble at the time might say.

Senator NUNN. Thank you, Senator Morgan.

I have several questions, General Mundie. I have another engagement that I have to preside over at 12:30, so I am going to have to move more rapidly than I would like. I will say to the other witnesses that we will reconvene about 1:30 because we will not be able to complete this, this morning.

General Mundie, what is your estimate of the effect on the number of people recruited which would result if, hypothetically and theoretically, recruiting regulations were followed to the letter and no unqualified people were allowed to enlist?

General MUNDIE. Will you restate that, sir, please?

Senator NUNN. What if everything that is set forth in the recruiting regulations were followed to the letter and there were no fraudulent enlistments? What percentage of people would be affected? Do you have any way of guessing at that?

General MUNDIE. The ones we approved, sir, would be one-tenth of 1 percent. We relieve and identify malpractice on the basis of substantial evidence which is less evidence than is required to go before a court. In the cases where you have one-on-one and it is one man's testimony against another's, the number of those allegations proved would be 1 percent in the case of the Army; I don't think they are all true—somewhere between one-tenth of 1 percent and 1 percent, sir.

Senator NUNN. Do you have any record of how many applicants or recruits come through and answer the question about use of marihuana in the affirmative?

General MUNDIE. No, sir, I do not.

[Additional information follows:]

Use of marijuana may or may not be disqualifying. This is dependent upon the decision by the AFEES physician as to whether the individual has a social behavioral problem. In those cases approved for enlistment by the AFEES doctor, the applicant may still be limited in job choice because of limitations for sensitive activities such as nuclear related jobs. The basic question asked of all Army applicants is, "Have you ever been involved in the use, purchase, possession or sale of marijuana, LSD, or any other harmful or habit-forming drug and/or chemicals except as prescribed by a licensed physician?" If the answer is yes, it is so indicated and explained in remarks. The AFEES doctor's decision is the next step. The applicant is also asked about law violations and convictions. This is where she or he would be expected to reveal charges or arrests concerning drugs. For purposes of enlistment, it is considered a felony offense to have been convicted for an offense of possession, use or sale of narcotics or habit-forming drugs, to include marijuana. The enlisted applicant waiver approval authority for juvenile felonies is me, the Commander, USAREC. For adult felonies, the approval authority is the Commander, Military Personnel Center, Washington, D.C.

Senator NUNN. Do any of your people have that?

Admiral GURNEY. I don't know whether there is a data field or not. I don't think our AFEES reporting system has that.

[Additional information follows:]

We do not maintain any data in the AFEES Reporting System on the number of applicants who admit to marijuana use.

Senator NUNN. Would you have any way of guessing? Is it 5 percent, 10 percent? What happens when you get that answer in the affirmative? What happens when they say they do use marihuana or have used it?

General MUNDIE. If they use it, sir, it is in most cases a misdemeanor. If it is a single case, the act of waiver takes place in the area commander Army captain level.

Senator NUNN. Are you talking about after they leave the service?

General MUNDIE. No, sir.

Senator NUNN. Is it a misdemeanor saying they have used it?

General MUNDIE. If an individual has been convicted of the use of marihuana, in most States it is a misdemeanor. The waiver authority for a misdemeanor is that the area commander—in my case the U.S. Army captain level—

Senator NUNN. They are not asked whether they have been convicted of a crime for using or possessing marihuana; they are asked if they have used marihuana, is that right?

General MUNDIE. Sir, I want to give you both answers. One is a case where they admit conviction. The other is where they admit use. In both cases they are reviewed by and the waiver authority rests with the Army commander captain. I am talking about use, sir; I am not talking about sale or possession.

Senator NUNN. In most States the use is not even a misdemeanor; possession is a misdemeanor.

General MUNDIE. I may be using the words incorrectly—as opposed to sale or possession of a large amount.

Admiral GURNEY. Maybe I can clear this up a little bit. I think what the General is saying is if, in the legal background, he had been convicted of the offense of possession or use of marihuana, that, as a misdemeanor, is waivable to continue processing.

What you are asking is: If he checks the little answer on the form that says "Have you ever used marihuana?" now that becomes an AFEES problem. The AFEES doctor then, as a part of profiling the individual, inquires as to the extent of use. "How often did you use it? How long ago?"

In the judgment of the physician, if the use of either marihuana or alcohol, for that matter, is considered severe enough that the doctor thinks the individual needs a psychiatric consultation, he refers him to a psychiatrist for consultation. The decision medically on the degree of drug usage is an AFEES responsibility.

Senator NUNN. Isn't it true in the Marine Corps, if he checks affirmatively as to the use of marihuana, it requires some waiver?

Admiral GURNEY. It is up to the Marine Corps standards. I don't know anything except the Navy nuclear field program that precludes anybody using marihuana from joining.

Senator NUNN. They are nodding their heads in the affirmative. We will hear later from them on that.

Do you have any way of knowing what percentage of the applicants come in and check that?

General MUNDIE. No, sir, I do not.

Senator NUNN. Nobody has any way of guessing?

Admiral GURNEY. I can provide a guess. It would be mostly a guess in the judgment of the physicians that we survey, a certain portion of them. If you would like that I will provide it.

Senator NUNN. Fine. I would like to have that.

[The information follows:]

Admiral GURNEY. On 16 and 17 October 1978, we conducted a survey of the nine largest AFEES to determine the percentage of applicants who provided positive answers to marihuana use on DD Form 1966 (Application for Enlistment—Armed Forces of the United States). The survey showed that out of a total of 1,401 applicants processed, 81 individuals, which equates to 6 percent, indicated a positive response to marihuana usage.

Senator NUNN. I think it is perfectly relevant to ask if they have been convicted of any use, if they have had any serious accident involving use, or if they are chronic users. It seems to me you ought to have something, when you ask that kind of question, that to some extent is verifiable.

Do you not think it corrupts the process from the very beginning when the recruiters know that they are going to have to get a waiver if they answer the question affirmatively? Wouldn't the statistics show that something like 60 percent of the young people in this country in that age group have used marihuana? Don't you think this is basically saying to the recruiters, "OK, fellows; wink at this one; give them some kind of signal?"

Have you ever asked yourself the question whether this is, in effect, corrupting the process from the very beginning and encouraging further corruption of the whole process of recruiting?

General MUNDIE. No, sir, I have not.

Senator NUNN. Do you think it is a point worth looking into?

General MUNDIE. I do indeed.

Senator NUNN. You have no way of verifying it; if they say "No," there is no way in the world of checking it. It is not like asking, "Have you been convicted?"

General MUNDIE. I understand that.

Senator NUNN. I don't imply in any way that I approve of or condone the use of marihuana. I think it is serious. I think we will find, more and more, that it causes severe problems in young people. I am concerned with saying basically to recruiters; "We are not serious on this fellows. Just get us some people; break the rules and regulations."

Once you start coaching them not to answer it frankly and correctly, how does a recruiter draw the line when he knows perfectly well if he starts grilling them on that question and asking them to answer it honestly, that that is going to lead to a waiver or request for waiver with all sorts of explanation?

It seems to me that the process is corruptive right there. That is something I hope you will look into.

General MUNDIE. I will, sir. I don't consider it to be a serious problem in the force but I don't have any figures at all.

Senator NUNN. I would say the same thing to the Marine Corps. I hope they will look into that.

General, in the AFEES, you state, an individual is first identified by signature or photographic means and is identified again before medical processing. How do you explain the fact that Marines are used to take medical examinations for others?

General MUNDIE. I don't think in the past, sir, our process has been as carefully executed as it could. I think you will find that the process now is quite good and the process we will implement will be better.

Senator NUNN. In Tuesday's testimony there was indication there was no comparison of the signature to the original application. Is that true?

General MUNDIE. That is not true and it is true, sir. Where we suspect that there has been a ringer involved, we check the signatures, and we have examples where this has been done. I cannot attest the fact that every signature has been checked in the past. I can attest the fact that under the new system it will be checked because it will all be on one piece of paper.

Senator NUNN. Let me ask you this: When did you make a decision and what brought about the decision to have this new signature testing?

General MUNDIE. I think we first started thinking about that when Mr. Travers visited us. I think George mentioned at that time consideration of giving photographic identification. We looked at less expensive systems that we could implement more quickly. It is the first time it came to my attention.

Admiral GURNEY. It is something that anybody would worry about; I don't care if you are in the driver's license issuing business or the business we are in. We worry about it constantly. We would like to tighten it to the point where we are 99.99 percent sure but not so tight that you have to bring two character witnesses to take the test. Somewhere in between is what we have been constantly looking for.

We have gone through all kinds of identification schemes, because there is no standard U.S. identification card. Some States have pictures on the driver's license; some don't. Some kids have the social security number typed in. Some have the name embossed where you can't change it.

Identification has been a problem. We have been wrestling with that. How far can we go without harassing the individual on identification? We are looking into it. We have found, I think, 15 cases in the past year where we suspect a ringer. Very few of those can we prove unless the individual comes up and confesses.

I can show you a signature which in your judgment looks like it is the same and in my judgment it does not but whether it would stand up in court I have no idea.

Senator NUNN. I think it is not to prosecute people as much as to determine fraudulent enlistment. I am not going to ask you the question "How many U.S. cases have been brought against fraudulent enlistment?" If you are a U.S. attorney, you have kidnaping and those sorts of things; you are not going to go after an applicant who fraudulently enlists in the U.S. Army, Marine Corps or anything else. The point is that you need to have a system that deters this kind of thing to the maximum extent possible.

Admiral GURNEY. We recognize that, sir. I think this new system will do that and it won't be a harassment.

Senator NUNN. I appreciate your looking at it with a positive attitude, because we don't know the answers. You are in the business; I think you have a much better idea than we do.

How long has it been since these two versions of the AFEEES test have been revised?

Admiral GURNEY. Two years.

Senator NUNN. How many people have taken the test in that 2-year period?

Admiral GURNEY. There is an ASVAB 5, which is the high school test, and an ASVAB 6 and 7, which are the production method tests. In 2 years, 2.3 million high school students have taken the test. In 2 years, another 2 million or more applicants will have taken the test. So for each version a little over 2 million times the test has been given.

Senator NUNN. You don't feel you need to revise that test with that kind of exposure?

Admiral GURNEY. I don't think we need to revise it but we have long recognized the need for additional qualifying portions of the test, what we call the AFQT, the three basic tests that constitute the qualification battery. We have asked the services to agree on that and we definitely need additional versions of that AFQT so that we wouldn't need to revise the test frequently. Were we to have so many versions, it would be impossible for a recruiter to crib an individual with any confidence.

Senator NUNN. If you had enough versions, the recruiter would have to spend more time coaching than it would take to go out and get another recruit.

General MUNDIE. Dr. White, from OSD, Assistant Secretary of Defense for Manpower and Reserve Affairs and Logistics, is pursuing this vigorously. I think we will get the other two tests that we need desperately.

Senator NUNN. You think you need two more tests?

General MUNDIE. We need two more core tests. The components are word knowledge, arithmetic reasoning, and space perception. We have four sets of those that we can interchange with the variations of tests that determine classification of the individual MOS.

It would be essentially impossible to coach anyone who had an IQ such that it required coaching. You would, in fact, be educating him to the extent that it wouldn't be a worthwhile venture. I think it would be impossible, sir.

Senator NUNN. I had a law school professor who gave every test that he had ever given before the real test was given. He said: "If you learn these, the questions are going to be the same." By the time you got through learning them, you had learned the whole course.

It seems to me there are ways to not eliminate but to reduce the temptation of recruiters who are under pressure to get copies of those tests and to just make them available on a wholesale basis.

General MUNDIE. Yes, sir.

Senator NUNN. That is what you say you are trying to do?

General MUNDIE. We are essentially doing what you are talking about. Even if they were compromised, it would be an impossible thing to study in sufficient depth to pass if you are mentally incapable of passing them before.

Senator NUNN. You say you have made a recommendation on this already?

General MUNDIE. Yes, sir, we have. Dr. White, Assistant Secretary of Defense, is working on that seriously at the moment. I think we are going to get what we need rather quickly.

Senator NUNN. Dr. White is about to go to the Office of Management and Budget. I hope somebody else in his office is working on it.

General MUNDIE. Dr. Martin, sir. He is just as interested as we are in getting it.

Senator NUNN. When did you make this recommendation?

General MUNDIE. I think it was made 2 years ago.

Senator NUNN. It has taken that long to get reaction from Dr. White's office?

General MUNDIE. No, sir; the problem is not in Dr. White's office; the problem is with the interservice group. It is representatives from the three services. I think they are the manpower people from each of the three services.

Senator NUNN. Why does it take them that long?

General MUNDIE. Disagreement on wording, problems with the various labs of the services. Dr. White has now decided he is going to get involved. They had a meeting about a month or 6 weeks ago. They were energized. There will be a meeting again, I think, in 2 weeks. I firmly believe, sir, it is a past problem, that it is not a future problem.

Senator NUNN. I almost get the impression—and again I know the danger of coming to a conclusion, so it is not a conclusion—I get the impression that there has been widespread knowledge throughout the whole military force that is involved in recruiting and manpower that these tests are well disseminated and available but nobody really wanted to move rapidly to do anything about it. Is that an erroneous impression?

General MUNDIE. Yes, sir, I think it is. I think a lot of people wanted to have something done about it. Unfortunately the system did not produce it in the time in which some of us believed—

Senator NUNN. You made a recommendation 2 years ago?

General MUNDIE. I did not; the command did. Let me make sure I am correct.

Admiral GURNEY. I believe so. Actually a strong recommendation I know was made a year ago to the working group and since then on quarterly basis. Perhaps I can answer your question because I suffer the same frustration. The services have a long history of their own aptitude test on which they base their commitment to train people in electronics or maintenance or food services or whatever. There are people who feel the tests they had were good predictors of success in training. They do not like to be told by outsiders to change those tests.

They are reluctant to change a validated set of questions for fear they are liable to give up something that works for something they are afraid won't work.

It is the people who validate such questions who are very slow moving in this field. They don't like to put out a new test.

Senator NUNN. I can understand that. However, I don't see any difficulty with giving more questions and using the same subtests we have had in the past. That is a part I don't understand. I gather you do not understand it either, why we can't have more questions.

Did you accompany that request for additional questions with any kind of statement that you feared a wide dissemination of these tests, the number taking them, and the number of instances where recruiters had been found with the tests and had indeed compromised the tests?

Admiral GURNEY. No; but that of course is a reason for wanting more tests.

Senator NUNN. You did not tell anybody about that up the line?

Admiral GURNEY. Yes; the reason is the likelihood of a compromise of the test booklets and the likelihood they are going to be used to crib applicants.

Senator NUNN. Did you ever have any written memo on that saying to the people up above that you needed more tests and more questions because you felt the existing tests were compromised?

Admiral GURNEY. Yes, sir; in addition we have done some other things as well which your committee has been provided with or Mr. Travers has, the verification retesting procedure that we are taking on as of the first of October.

Senator NUNN. In spite of that it has taken 2 years and you still have not gotten any OK up above?

Admiral GURNEY. Once again it is not just an OK from above. It is the services through their laboratories being reluctant to take a new set of questions and use them as a service qualifying device or, to put it another way, you could say the services perhaps don't feel that the urgency is there and the problem is not as large as you feel it is, that there is so much cheating that 5 percent go in with erroneous scores or 10 percent.

Senator NUNN. How big a problem do you think it is, Admiral? You know more about it than I do. Would you call it a minor problem or a medium problem?

Admiral GURNEY. I think it is a major problem. The reason I do is for the reason you stated. It tempts an otherwise honest recruiter, it tempts him to maneuver the system a little bit. We would like to remove that temptation from an otherwise honest recruiter to crib an applicant.

Senator NUNN. We saw some recruiters Tuesday. To me that was a sad thing. Here they were and all their records I saw indicated there were never any problems until they got into recruiting. They were good people. I am sure most of them would be very effective in combat, very brave, courageous, patriotic Americans. Here we have the system itself, and I don't excuse the individuals culpability because of the system, but I think it is something that is sad to see. They have been, in effect, corrupted by the system.

I don't know that you can change the system. It may be that only Congress can change it. It may be that the whole Volunteer Force is driving you to the point that you can't make improvements. Do you have any comment on that, General Mundie?

General MUNDIE. I agree with you, sir, it is a temptation to the recruiter. The addition of the two tests I think will provide the result that Admiral Gurney spoke to. I think you have malpractice caused by three things. You can have it caused by a recruiter who is not meeting the objective and is incapable of meeting it. You have malpractice

committed by a recruiter who has met the objective but wants to exceed and do something better than his peers do. I think you have malpractice committed by recruiters who are trying to help an applicant, simply trying to help. You have all three.

I couldn't tell you the percentages but I think they fall into those three categories. The more we can do to eliminate the first two the better. I am not sure there is any way you can get inside a man's soul and measure it and keep from trying to help someone who is trying to better himself. We just have to be alert to it. All three of those conditions exist in the field today.

Senator NUNN. Of course the ultimate question for national security purposes, and that is the purpose of the military force, is the readiness capability of our military force being eroded by this kind of situation. You have heard the testimony of lawyers here this morning.

General MUNDIE. Yes, sir.

Senator NUNN. You have heard the testimony of a very articulate lawyer who came from Hawaii who voluntarily and basically said he could visualize possible problems in units that were called into combat with this *Russo* decision, the combination of that and the fraud situation. Do you want to comment on that?

General MUNDIE. I don't think the efficiency or the combat effectiveness of any of the Army units have been affected by the Volunteer Force, active Army units.

Senator NUNN. You emphasize active?

General MUNDIE. Yes, sir, I do. We have serious problems in the Reserve. I was given the task on the 1st of October to recruit for the U.S. Army Reserve as you well know. We have to make that work. I think that is the other half of the Volunteer Force problem.

Senator NUNN. You admit it is not working now in the Reserves, don't you?

General MUNDIE. I do indeed, sir. It is a double problem. It is not just enlistment. It is retention as well.

Senator NUNN. Admiral, do you have any other comments?

Admiral GURNEY. On the *Catlow-Russo* business, the reason I think partly why MEPCOM was formed, and certainly the reason that we went to the entrance national agency check procedure, was *Catlow-Russo*. It was to unhook the contracting agent for enlistment from the recruiter. The recruiter brings him to the organization but then the individual is unhooked and he is his own man or woman. He answers his own questions. He is cautioned that what he signs he means. He is particularly advised that these are his own statements, "Never mind what anybody told you." He is asked "Did anybody tell you?" The whole idea being to unhook the recruiter from being the contracting agent of the person he recruits.

Senator NUNN. Has that worked in a legal sense? Has that cut off the *Catlow-Russo*—

Admiral GURNEY. I am hoping it will. I was surprised to find that not many of the JAGS understand what they are doing. Of course that is not surprising. People don't look into the administrative processes very much. We intend in the next couple of months to educate people on the act of contracting which I don't think they know.

I think most people think the recruiter goes out, gets a kid on the street and signs a contract and gets the kid to the recruiting station.

Senator NUNN. Captain, do you mind coming back to the witness table and giving us your view on the process? You heard the testimony about what is being done. You are out there in the field.

Captain ATKINSON. Mr. Chairman, you are really putting me on the spot.

Sir, I think attorneys are right now going through an education process on a trial and error basis in handling these cases. There is no question that the admiral is correct. Each office has to feel its way through each type of case. How can you discover the fraud when these allegations are made? My point is not that the readiness of units is being compromised by the activities of the command, of the general and the admiral here; that is not the thrust of what I was saying. It is my personal opinion that the spinoff effects of *Catlow-Russo* can have a very detrimental effect on the morale and the directives that a commander is trying to instill into his troops regarding respect for law and order, respect for command.

I think the spinoffs of *Catlow-Russo* in allowing an individual to escape the military justice system does adversely affect the two purposes that a commander is trying to seek in instilling a sense of justice within his troops and instilling a respect for law and order.

Senator NUNN. What I am interested in, particularly, is the admiral's reference to what they are doing at the command in separating the applicant, or the potential enlistee, from the recruiter's possible malpractice by repeating all of these questions, going over them very carefully, asking if the recruiter himself is engaged in any kind of misleading statements and so forth so that there is an effort being made to separate that applicant from the recruiter. I understand that is very similar to what you basically were recommending be done by the JAG. Do you have any comment on that or were you aware that that was being done?

Captain ATKINSON. Yes, sir, I was aware that that was being done. The problem I guess I can best illustrate by the cases I have had just in general. That is that the individuals when they go through AFEES procedure where there has been recruiter misconduct involved, are generally given a charge by the recruiter, a charging statement to the effect of, "listen, AFEES personnel are going to grill you in these areas. They are going to ask you all these questions. They are going to ask you to put aside any coaching, any programmed answers you have been given by your recruiter. They are going to tell you now is the time to come clean, to give truthful honest answers on this one-to-one screening. Don't tell them anything different than what we have put down on this application because if you do you are not going to be processed further for enlistment."

That has been my experience in the case of recruiter fraud that we have found on the legal side of the house. What I am saying is that when a recruiter decides to perpetrate this type of fraud he is trying to follow it up and say, "listen, there is going to be this additional hurdle you are going to have to go through after you leave my office."

Senator NUNN. He could also tell them, if he is following through, that when they get to Hawaii the JAG is going to ask him the same questions, couldn't he?

Captain ATKINSON. I guess he certainly could, sir.

Senator NUNN. I guess that AFEES process is to some extent helpful. It has to be helpful.

Captain ATKINSON. As the statistics have proven here with the admiral and general, I am sure it is in screening out 19,000—some individuals who were given additional information. The difference, sir, between disclosure there and disclosure later is something to which I am sure, as anyone who has had some period of time in service life, can relate. There are perceptions that an individual has of service life before he enters that push him toward going into that service. He wants to become a member. As the testimony has established here, many people are literally on bended knee wanting to get in.

However, once in and going through a boot camp procedure, once seeing the day-to-day training and rigors that are involved, the discipline that is required, these individuals are disenchanted and are then more than willing to come forward and admit fraud that had been perpetrated at an earlier time because they are dissatisfied.

Senator NUNN. So you are suggesting a double check. You are saying the AFEEES process is much better than not having it; it helps some?

Captain ATKINSON. Yes.

Senator NUNN. Later on it would be better to do the same thing through a legal office once they are in service?

Captain ATKINSON. Yes, sir.

Senator NUNN. Thank you very much, Captain Atkinson. I did not mean to put you on the spot and I hope I didn't. I just wanted you to address that one point because I think it is important.

I will ask the General or the Admiral this question. We have received information basically that your command is now not requiring the recruiters or anyone else to go beyond the question of whether he has a criminal record unless that question is answered in the affirmative and that you are not getting the criminal records unless the applicant admits he has a criminal record. Is that basically the correct information?

General MUNDIE. That is both true and false, sir. In some jurisdictions we simply can't get it. We don't have access to the juvenile records and they have not been out of juvenile status long enough to really have done anything wrong. In other cases we do check. We check suspicious cases as well. A yes and no answer to that is correct but it varies with the jurisdiction in which we are operating.

Senator NUNN. Isn't this going in the wrong direction, General? We have heard all sorts of allegations here about the covering up of police records. We heard Major Schreiber testify yesterday he felt confident the records were not being covered up because basically the FBI was coming back for a check at a later point. We also posed the question "you are not getting the juvenile records." The answer is that "we are not in many cases."

What you are saying is, as I understand it, in a lot of jurisdictions you are not going to ask for the adult records any more unless the adult himself comes in and says he has a police record.

Mr. TRAVERS. General, on page 7 of your statement you say: "Police record checks are processed on applicants who claim to have law violations that would need a waiver to enlist." There is no qualification in that sentence. You say this applies only—

General MUNDIE. For those who need waiver to enlist.

Mr. TRAVERS. Does it apply only in geographical areas where juvenile records are not available?

General MUNDIE. Where it requires a waiver we process it. Where the individual says "I have a record" we must confirm the record.

Mr. TRAVERS. The only time a criminal record is investigated is if the applicant admitted having a criminal record that would require a waiver?

General MUNDIE. I understand what you are saying. I am not trying to be devious. I want to be sure I give you the correct answer.

Senator NUNN. Why don't you repeat your question?

General MUNDIE. I understand the question, sir. It is a complicated one to try to answer. I don't believe I can make the statement yes or no and have it apply to all 57 district recruiting commands. I can make the statement yes, that we do check and we get varying results from those checks when the individual admits to a police record because some jurisdictions will not give us access to juvenile data.

Senator NUNN. What happens when the applicant does not admit to a police record? Are you doing anything to check behind that? If you ask him the question. "Do you have any kind of police record?" And he says no, then what do you do now?

General MUNDIE. On the suspicious ones, sir, we follow it up. In all cases we are not checking.

Senator NUNN. How do you determine it is suspicious? Is it the way he looks or holds a pencil?

General MUNDIE. No, sir, I suspect it is the way he acts. You will be surprised how well most of the recruiters know these youngsters they recruit.

Senator NUNN. That again creates an incentive for the recruiter to look the other way. His performance record is based on that. Major Schreiber made no bones about it, he pushed his men to the limit. You have a young man who comes in and says, "No, I don't have a police record." This recruiter has Major Schreiber looking over his shoulder. Does he say, "You look suspicious. I will have to check this further"? That is absurd. General, that is contrary to human nature. You are putting these recruiters out there and you are not taking into account human nature. When was this policy implemented when you did not check at all unless they answered affirmatively?

General MUNDIE. That is the reason I am trying to be careful how I answer it. There is a lot about the command I still don't know.

Senator NUNN. Admiral?

General MUNDIE. It is on my side, not his.

Senator NUNN. Is it a recent change.

General MUNDIE. The correct answer, sir, is that we check in all jurisdiction on all applicants. We do not get a response on the juvenile record unless the applicant confesses. Then if he has admitted it, the jurisdiction will in fact give us that information.

Senator NUNN. The testimony Tuesday was that there was a change and how there was not going to be any check unless they answered that they did have a previous violation.

**STATEMENT OF LT. COL. CHARLES MURRAY, LEGAL COUNSEL,  
U.S. ARMY RECRUITING COMMAND**

Colonel MURRAY. Isn't that the Marine Corps, sir? I think I mentioned it again this morning that the Marine Corps has that.

Senator NUNN. Give us your name?

Colonel MURRAY. Lt. Col. Charles Murray, legal counsel for the U.S. Army Recruiting Command. We have difficulty getting juvenile records. We have difficulty even where we are authorized in certain jurisdictions to get juvenile records which are few. We have a problem with collusion. We make every effort to make a record check on everyone.

Senator NUNN. This is Army?

Colonel MURRAY. U.S. Army only.

Senator NUNN. Are you speaking only for the Army?

Colonel MURRAY. That is correct.

Senator NUNN. Your policy in the U.S. Army is still to try to make every effort to get records on everyone, whether they answer in the affirmative or negative?

Colonel MURRAY. That is correct.

Senator NUNN. Is that your policy in the Marine Corps?

General McLENNAN. Our policy is to get the local check when the applicant admits some prior criminal record.

Senator NUNN. But not to do it otherwise?

General McLENNAN. Not otherwise. Many of the local recruiting stations continue the policy of checking because they are in jurisdictions where the police authorities will provide the information.

Senator NUNN. Therefore, the Marines are moving in a different direction from the Army.

General McLENNAN. ENTNAC continues. The police record check goes through the ENTNAC process.

Senator NUNN. We know the ENTNAC applies to adults. You are basically leaving a gap, sir.

General MUNDIE. Once the ENTNAC interview is passed to the Federal level there is a name check run. If the individual changes his name in any way it won't surface but later if any of the armed services start to run a security investigation on an individual a detailed FBI check is made and at that time all sorts of things surface.

Senator NUNN. That is after he has gotten in trouble?

General MUNDIE. No, sir. It is the time his commander or the individual has applied for security clearance. He has not been in trouble. He may be applying for a special clearance requiring access to classified information, many numbers of things. When we run a national agency check, a detailed check through the FBI is made by the Defense Investigative Service. At that time it surfaces not only an adult record, it surfaces what some States refer to as an expunged record.

The third case is the juvenile record to which we were not granted access, to which the man did not admit, but which was on file with the Bureau. Some States provide that to the Bureau. Some States do not. I don't know which is which.

Senator NUNN. Has your command made any recommendations for changes in the law that would permit access to all records?

General MUNDIE. Not since I have been commanding, sir. For the past 3 months the answer is no.

Senator NUNN. If you could have anything you wanted what would you want in this area in terms of law?

General MUNDIE. I would like access to the records, sir. It could be very useful to us. If our recruiters knew that every individual was going to be checked at the local level, I am not sure we have the time or

the capacity to check them nationwide at the point that the recruiter contacts them, it would be very helpful.

[Additional information follows:]

At the present time USAREC has a great deal of difficulty obtaining police record checks from state and local law enforcement authorities and state and local courts. This problem is particularly acute in the area of record checks into juvenile offenses.

Part 20 of Title 28, Code of Federal Regulations contains regulations governing the dissemination of criminal records and information. They apply to all State and local agencies whose collection, storage, or dissemination of criminal history record information has been funded in whole or in part with funds made available by the Law Enforcement Assistance Administration (LEAA). Since most State and local criminal justice agencies, including local police departments, receive funding from the LEAA, the regulations affect the majority of such agencies. They became effective on December 31, 1977.

The only records which the recruiters in the Department of Defense are entitled to receive under this order are adult felony conviction records—those for which the individual was tried in an adult, as opposed to juvenile court. In order for a Federal agency to have access to such records, the order requires that there be either a statute or an executive order expressly authorizing access to such records or authorizing the agency to conduct an investigation to determine employment suitability. The Department of Defense has been unsuccessful in its attempts to obtain a statute or executive order giving the Department of Defense such authority with regard to military personnel. Complete access to all criminal records would contribute substantially to the US Army Recruiting Command's ability to fairly and accurately determine eligibility for enlistment.

Senator NUNN. I am running way behind on my previous appointment. I will just wrap this up at this point. Do you have anything else?

General MUNDIE. I have one more thing. I understand you are interested in the accessibility of the high schools.

Senator NUNN. Right.

General MUNDIE. Yes; it would be useful if it is done in such a way that we don't antagonize those high schools that are not participating at this time on a voluntary basis. If you antagonize them I am not sure that we will accomplish what I think you intend to do which I think is a very important thing. What I think is more important, sir, is that we get civilian leadership such as yourself, and you have been helpful to respond in a positive vein that the profession that we serve, the military profession, is an honorable profession, it is essential to our way of life and to our Nation. We have an awful lot of people in public life who are centers of influence in their community who are either mute or negative.

I am not suggesting that you recommend that each individual serve. That is an individual persuasion. What I do think is important is that the public officials speak positively about the profession, and far too many say nothing at all. That would be more helpful to me. I speak only for my command on access to the high schools that I don't have access to now because I think that would persuade people to take a more positive approach.

Senator NUNN. What you are talking about is mobilizing every civic leader and political leader in the country. You can't pass a law on that.

General MUNDIE. I know that, sir. I have some statistics that are sort of frightening. Just in our request to the body you represent and the one on the other side of the Capitol where my district recruiting command wrote each Senator and in some cases duplicate letters, 152

letters to Senators, and only 55 of you responded. You are one who responded.

Senator NUNN. What were the letters?

General MUNDIE. Asking to visit or in some way make some positive statement about the military service. We have 55 responses to 152 letters. Excuse me, it was 25 responses to the 152 letters. 55 responses to 400-some odd letters to the House of Representatives.

Senator NUNN. You wrote every member?

General MUNDIE. Let me give you the exact figures; sir.

Senator NUNN. I think that is interesting.

General MUNDIE. We wrote 152 letters to Senators. Obviously more letters than Senators, 470 letters to Representatives. We received 25 responses from Senators and 55 responses from Representatives. We were simply asking their support. We didn't want them to be recruiters. We were asking for support, to visit the DRC's. I will extend it publicly, visit unannounced. I don't want to set up a visit. I would like you to see our system as it works on a daily basis. That is in essence what we have asked.

Senator NUNN. Basically you think the system can work?

General MUNDIE. I do, sir. It will never be 100 percent effective. When I say work please don't interpret that as 100 percent.

Senator NUNN. Do you think we are capable of recruiting people on a voluntary basis to protect this country with Active and Reserve Forces?

General MUNDIE. I will answer the first part affirmatively. On the second part give me another year.

Senator NUNN. Admiral, what is your answer to the question?

Admiral GURNEY. Yes, sir, I do.

Senator NUNN. On both counts?

Admiral GURNEY. Yes, sir.

Senator NUNN. What do you recommend on the Reserve recruitment?

Admiral GURNEY. I think it has to be two things. The individual has to see it as attractive and that is both financial and popular. More than that, he has to feel that he has something to do. I don't believe recruitment is going to be the problem. The problem will be keeping them in the neighborhood. That means make it interesting, make it challenging. We have a long way to go before we exhaust all those possibilities and give up on it. I am optimistic.

Senator NUNN. At what stage would you give up? What would indicate danger signals to you?

Admiral GURNEY. You would have to run out of a whole lot of alternatives. First, I would have to throw back to you what price are you willing to pay? If you let me pay a youngster \$1,000 a weekend to drill with the Reserve, I would fill it up tomorrow.

Senator NUNN. I will answer that question quickly. We pay more right now in terms of percentage of overall military dollars spent on manpower than we can afford if we are really trying to protect this country from our principal adversary which is the Soviet Union. We can't continue to have more and more money go into manpower. If we do we are not going to have anything for them to shoot and fly and

sail. That is the answer I give you very quickly. We have to find a way to make it work if it is going to work within the basic percentage of dollars going into manpower.

We are spending about twice the percentage of dollars on manpower that the Soviet Union is. We have much less of a force than they do.

General MUNDIE. Let me speak as an officer in the Army and not for the Army.

I think we will have some pretty good feel at the end of the year when I start recruiting for the U.S. Army Reserve. Two things will happen. You will have a professional force of recruiters recruiting. You will no longer have the reserve component—I am speaking only of the U.S. Army Reserve—the reserve component commanders trying to do two things, both of them first priority, recruiting and training, which has been the task put before them in the past. If I recruit and recruit successfully it gives them an opportunity to unhook from that in a formal sense. They still have an obligation to help me but not as precise as it is at the moment, and let them concentrate on training, which I think is a bigger problem than that of retention.

Senator NUNN. That is a major problem in the reserves, I know that.

General MUNDIE. Both parts have to be addressed when I talked to the success of it. That is the only reason I equivocated on the answer on the reserve. I think we need that time to see if it is going to cure it. I am optimistic but I won't be so naive to give you an answer today.

Senator NUNN. How about medical personnel?

General MUNDIE. We are working with the Surgeon General at this time in the southeast in a test program, if you will, to see if we can't help in that area. We are optimistic about it. We started the first of October. We are watching it very carefully. It is a contract only between me and our Surgeon General. I can't speak for what the other services are doing.

Senator NUNN. Thank you very much. We appreciate your testimony. We have a lot of questions that we will submit for the record. We would like you to get the answers back to us as soon as you can.

General MUNDIE. We will, sir.

Senator NUNN. We will reconvene at 2 p.m. for the next witness.

General MUNDIE. Thank you, sir.

[Whereupon, at 1 p.m. the hearing recessed, to reconvene at 2 p.m. the same day.]

#### AFTERNOON SESSION

Senator NUNN. General Mundie, I understand you want to make a brief statement.

General MUNDIE. Yes, sir. I want to correct a conflict in my testimony. It was a conflict, because we told you two different things. The question goes back, under what conditions do we conduct a police check of an applicant enlisting in the U.S. Army. I am speaking now only of the Army. If an individual states to the recruiter that he or she does not have a police record, that process of enlistment may continue. I will come back to may in just a moment.

If the applicant tells the recruiter that he or she is the subject of an ongoing case, either investigation or at the point of trial, we suspend all processing. If an individual states that he or she has a police record, or if the recruiter suspects that the individual may have a police record and is concealing it, we will conduct a police check.

Senator NUNN. Let's assume the individual says, "I do not have a police record," and let's assume that the individual does not look suspicious to the recruiter. What happens then in terms of further checks on the police record?

General MUNDIE. The next check, sir, is made at the ENTNAC interview by an AFEES, ENTNAC interviewer. The case is forwarded through the Defense Investigative Service to the FBI for a name check, and if there is a name match, it will surface at that time. If the individual subsequently either is investigated for a security clearance or submits to the request for one and completes the national agency check form, then a thorough check is made through the FBI, and it will surface whatever information as has been catalogued on the individual at the Federal level and such information as the States provide.

Senator NUNN. That is if they want a security clearance?

General MUNDIE. That is correct, so otherwise what is connected is a follow-on to the ENTNAC interview. That form is processed through the Defense Investigative Service, to the FBI, and a name match is made. If you get a match, you will get the information, but it is not a detailed check such as occurs at the time a security investigation is made.

Senator NUNN. Is this the Army's policy or an all service policy?

General MUNDIE. It is Army policy, sir. I will not speak for the others, but I think it is as true of the others as well.

Senator NUNN. How does that differ from the Army policy earlier this year? Has there been a change?

General MUNDIE. Sir, there has been a change, but I do not know. I cannot answer your question. The document I am speaking from is dated October 1, 1978. I am speaking from a document 9 days old. I cannot answer, but I will get the information for you for the record.

Senator NUNN. I think the key question I have is whether you are requiring a more thorough check of police records or a less thorough check than prior to the change.

General MUNDIE. I suspect my answer will be a more realistic one which is less thorough, because we could not get information in many cases, but I will confirm that for you in the record.

[Additional information follows:]

Let me clarify my discussion. First, concerning the police records check policy, there has been no change. There are three events which will cause a recruiter to initiate a police records check during his interview for moral qualifications. If the applicant claims a minor non-traffic offense we conduct a check because of the likelihood of more than one offense which will require a moral waiver to be processed. Similarly if the applicant admits to any arrest, charge, juvenile adjudication, or conviction requiring a moral waiver, a police records check will be conducted. The third event which will cause the check to be initiated is if the recruiter has reason to suspect the applicant may be concealing a record. Based on the results of a check run for any of these three reasons, either a moral waiver will be processed or the disqualification will be reported to the applicant.

Second, whether or not a police check is run, during AFEEES processing, an Entrance National Agency Check (ENTNAC) is initiated on practically every applicant. This check is a name and social security number check conducted by the Defense Investigative Services (DIS). Applicants for sensitive jobs may and all aliens do receive a more thorough screening. This procedure is more detailed and involves either a National Agency Check (NAC) which requires a fingerprint check in addition to a name check, or a full Background Investigation (BI) which is a complete and thorough investigation into the applicant's background. These checks and investigations, again, are done by the DIS and the results provided the appropriate service.

The change that has occurred in Army procedures took place during June 1978 and applies only to aliens. The more detailed NAC or BI has always been required for aliens. Previously, these were begun and the alien was enlisted but was often delayed in training awaiting the results. Now, however, the alien is not enlisted into the Regular Army until the results are complete. The alien is enlisted into the Delayed Entry Program (DEP) for a minimum of 60 days, and extended if necessary, until the investigation is complete.

Senator NUNN. Is it mainly juvenile information you could not get?

General MUNDIE. I suspect so, for the most part, but for transient personnel, it could very well be it did not reveal it, we would not have caught it until the ENTNAC interview was processed through the name check at the FBI. In other words, if he enlisted in California and his record was in New York, and he had failed to release it, it would not have come up until it was processed.

Senator NUNN. OK, General. Thank you very much.

General MUNDIE. Thank you, sir.

[Subsequent to the hearing, questions were submitted to General Mundie to be answered for the hearing record. The questions, with answer supplied, follow:]

QUESTIONS FOR MAJ. GEN. WILLIAM L. MUNDIE, U.S. ARMY, COMMANDING GENERAL  
U.S. MILITARY ENLISTMENT PROCESSING COMMAND AND U.S. ARMY RECRUITING  
COMMAND, TO BE ANSWERED FOR THE RECORD

VERIFICATION SYSTEM FOR TEST SHOWS TEST COMPROMISE

*Question.* General, I understand that the Army is implementing a new verification system "which is designed to determine when inconsistency among ASVAB subtest scores is sufficient to call into question whether unauthorized assistance was obtained prior to testing." (Quote is from statement by Admiral Gurney.) Would you explain this system?

*Answer.* MEPCOM's verification retest system is a comprehensive procedure designed to help insure applicants are enlisted with test scores that are representative of their true mental ability. A major secondary benefit of the system is that it identifies applicants that most probably received unauthorized assistance prior to testing (commonly called test "coaching"). The procedure is actually a three tiered process:

All applicants' test scores are screened against consistency tables. These tables are designed to identify that five percent of all applicants whose subtest scores appear most aberrant. This initial screening process does not, in itself, confirm whether an applicant was "coached."

Applicants identified by the initial screening process are administered an additional 12-20 minute test. About one fourth of the applicants taking this test score poorly. As a result, their initial qualifying test scores are invalidated and they are administered a new qualification test. It is imperative a new qualification test be administered. By administering a new qualification test we are eliminating the possibility of arbitrarily disqualifying those applicants who may have failed the short 12-20 minute test by random chance.

Those applicants whose initial scores have been invalidated are administered a new qualification portion of the test. Applicants failing this final test were most probably "coached" prior to initial testing. Nevertheless, even this "three tiered" verification process is not entirely conclusive, as it is possible an applicant who was not coached became demotivated during the verification process.

*Question.* I understand this verification retest system has been highly tested by every AFEEES for every service. I would like to insert a copy of the results of that pilot test into today's record. That test indicates that about five percent of all those who take the test have inconsistencies that indicate their score is too high. The Army is 7.4 percent; the Marine Corps is 7.7 percent. For the Cleveland area, there was an indication that 12.2 percent of those tested consistently had high scores. This percentage was about double that for the other services in Cleveland. What does this indicate to you about test compromise problem in Cleveland?

ESTIMATED WORKLOAD IMPACT UPON IMPLEMENTATION OF UNIFORM VERIFICATION RETEST PROCEDURES—  
OCT. 1, 1978

	High screen percentage					Low screen percentage
	Army	Navy	Air Force	Marine Corps	All services	
<b>USMEPCOM eastern section:</b>						
Albany, N.Y.	1.9	2.8	1.8	4.4	2.2	5.8
Atlanta, Ga.	6.8	3.5	3.6	3.7	5.1	4.9
Baltimore, Md.	6.0	5.8	4.9	6.3	5.2	3.7
Beckley, W. Va.	2.4	7.9	3.4	5.6	4.2	2.9
Boston, Mass.	5.0	4.8	5.6	4.8	4.7	8.2
Buffalo, N.Y.	3.0	2.1	2.1	4.4	2.4	3.9
Charlotte, N.C.	4.5	0.8	3.5	2.1	3.4	5.8
Fort Hamilton, N.Y.	5.1	4.7	6.4	12.5	5.7	5.4
Fort Jackson, S.C.	5.4	2.3	3.7	3.6	4.6	4.8
Harrisburg, Pa.	5.6	4.9	1.6	6.9	4.4	7.7
Jacksonville, Fla.	3.8	3.2	4.0	2.8	3.5	4.9
Manchester, N.H.	2.3	3.8	5.8	2.5	2.7	6.1
Miami, Fla.	5.6	6.5	5.9	6.7	5.8	5.3
Newark, N.J.	6.5	3.1	3.6	4.0	4.8	3.9
New Haven, Conn.	3.7	4.4	2.0	12.9	5.2	8.1
Philadelphia, Pa.	4.1	5.5	6.5	8.9	4.8	5.4
Pittsburgh, Pa.	5.1	2.9	3.5	4.8	3.8	7.3
Portland, Maine	3.4	3.8	2.6	2.6	2.9	7.1
Raleigh, N.C.	3.0	3.1	3.1	6.2	3.2	2.6
Richmond, Va.	6.9	2.0	3.7	2.1	4.7	5.0
San Juan, P.R.	6.3	1.9	4.6	2.6	5.8	5.4
Springfield, Mass.	6.9	2.3	9.2	14.9	6.2	9.0
Syracuse, N.Y.	2.7	1.9	2.3	2.1	2.3	10.0
Wilkes-Barre, Pa.	0.4	3.3	4.5	7.0	3.1	7.9
<b>USMEPCOM eastern sector total.</b>	<b>4.9</b>	<b>3.8</b>	<b>4.2</b>	<b>6.2</b>	<b>5.0</b>	<b>4.8</b>
<b>USMEPCOM central sector:</b>						
Chicago, Ill.	8.6	20.3	5.9	20.6	12.9	3.8
Cincinnati, Ohio	5.4	3.3	3.4	16.6	4.5	2.6
Cleveland, Ohio	6.2	4.2	6.0	12.2	6.7	7.3
Columbus, Ohio	2.9	2.8	2.8	17.8	4.9	6.6
Des Moines, Iowa	3.4	3.0	6.7	7.0	4.5	6.8
Detroit, Mich.	4.6	4.7	3.7	9.4	4.8	5.1
Fargo, N. Dak.	1.9	—	5.0	5.7	2.3	14.3
Indianapolis, Ind.	4.6	3.6	6.5	2.4	4.1	5.4
Jackson, Miss.	3.8	3.5	2.6	—	3.3	5.7
Kansas City, Mo.	3.9	4.0	4.9	3.6	4.5	6.0
Knoxville, Tenn.	4.5	4.0	4.5	5.7	4.2	3.1
Little Rock, Ark.	6.0	2.4	3.4	4.6	4.9	3.5
Louisville, Ky.	5.6	3.9	3.3	6.8	4.7	4.8
Memphis, Tenn.	11.4	4.1	1.8	6.2	6.6	4.0
Milwaukee, Wis.	4.6	2.9	2.2	4.1	3.3	5.8
Minneapolis, Minn.	4.2	3.6	2.7	5.4	3.6	8.4
Montgomery, Ala.	6.2	4.9	3.7	3.7	5.4	5.0
Nashville, Tenn.	7.3	3.6	2.6	7.6	5.1	2.1
New Orleans, La.	3.3	4.1	3.4	4.0	3.5	3.6
Omaha, Nebr.	5.8	4.1	4.4	4.2	4.6	2.5
Shreveport, La.	4.3	2.1	3.5	5.6	3.7	3.9
Sioux Falls, Iowa	3.8	3.5	2.6	.6	3.6	12.0
St. Louis, Mo.	4.9	3.6	2.6	5.1	3.9	4.4
<b>USMEPCOM central sector total.</b>	<b>5.7</b>	<b>5.8</b>	<b>4.1</b>	<b>9.5</b>	<b>5.6</b>	<b>4.6</b>

See footnotes at end of table.

ESTIMATED WORKLOAD IMPACT UPON IMPLEMENTATION OF UNIFORM VERIFICATION RETEST PROCEDURES—  
OCT. 1, 1978—Continued

	High screen percentage					Low screen percentage
	Army	Navy	Air Force	Marine Corps	All services	
USMEPCOM western sector:						
Albuquerque, N. Mex.-----	2.5	3.4	5.1	1.5	2.6	3.2
Amarillo, Tex.-----	2.2	2.2	3.1	6.2	2.4	5.0
Boise, Idaho-----	8.6	4.8	5.7	6.4	5.9	8.3
Butte, Mont.-----	3.9	3.4	3.6	1.7	3.0	6.3
Dallas, Tex.-----	9.5	3.7	4.8	9.9	6.1	6.8
Denver, Colo.-----	4.8	3.7	3.7	1 4.2	2 3.9	6.9
El Paso, Tex.-----	2.9	4.2	1.5	2.0	3.0	4.5
Fresno, Calif.-----	5.6	3.1	5.8	10.4	2.5	5.8
Honolulu, Hawaii 4-----	2.1	4.6	2.9	1.0	7.0	7.1
Houston, Tex.-----	14.8	2.0	4.9	10.0	4.0	5.8
Los Angeles, Calif.-----	4.8	3.4	4.5	7.2	5.3	6.9
Oakland, Calif.-----	6.2	4.3	6.4	10.2	4.3	7.1
Oklahoma City, Okla.-----	5.2	1.7	5.0	5.3	3.5	6.4
Phoenix, Ariz.-----	4.0	2.2	3.8	6.4	6.0	4.6
Portland, Oreg.-----	7.3	5.8	6.2	9.5	3.5	7.9
Salt Lake City, Utah.-----	3.5	3.2	5.7	10.8	4.2	7.2
San Antonio, Tex.-----	2.5	4.2	4.6	2.8	4.0	12.2
Seattle, Wash 5-----	4.7	2.6	5.6	2.8	2.8	8.4
Spokane, Wash.-----	5.2	3.9	5.4	2.3		
USMEPCOM western sector total-----	5.1	3.5	4.8	1.3	6 4.5	6.4
USMEPCOM national total-----	7.4	4.4	4.3	7.7	7 5.0	5.1

<sup>1</sup> Example No. 1.

<sup>2</sup> Example No. 2.

<sup>3</sup> Example No. 3.

<sup>4</sup> Includes Guam.

<sup>5</sup> Includes Anchorage.

<sup>6</sup> Example No. 4.

<sup>7</sup> Example No. 5.

NOTES.—Caution: These percentages do not provide a valid diagnostic tool for determining the extent of test compromise in a given area—an explanation of the utility/validity of these percentages is attached. See precautionary notes on p. 4. Explanatory notes are on p. 4. Examples (indexed by number) are also explained on p. 5.

## EXPLANATORY NOTES

Each of the percentages is based on screening limits in MSEPOM Circular 611-5 dated 21 September 1978. Total nationwide sample size is 145,000 applicants tested April-June 1978. Average sample size for each cell (each percentage listed by service) is 493 applicants tested. The sample size range for the cells by service is from 31 to 2377.

The "High Screen Percentage" indicates the estimated percentage of applicants with qualification scores (AFQT) of greater than or equal to 21 $\frac{1}{2}$ , whose AFQT scores appear inconsistently high. These percentages provide an estimate of the percentage of passing applicants who will require verification retests.

The "Low Screen Percentage" indicates the estimated percentage of applicants with qualification scores (AFQT) ranging from 11 to 30\* appearing consistently low. These percentages provide an estimate of the percentage of failing applicants who will be authorized immediate retests to qualify for enlistment.

## PRECAUTIONARY NOTES

(Pertaining to the caution listed on pages 1-3)

These percentages were developed to provide an estimate of workload impact on implementation of uniform verification retest procedures on 1 October 1978. These percentages do not provide a valid diagnostic tool for determining the extent of test compromise by a given service in a given area. This is because the screening limits being used have been designed to identify only those 5 percent of all applicants whose test scores exhibit the greatest aberrations. Accordingly, with the existing screening limits, an AFKES "fallout rate" is very susceptible to extensive "coaching" by isolated recruiters. For example: if one Marine Corps recruiter serviced by AFKES Denver were to extensively "coach" all his applicants, he could expect the "Denver Marine Corps 'fallout rate'" to increase from approximately 4 percent to over 10 percent. It would not be valid to make generalizations regarding the Marine Corps recruiting command in Denver because of one recruiter.

The percentage of applicants whose scores appear "inconsistently low" is also provided by AFKES. As in 1 above it is invalid to make generalities regarding prevalence of "unlucky" applicants within a given part of the country.

\*The Armed Forces Qualification Test (AFQT) scores required for enlistment is generally 21 or 31 depending on whether the applicant is a high school diploma graduate. Applicants with AFQT's of less than 10 are not permitted to retest based on "inconsistently low" AFQT scores.

EXAMPLES  
(Indexed on page 3)

Example #1: Of all passing (estimated by AFQT $\geq$ 21)\* Marine Corps applicants led by the Denver AFRES from April-June 1978, 4.2 percent have "inconsistently low" AFQT scores and would have been subject to verification retest procedures.

Example #2: Of all passing applicants (estimated by AFQT $\geq$ 21)\* regardless of service, tested by the Denver AFRES from April-June 1978, 3.9 percent had "inconsistently low" AFQT scores.

Example #3: Of all failing applicants (estimated by AFQT $<$ 31)\*, regardless of service, tested by the Denver AFRES from April-June 1978, 6.8 percent had "inconsistently low" scores and would have been authorized to retest immediately on a different test form.

Example #4: Of all passing applicants (estimated by AFQT $\geq$ 21)\* tested within Western Area from April-June 1978, 4.5 percent would have been required to go through verification retest procedures.

Example #5: Of all passing applicants (estimated by AFQT $\geq$ 21)\* tested nationwide from April-June 1978, 5.0 percent would have been required to go through verification retest procedures.

\*The Armed Forces Qualification Test (AFQT) score required for enlistment is generally 21 or 31 depending on whether the applicant is a high school diploma graduate. Applicants with AFQT's of less than 10 are not permitted to retest based on "inconsistently low" AFQT scores.

Answer. Our verification retest program has been pilot tested in only two AFEES, AFEES Louisville and AFEES Detroit. The results of that pilot are as follows: Out of 10,472 applicants tested in their pilot AFEES from 2 Feb-30 June 78, 473 applicants had inconsistently high scores and were identified for further testing. As of 30 Jun 78, 247 out of 473 applicants so identified had returned to the AFEES, qualified during medical processing and were subsequently administered a short 12-30 minute test to verify their initial scores. Of the 247 tested, 49 scored poorly. As a result, their initial qualifying scores were invalidated and they were required to take a new qualification test. Two applicants refused to take the new qualification test and were disqualified. Three applicants admitted they had been coached and as a result were disqualified. Eleven applicants passed the new qualification test and 33 applicants failed.

The verification retest screening process does not indicate the percentage of applicants whose scores are too high. With our verification retest procedures, every applicant's scores are "screened" against statistically based tables. These tables are designed to scientifically identify that five percent of all applicants whose test scores appear most aberrant. The tables could have been designed to screen a different percentage. The five percent workload figure does, however, appear ideal. We previously tried a larger percentage screen but found that too many applicants who were obviously not coached were needlessly being subjected to additional testing. Prior to nationwide implementation, we needed to be sure our theoretical computations used in developing the tables were correct. Accordingly, we used a computer program to apply the screening tables against a large sample of applicants' scores. In this manner we determined how many applicants would have been subject to verification retest procedures had these screening tables been in effect. These workload estimates (which made up the tables from which the statistics for Cleveland were cited) are not, however, a valid diagnostic tool for determining the extent of compromise within a given area. There are three reasons for this:

a. The screening process is merely a statistical technique for determining which portion of the applicant population to retest.

b. Moreover, percentage figures are very misleading. Although a total of 145,000 records were screened nationwide, the subsample pertaining to a given recruiting service at a given AFEES is generally quite small. As a result, the statistical sampling error is quite large. Accordingly, it is unrealistic to make comparisons between local recruiting commands.

c. In addition, these percentages are extremely sensitive to the illegal activities of very few recruiters. For example, the Denver Marine Corps "fallout rate" would probably increase from about 4 percent to over 10 percent as a result of extensive coaching on the part of one recruiter. It is highly inappropriate to make generalities regarding an entire command because of one recruiter.

In view of the above limitation, it is not prudent to use these screening estimates to make conclusive statements regarding the extent of coaching by a given service within a given area. As indicated previously, the initial screening process, by itself, cannot confirm whether or not an applicant was "coached." In contrast, the full verification retest procedure confirms an applicant's aberrant scores by the sequential administration of two additional tests. Accordingly, the percentage of applicants who fail to qualify due to verification retest procedures is a valid indicator of the extent of test compromise within a given area. With the apparent higher initial screening rate for the Marines in Cleveland, I would, however, predict the verification retest failure rate for the Marines in Cleveland will also be higher. We will have to wait for the initial results of our verification retest process before my suspicions can be confirmed.

*Question.* General Mundie, Doctor Harry Wilfong, Deputy AFEES for Testing, was asked by the staff his interpretations of these results for Cleveland. He replied that this result indicated, in his opinion, that there was extensive test compromise or significant coaching by the recruiters. Do you disagree with that opinion?

Answer. No. Even though the initial screening process is not in itself a valid diagnostic tool, I would predict the verification retest failure rate will be higher for the Marines in Cleveland compared to the other services. Accordingly, I would predict the extent of test compromise attributable to the Marine Corps is probably higher than that attributable to the other services. Nevertheless, we will have to see the results of the retest process before making conclusive statements regarding the extent of coaching. The estimated screening percentage simply calls specific areas into question. The retest process itself confirms or refutes our suspicions.

## COMPARISON TO THE DRAFT

*Question.* General Mundie, do you think copies of the mental exam were used during the draft era?

*Answer.* Yes. Logically, however, they were probably used in a different manner. Applicants, knowing they were going to be drafted, probably attempted to score well so they could choose ahead of time which service and which field they could enter.

*Question.* Do you think there was falsification of educational documents during the draft?

*Answer.* Yes. There were cases of potential inductees producing false college admission documents to obtain deferments. Likewise, counterfeit marriage licenses and birth certificates of dependents were provided to local draft boards for the purpose of obtaining deferment. There was fraud in the area of family need as well. The principal difference is in the "purpose" of deception: in the draft era it was to stay out; now, it is to get in. The message, in our opinion, is the same: people are likely to lie in their own self interest.

*Question.* Do you think so-called "ringers" were used to take the mental or physical exam for others?

*Answer.* Definitely. The use of ringers would probably be the easiest manner for a dishonest potential inductee to insure he would be disqualified.

*Question.* Do you agree that unlike the draft era, the effect of these frauds now is to place unqualified people into the military with potential harm for the readiness and morale of our forces?

*Answer.* Not completely. In the draft era our problems was to identify those qualified inductees who were attempting to appear unqualified, and now it is to identify the unqualified applicants who are attempting to appear qualified. I do not, however, feel the extent and effect of these frauds is that significant. Yes, some unqualified applicants will always pass through any screening process no matter how stringent. Nevertheless, it is doubtful the overall readiness and morale of our forces is impacted any more significantly by these few people than by those who were qualified and committed fraud so as not to serve.

## MEDICAL PROBLEMS

*Question.* General Mundie, recent press accounts have reported charges by Dr. Ellis Zuckerman about the poor quality of Army medical exams. According to the press the Doctor has said that recruiters deliberately falsified information to get people into the Service; that subsequent physicals are so slipshod many deceptions go undiscovered; and that when they are found, the military often refuses to concede mistakes. Do you think there is validity to these charges?

*Answer.* Mistakes are made, as in any diagnostic endeavor, but physical exams in the AFEES are by no means "slipshod." The medical mission of the AFEES is monitored and administered through Headquarters, MEPCOM, Fort Sheridan, Illinois. Each AFEES employs a Chief Medical Officer, who is a licensed physician. Currently, all 66 Chief Medical Officers are Civil Service civilian physicians. There are no active duty military physicians serving as chief medical officers. Supplemental physicians are hired on a daily fee-basis with need assessed from the projected number of applicants for the next day, which is information supplied by the local recruiting commands serviced by the AFEES. In cases of questionable medical acceptability, specialist physician consultations are available and funded at no expense to the applicant. Certain findings require specialty consultation, such as an applicant's having had knee surgery, history of psychiatric treatment, etc. The medical enlistment standards for entry into the various services are contained in chapter 2 of Army regulation 40-501 and have remained essentially unchanged since 1945. These medical standards are adhered to as rigidly and as carefully as possible. The AFEES physician is supported by active duty noncommissioned senior medical specialists, additional active duty corpsmen, and civilian health and laboratory technicians. Each AFEES has all the necessary equipment to perform a thorough physical examination:

Vision tester.

Lensometer for checking eyeglass prescription.

X-ray machines and contracts for licensed radiologists to read each X-ray.

Laboratory equipment and trained technicians for performing urinalysis and blood serology.

Fully equipped examination rooms for both male and female examinations.

The physicians in the AFEES are not bound by any "quota" and care is taken to remove any pressures on the doctor to "hurry" or to compromise in any way on the requirement for a thorough physical. In point of fact, most complaints reaching MEPCOM are the precise opposite of Dr. Zuckerman's allegation. Complaints of being too careful, too thorough, too rigid in application of standards are heard far more often than the notion that the physical exams are slipshod.

#### MEDICAL COVERUPS

*Question.* General Mundie, about 4 percent of Army recruits are discharged for a medical problem that actually existed prior to enlistment.

14,409 cases in fiscal year 1977 for all Services of medical problems identified after AFEES medical exam and acceptance of applicant. These cases cost the Government about \$49 million in fiscal year 1977.

1,975 cases where there was a review by military service surgeon general or where there was insufficient information.

12,434 cases remaining according to MEPCOM.

47 percent could not have been detected at the AFEES.

37 percent should have been, could have been or might have been detected.

16 percent involved concealment of medical history by applicant.

*Question.* Does this suggest that there is some malpractice by medical personnel at the AFEES? Have there been cases?

*Answer.* The information above was given in the testimony before the Senate Armed Services Committee. It concerns data for fiscal year 77 physical defects which "existed prior to enlistment." Additional data for physical defects which "existed prior to enlistment" for fiscal year 78 is provided as follows:

10,439—cases of physical defects which existed prior to enlistment"—in fiscal year 78 for all services.

1,626—15.6 percent could not have been detected at AFEES.

2,394—22.9 percent might have been detected—involved a medical opinion.

389—3.7 percent should have been detected at AFEES.

4,483—42.9 percent could have been detected if applicant had revealed history.

613—5.9 percent accepted at AFEES after consultation or MEPCOM/parent service surgeon's review.

934—8.9 percent insufficient information to make determination.

The above figures show considerable change for fiscal 1978 over fiscal year 1977 and fiscal year 1976. There is a significant decrease in total cases. The cases that could not have been detected decreased, and cases of concealed history increased.

Malpractice is a harsh word and usually is applied when a "patient" suffers injury due to lack of skill normally expected of a physician or there is evidence of other negligence. Some medical conditions required more extensive and elaborate examinations to raise the probability of detection. New equipment, doctors' conferences, and continuing education are helping to improve the physical examination and bring down the incidence of "errors". Still, some disqualifying defects will be missed by even the most conscientious examining physician. Every time such a case comes up, it is returned to the examining doctor for review and comment, and it is reviewed at MEPCOM headquarters by the Command Surgeon. We would like to see our detectable error<sup>1</sup> rate at zero. It currently is at about .64 percent. This is, 6.4 errors that could have been detected by AFEES physicians per thousand enlistments. If the detectable error rate is applied to total physicals given (over 514,000), the figure is about 5.4 per thousand physicals given. That is not perfect but it is by no means "slipshod".

No physician employed by MEPCOM has been relieved or is now under investigation for "malpractice". Repeated errors or a very high error rate would be grounds for removal of the physician and MEPCOM would not hesitate to take such action when indicated.

<sup>1</sup> Detectable error is defined as those EPTS cases which "might have been detected—involved medical opinion" plus "should have been detected." 2394 + 389 = 2783 cases which were detectable. In the context of "malpractice" or "negligence," the figure 389 errors which clearly "should have been detected" by a conscientious, thorough physician is a more appropriate indication of the effective of the AFEES physical examination procedures. Using this indicator, we have .9 cases per thousand enlistments and .75 cases per thousand physical examinations given.

*Question.* Do you consider their concealing of medical histories to be a serious problem?

*Answer.* Yes, it is the largest cause of unqualified enlistments. This figure has shown an increase during F.Y. 79. Each AFEEES tries very hard to obtain full and accurate disclosure of medical history. We will continue to stress full and accurate disclosure. This is not an easy question. Our physicians tell us that applicants for insurance policies conceal medical history at a high rate. They tell us that concealing medical defects is widespread and condoned socially and is a significant problem not only in public health but in private practice. Somehow a person's medical history is considered by that person to be personal property and not subject to scrutiny. It is a significant problem throughout our society and not peculiar to military applicants.

#### RECRUITERS RECEIVING COMBAT REENLISTMENT BONUSES

*Question.* General Mundie, Secretary Alexander has informed this Committee that in order to encourage more volunteers for recruiting duty, the Army plans to allow soldiers who have received reenlistment bonus because they are in combat skill or other critical technical skill, to volunteer for recruiting duty but keep the reenlistment bonus. Do you favor such a program?

*Answer.* Yes.

*Question.* Does this mean we will have a shortage in the combat arms to fill recruiting slots?

*Answer.* Yes. To the extent that at the unit level we may, by taking a combat arms soldier create a vacancy. You may recall that we were proposing acceptance of up to 400 of these bonus recipients for recruiter duty. This is but a small percentage of the total combat arms soldiers.

*Question.* Will these recruiters receive both the reenlistment bonus for the combat arms and special recruiter pay?

*Answer.* Yes. To deny one or the other will be counterproductive to the original intent of the USAREC proposal.

*Question.* Are you aware that the law authorizing the reenlistment bonus provides that any remaining bonus must be returned if the soldiers fails to complete the term of enlistment or fails to maintain proficiency in other skills for which he received the bonus?

*Answer.* Yes.

*Question.* Are we opening up a new avenue of recruiting malpractice by enabling the recruiter to say: "Look, sign up for the combat arms and you'll receive a bonus but you might not be assigned to combat like me."

*Answer.* No. The intent of the original USAREC proposal was to induce/attract more combat arms soldiers to recruiting duty and at the same time bolster sagging recruiter strength occasioned by the widespread perception within the NCO Corps that recruiting is a "high risk" job. This action is not related to the enlistment bonuses used by recruiters to obtain accessions.

#### APPLICANTS REFUSE TO ENLIST

*Question.* General Mundie, according to testimony on Tuesday, an average of 1,000 recruits a month go through the entire AFEEES process, including the swearing in, then decide not to enter the military and are given an honorable discharge. Do you agree with that testimony? Is this a significant problem?

*Answer.* An average of 800 enlistees are administratively released from the Army Delayed Entry Program each month. DEP loss is bothersome but not a significant problem in terms of pay and benefits. There is no entitlement until the individual enters on active duty. Technically, the services could enforce the DEP contract for each enlistee by requiring service in the Reserve component, to include involuntary ordering to active duty. The "all volunteer" aspect of recruiting precludes strict enforcement and those applicants who "want out" prior to swearing in for active duty are allowed to request administrative termination of their Reserve enlistment agreement.

#### RECRUITING MALPRACTICE IN LANSING, MICH.

*Question.* I understand there has been a recent investigation of a large number of recruiting malpractice cases in the Lansing, Michigan area involving the falsification of educational documents and phony diplomas. Would you discuss this case? Were there any other types of malpractice involved?

Answer. During the period 12 October 1977 through 23 June 1978, five recruiting malpractice investigations were conducted by the Army in the Lansing District Recruiting Command concerning allegations that recruiters supplied false high school diplomas or false General Educational Development (GED) Certificates to applicants for enlistment into the Army. The investigation was initiated on 12 October 1977 based on information provided by an Army enlistee undergoing basic training who stated he had received a false high school diploma from a recruiter for use in enlisting in the Army. A second investigation was triggered as a result of an anonymous telephone call on 25 October 1977 to the Lansing District Recruiting Command headquarters. The caller alleged that two applicants had received false diplomas. The remaining three investigations were conducted as a result of another allegation by an Army enlistee and as a result of information turned up during the initial two investigations.

The fifth and last investigation, conducted by the Headquarters, Midwest Region Recruiting Command, began on 13 March and was completed on 23 June 1978.

This investigation encompassed the entire Lansing District Recruiting Command which has six Area Commands, 37 recruiting stations, and 137 field recruiters with geographical responsibility for active Army recruiting for most of the state of Michigan except for the greater Detroit area and the western half of the upper peninsula. The investigation was aimed at ascertaining the full extent of the malpractice involving the use of false diplomas or GED certificates. One additional recruiter was found to have been involved in processing an unqualified individual with a false high school diploma. Three applicants with false diplomas were identified.

The first four investigations revealed that five Army recruiters from the Grand Rapids South Recruiting Station, (located in Rogers Plaza), one from the Lansing Main Recruiting Station and one from the Fremont Recruiting Station were directly or indirectly involved in processing 11 male applicants with false high school diplomas and one female applicant with a false GED certificate during the period May 1977 to October 1977. All 12 applicants were high school dropouts. Without the false documents, some were qualified for enlistment as non-high school diploma graduates but not for the specific enlistment option desired, while others did not meet the basic criteria for enlistment at all. The fifth investigation substantiated malpractice by two more recruiters from the Lansing Main Recruiting Station, who were directly involved in the processing of 3 other applicants with false high school diplomas. One of the two recruiters was relieved and the other was medically reassigned.

Based on the conclusions of five investigations, a determination could not be made as to whether recruiters had actually provided false documents or not, the investigations concluded that the subject recruiters had knowledge the documents were false.

The recruiters were relieved of their duties as US Army recruiters between February and June of 1978 and have either departed or are in various stages of departure from the Recruiting Command for permanent reassignment to other Army units. One of the five Grand Rapids recruiters had been previously relieved for malpractice earlier this year for falsifying a birth certificate.

With regard to the 12 false documents in the first four investigations, it was determined that eleven facsimiles of actual high school diplomas, some wallet sized, and one GED certificate were used in processing of the 12 applicants for enlistment purposes. The quality of the bogus diplomas and certificates was such as to make detection of their authenticity by the processing personnel difficult. The diplomas all bore the names of four authentic schools in the Grand Rapids area: Lee, Newago, Grand Haven and Ottawa Hills High Schools, and the J. W. Sexton High School in the Lansing area. The GED certificate carried the name of Orchard View Community Education Office, Muskegon, Michigan. Again, none of these documents were the bona fide diplomas or the certificate in use by the institutions they were supposed to represent. The source of the false documents or how they were obtained is unknown. Procedures for verification of education have been refined since 31 October 1977 in an effort to preclude recurrence of recruiting malpractice of this nature.

Of the 12 applicants involved in the first four investigations, three have been discharged from the Army and one was in the process of being discharged at the time of investigation. Information concerning the status of the remaining eight enlistees is not yet available. It is significant to note that while the investigations disclosed substantial evidence that applicants were knowingly processed with false high school diplomas, the source of those diplomas could not be

determined. That is to say that the allegations that Army recruiters had provided the diplomas could not be substantiated. It is, therefore, inaccurate based on our investigation to conclude that Army recruiters were directly involved in falsifying educational documents. These investigations disclosed only one instance of another type of malpractice. One of the applicants processed as a high school graduate was discovered to have been adjudged a juvenile delinquent and a ward of the court at the time of his enlistment processing. The investigation disclosed that the recruiter knew this applicant was under court control and actively concealed this information.

*Question.* I understand that one of the recruiters involved was relieved from recruiting duty as a result of the investigation but that this same recruiter had been previously relieved earlier this year for falsifying a birth certificate. Once a recruiter is relieved for malpractice, why doesn't he stay relieved?

*Answer.* Once a recruiter is relieved, barring some exceptional circumstance such as reinvestigation or new evidence, he does stay relieved. You will recall that the processing of applicants with false diplomas occurred between May and October 1977. The investigation involving the recruiter to which you refer was completed 23 June 1978. He had been relieved on 23 December 1977 based on an investigation into an enlistment which took place during October 1976. At the time of the Lansing investigation, this recruiter was not assigned duties involving direct contact with applicants, his Special Duty Assignment Proficiency Pay had been withdrawn, and he was pending assignment outside the Recruiting Command.

*Question.* Did some of these cases involve falsifying of high school records to provide a Combat Arms Bonus Payment to the applicant who is not really eligible for the bonus?

*Answer.* As stated previously, there was no direct proof discovered that high school records were falsified by Army recruiters. Six of the applicants processed for enlistment with false diplomas were processed for cash bonus options. No evidence was discovered linking the enlistment bonus to irregularities during the processing nor was there any suggestion of possible "kickbacks."

#### READING COMPREHENSIVE LEVEL FOR THE APPLICATION

*Question.* According to the Department of Defense officials, the reading comprehension level necessary to understand the application for enlistment for military service is the 16th grade level. That is, someone must have the comprehension of the college seniors to fully understand the application. I understand Defense has established a task force to lower the needed comprehension level to the 12th grade. Do you consider this to be an appropriate level for the enlistment application? Would you agree that the vast majority would not have this high comprehension level?

*Answer.* We think the new Form 4 (enlistment/reenlistment document) is now worded at the appropriate level, given the need for the type of information required by the Armed Forces and the fact that the form is carefully explained to the applicant. It is designed at the 12th grade level. The DD Form 1966 (Application for Enlistment—Armed Forces of the United States) has never been analyzed to determine the comprehension level necessary to understand the form, but this too is carefully explained to each applicant and all questions the applicant may have are answered. The point to be made here is that the combination of simplified wording and careful verbal explanations has given us a high level of confidence that the applicant who qualifies on the ASVAB is able to comprehend fully the content of DD Form 4 and Form 1966 and is personally aware of and responsible for the conditions of enlistment.

#### RECRUITER AWARDS AND INCENTIVES

*Question.* For the record, would you outline what awards and incentives are available for recruiting personnel?

*Answer.* The Recruiting Command fully appreciates the value and necessity of incentives to motivate and encourage the recruiting sales force. Unlike civilian sales forces, we cannot offer such incentives as cash bonuses, sales commissions, or prizes in the form of valuable merchandise. However, we have established the following incentives:

A structured awards system which allows recruiters to earn a variety of achievement awards over periods of time. Included among these awards are recruiter

badges, achievement stars to be worn on the recruiter badges, certificates of achievement, trophies, and a distinctive recruiter ring.

An Annual Awards program which recognizes the top recruiters in each region, based on recruiting achievements during each fiscal year.

Special Campaign awards consisting of plaques, trophies, and letters of commendation for recruiters who meet or exceed special goals established by local commanders.

The possibility of transferring to a different location after 4 years of successful recruiting at the recruiter's present location.

In addition to the above, USAREC soldiers also receive military awards authorized in the Army Awards System. Included are awards such as Good Conduct Medals, Army Commendation Medals, Meritorious Service Medals, etc.

#### QUALIFICATIONS FOR RECRUITING DUTY

*Question.* For the record, please submit the qualifications required and the selection procedures used for both officer and enlisted personnel assigned to recruiting duty.

*Follow-on.* Are there any special qualifications required and/or desired of officers assigned to USAREC? For enlisted personnel?

*Answer.* USAREC receives the highest quality of officers available within the Army. Department of the Army has established some very demanding criteria. For example, all of our commanders have had troop command experience commensurate with their grade, as well as college degrees and advanced military schooling. Staff officers assigned to the command are promotion competitive and are college graduates and most have attended their branch schools or Command and General Staff college or its equivalent.

As indicated above, there are many prerequisites which an officer must possess to be assigned to the Recruiting Command: command, military and civilian schooling, and of course promotion potential. Even more attention is paid to the selection of noncommissioned officers who volunteer for recruiting duty. Some of the criteria include a general technical aptitude area score of 110 or higher, be in grade sergeant to sergeant first class, and have not less than 2 years nor more than 16 years of service. The volunteer must have a good efficiency file, favorable national agency check, meet appropriate height and weight standards, successfully pass a board of experienced recruiting personnel, and successfully graduate from the Army Recruiter course. Only 19 out of 100 who volunteer for recruiting duty arrive at a recruiting station.

In addition, USAREC selection and interview boards evaluate applicants using a "whole person" concept to better determine each applicant's success potential as an Army recruiter. Personal qualities examined are: 1. Financial stability; 2. Emotional stability; 3. Physical fitness and appearance; 4. Family environment to include medical or physical handicaps of dependents; 5. Personality and motivation; 6. Marital harmony.

In addition, enlisted personnel classified in administrative and support skills must meet the following qualifications for assignment to USAREC;

May be volunteers or nonvolunteers, but priority is given to those who volunteer.

Must be financially and emotionally stable.

Must be in good physical health and meet prescribed Army physical fitness standards.

Must be free of any family or marital problems which would tend to detract from their duty performance.

Must have a good military record, free of any significant disciplinary actions involving matters of conduct or character.

#### AVERAGE RECRUITING STRENGTH

*Question.* Please furnish for the record the monthly average number of Army recruiting personnel authorized and assigned for fiscal year 1976, fiscal year 1977, and fiscal year 1978.

*Answer.* The monthly average number of Army recruiting personnel authorized and assigned for fiscal year 1976, fiscal year 1977, and fiscal year 1978 is listed below:

	Authorized	ASG
Fiscal year 1976:		
July 1975	6,420	6,280
August 1975	6,420	6,076
September 1975	6,420	6,051
October 1975	6,420	6,069
November 1975	6,420	6,104
December 1975	6,420	6,111
January 1976	6,420	6,130
February 1976	6,159	6,094
March 1976	6,159	6,133
April 1976	6,071	6,080
May 1976	6,071	6,057
June 1976	6,071	6,009
Average for year	6,289	6,099
Transition quarter:		
July 1976	6,065	5,907
August 1976	6,065	5,818
September 1976	6,065	5,848
Average for quarter	6,065	5,858
Fiscal year 1977:		
October 1976	6,069	5,879
November 1976	6,071	5,950
December 1976	6,071	6,124
January 1977	6,071	6,228
February 1977	6,071	6,251
March 1977	6,071	6,256
April 1977	6,071	6,242
May 1977	6,391	6,293
June 1977	6,391	6,378
July 1977	6,391	6,378
August 1977	6,391	6,486
September 1977	6,391	6,504
Average for year	6,204	6,247
Fiscal year 1978:		
October 1977	6,391	6,475
November 1977	6,391	6,478
December 1977	6,391	6,378
January 1978	6,391	6,399
February 1978	6,391	6,342
March 1978	6,406	6,320
April 1978	6,405	6,422
May 1978	6,402	6,325
June 1978	6,394	6,328
July 1978	6,394	6,347
August 1978	6,347	6,357
September 1978	6,351	6,335
Average for year	6,387	6,375

## POLICE RECORDS CHECKS

General MUNDIE. I will provide for the record, the actual regulations that apply to recruiters on checking police records: Chapter 3, Army Regulation 601-210, Regular Army Enlistment Program, and USAREC Regulations 601-56 with change 3, Waiver Processing Procedures. A copy of which is attached.

## CHAPTER 3

## WAIVABLE AND NONWAIVABLE ENLISTMENT CRITERIA

## Section I. WAIVABLE AND NONWAIVABLE DISQUALIFICATIONS

**3-1. Moral and administrative disqualifications.** Responsibility for determining whether waiver requests warrant favorable consideration rests at all levels of command. It also includes the questioning, investigation, counseling, acquisition of appropriate documentation, and information required to be included in a waiver request.

*a.* Appendix A lists nonwaivable disqualifications.

*b.* Appendix B lists nonwaivable disqualifying separations. Persons separated from any

Armed Force, or its Reserve component, whose separation documents contain disqualifying reenlistment eligibility codes or entries in this appendix will not be considered for waiver.

*c.* Appendix C lists disqualifications for which waiver may be submitted.

*d.* For prior service personnel, only those disqualifications occurring during and subsequent to the last period of service and those not previously revealed are considered disqualifying.

## Section II. WAIVERS OF ENLISTMENT ELIGIBILITY CRITERIA

**3-2. General.** This section prescribes the procedures by which requests for waiver will be initiated and processed to meet the basic qualifications for enlistment.

**3-3. Submission of requests.** *a.* All requests for waiver and other actions requiring approval by the CG MILPERCEN, as set forth in this chapter, will be forwarded to the Commander, US Army Enlistment Eligibility Activity, 9700 Page Boulevard, St. Louis, MO 63132, unless otherwise indicated. Moral waivers will be forwarded, through the chain-of-command within USAREC prior to submission, to Cdr USAEEA.

*b.* The Commander, US Army Enlistment Eligibility Activity (USAEEA), has the authority to act in behalf of the Commanding General, US Army Military Personnel Center (MILPERCEN), in processing, approving, and disapproving waivers for enlistment that are listed in

tables 3-1 and 3-4 of this regulation, unless otherwise specified by the CG MILPERCEN.

**3-4. Waiver disapproval authority.** The responsibility for determining whether a waiver request warrants favorable consideration rests at all levels. Commanders below the approving authority, to include commissioned area commanders, may disapprove waivers for applicants not meeting the prescribed standards.

**3-5. Validity period.** Unless otherwise stated in the waiver document, waivers granted under the provisions of this chapter are valid for six months from the date of issue unless there is a change in status, with the exception of DEP personnel, in which cases waivers are valid until enlistment in the Regular Army, if there is no change in qualifications. Personnel who acquired additional offenses or disqualifications after waiver approval will be required to resubmit the waiver for reconsideration prior to being enlisted.

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## 3-6. Administrative instructions.

a. Requests for waiver. Requests for waiver will be submitted on the appropriate form, as shown below.

(1) Nonprior service personnel with civil convictions or adverse juvenile adjudications DA Form 2981 (Application for Determination of Moral Eligibility for Induction). DD Form 1966 and Documents as applicable in table 3-3.

(2) All others. DA Form 3072-1 (Request for Waiver of Disqualification for Enlistment in the Regular Army for Personnel Applying from Civilian Life), DD Form 1966, and additionally for prior service personnel, latest DD Form 214, (or GSA Form 6851 or DA Form 1569 obtained in lieu of DA Form 214 in accordance with paragraph 4-24) and DA Form 3286a, as applicable for the involving civil court conviction or adverse juvenile adjudications, the information required by DA Form 2981 will be reflected in the remarks section of DA Form 3072-1 or in an inclosure to this form.

## b. Record entries.

(1) Complete item 20e, sections II and VII, DD Form 1966, as applicable.

(2) When enlistment has been accomplished, a notation of the waiver granted will be made in remarks, item 41, on all copies of DD Form 1966.

(3) A copy of the waiver document, together with any documentary evidence on which the waiver was predicated, will be attached to the original copy of DD Form 4.

3-7. Waiver approval procedures, a Table 3-1 provides waiver approval authorities for basic eligibility criteria, documentation, and waiting periods required.

b. Table 3-2 prescribes waiting periods required following civil restraint before waiver request may be submitted.

c. Table 3-3 prescribes documents required to support requests for moral waivers for enlistment.

d. Table 3-4 provides waiver approval authority for moral waivers.

3-8. Other waiver recommendations. When no specific procedures for waiver of basic eligibility criterion or restriction contained elsewhere in this regulation, has been prescribed by this regulation; personnel who do not qualify for enlistment but who appear to offer significant potential for productive Army service may be recommended by the commissioned area commander.

a. Requests for waiver under the provisions of this paragraph will be submitted through command channels to Cdr USAEEA.

b. All such requests for waiver will be justified fully.

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Table 3-1. Waiver Approval Authorities--Basic Eligibility Criteria  
 (Approval authority, as shown in this table, cannot be further delegated)  
 (See Table 3-4 for Approval Authorities for Civil Offenses)

LINE	DISQUALIFICATION	APPROVAL AUTHORITY	MINIMUM DOCUMENTATION REQUIRED
A	Medical 1. Nonprior Service 2. Prior Service	1. CG, USAREC 2. CG, MILPERCEN	1. DA Form 3072-1. *2. Original SF 88 and SF 93. 3. Detailed description and current evaluation of the medical defect requiring waiver. 4. DD Form 214 for prior service.
*A-1	Underweight or overweight.  1. Nonprior Service  2. Prior Service	1. AFEES Senior Medical Officer  2. None. Prior service applicants enlisting in the DEP or active Army must meet the weight standards of AR 600-9. No waivers are authorized	1. Waivers are authorized for enlistment into the DEP and Regular Army for applicants who are found 5 pounds under or over the weight standards in AR 40-501. The waiver applies to all skills, except programs which lead to a commission or appointment. 2. When a waiver is granted, it will be entered in item 73, SF 88 (Report of Medical Examination), as follows:

(Next page is 3-3)

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LINE	DISQUALIFICATION	APPROVAL AUTHORITY	MINIMUM DOCUMENTATION REQUIRED
			<p>a. "Per table 3-1, AR 601-210, Subject: Waiver Authority for Overweight or Underweight Applicants, granted for ___ pounds overweight/underweight" (use applicable category).</p> <p>b. This will be authenticated by the AFEES commander or the chief medical officer, if authorized by the commander.</p> <p>c. A profile of "3R" will be entered under the "P" in item 76, SF 88.</p> <p>3. Waivers will be granted only in those cases where it can be reasonably expected that the applicant will lose or gain the weight prior to completion of basic (combat) training.</p>
B	Dependents/responsibility for other persons (rule F and footnote to table 2-1 apply)	CG MILPERCEN	<p>1. DA Form 3072-1.</p> <p>2. Documentation substantiating that dependents or persons for whom responsibility is exercised will not suffer hardship from loss of care, supervision, or financial support. (Obtain statement from spouse when involved.)</p> <p>3. Financial statement, to include all assets and liabilities and projected earnings of spouse, dependents and persons for whom responsibility is exercised, should any of these persons be qualified for and intend to work (see DA Form 3072-2).</p> <p>4. Divorce decree, if applicable.</p>
C	<p>AWOL/Lost Time</p> <p>1-5 days</p> <p>6-15 days</p> <p>* Over 15 days</p>	<p>Cdr DRC</p> <p>Cdr DRC</p> <p>CG MILPERCEN</p>	<p>1. DA Form 3072-1.</p> <p>2. Documentation as prescribed by approving authority.</p> <p>1. DA Form 3072-1.</p> <p>2. Letters of recommendation from at least three citizens of the applicant's community, excluding personal friends and relatives, attesting to the individuals standing in the community both before and after military service.</p> <p>3. Evidence of completion of civilian schooling, if any since last separated from active duty.</p> <p>4. Explanation of all periods of unemployment of three or more months duration since last separated from active duty.</p> <p>*1. Same as for 6-15 days. (Note: Requests for waiver may not be submitted until a 2 year period has elapsed since day of last AWOL/Lost Time.)</p>
D	Previous discharge for dependency or hardship	CG MILPERCEN	<p>1. DA Form 3072-1.</p> <p>2. Proof that the condition for which discharged no longer exists; proof will be in the form of affidavit, or sworn statements executed by the person or persons in whose behalf the individual was discharged or another member of the community who is thoroughly familiar with the home conditions of the applicant's family; the facilities of Selective Service or the American Red Cross will not be used to secure this evidence.</p>

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LINE	DISQUALIFICATION	APPROVAL AUTHORITY	MINIMUM DOCUMENTATION REQUIRED
			3. Financial statement, to include all assets and liabilities and statement of current monthly expenses.
E	Waiver of limitation to three-year enlistment (see line C, table 2-4)	Waiver approval authority	1. DA Form 3072-1 or DA Form 2981. 2. Documentation to support enlistment for a longer period than three years.
F	Last separated from any of the Armed Forces on the basis of being a sole surviving person and family member or applying for enlistment for the first time	CG USAREC	1. DA Form 3072-1. 2. A statement, signed by the applicant, requesting that the sole surviving person designation be withdrawn and acknowledgement of availability for worldwide assignment including assignment to a combat zone and future requests for separation or for establishment of assignment limitations as a sole surviving person will not be honored.
G	Previous conscientious objectors who are no longer conscientious objectors 1. Nonprior Service 2. Prior Service	1. CG USAREC 2. CG MILPERCEN	1. DA Form 3072-1. 2. A statement, notarized or witnessed by a commissioned officer, signed by the applicant, announcing without qualification that he is no longer a conscientious objector and acknowledging his availability for combat duties, if needed, and for worldwide assignment, including assignment to a combat zone. (Line S, App C)
H	Received one or more convictions by military courts-martial during last period of active service or was discharged with disqualifications (e.g., unsuitability, conviction by civil court, resignation for good of service, misconduct, fraudulent enlistment, or bar to reenlistment)	CG MILPERCEN	1. DA Form 3072-1. 2. Police clearances (DD Form 369) obtained in accordance with table 4-1. 3. Letters of reference from all employers since last separated from active duty. 4. Explanation of all periods of unemployment of three or more months duration since last separated from active duty. 5. Evidence (including transcripts, as appropriate) of completion of civilian schooling, if any, since last separated from active duty. 6. Letters of recommendation from at least three reputable citizens of the applicant's community, excluding personal friends and relatives, attesting to the individual's standing in the community since last period of military service. <i>(Note: Requests for waiver may not be submitted until a 2-year period has elapsed since the date of conviction, or unconditional release from confinement, probation, or parole, whichever is later; furthermore, applicants who received a disqualifying discharge must wait two years from date of discharge.)</i>
*I	Desires to be enlisted as conscientious objector. 1. Nonprior Service 2. Prior Service	1. CG, USAREC 2. CG, MILPERCEN	1. DA Form 3072-1. *2. See note at end of this table, and Line Z, App C.

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LINE	DISQUALIFICATION	APPROVAL AUTHORITY	MINIMUM DOCUMENTATION REQUIRED
J	Was denied reenlistment at time of last separation from active Service under Qualitative Screening Process unless coded RE-4	CG MILPERCEN	<ol style="list-style-type: none"> <li>1. DA Form 3072-1.</li> <li>2. Evidence (including transcripts as appropriate) of completion of civilian schooling, if any, since last separated from active duty.</li> <li>3. Letters of reference from all employers since last separated from active duty.            Note: Requests for waiver may not be submitted until a 2-year period has elapsed since discharge.)</li> </ol>
K	Prior grade and service (see rule H, table 2-1)	CG MILPERCEN	<ol style="list-style-type: none"> <li>1. DA Form 3072-1.</li> <li>2. Letters of reference from all employers since last separated from active duty and evidence (including transcripts as appropriate) of completion of civilian schooling, if any, since last separated from active duty.</li> </ol>
L	Discharged under the Trainee Discharge program or Expeditious Discharge program	CG MILPERCEN	<ol style="list-style-type: none"> <li>1. DA Form 3072-1.</li> <li>2. Letters of reference from all employers since last separated from active duty.</li> <li>3. Explanation of all periods of unemployment of three or more months duration since last separated from active duty.</li> <li>4. Letters of recommendation from at least three reputable citizens of the community, excluding personal friends and relatives, attesting to the individual's standing in the community after completion of last period of military service.            (Note: Request for waiver may not be submitted until a two-year period has elapsed since discharge.)</li> </ol>
* M	Evaluation score below 70 on MOS proficiency test, or below 60 on the Skill Qualification Test.	CG MILPERCEN	<ol style="list-style-type: none"> <li>1. Same as for Line J.            (Note: Requests for waiver may not be submitted until a 6-month period has elapsed since discharge.)</li> </ol>

LINE	DISQUALIFICATION	APPROVAL AUTHORITY	MINIMUM DOCUMENTATION REQUIRED
N	Persons whose DD Form 214 contains no PMOS evaluation score	CG MILPERCEN (Year Group Management)	<ol style="list-style-type: none"> <li>1. Applicants separated from active duty after 30 June 1975 with over 24 months service whose DD Form 214 does not indicate a PMOS test score, who are otherwise qualified for enlistment without waiver, will be telephoned to the Year Group Management (YGMO) for approval. There is no prescribed waiting period following separation before application can be submitted.</li> <li>2. Qualified applicants with 24 months and less service will not be referred to YGMO.</li> </ol>
O	Persons who were enrolled in the Alcohol and Drug Abuse Prevention and Control Program (ADAPCP) at time of last separation from active service	CG MILPERCEN	<ol style="list-style-type: none"> <li>1. Same as for Line A. (Note: Waivers are not required for persons who voluntarily enroll and successfully complete the action phase of ADAPCP, providing they are otherwise qualified and 6 months has elapsed since completion of the active phase.)</li> </ol>

## NOTE:

Individuals who desire to enlist as noncombatant conscientious objectors will be advised to obtain letters that substantiate the claim, provided the information required by Appendix A, AR 600-43, and submit a personal letter expressing the individual's desire to enlist in the Army. The DRC will send the applicant's documentation and a DA Form 3072-1 to HQDA (DAPC-EPA-A-S), Alexandria, VA. 22332. The case will be reviewed for an advisory opinion. Upon review and determination, an advisory opinion will be rendered and the application forwarded to Cdr, USAREC (USARCRM-M) for NPS, and to CG, MILPERCEN (Enlistment Eligibility Activity, ATTN: EPEEA) for PS for final approval or disapproval for enlistment as a noncombatant conscientious objector. No individual who desires to enlist as a noncombatant conscientious objector will be permitted to enlist until a favorable advisory opinion has been rendered.

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APPLICANT'S MONTHLY FINANCIAL STATEMENT		DATE
For use of this form, see AR 601-210, the proponent agency is ODCSPER.		
1. LAST NAME, FIRST NAME, MIDDLE INITIAL		2. RESIDENCE OF DEPENDENTS WHILE SEPARATED FROM APPLICANT
<b>3. CURRENT INCOME</b> SALARY <sup>1</sup> \$ _____ OTHER INCOME (Current) <sup>2</sup> \$ _____ SOURCE _____ OTHER INCOME (If Enlisted) <sup>3</sup> \$ _____ SOURCE _____		
4a. LIABILITIES TO APPLY AGAINST ABOVE INCOME		4 b. LIABILITIES TO APPLY AGAINST MILITARY INCOME
RENT \$ _____	RENT OR HOUSE NOTES \$ _____	
UTILITIES _____	UTILITIES _____	
FOOD _____	FOOD _____	
MEDICAL _____	CLOTHING _____	
CLOTHING _____	INSURANCE (Life) _____	
INSURANCE (Life) _____	INSURANCE (Auto) _____	
INSURANCE (Auto) _____	CAR OPERATING EXPENSE _____	
CAR OPERATING EXPENSE _____	CAR NOTES _____	
CAR NOTES _____	PAYMENT ON OTHER DEBTS <sup>4</sup> _____	
PAYMENT ON OTHER DEBTS <sup>4</sup> _____	OTHER INDEBTEDNESS OF FINANCIAL OBLIGATIONS _____	
OTHER INDEBTEDNESS OR FIN. OBLIG. _____	TOTAL \$ _____	
TOTAL \$ _____	TOTAL \$ _____	
<b>5. ASSETS</b>		
SAVINGS \$ _____	ROOMS OF FURNITURE OWNED _____	
BONDS, STOCKS, ETC. _____	NUMBER OF VEHICLES _____	
FURNITURE _____	_____	
MOTOR VEHICLES _____	_____	
OTHER ASSETS _____	_____	
TOTAL \$ _____	_____	
6. ADDITIONAL INFORMATION OR REMARKS (In the event a move of dependents is indicated, include information as to disposition of furniture if applicable, any other information you feel is pertinent to your current and future financial stability)		
The above is true to the best of my knowledge, and includes all current and known future obligations and/or demands against my income.		
WITNESSED		SIGNATURE OF APPLICANT
<sup>1</sup> If applicant is currently unemployed, indicate salary for last employment and employment termination date. <sup>2</sup> Indicate additional current monthly income including spouse's salary, if employed. If income is from more than one source, indicate each source and amount of that source. <sup>3</sup> Indicate anticipated income other than military salary if enlistment is approved. <sup>4</sup> See Item 23, DA Form 3072-1.		

DA FORM 3072-2, 1 JUL 75

PREVIOUS EDITION IS OBSOLETE.

Figure 3-1

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## Section III. CIVIL OFFENSES

3-9. Moral standards. Moral standards for enlistment deal generally with the acceptability of persons with records of court convictions or adverse juvenile adjudications. They are designed to screen out persons who are likely to become serious disciplinary cases and would thus divert resources from the performance of military missions. Applicants will be advised that all arrests, convictions, or adverse juvenile adjudications are required to be revealed regardless of whether a waiver would be required under this regulation.

3-10. Waivers of moral standards.

a. Waivers of moral standards may be granted for applicants for enlistment who have court convictions or adverse juvenile adjudications listed below.

(1) Persons convicted of multiple traffic offenses (line C, app C).

(2) Persons convicted of minor nontraffic offenses (line D, app C).

(3) Persons convicted of misdemeanors (line E, app C).

(4) Persons convicted of juvenile felony offenses (line F, app C, and para 3-11b(2)).

(5) Persons convicted of adult felony offenses (line H, app C, and para 3-11b(2)).

\*b. Appendixes D-G give a listing of offenses and are used in conjunction with para 3-10a above. Guidance furnished in the headnotes of the appendixes pertaining to doubtful cases and applying state laws will only be used if no similar offense is contained in any of the offenses. Regardless of what an offense is classified under state law and what the maximum punishment is, if the offense is listed under one of the appendixes, it will be classified that type of offenses. Attempted offenses will be classified in the same category as it would be if the individual had succeeded in the attempt (i.e., attempted possession of stolen property value \$100 or less, offense would be categorized as a misdemeanor under stolen property knowingly received (value \$100 or less)).

\*c. Persons applying for a waiver of an adult felony conviction will provide evidence of satisfactory rehabilitation and documentation to support a meritorious case.

3-11. Rules governing processing of moral waivers.

\*a. All offenses must be listed in item 40 (Involvement with Police

Judicial Authorities), DD Form 1966 (Application for Enlistment-- Armed Forces of the United States) regardless of subsequent proceedings; i.e., found guilty, dismissed, etc. If an individual was arrested, cited, charged or held for an offense or offenses and allowed to plead guilty to a lesser offense, the original charges will be listed along with the offense(s) individual pleaded guilty to (i.e., arrested for grand larceny and criminal possession of stolen property (value \$100 or less), pleaded guilty to criminal possession of stolen property (value \$100 or less). Individual requires misdemeanor waiver). A waiver is not required on the basis of an arrest or questioning not resulting in preferral of charges, or when charges are dismissed without determination of guilt. A waiver is not authorized if a criminal or juvenile court charge is pending or if such a charge was dismissed or dropped at any stage of the court proceedings on condition that the offender enlist in a military service (line K and footnote, app A).

b. To insure equitable treatment for all persons applying for enlistment in the Regular Army, notwithstanding the wide variance among the statutes of the several States from which they may apply, the following rules are furnished for the guidance of those responsible for waiver processing.

(1) Expunging of the record. In some states there are procedures established for a subsequent "expunging of the record," dismissal of charges, or pardon (upon evidence of rehabilitation of the offender) and such action has the effect of extinguishing the "initial conviction"

or "adverse juvenile adjudication" so that, under State law, the applicant has no record of conviction or adverse juvenile adjudication. Notwithstanding the legal effect of this action, a waiver to authorize the Regular Army enlistment of such an applicant is required and the record is required to be revealed.

(2) Juvenile and youthful offenses. For the purpose of determining eligibility for Regular Army enlistment, a juvenile or youthful offense is defined as an offense committed by the applicant when below the age at which that individual could enlist in the Regular Army without parental consent. Offenses committed while below the age of 18, are considered juvenile or youthful offenses regardless of disposition by civil authorities. For example, a juvenile felony, as used in this regulation, is a felony (defined in app G) committed by an applicant while below the age of 18, regardless of whether the determination was made by civil court conviction or adverse juvenile adjudication. Conversely, an adult felony, as used herein, is a felony offense committed by an applicant while 18 years or older regardless of the type of court that made the determination. For offenses not listed in appendix G, the offense will be treated as a felony for adults and juveniles if the maximum confinement under local law exceeds one year for adults who commit the offense.

(3) Civil court conviction. This term will be construed to mean the determination of guilty by a court (or a jury), based either on the merits of the case, or on the defendant's plea of guilty or nolo contendere, regardless of--

(a) Whether sentence was then imposed, withheld or suspended.

(b) Subsequent proceedings in the case to delete an initial determination of guilt from court records, based on

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evidence of rehabilitation or completion of a satisfactory probationary period. Examples of subsequent proceedings used throughout the United States in adult offender cases include pardon, expungement, reopening of the case to change the original finding of guilty or nolo contendere to not guilty and to dismiss the charge; amnesty; and setting aside the conviction. These subsequent proceedings merely recognize rehabilitation and do not alter the fact that the offender committed the criminal act.

4. Adverse juvenile adjudication. This term--

(a) Will be construed to mean that a judge or a jury in juvenile court proceedings determined that the juvenile was guilty of or committed the acts alleged in the petition or complaint, based either on the merits of the complaint or on the juvenile's admission of guilt or plea of guilty, and that the determination was recorded in the court records.

(b) Applies, regardless of whether sentence was then imposed, withheld, or suspended; and, regardless of subsequent proceedings in the same case to delete an initial determination of guilt from court records, based on evidence of rehabilitation or a satisfactory period of probation or supervision. Examples of subsequent proceedings used in juvenile courts in the United States include expungement, record sealing, reopening the case to change the original findings of guilty or delinquency, or

the plea of guilty or admission of the truth of the allegation in the petition--to not guilty and dismissal of the original petition and setting aside the adjudication of delinquency. These subsequent proceedings merely recognize rehabilitation and do not alter the fact that the juvenile committed the act for which he was adjudicated.

(c) Includes adjudication as a juvenile delinquent, wayward minor, youthful offender, delinquent child or juvenile offender and declaration of the juvenile as a ward of the court. The term does not include the adjudication of the juvenile as dependent, neglected, or abandoned.

(5) Unconditional suspended sentence and unsupervised unconditional probation. The terms "unconditional suspended sentence" and "unsupervised unconditional probation" are defined as suspended sentence or probationary status imposed by a court that places no condition upon the individual--

(a) Regarding individual's freedom of movement.

(b) Requiring the payment of damages (if paid, this requirement is not then a bar to waiver consideration).

(c) Requiring periodic reporting by individuals to an officer of the court (to include a probation officer).

(d) Involving supervision by an officer of the court (including a probation officer). For example, a sentence suspended on sole condition that the offender must not commit a like offense in the next 12 months would not bar waiver consideration.

(6) For prior service personnel. Although all offenses committed by the

applicant must be listed, only those offenses committed during and/or subsequent to the last period of honorable service, and/or those not previously revealed, require a waiver. In the case of Reserve Component personnel of any service, a waiver is required for all offenses shown that require a waiver regardless of whether a waiver was authorized for entry into the Reserve Component or not. Waivers granted for entry into the Reserve Components are not valid for Army enlistment.

3-12. Waiting period. The purpose of a waiting period following release from civil restraint is to give the individual an opportunity to demonstrate a satisfactory adjustment and to provide the Army with a basis for judging the extent of the applicant's rehabilitation before enlistment. For prior service personnel waiting periods prescribed in table 3-2 apply only to offenses and periods of confinement since the date of last separation from active military service.

3-13. Required investigations. If the applicant admits to a record (to include arrests, charges, juvenile court adjudications, and convictions) or if the applicant does not admit to one, and the enlisting agency has

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reasons to believe such a record does exist enlistment action will be held in abeyance pending a complete investigation of the facts in the case.

\*a. If the individual admits to an arrest record, with subsequent conviction or adjudication, and civil authorities refuse to furnish the information, there is no record of the information, or the applicant is unable to obtain the records, then a waiver will be submitted as a self-admitted or alleged record if such offenses require a waiver under Appendix C. If the individual admits to an arrest record, but states that no conviction or adjudication occurred, and civil authorities refuse to furnish the information, there is no record of the information, or the applicant is unable to obtain the records, a waiver to permit enlistment is not required.

\*b. The investigation will include the documents listed in table 3-3 and the police clearance prescribed in action 5, table 4-1 (police records checks will be run on all admitted offenses regardless of disposition except for minor traffic offenses) and, except in applications for waiver of an adult felony offense, any other documents the CG USAREC may require. In the case of waiver requests, police records checks will be made with the municipal, county, and State law enforcement officials for each community in which the applicant alleges or other sources reveal that the individual was charged with a law violation or act of delinquency and where the individual resided. Checks will be made with the courts, probation departments, State juvenile correctional facilities, and parole officers concerned with any offense alleged by the applicant or revealed by a police records check or other sources to determine disposition of charges, conditions on which sentences were suspended, the inclusive dates of probation, confinement or commitment, and parole.

\*c. If all civil restraint (except that exempt by line G, app C) has been terminated and there is substantial evidence of rehabilitation as a law-abiding member of a civil community, the applicant may be processed for enlistment.

d. Recruiting personnel will not participate directly or indirectly in the release of an individual from a pending charge in order that he may enlist in the Army as an alternative to further prosecution or further juvenile court proceedings. Equally important, recruiting personnel will in no

way contribute, either tacitly or expressly to the false notion that the Army condones such a practice. Since persons who are subject to a pending charge are not eligible for enlistment, they are not eligible for preenlistment processing to determine their mental and medical eligibility.

e. Recruitment personnel will not participate in any way in securing the release of an individual from any type of civil restraint in order that he may enlist or accomplish reenlistment processing to determine his enlistment eligibility. The term "civil restraint" includes confinement, probation, parole, and suspended sentence (see line K and footnote, app A). Accordingly, persons under the type of civil restraint that renders them ineligible for enlistment are not eligible for preenlistment processing to determine their mental and medical eligibility for enlistment.

3-41. Moral waiver procedures.

a. Requests for waivers that are recommended for approval by a commander but are beyond his approval authority will be forwarded to the next higher commander for consideration. Authority to determine whether a request for waiver is meritorious rests at all levels of command. Waiver requests not determined sufficiently meritorious to warrant a recommendation for approval will be disapproved by the considering commander.

b. Rescinded.

c. Only the commander or, in his absence, the second in command will approve and sign waivers. The second in command or, in his absence, the adjutant or assistant adjutant may sign disapprovals or forward recommendations of approval for further consideration of requests for waivers, except that adjutants or assistant adjutants are not authorized to sign for commanders in cases involving an adult felony. This authority will not be further delegated.

d. Cases requiring Department of the Army approval will be forwarded through channels to the following addresses for:

(1) Applicants for Officer Candidate School (OCS) enlistment option and warrant officer flight training (WOFT) (see table 3-4).

(2) All others: Commander, US Army Enlistment Eligibility Activity, 9700 Page Boulevard, St. Louis, MO 63132.

Table 3-2. Waiting Periods Following Civil Restraint before Waiver Requests May Be Submitted

LINE	TYPE OF CIVIL RESTRAINT	WAITING PERIOD REQUIRED
A	Parole, probation, or suspended sentence.	If the civil restraint is as defined in paragraph 3-11b(5), no waiting period is required. Otherwise, a waiver request may not be submitted until period of civil restraint has been concluded.
B	Confinement of a juvenile or adult for less than 15 days.	A minimum of two weeks and a maximum of up to two months, as considered necessary by the district recruiting command (DRC) commander concerned.
* C	Confinement of an adult for 15 days or more.	Three-month waiting period. (See Note 4.)
D	Confinement of a juvenile for 15 days or more.	A minimum of one month and a maximum of up to three months, as considered necessary by the DRC commander concerned.

Table 3-3. Documents Required to Support a Request for Moral Waiver for Enlistment

LINE	DOCUMENTS REQUIRED	OFFENSE FOR WHICH DOCUMENT REQUIRED (INDICATED BY "X") (Refer to note 1 following this table).				
		Minor Traffic	Minor Nontraffic	Misde-meanor	Juvenile Felony	Adult Felony
A	Favorable reports from a probation or parole officer which reflect that the applicant has performed satisfactorily while in a probation or parole status (see note 2).			X	X	X
* B	Favorable reports from correctional facility officers (see note 2).		X	X	X	X
C	Favorable reports from employers 1 year preceding application (see note 3). (DD Form 370).		X	X	X	X
D	Favorable reports from schools attended in the last 2 years and grade transcripts, if attending college. (DD Form 370).		X	X	X	X
E	Comments from at least three reliable members of the civilian community in which the applicant has resided since conviction or adjudication (e.g., educators, minister, and doctors) reflecting that the applicant has been a law-abiding, trustworthy, and reliable citizen. (Reliable member of the civilian community will not include a relative of the applicant.) (DD Form 370).			X	X	X
F	Recommendation from the recruiter in the "Remarks" section of DA Form 2981 or DA Form 3072-1 as to the applicant's motivation for service and potential to become a satisfactory member of the military community.	X	X	X	X	X
G	All reports received from law enforcement agencies as required by paragraph 3-13b.	X	X	X	X	X

## Notes:

- Offenses include those involving confinement, probation, or parole and those not involving confinement, probation, or parole (including unsupervised unconditional probation and unconditional suspended sentence). In cases of multiple offenses, documentation will support a waiver of the most serious offenses.
- Lines A and B apply only to offenses involving confinement, probation, or parole.
- If a request for reports in line C will jeopardize employment, a report is not required.
- \*4. DRC Cdr may waive this waiting period if the applicant was sentenced to either pay a fine or, in the alternative, a period of confinement. Written verification from the court imposing confinement is required.

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Table 3-4. Waiver Approval Authorities—Civil Offenses

LINE	OFFENSE	ENLISTED WAIVER APPROVAL AUTHORITY		
		Applicants	OCS Applicants	WOFT Applicants
A	Minor traffic offense (line C, app C)	CDR, Recruiting Area	CDR DRC <sup>1</sup>	CDR DRC
B	Minor nontraffic offenses (line D, app C).	CDR, Recruiting Area	CDR DRC <sup>1</sup>	CDR DRC <sup>2</sup>
C	Misdemeanor (line E, app C).	CDR DRC	CDR RRC <sup>1</sup>	CDR RRC <sup>2</sup>
D	Juvenile Felonies (line F, app C).	CG USAREC	CG MILPERCEN <sup>1</sup>	CG USAREC <sup>2</sup>
E	Adult Felonies (line H, app C).	CG MILPERCEN	CG MILPERCEN	CG MILPERCEN <sup>2</sup>
F	Civil restraint consisting of un- conditional suspended sentence or unconditional unsupervised proba- tion.	Approval authority indicated in lines A through E for the specific offenses involved.		

*Notes:*

<sup>1</sup> Cases involving confinement, whether or not suspended; a fine over \$50; offense number 14, appendix E; or offense number 1, 3, 7, or 11, appendix F, will be forwarded to HQDA (DAFC-OPD-PA-P) 200 Stovall Street, Alexandria, VA 22332.

<sup>2</sup> Cases approved for enlistment will be coordinated by telephone with CG RCPAC (AGUZ-PAD DP) (AUTOVON 698-7398; or commercial line 314-268-7398) to determine whether or not the disqualification would preclude an appointment as a warrant officer in the Army Reserve.

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USAREC Reg 601-56  
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DEPARTMENT OF THE ARMY  
HEADQUARTERS UNITED STATES ARMY RECRUITING COMMAND  
FORT SHERIDAN, ILLINOIS 60037

Change 3

28 December 1977

Personnel Procurement  
WAIVER PROCESSING PROCEDURES

USAREC Reg 601-56, 12 September 1977, is changed as follows:

- |                            |                         |
|----------------------------|-------------------------|
| ✓1. <u>Remove old page</u> | <u>Insert new pages</u> |
| 9                          | 9 & 10                  |
| I-1                        | I-1                     |
- ✓2. Appendix F. Delete MOS 71M under the "P" and "L" profile factors. Delete MOS 26K under the "P" profile factor. Add MOS 26E under the "P" and "L" profile factors.
- ✓3. File this change sheet in front of the publication for reference purposes.

The proponent agency of this regulation is the Office of the Director of Recruiting Management. Users are invited to send comments to Cdr, USAREC, ATTN: USARCRM-M-PO, Ft Sheridan, IL 60037.

FOR THE COMMANDER:



JOHN A. FOSTER  
Colonel, GS  
Director, Recruiting Force Management

SHIRLEY R. HEINZE  
Colonel, GS  
Chief of Staff

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24 OCT 1977  
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USAREC Reg 601-56

C 2

DEPARTMENT OF THE ARMY  
HEADQUARTERS UNITED STATES ARMY RECRUITING COMMAND  
FORT SHERIDAN, ILLINOIS 60037

Change 2

19 October 1977

Personnel Procurement  
WAIVER PROCESSING PROCEDURES

USAREC Reg 601-56, 12 September 1977, is changed as follows:

- ✓1. Page H-4. Change "USAREC Form 457-Rev 12 Sep 77" to read "USAREC Form 457-R, Rev 12 Sep 77."
- ✓2. File this change sheet in front of regulation for reference purposes.

The proponent agency of this regulation is the Office of the Director of Recruiting Management. Users are invited to send comments to Cdr, USAREC, ATTN: USARCRM-M, Ft Sheridan, IL 60037.

FOR THE COMMANDER:



SHIRLEY R. HEINZE  
Colonel, GS  
Chief of Staff

Director, Recruiting Force Management

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USAREC Reg 601-56  
C 1DEPARTMENT OF THE ARMY  
HEADQUARTERS UNITED STATES ARMY RECRUITING COMMAND  
FORT SHERIDAN, ILLINOIS 60037

Change 1

11 October 1977

Personnel Procurement  
WAIVER PROCESSING PROCEDURES

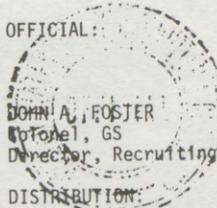
USAREC Regulation 601-56, 12 September 1977, is changed as follows:

1. Para 7b, page 3--change USAREC FL 363-R to USAREC FL 112-R.
2. Para 12b, page 9--change USAREC FL 364-R to USAREC FL 113-R.
3. Remove old pages Insert new pages  
L-1 and L-2 L-1 and L-2
4. File this change sheet in front of the publication for reference purposes.

The proponent agency of this regulation is the Office of the Director, Recruiting Management. Users are invited to send comments to Cdr, USAREC, ATTN: USARCRM-M-PO, Ft Sheridan, IL 60037.

FOR THE COMMANDER:

OFFICIAL:



JOHN A. FOSTER  
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USAREC Reg 601-56

DEPARTMENT OF THE ARMY  
HEADQUARTERS UNITED STATES ARMY RECRUITING COMMAND  
FORT SHERIDAN, ILLINOIS 60037

USAREC Regulation  
No. 601-56

12 September 1977

Personnel Procurement  
WAIVER PROCESSING PROCEDURES

Issue of further supplements to this regulation by regional commanders is permitted, as required. If supplements are issued, one copy will be furnished the Cdr, USAREC, ATTN: USARCRM-M (Policy Branch), Ft Sheridan, IL 60037.

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1. PURPOSE. This regulation contains instructions for processing waiver applications to determine eligibility for enlistment.

2. SCOPE. This regulation is applicable to all elements of this Command.

\*This regulation supersedes USAREC Regulation 601-56, 24 September 1976; letter, this Headquarters, USARCRM-M, 15 May 1975, subject: Exception to Fraudulent Entry; letter this Headquarters, USARCRM-M, 5 August 1976, subject: Height Standards for MOS 95B; and letter, this Headquarters, USARCRM-M, 5 August 1976, subject: Waivers for Enlistment in MOS 95B.

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3. POLICY.

a. Moral Waivers. Moral waivers for enlistment require documentation that a meritorious case exists to warrant an exception to the standards established in AR 601-210. Moral waiver processing procedures are aimed at identifying and screening applicants who could present disciplinary problems. One or more convictions of a felony pose a serious question as to an applicant's fitness for service, as does an excessive number of minor traffic offenses. Such applicants are likely to become serious disciplinary problems and could divert resources from performance of military missions. All commanders are charged with the responsibility of recommending/approving waivers for applicants who, to the satisfaction of the commander concerned, have been rehabilitated, who are good risks from a moral standpoint, and who possess a documented, meritorious waiver request. It is the applicant's responsibility to obtain the required documentation.

b. Medical Waivers. Physical standards are established to measure physical fitness of candidates for enlistment as well as to establish minimum physical requirements for retention. The objective is to procure and retain personnel who are physically fit and temperamentally adaptable to the conditions of military life. This is intended to preclude from enlistment those individuals who present contagious or infectious disease which would be likely to endanger the health of other personnel; those who are likely to require repeated admissions to sick call, prolonged hospitalization, or invaliding from service; and those who present any conditions which would be likely to form the basis of a claim for physical retirement benefits. When a defect is considered to be disqualifying in accordance with the standards set forth in chapter 2, AR 40-501, but is of such nature as not to preclude the performance of duty and the applicant appears to offer significant potential for productive Army service, a waiver may be recommended by the AFEES physician and submitted by the district recruiting command (DRC).

c. Other waivers. Table 3-1, AR 601-210 covers waiver approval authority and minimum documentation required on other waiver applicants for basic eligibility. In some cases, personnel may not qualify for a specific option but appear to be exceptionally qualified for enlistment. These applicants may warrant an exception to the enlistment standards and a waiver application may be submitted in accordance with paragraph 3-8, AR 601-210. Waivers for enlistment into MOS 95B fall into this category. Although the current AR 611-201 does not include provisions for enlistment waivers for MOS 95B, HQDA has provided for the submission of waivers for all prerequisites except civil court convictions. All requests for waivers should be forwarded to the appropriate headquarters exercising approval authority as outlined in table 3-1, AR 601-210. HQDA will consider military police (MP) height waivers of 1 inch in height providing the individual is otherwise qualified. Waivers for up to 2 inches will be considered on an individual case basis for individuals with 2-years experience or education in the law enforcement field. Requests for MP height waivers will be submitted from the DRC to this Headquarters, ATTN: USARCRM-M.

d. Upgraded Vietnam Era Discharges. Guidance for the submission of waivers on individuals from the Vietnam era whose discharges have been upgraded by discharge review boards is at appendix L.

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4. RESPONSIBILITIES. Recruiting Management Directorate, HQ USAREC is responsible for processing moral waivers, MOS recommendations (after approval of medical waiver), and waivers for exceptionally qualified individuals and those disqualifications listed in table 3-1, AR 601-210 which designate HQ USAREC as the approval authority. RRC and DRC commanders will designate waiver processing personnel within their respective headquarters.

5. STANDARDS. The mission of this Command is to select a sufficient number of persons to meet programed objectives. Enlistment of the best qualified applicants to meet requirements is the Command's objective. All waiver requests will be fully substantiated with appropriate documentary evidence and complete justification that the request is meritorious.

6. DISAPPROVING AUTHORITY. Recruiters do not have the authority to disapprove a legitimate waiver request or refuse to forward an applicant's request to the commissioned area commander or DRC commander as appropriate. Regional commanders may elect to delegate disapproval authority no lower than DRC level or may delegate disapproval authority down to the commissioned area commander level. Commanders below the approving authority, to include commissioned area commanders if disapproval authority has been delegated to them by the region commander, may disapprove waivers for applicants not meeting the prescribed standards. This authority may not be delegated to the assistant area commander. USAREC FL 112-R will be used to disapprove the waiver request. Commanders are required to review the waiver request and all documentation on an individual basis and determine if it is meritorious prior to approving/disapproving or recommending approval to higher headquarters. No member of this Command has the authority to preclude an applicant from submitting a request for a moral waiver that is waivable.

7. APPROVING AUTHORITY.

a. Regional commanders may elect to delegate approval/recommend-approval authority no lower than DRC level or may delegate approval/recommend-approval authority down to the commissioned area commander level.

b. If approval/recommend-approval authority is delegated down to the commissioned area commander level, the commissioned area commander can approve minor traffic and nontraffic offenses and recommend approval on waivers above his approving authority. To approve minor traffic and nontraffic waivers, he will use USAREC FL 112-R. To recommend approval of a waiver above his approval authority, he may use USAREC FL ~~363-B~~ <sup>112-R</sup> or sign the DA Form 2981 or DA Form 3072-1 <sup>see #</sup> as appropriate.

c. If approval/recommend-approval authority is at DRC level, the recruiter will sign the DA Form 2981 or DA Form 3072-1 as appropriate and forward the waiver to the DRC. The DRC commander will then use USAREC FL 112-R to approve/recommend approval or disapprove the waiver request.

d. Assistant area commanders are not authorized to approve or recommend approval on waiver requests.

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e. On waiver requests reviewed at the DRC or RRC, only the commander or, in his absence, the second in command will approve and sign waivers. The second in command or, in his absence, the adjutant or assistant adjutant may sign disapprovals or forward recommendations of approval for further consideration of requests for waivers, except that adjutants or assistant adjutants are not authorized to sign for commander in cases involving an adult felony. In cases involving an adult felony, only the commander or acting commander may sign the request. Deputy commanders may sign at region level. This authority will not be further delegated.

## 8. MORAL WAIVER PROCEDURES.

a. District recruiting commanders will establish a waiver board. Members of the waiver board will be appointed/designated in writing by the DRC commander.

b. The board will consist of at least three members--two commissioned officers and an NCO (E-6 or above, preferably a OOE). Alternate officers and NCO's may be appointed/designated to expedite processing moral waivers when one of the principal board members is either absent, on leave, or TDY. The board will include a minority representative if one is assigned to the DRC that meets the criteria outlined in this paragraph.

c. It is not mandatory that a formal meeting of the board be called on each individual waiver request. Members of the board may review the requests separately and consolidate the recommendations to determine approval/disapproval recommendation. Appendix E of the regulation should be used by board members in reviewing moral waiver applications.

d. The board will review requests for moral waivers for which the DRC commander has approval authority and make recommendations to the DRC commander. The board will also review and make recommendations on waivers which must be submitted to higher headquarters. The waiver board, based on impartial individual judgment by each voting member, will determine on a case-by-case basis, the eligibility of applicants to enlist into the Army.

e. The three board members recommendations will be entered on a USAREC Form 457-R, Waiver Board Proceedings, and this board proceeding will be filed with the DRC file copy of the moral waiver. The form may be handwritten. Board members will record their reasons for approving/disapproving the waiver request to include an evaluation of references in the remarks column of the form.

f. Verbal and facsimile transmission (DEX) waiver approvals are not acceptable on active duty enlistments. In accordance with paragraphs 3-6b and 4-13a, AR 601-210, the waiver application with all inclosures is attached to the original DD Form 4 along with the DD Form 1966 and other documents as specified, and forwarded to Cdr, MILPERCEN (DAPC-PSS-D), 200 Stovall Street, Alexandria, VA 22332. Verbal or facsimile transmission approval of a waiver results in the complete waiver application not being forwarded at the time of enlistment and is in violation of AR 601-210.

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g. Verbal or facsimile transmission (DEX) waiver approvals are acceptable under the following circumstances:

- (1) DEP enlistments only.
- (2) As an exception only (delay in mail service, on spring break from college, high school, etc.).
- (3) When DRC is not within a 50-mile radius of the servicing AFEES and approval authority is area commander thru USAREC level.
- (4) Approval for all exceptions must be granted by this Headquarters and will only be requested by region operations personnel.
- (5) Waiver must be in house at approval authority level (area commander to USAREC level, no exceptions for adult felony waivers).
- (6) Once approval has been given, the guidance counselor will make a notation in remarks, item 41, DD Form 1966 of type of waiver approved, date of approval and name of person granting the exception.
- (7) Individual will not be enlisted on active duty until the original approved waiver is received and made part of the DEP enlistment packet.

h. A moral waiver may not be requested on an individual who was erroneously or fraudulently enlisted in the DEP who had a charge filed and pending or a record requiring a waiver prior to entry into the DEP. A determination will be made as to whether an individual's enlistment into the DEP was erroneous or fraudulent in accordance with paragraph 4-13 or section IV, chapter 7, AR 135-178, and the individual's enlistment will be voided. Once an individual's enlistment has been voided, a moral waiver can be submitted if individual is free of all judicial restraint and is otherwise qualified.

i. A moral waiver may be submitted on an individual who has been charged with or adjudicated by juvenile court or convicted for any offense while in a delay status, provided no charges are still pending and the individual is subject to no civil or judicial restraint other than unconditional suspended sentence or unsupervised unconditional probation (paragraph 3-11b(5), AR 601-210). The waiver will include in item 12, DA Form 2981 or item 28, DA Form 3072-1, the date the individual entered the Delayed Entry Program, option, scheduled active duty date, and whether administrative extensions have been granted.

j. A suspense system will be established for waivers which have been forwarded and for which a final determination or interim reply has not been received. This system will begin at the DRC level and also be used at region and HQ USAREC level. Inquiries or tracer actions will not be initiated when a final or interim reply has not been received until after the time frames shown below have elapsed. Further, all inquiries or tracer action will be through the proper channels (e.g., AC, DRC, Region, USAREC).

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## Processing Days (Does not include weekends)

Initiator	AC	DRC	Region	USAREC	DA
Recruiter	7	15	30	45	60
DRC	X	X	15	45	60
Region	X	X	X	30	45
USAREC	X	X	X	X	45

k. If an applicant declines or requests termination of a pending waiver action, each level will notify the next level in the chain of command to permit final disposition of suspense files.

1. Appendixes A-H will be used as guidelines in conjunction with table 3-3, AR 601-210 in filling out waiver applications.

## 9. MEDICAL WAIVER PROCEDURES.

a. A request for medical waiver is a dual action. First, it requests the USAREC Surgeon to grant a waiver for basic enlistment eligibility and, secondly, Classification and Standards Branch, Department of the Army must approve the requested MOS for which the applicant desires to enlist. The Surgeon General's Office at HQDA also reviews the SF 88 & 93 and can reverse the USAREC Surgeon's approval; therefore, an applicant should not be advised that his medical waiver is approved before the request is returned. Recruiting Management, this Headquarters, forwards the approved medical waiver to HQDA.

b. The following steps will be followed in processing a medical waiver:

(1) Insure AFEES examining physician has recommended applicant for a medical waiver (item 75, SF 88) as required by rule E, table 2-1, AR 601-210.

(2) Review AR 611-201 to determine if applicant's physical profile meets retention standards. Insure that the applicant is otherwise qualified for recommended MOS under the criteria shown in the Qual Program of the REQUEST system and a training space is available. The MOS that are recommended must accept a "3" under disqualifying factor in the physical profile of the MOS as listed in AR 611-201. A list of MOS and their retention standards is at appendix F. This list is subject to change based on changes to AR 611-201 and the Qual Program.

(3) A minimum of three recommended MOS will be placed in item 28, DA Form 3072-1. It is recommended that as many MOS as possible be listed, in priority, in case some of the MOS are closed to enlistment.

(4) The waiver will be submitted thru the DRC to this Headquarters, ATTN: USARCRM-M. The DRC will use USAREC FL 112-R to forward the waiver request.

c. Table 3-1, line A, AR 601-210 states that Cdr, USAREC is the approving authority for NPS medical waivers and CG, MILPERCEN for PS. NPS medical waivers will be sent direct from the DRC to the USASREC Surgeon. All prior service medical waivers will be forwarded direct from the DRC to Commander, Enlistment Eligibility, ATTN: EPEEA, 9700 Page Boulevard, St. Louis, MO 63132. Notwithstanding that the CG, MILPERCEN has final approval on PS medical waivers, the medical waiver is forwarded from Enlistment Eligibility Activity to the USAREC Surgeon for his recommendation as outlined in 9a above. Non-medical disqualifications must be approved by subordinate headquarters prior to forwarding waiver requests to Enlistment Eligibility Activity (EEA).

10. COUNSELING OF APPLICANTS. To prevent frustration and confusion on the part of both the recruiter and the applicant, care should be taken in counseling applicants on waivers. For this purpose, all personnel will become completely familiar with the contents of appendix E of this regulation.

a. During Waiver Processing. Advise the applicant of the purpose of submitting a waiver and required documents to support the request. Inform the applicant that waivers are handled on an individual basis and that the decision on the waiver is based on consideration of the waiver packet by the board members and individual commanders concerned. If waiver approval level is higher than DRC level, the applicant will be advised that the request may take from 30-60 days or longer. Appendixes J and K cover waiver processing times and pocket size matrices for use by the field recruiting force.

b. Counseling of Applicants on Sealed Records. Some states have provisions which provide that a youthful offender is not required to reveal his juvenile adjudication at the time of application for public employment. Many, if not all, states provide that an individual who has been adjudicated delinquent by a juvenile court for a law violation is not deemed to have been convicted of a crime. Additionally, some states provide for the expunging or sealing of juvenile court records after the lapse of a prescribed period of time. Every applicant, regardless of the disposition of his case by a state court, must reveal his record prior to enlistment and record it on the appropriate form Paragraph 3-11b(1)(3)(4); action 4, table 4-1; action 4, table 4-3; and H-7, AR 601-210; and item 40, DD Form 1966 cover these expunged and sealed records and the recruiter and guidance counselor's responsibility in counseling individuals about these records. All individuals concerned with enlistment processing have the responsibility to insure that applicants are made aware of Army requirements in regards to sealed and expunged records.

c. Advising Applicants of Denial of Waivers. Explain that their application for waiver of disqualification was not favorably considered. The "whole man" concept is used in determining approval/disapproval of a waiver, whether for moral, grade determination, dependency, etc. This "whole man" concept is further clarified in paragraphs 3 and 4, appendix E. Also, in the processing of prior service waivers, the individual should be advised that if the waiver was forwarded to EEA, the denial of the waiver was after thorough evaluation of his prior service records in conjunction with his current waiver request. The individual's name who signed the disapproval will not be disclosed to the applicant. Disapproved waivers will not be given to applicants. Only those documents which belong to the applicant will be returned.

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11. SUBMISSION OF REQUESTS.

a. All waiver requests will be submitted thru appropriate chain of command channels. With the exception of minor traffic and minor nontraffic waivers when the approval/disapproval authority is delegated to the commissioned area commander by the regional commander, waivers will be submitted through the DRC to the appropriate approval authority. If the approval/disapproval authority has been delegated down to the area commander level, the area commander will be the first commander in the chain who can recommend approval of a moral waiver or disapprove a moral waiver above his approval authority. If the approval/disapproval or recommend-approval authority is retained at DRC level, the DRC commander will be the first commander in the chain of command.

b. In the event a commissioned area commander is absent for an extended period of time (TDY, leave) and has approval/recommend-approval or disapproval authority, the waiver will not be held up for his return. The recruiter will sign the DA Form 2981 or 3072-1 as appropriate and forward the waiver to the DRC for approval/disapproval or recommend-approval action.

c. Waiver requests that contain two different disqualifications will be processed through all necessary subordinate commanders prior to reaching the final approving authority.

d. Applicants requesting waiver of more than one disqualification will submit requests on DA Form 3072-1; e.g., moral and dependency, or moral and medical disqualifications.

e. Waiver of limitation to the 3-year enlistment (Line C, Table 2-4 and Line E, Table 3-1, AR 601-210) will be submitted on DA Form 3072-1 or DA Form 2981 as appropriate. The request for waiver of 3-year limitation will be requested in the remarks section.

f. All waivers requiring HQ USAREC action will be forwarded ATTN: USARCRM-M.

12. ROUTING OF WAIVER REQUESTS.

a. All waivers will be initiated on DA Form 2981 or DA Form 3072-1 as appropriate. All additional documentation to support the waiver request will be listed as inclosures in item 12, DA Form 2981 or item 31, DA Form 3072-1.

b. DA Form 2981 and DA Form 3072-1 are only recommendations, not final approval; therefore, they must have a cover letter. USAREC FL 112-R (original and one copy) will be used for approval/disapproval or recommend-approval. The commissioned area commander will use USAREC FL 112-R to approve waivers that have been delegated down to his level or disapprove waivers at or above his approval authority. If approval authority is above his level and he is recommending approval, this can be done by virtue of signing the DA Form 2981 or DA Form 3072-1 as appropriate, or he can recommend approval by using USAREC FL 112-R.

Once he has recommended approval he will forward the request to the DRC. If approval/disapproval or recommend-approval authority is retained at DRC level, the recruiter will recommend approval by signing the DA Form 2981 or DA Form 3072-1 as appropriate and will forward the request to the DRC where the DRC commander will put the cover letter (USAREC FL 112-R, original and one copy) on the waiver request. If the commissioned area commander recommends approval by signing the DA Form 2981 or DA Form 3072-1, the DRC commander will put the cover letter on the waiver request. If the commissioned area commander recommends approval by virtue of a USAREC FL 112-R, the DRC commander will approve/disapprove or recommend approval by indorsement (original and one copy) using USAREC FL 113-R. USAREC FL 113-R (original and one copy) will be used by the regions to disapprove waiver actions or to recommend approval to higher headquarters.

c. Copies of USAREC Form Letters 112-R and 113-R are at appendix H.

### 13. ADMINISTRATIVE GUIDELINES.

a. Files 101-01-Waiver Suspense Files. All waivers will initially be placed in this suspense file. When final determination has been made, the file copy will be removed from the suspense file and filed under 704-03.

b. Waiver Requests. All waiver requests will be filed on a fiscal year basis.

c. Disposition Instructions for Files 704-03 - Examination/Enlistment Files. Files will be cut off at end of the fiscal year and destroyed after 1 additional year. Deviation from the 6-month cut-off for file number 704-03, Examination/Enlistment Files was granted by Cmt 2, DF, this HQ USARCRFM-A, 15 Nov 77, subject: Deviation from Disposition Instructions. File labels will be in accordance with paragraph 2-3, AR 340-18-1. Example:

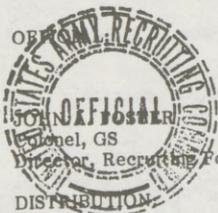
704-03 Examination/Enlistment Files  
COFF 30 Sep 78, Dest Oct 79  
(DF, USARCRFM-A, 15 Nov 77)

d. Files Plan is shown at appendix I.

The proponent agency of this regulation is the Office of the Director of Recruiting Management. Users are invited to send comments to Cdr, USAREC, ATTN: USARCRM-M-PO, Ft Sheridan, IL 60037.

C3, USAREC Reg 601-56

FOR THE COMMANDER:



SHIRLEY R. HEINZE  
Colonel, GS  
Chief of Staff

A plus  
1-Cdr, ea MACOM  
1-Cdr, EEA  
1-HQDA (DAPE-MPR-P)  
1-HQDA (DAPE-MPE-CS)

## APPENDIX A

## INSTRUCTIONS FOR COMPLETION OF DA FORM 2981

1. Change induction to enlistment in the title of the form. Change AR 601-270 to AR 601-210 in the title of the form.
2. "Date" block of application will show date waiver submitted to commissioned area commander or DRC.
3. "TO" & "FROM" block. Will depend upon level approving waiver. If commissioned area commander is approving authority, the waiver will be from recruiting station to commissioned area commander; if DRC is approving authority and commissioned area commander has recommend approval authority the waiver will be from commissioned area commander to DRC; if DRC is approving authority & area commander does not have approval/disapproval or recommend-approval authority, the waiver will be from RS to DRC; if going to HQ USAREC, EEA, MILPERCEN etc., the waiver will be from DRC to final approving authority.
4. Item #1. Applicant's name--Last, First, MI, DOB, and SSN.
5. Item #2. Current mailing address of applicant to include street number, route, post office box, and ZIP code.
6. Item #3. To include selective service classification if available. Type "none" in block for those turning 18 years old after 1 April 1975.
7. Item #4. Give date of offense, offense, detailed description of offense, and age at time of offense. If detailed description is not given, waiver request will be returned to the originator. All offenses must be listed in this item regardless of final disposition; i.e., found guilty, dismissed, dropped, etc.
8. Item 5a. City and state in which tried, name of court, and date of trial. (Trial date will usually be different from date of offense.)
9. Item 5b. Disposition or sentences imposed will show complete sentence, including restitution, fines, suspensions, and probation.
10. Item 5c. The offenses are punishable under the law of the state--if an offense was committed as an adult the maximum punishment would be what an adult could receive; if a juvenile, maximum punishment would be what a juvenile could receive.
11. Item 5d. Dates of confinement, parole and probation will be inclusive. For example, if an applicant spent 3 days in jail the dates have to be given; e.g., 3-5 March 1976. Only the number of days or months is not acceptable.
12. Item #6. This block will always begin with last high school attended. All periods of employment and unemployment will be accounted for.

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13. Item #7. Self-explanatory.

14. Item #8. List degree, GED, HSG or years of schooling completed. If GED listed, number of years of schooling completed should be in parentheses; e.g., GED (10).

15. Item #9a. ASVAB scores 90 or higher. The complete list of ASVAB scores over 90 will be entered--stating 10 scores over 90 is not acceptable, each score over 90 will be listed; e.g., ST 99, MM 101.

16. Item #9b. Change GT score to ST score.

17. Item #10. Physical profile will be entered.

18. Item #11. AFQT or WST score. Include booklet number, score, and category.

19. Item #12. Any extenuating circumstances should be entered in this block such as explanation of unemployment, not being able to get police record checks, asking for waiver to 3-year limitation, etc. The recruiter's recommendation will also be entered in this block. A statement such as "applicant is neat and expresses a strong desire to enter the Army" is not considered a good recommendation. The recruiter's recommendation may be the single most important aspect of a waiver request. While even the strongest recruiter recommendation cannot make a noncompetitive applicant competitive, it does serve to significantly influence the outcome of determinations when an applicant cannot demonstrate overwhelming potential, yet is not sufficiently below standards so as to warrant disapproval of the request. Specific recommendations are desired. The recruiter will type his signature block and sign the waiver in item 12 if the waiver is to be approved at DRC level or higher and the area commander has recommend approval authority and recommends approval by virtue of signing the DA Form 2981. Inclosures will be listed in remarks or put on separate paper if there is not sufficient space to list them on DA Form 2981 or DA Form 3072-1.

20. Item #13. Self-explanatory.

21. Item #14. The recruiter of credit's signature block will go in this item and the recruiter will sign in item 15. The one exception to this is when the commissioned area commander has recommend-approval authority and elects to recommend approval by signing the DA Form 2981. Then, the recruiter's signature block and signature would be in item 12.

22. The waiver application will be submitted in two copies if approval level is at AC or DRC level. The applications will be submitted in five copies if approval authority is above DRC level so each action office can retain a file copy.

## APPENDIX B

## INSTRUCTIONS FOR COMPLETION OF DA FORM 3072-1

1. DA Form 3072-1 will be used for all waivers except for moral waivers for non-prior service (NPS), in which case DA Form 2981 will be used. Request for waiver of 3-year enlistment on non-prior service moral waivers will be done in remarks of DA Form 2981.
2. "Date" Block: Will be date waiver application is forwarded to DRC.
2. "TO" & "FROM" Blocks: Will be from DRC to approval authority for that particular type of waiver.
4. "Disqualification" Block: Type dependency, lost time, etc.; RE Code will be extracted from block 15, DD Form 214, if applicable. Extract correct table or paragraph from AR 601-210 for authority block.
5. Item #1: Self-explanatory.
6. Item #2. Extract from DD Form 214, plus grade held in Reserve, or NA if NPS.
7. Item #3: Same as 1a.
8. Item #3: Self-explanatory--to include ZIP code.
9. Item #5: Example: 5 Jun 38. (DO NOT USE NUMERICAL ENTRY FOR MONTH.)
10. Item #6: Extract from block 6, DD Form 214, or NA if NPS.
11. Item #7: Enter US Army, US Air Force, etc., or NA if NPS.
12. Item #8: Enter Primary MOS, leave Secondary blank, enter duty MOS, or NA if NPS.
13. Item #9: Extract from 17-c, DD Form 214, or NA if NPS.
14. Item #10: Extract from 17-B, DD Form 214, or NA if NPS.
15. Item #11: Extract from item 13-A, DD Form 214, or NA if NPS.
16. Item #12: Enter ASVAB and AFQT/WST score, plus date of test.
17. Item #13: Enter total active service from Item 18(c), DD Form 214, 1 November 1972. Leave Inactive blank or NA if NPS.
18. Item #14: PS-Enter education completed since discharge; NPS enter GED, HSG, etc. In "Total years completed" block, enter both PS and NPS.

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19. Item #15: Self-explanatory.
20. Item #16: Complete all blocks. Enter as follows: Two (2), Ages 2 & 4, etc.
21. Item #17: Self-explanatory.
2. Item #18: Enter information requested to include date processed.  
Assignment Limitations: Leave blank.
23. Item #19: Extract from item 16, DD Form 214, or NA if NPS.
24. Item #20: Enter where dependents will reside if approved (address to include ZIP code and with whom) or NA if not dependency waiver.
25. Item #21: Extract from item 26-A, DD Form 214. (Example: Inclusive dates: 17-28 Oct 72; No. Days: 12; Reasons: AWOL, Confinement, etc, or NA).
26. Item #22: Enter NONE or enter information requested. (Example: Types: Summary, Special, etc.; Offense: AWOL, Larceny, etc.; Date of Conviction: 9 Jun 72; Sentence: \$150.00 and thirty (30) days confinement; or NA if NPS.)
27. Item #23: Enter information requested. (Example: Total: (Enter amount still owed) \$900; Type: Auto Loan; Monthly Payment: \$90; Termination Date: September 1974.)
28. Item #24: Same as Item 22 or NA if NPS.
29. Item #25: Enter all offenses for prior service regardless of when they occurred. If a moral waiver was approved prior to individual's last term of service it should be so stated. A moral waiver for prior service applicants is only required for civil convictions occurring during and subsequent to the last period of service and for those not previously revealed. A detailed description of the offenses will be given in remarks along with city and state in which applicant was tried, name of court, and date of trial.
30. Item #26: Enter information requested. (Example: Date: 27 Jul 66; Reason: Promotion or Reduction; Authority: AR 600-200; Grades: E2 to E3 or E4 to E3, etc.)
31. Item #27: Enter all information requested. NPS will begin with last high school attended.
32. Item #28: Use for continuation of any of the above items.
33. Item #29: Recruiter's evaluation and signature block, with recruiter's signature.

34. Item #30: Applicant must sign all copies.
35. Item #31: Enter inclosures. Continue on white sheet of paper if necessary.
36. Item #32: Commissioned area commander or recruiter's signature block as appropriate.
37. Item #33: Will be signed by commissioned area commander or recruiter as appropriate.
38. The application will be submitted in two copies if approval is AC or DRC level. The application will be submitted in five copies if approval authority is above DRC level so each action office can retain a copy.

## APPENDIX C

## REFERENCES

1. DD Form 370 will be used for all required references.
2. All DD Form 370's will be mailed to referred individuals completing the form. Under no circumstances will the applicant handcarry these forms for signature.
3. DD Form 370 will be obtained from schools attended in previous 2-year period and grade transcripts will be included if attending college.
4. DD Form 370 will be from employers to cover 1 year preceding application.
5. DD Form 370 will be obtained from three reliable members of the civilian community.
6. If more than 60 days have elapsed since initiation of references and submission of the waiver request, references will be updated. Former employer and school references do not need to be updated if individual has not been reemployed or attended school at either place since initial submission of the references. This updating is required to insure that references are current and not from individuals who have not seen the applicant for an extended period of time. This updating of references does not apply to approved waivers unless resubmitting for an update of approval.
7. "Date" block on the DD Form 370 will show date request is sent.
8. "TO" block, DD Form 370, will be individual's name and address from whom the reference is being requested.
9. Name and address of applicant on DD Form 370 is self-explanatory as is "US Army" block.
10. Identification data on DD Form 370 will be filled in completely.
11. "Return" block of DD Form 370: Recruiting station stamp will be placed in this block and the recruiter will sign the form.
12. The words "PLEASE EXPEDITE" should be typed in the right hand margin across from "TO" block on the DD Form 370.
13. The following statement will be typed in "remarks" column on the DD Form 370: "Please write a personal narrative evaluation of the applicant. Thank you."
14. A USAREC FL 50 will be included in the moral waiver application if applicant is a current year high school dropout.

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15. DD Form 369's will be updated prior to enlistment (active or out of DEP) if more than 60 days have elapsed since initial authentication. The updated police checks will only be required from places where applicant has resided, attended school, been employed or claims a new offense since the initial submission of police records checks.

16. USAREC FL 31 will be used to obtain a report from a probation or parole officer whether for an adult or juvenile conviction/adjudication. This form will be submitted in addition to the municipal, county and state police records checks if an individual has been on probation or parole.

17. USAREC FL 41 will be used to obtain a report from a correctional facility whether individual was an adult or juvenile at time of incarceration. This form will be submitted in addition to the municipal, county and state police records checks if an individual has been committed or confined in a correctional facility.

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APPENDIX D  
SAMPLE SHEET FOR COMPILING A MORAL WAIVER

DA FORM 2981  
OR  
DA FORM 3072-1  
(BASIC FORM)

1 copy of pages 1-6 of DD Form 1966		
Police Record Check (DD Form 369)	PAST RESIDENCE	
Police Record Check (DD Form 369)		
Police Record Check (DD Form 369)		
Police Record Check (DD Form 369)	PRESENT RESIDENCE	
Police Record Check (DD Form 369)		
Police Record Check (DD Form 369)		
Police Record Check (DD Form 369)	PLACES VIOLATORS ARE ALLEGED OR SUSPECTED	
Police Record Check (DD Form 369)		
Police Record Check (DD Form 369)		
Repts fr Probation/Parole Off (USAREC FL 31)		
Correctional Facility Officers Report (USAREC FL 41)		
Employer's References (DD Form 370)		
School References (DD Form 370)		
Personal References (DD Form 370)		
USAREC FL 50 (If current year school dropout)		
Miscellaneous Information		
DA Form 3286a (PS)		

D-1

## APPENDIX E

SUGGESTIONS TO MEMBERS OF THE  
ENLISTMENT WAIVER BOARD

1. Moral standards deal generally with acceptability of persons with police records. They are designed to screen out persons who are likely to become serious disciplinary cases and who thus divert resources from the performance of military missions. An additional purpose is to assure enlistees and their parents that servicemen will not be thrown into close association with individuals who are chronic offenders or who have committed serious offenses.
2. Moral standards, as well as mental and physical standards, are considered in determining the applicant's acceptability for military service. Therefore, the applicant's history of police involvement should be elicited and checked and moral waivers will be required when the applicant has had an adverse adjudication as a juvenile or when criminal charges resulted in conviction or action by a court tantamount to a finding of guilty. This is in accordance with the DOD principle that any individual whose pattern of behavior poses a serious question as to his fitness for service should be given a special review at an appropriate level before being accepted or rejected for service. Waivers are required only in cases of conviction or adverse juvenile adjudication and when a plea of guilty or nolo contendere was entered and accepted by the court. Waivers are not required on the basis of arrest or questioning not resulting in referral of charges, or when charges are dismissed without adjudication of guilt or without a plea of guilty or nolo contendere being entered.
3. Moral waivers are approved or denied on the basis of such factors as the nature of the offense(s), age when committed, punishment actually imposed, degree of rehabilitation, duration of period since last offense, reports of probation officers, school authorities, employers, etc.
  - a. The "whole man" concept should be applied in determining the applicant's moral qualification for enlistment. Areas of consideration under this concept are: number of offenses, severity of the charges, actual sentence/punishment for offense(s), time that has elapsed since offense(s) and sentencing, applicant's age at time of violation, applicant's mental and physical qualifications for enlistment, employment history of applicant, educational achievements of applicant, and favorable comments from probation and parole officers, employers, school officials, and reliable members of the civilian community.
  - b. Moral waivers should be granted only in exceptionally meritorious cases; these cases must present clear evidence of rehabilitation and a high assurance that the individual will not become a disciplinary problem.
  - c. Commanders should closely adhere to the above criteria for moral waiver processing. The authority to grant or recommend approval on an

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application for moral waiver should not be a routine or "rubber stamp" exercise. Approving only the most highly qualified individuals coincides with the effort and emphasis on quality enlistment.

4. It is the utmost importance that men and women of high quality be recruited. This makes the board's task of reviewing applications very important. Each member must thoroughly review all documentation provided prior to making a determination. Each applicant must be considered as an individual case based on such factors as the nature of the offense, age when committed, punishment imposed, etc. No specific formula can be developed which determines that the applicant is "acceptable" or "unacceptable." Each board member must make an independent decision based on his own judgment that the case is meritorious. The DA Form 2981 and attached documents contain significant facts which will provide insight and must be thoroughly reviewed.

a. An important factor to be considered is the offense and its seriousness. AR 601-210 lists offenses in four categories ranging from minor traffic to felony. Insight into the seriousness of the offense may be obtained by evaluating the sentence of the court when compared to the maximum penalty; i.e., amount of the fine, length of probation or parole, whether confinement was imposed, and if so, the length of confinement. Consideration should be given to the fact that some locales and judges hand down more severe sentences than others for like offenses.

b. The frequency of offenses, both serious and minor, provides an indication of the applicant's respect or disrespect for authority. However, initial impression and comparison to other people that the board member has known must be tempered with consideration of the supporting documents.

c. The age of the applicant at the time of the offense is also extremely important. Younger offenders may not have attained enough maturity to recognize the seriousness of the offense or to have developed the necessary self control to inhibit impulses. Association with older and more aggressive persons can influence a youth to follow the crowd and commit an offense as a member of a group. To the contrary, an offense which appears to have been deliberately planned and committed alone should be considered more serious.

d. Although no specific section of the DA Form 2981 is devoted to family background, inclosures will provide comments by reputable citizens in the applicant's community.

e. Periods and types of civil restraint (confinement, parole, or probation), coupled with official's reports will provide some indication of the applicant's ability to conform to rules in an unsupervised environment.

f. The record of employment and reports from employers will provide a good indication of the applicant's professional abilities, work habits, reliability, leadership potential, and determination to better himself.

g. Education level, physical qualifications, and mental test scores should also be considered in determining the applicant's acceptability.

h. The remarks made by the recruiter will reflect the recruiter's opinion of the applicant's motivation for service and his potential to become a satisfactory member of the military. Each board member must make his own evaluation of these comments.

5. There often is a feeling that a waiver board or a higher headquarters does not have personal contact with applicants, thereby the disapproval rate is high. Two things are important to remember in this regard. First, requests received by a waiver board or higher headquarters are normally for more serious deficiencies than those for which waiver authority has been delegated to a lower level. Second, in all determinations for waiver of enlistment eligibility requirements, a detached, objective viewpoint is necessary to ensure that meritorious cases warrant the exception to enlistment standards.

6. Moral rejection for enlistment does not mean that the applicant cannot apply at a later date with additional documentation indicating that a meritorious case does exist. Termination of probation or parole within a short period of time prior to application should be closely reviewed. In the absence of specific and unequivocal remarks by the probation/parole officer that the applicant truly merited "early termination," it is possible that the Army is viewed as a welcome receptacle for a troublemaker.

## APPENDIX F

## MOS AND RETENTION STANDARDS FOR MEDICAL WAIVERS

P	U	L	H	E	S	
00C	61F	74F	01B	68F	43M	57D
01B	63J	83E	01C	68G	44B	57E
01C	68B		01D	68H	45B	57F
01D	68D		01E	68K	45K	57H
01E	68F		01F	71C	45N	61C
01F	68G		01G	71D	45P	62D
01G	68H		01H	71E	45R	63G
01H	68K		05B	71G	51A	63H
05B	71C		05C	71L	51B	63J
05C	71D		05E	<del>71M</del>	51D	76D
05E	71E		05F	71N	51F	76J
05F	71G	26M	26M	71Q	51G	76P
26D	71L	26N	26N	71R	51J	76V
26H	<del>71M</del>	32D	32D	72C	51K	76W
<del>26K</del>	71N	34B	34B	72E	51L	76X
26M	71Q	34E	34E	73C	51N	76Y
26N	71R	34F	34F	73D	51R	81E
34B	72C	34G	34G	74B	57D	94B
34E	72E	34H	34H	74F	57E	94F
34F	73C	34J	34J	75B	57F	
34G	73D	34K	34K	75C	61F	
34H	74B	41B	41B	75D	73D	
34J	74D	41C	41C	75E	74F	
34K	74F	41E	41E	81B	76D	
35B	75B	41G	41G	81C	76J	
35D	75C	41J	41J	81E	76P	
35E	75D	41K	41K	83E	76V	
41B	75E	42D	42D	91G	76M	
41C	81B	42E	42E	92B	76X	
41E	81C	43M	43M	92C	76Y	
41G	81E	45B	45B	92D	81B	
41J	83E	68B	68B		81C	
41K	83F	68D	68D		81E	
42D	84B	<i>26E</i>			83E	
42E	84F				83F	
43M	84G				94B	
44B	91G				94F	
44E	92B					
45B	92C					
52E	92D					

SEE C#3

*26E*

## APPENDIX G

FREQUENT ADMINISTRATIVE ERRORS AND OMISSIONS  
IN WAIVER PROCESSING

1. Requests are being forwarded using DF and facsimile signature. Use military letter (USAREC FL 112-R) and indorsement (USAREC FL 113-R).
2. DA Form 2981 not filled out in accordance with appendix A, this regulation. Frequent errors and omissions are:
  - a. No DOB or SSN in item #1.
  - b. Failure to list all offenses regardless of disposition.
  - c. Omission of detailed description of offense.
  - d. Complete sentence not listed (i.e., fine, restitution, probation).
  - e. Confinement not listed.
  - f. Periods of unemployment or schooling not listed.
  - g. ASVAB scores not listed individually (stating all scores over 90 is not acceptable--each score over 90 will be listed; e.g., EL 99, ST 105).
  - h. Incorrect age at time of offense. Check DOB and not year against date of offense.
3. Failure to cross-check data on all forms for consistency of information.
4. Use DD Form 370 for all references. DD Form 370 should have a narrative description in "remarks" section.
5. Medical waivers should be addressed to the USAREC Surgeon, ATTN: USARCRM-M, and should be recommended by AFEES physician.
6. Failure to list recommended MOS in item 28 of DA Form 3072-1 on medical waivers. Should be done after accomplishing the following:
  - a. Insure physical profile meets retention standards in accordance with AR 611-201 and appendix F, this regulation.
  - b. Check REQUEST and insure MOS is available.
  - c. Check against MOS closed to recruiting.

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- d. Check ASVAB scores to insure qualified.
  - e. Check color perception.
  - f. Recommend PS only for those MOS open to PS.
7. DD Form 369 will be updated prior to enlistment if more than 60 days have elapsed since submission.
8. USAREC FL 31 is in the waiver application showing probation has been terminated, but there is nothing from the probation officer indicating applicant's performance while in probation status (in accordance with line A, table 3-3, AR 601-210).
9. There are frequent errors in filling out items 40a-g, DD Form 1966. If item 40c is checked "yes," there should be an explanation in item 41, DD Form 1966 and item 5d, DA Form 2981 if required. If applicant has ever been on probation, parole, or under suspended sentence, item 40d, DD Form 1966 will be answered "yes." Item 40e, DD Form 1966 should never be answered "yes," if there is a "yes" answer in this block, the applicant should not be processed for waiver.
10. If municipal, county, and state will not release information on individual, the recruiter will so state either in remarks section on DA Form 2981 or on DD Form 369. The statement will be signed by recruiter verifying that the law enforcement officials will not release information.
11. AR 601-210 says only three character references are required. Additional references can be submitted. An applicant cannot be hurt by too much documentation.

## APPENDIX H

## USAREC FORMS FOR WAIVER APPLICATIONS

The USAREC forms in this appendix are provided to initially forward waiver request, disapprove or approve a waiver request, forward waiver request to a higher approval authority, and record waiver board actions. The USAREC FL 112-R and FL 113-R will be prepared in original and one copy.

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**DEPARTMENT OF THE ARMY**  
HEADQUARTERS UNITED STATES ARMY RECRUITING COMMAND  
FORT SHERIDAN, ILLINOIS 60037  
(Appropriate DRC Address)

USA      Applicant's name, SSN

SUBJECT: Determination of Acceptability - (Moral, Medical, etc.)

Commander  
(Appropriate action level)

1. The attached request for waiver of disqualifications is forwarded:  
    ( ) For inclosure in applicant's file.  
    ( ) For consideration.
2. Waiver request is:  
    ( ) Approved.  
    ( ) Disapproved.  
    ( ) Recommend approval.  
    ( ) \_\_\_ year enlistment period.  
    ( ) Recommend \_\_\_ year enlistment period.
3. Remarks:

SIGNATURE BLOCK

USAREC FL 112-R, 12 Sep 77

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USA                      Applicant's name                      Ind  
SSN and date of application  
SUBJECT: Determination of Acceptability - (Moral, Medical, etc.)

FORM

TO: Appropriate Action Level

Items indicated below comprise a request for waiver of:

- \_\_\_\_\_ Felony.
- Medical/MOS.
- Recommend approval.
- 3-year enlistment. Recommend \_\_\_ year enlistment.
- Recommended MOS for enlistment:
- Returned without action for the reasons stated in remarks.
- Remarks:

SIGNATURE BLOCK

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USAREC Reg 601-56

WAIVER BOARD PROCEEDINGS	
1. Name of Applicant - SSN	
2. Board Member #1 Recommendation	
( ) Approval	( ) Disapproval
Remarks:	
Signature, Rank, Date	
3. Board Member #2 Recommendation	
( ) Approval	( ) Disapproval
Remarks:	
Signature, Rank, Date	
4. Board Member #3 Recommendation	
( ) Approval	( ) Disapproval
Remarks:	
Signature, Rank, Date	

SE C USAREC Form 457 Rev 12 Sep 77  
 CAP 457-R

(Previous editions may be used until exhausted)

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## APPENDIX I

FILES PLAN-ELIGIBILITY FILES  
(AR 340-18-1 and AR 340-18-7)

AUTHORITY	MINOR TRAFFIC OFFENSES	NONMINOR TRAFFIC OFFENSES	MISDEMEANOR	JUVENILE FELONIES	ADULT FELONIES
AREA COMMANDER					
	If AC has approval/disapproval authority he will forward a copy of the waiver to the DRC and the DRC will be responsible for the filing action.				
DISTRICT RECRUITING COMMANDER	704-03	704-03	704-03	101-01 or 704-03*	101-01 or 704-03*
REGIONAL RECRUITING COMMANDER	_____	_____	_____	101-01 or 704-03*	101-01 or 704-03*
USAREC	_____	_____	_____	704-03	101-03 or 704-03

## NOTE:

- Filing action will begin at DRC level and above. A completed waiver action will be filed in 704-03.
- Whenever waiver is disapproved at lower than approving authority, the responsible command (DRC & above) will file disapproved waiver action in 704-03; e.g., DRC disapproving juvenile felony would be filed in 704-03.
- All files will be filed on a fiscal year basis.
- Files will be cut off at end of the fiscal year and destroyed after 1 additional year.

## APPENDIX J

MORAL WAIVER PROCESSING ON APPROVED WAIVERS

<u>TYPE OF WAIVER</u>	<u>APPROVAL AUTHORITY</u>	<u>ROUTING</u>	<u>PROCESSING TIME</u>
Minor Traffic	Cdr, Rctg Area	Rctr/AC/Rctr	3-5 days to include mailing time
Minor Nontraffic	Cdr, Rctg Area	Rctr/AC/Rctr	3-5 days to include mailing time
Misdemeanor	Cdr, DRC	Rctr/AC/DRC/Rctr	10-15 days to include mailing time
Juvenile Felony	Cdr, USAREC	Rctr/AC/DRC/Rgn/USAREC/DRC	20-30 days to include mailing time
Adult Felony	Cdr, MILPERGEN	Rctr/AC/DRC/Rgn/USAREC/EEA/DRC	45-60 days to include mailing time

NOTE:  
 Waivers will take longer if they have to be returned to the DRC for additional information. PS waivers are delayed at EEA because the individual's records have to be retrieved and evaluated. If the records are checked out to another agency, EEA has to await return of the records.

The above processing times are based on time elapsing after compilation of the waiver. Completion of the waiver and all required documentation may take a recruiter anywhere from 2 days to 14 days or longer to complete. Above procedure will vary somewhat if approval authority is retained at DRC level--the AC could be deleted from the routing process.

## APPENDIX K

USAREC REG 601-56

MEDICAL WAIVER PROCESSING ON APPROVED WAIVERS

<u>TYPE OF WAIVER</u>	<u>APPROVAL AUTHORITY</u>	<u>ROUTING</u>	<u>PROCESSING TIME</u>
NPS	Cdr, USAREC-Medical HQDA-MOS	DRC/USAREC Surgeon/ Policy Branch/HQDA/ DRC	15-30 days to include mail time
PS	Cdr, USAREC-Medical HQDA-MOS Cdr, MILPERCEN-final approval/disapproval authority for grade, MOS, and length of enlistment	DRC/EEA/USAREC Surgeon/Policy Branch/EEA/DRC	45-60 days to include mail time

NOTE:

Waivers will take longer if they have to be returned to DRC for additional information or forwarded to Health Services Command for evaluation. PS waivers must be routed through EEA initially so the PS medical records can be retrieved. If these records are checked out to another agency, EEA has to await return of the records. Waivers are routed through Policy Branch for recommendation of MOS. NPS waivers are forwarded to HQDA for approval of the MOS and return to the DRC. PS waivers are called in to HQDA for approval of MOS. In some cases, medical waivers on PS will have to be forwarded to HQDA for final evaluation by S60 and approval by HQDA (e.g., one kidney).

## APPENDIX L

ENLISTMENT ELIGIBILITY CRITERIA AND PROCESSING FOR INDIVIDUALS  
FROM THE VIETNAM ERA WHOSE DISCHARGES HAVE BEEN UPGRADED BY  
DISCHARGE REVIEW BOARDS

1. Individuals whose discharges are upgraded under the discharge review program may apply through HQ USAREC for waiver to enlist as individuals with prior military service, if otherwise eligible under the provisions of AR 601-210. These individuals must:
  - a. Meet basic enlistment eligibility criteria in accordance with chapter 2, AR 601-210.
  - b. Meet moral and other administrative criteria in accordance with chapter 3, and appendixes A, B and C, AR 601-210.
2. Individuals whose discharges have been upgraded under this program will be identified in their personnel records with:
  - a. Separation Program Designator (SPD) KCR and
  - b. Reenlistment Eligibility (RE) Code 3 (Ineligible to enlist unless a waiver is granted), or 4 (Ineligible to enlist), as appropriate.
3. All enlistment policies and processing procedures contained in AR 601-210 apply.
  - a. Special processing provisions for verifying prior service, contained in section VII, chapter 4, AR 601-210 will be followed.
  - b. Requests for waivers of enlistment eligibility criteria will be processed in accordance with chapter 3, AR 601-210.
4. The Commanding General, US Army Military Personnel Center (MILPERCEN) is the final authority for approving enlistment for these individuals. Therefore, regardless of the approval authority listed in chapter 3, AR 601-210, all waivers will be forwarded to Cdr, MILPERCEN for final approval or disapproval of enlistment. However, the responsibility for determining whether a waiver request warrants favorable consideration rests at all echelons of command. Recruiting commanders below the approving authority will disapprove all requests for waivers not deemed meritorious.
  - a. All requests for waiver and other actions requiring approval by the CG, MILPERCEN, as set forth in chapter 3, AR 601-210, and these instructions will be forwarded to the Commander, US Army Enlistment Eligibility Activity (USAEAA), through established USAREC command channels. Prior to forwarding these requests, recruiting commanders will take action to approve or disapprove waiver of disqualifications for which they have approval authority in accordance with tables 3-1 and 3-4, AR 601-210.

USAREC Reg 601-56, C-1

b. Waiting periods following civil restraint and other disqualifications, as outlined in chapter 3, AR 601-210 will be adhered to.

c. The minimum documentation required to accompany each request for waiver will be in accordance with table 3-1, AR 601-210, as specified for each specific disqualification. However, all documentation specified by line H of table 3-1, AR 601-210, will be forwarded with each request for waiver, regardless of the disqualification involved.

5. Enlistment for individuals whose request for waiver is approved by the CG, MILPERCEN, will be accomplished under enlistment processing procedures for prior service personnel.

Senator NUNN. General McLennan, have a seat. Do you have anyone you want to bring with you? You may bring your staff up with you and have them sit at the witness table if you would like.

**STATEMENT OF LT. GEN. KENNETH McLENNAN, DEPUTY CHIEF OF STAFF FOR MANPOWER, U.S. MARINE CORPS, ACCOMPANIED BY COL. WILLIAM CRYAN, PARRIS ISLAND, U.S. MARINE CORPS**

General McLENNAN. Sir, I have Col. William Cryan from Parris Island, the officer who conducted the investigation in Cleveland, and when we get to that portion of my testimony, I would like to ask Col. Cryan to join me.

Senator NUNN. Do you have anyone else you would like to join you up here?

General McLENNAN. No, sir.

Senator NUNN. Colonel Cryan can come up if you want him to. General McLennan is Deputy Chief of Staff for Manpower for the Marine Corps. This is his first appearance before this subcommittee since his assignment as Deputy Chief of Manpower last July.

General, I welcome you here to your first appearance. We are delighted to have you here. As you can well imagine, having been here for most of the testimony—I think you were here Tuesday, too—we have a lot of questions.

General McLENNAN. Yes, sir.

Senator NUNN. General McLennan also prepared the report on Marine Corps recruiting practice which General Wilson sent to the subcommittee on September 6, and that report has already been entered into the hearing record.

General, would you like to make an opening statement?

General McLENNAN. Yes, sir. I have a short statement to describe in general terms the activity in which I have been involved as the investigating officer of the U.S. Marine Corps Recruiting Service.

Mr. Chairman, I welcome the opportunity to be here today to report on Marine Corps recruiting practices. I am reporting to you as the officer appointed by General Wilson to conduct the investigation into recruiting practices requested by the subcommittee chairman. I also prepared the written report of the investigation delivered to the subcommittee on September 12, 1978. That report was as complete as we could make it at the time. We have continued analysis to refine some of the data included in the report and to study its implications for possible improvements to our recruiting service.

I am newly assigned as the Deputy Chief of Staff for Manpower after almost 2 years commanding one of the Corps' major field commands, the Second Marine Division, based at Camp LeJeune, N.C. Therefore, this was also an opportunity for me to become reacquainted with the details of the recruiting system and changes in Marine Corps recruiting which have occurred over the past several years.

We in the Marine Corps share the common concern that the military services continue to obtain adequate numbers and quality of volunteers to maintain the All-Volunteer Force. We acknowledge the absolute necessity for an efficient, effective recruiting service and are greatly concerned at the abuses and errors which have been reported. My investigation has convinced me, however, that the current Marine

Corps recruiting system is well designed, is adequately staffed, with several thousand dedicated men and women, and has been successful in these last two years in meeting increasingly higher quality goals.

My investigation has also revealed areas which need improvement, and specific examples of fraud and failure on the part of some individuals. I talked with individual recruiters and officers in supervisory positions nationwide. In my opinion, they are a loyal, effective group of Marines, of whom we can all be proud. Since October 1, 1976, nearly 75,000 young men and 3,000 young women were recruited for the regular Marine Corps. The majority of those are successfully serving today. It has been just over two years now since a number of changes were made in our recruiting system in an effort to assure that we obtain improved quality personnel.

Senator NUNN. General, just a minute. Did you say since October 1, 1976, nearly 75,000 young men and 3,000 young women were recruited for the regular Marine Corps by this service, the majority of whom are successfully serving today? That majority could be from 50 percent to 99. What is the percent figure?

General McLENNAN. Of that number, of that 75,000, of the men, of the figures that we supplied to you, Senator, there were 83 percent still on active duty at the conclusion of the investigatory period. Of the 3,000 women, the percentage would be roughly the same.

Senator NUNN. About 83 percent?

General McLENNAN. Yes, sir.

Senator NUNN. Thank you.

General McLENNAN. The changes that were a part of an overall program initiated in 1975 by our Commandant, General Wilson, to raise standards and improve the quality of Marines throughout the Corps, some of these changes were initially reported to this committee by letter in December, 1975, and others later in a series of hearings held before the House Armed Services Committee in May and June of 1976. They were summarized in a report by the House Subcommittee on Military Personnel published on the 20th of September, 1976.

The fact that these changes were instituted and reported to the Congress in 1975 and 1976 led me to concentrate my investigation, and particularly the statistical analysis which supported it, on the period starting October 1, 1976. For a statistical analysis I took July 31, 1978 as a cut-off, and that is because I commenced this investigation on the 8th of August. I consider that this period, which comprises fiscal year 1977 and the first 10 months of fiscal year 1978, as an adequate evaluation period for the changes in our recruiting system.

The report of the investigation emphasizes several areas on which our recruiting system is based, quality control measures, recruiter selection, training and individual performance, and continuing scrutiny of the results of that system, that is, the numbers, quality, and subsequent service of the men and women recruited into the Marine Corps.

We are presently studying measures to improve recruiter working conditions, to detect unqualified marines currently serving in our ranks, and to improve initial testing procedures, particularly mental and physical. Our objective is to develop the most effective system possible to operate in the All-Volunteer Force environment and to discover and correct mistakes when they occur.

That completes my formal statement, Mr. Chairman. I would like to add just a few comments that relate to General Mundie's testimony. He described in some detail the processing, the recruiting service in the Army. Our two systems in terms of the relationship between recruiter and applicant and the processing through AFEES is identically the same.

I still believe there is some confusion on this question of police record checks. As I indicated informally before the noon break, our policy was put into effect in March of this year that requires that only in the case where an applicant admits some form of prior criminal record is a concerted effort made at the local level in order to substantiate that record.

However, every marine—man, woman, active, or reserve—who goes through AFEES goes through the ENTNAC process, and in every file on every marine we have, there is an ENTNAC check. So, I wanted to dispel the notion perhaps that we have large numbers of marines who have had no check relative to their past criminal background, if in fact they had one.

Senator NUNN. Why did you cut out the criminal checks at the recruiter level?

General McLENNAN. In many cases because of the difficulties we had at the local level in obtaining information from the local authorities. In my visit nationwide during August, I found that many of the recruiting stations were still conducting local police checks, because in their particular jurisdictions, they were able to get the information. The police would cooperate. The police authorities would cooperate in confirming any record the individual might have. In other locations that was not possible, so it was a fruitless effort for them to continue to go through the drill of contacting an authority who would refuse to provide the information.

Senator NUNN. Do you think they do it better at the ENTNAC level? Is there more cooperation?

General McLENNAN. No, sir. I think it would be better at the local level, because it takes 45 days to get the ENTNAC information back. That 45 days depends upon the individual marine. If he is going into our delayed entry pool, which means he can be delayed from being shipped to training for up to 365 days; and this is a process we used with high school seniors, obviously to permit them to finish school before they go to recruit training, then the 45-day delay is not that important, because we still have him in his home community when the police record check is obtained, but in the case of a young man or woman who is shipped right away, moves right through the AFEES process, when the ENTNAC card is sent to Washington, to the Defense Investigative Service, it is 45 days as an average before we get the information back.

That means the young man or the young woman is in about the midpoint of the recruit training, and we have gone through the expense of shipping them from their home location to the recruit depot before we are aware of the fact that they have not qualified, so by all means, from our position, it would be much, much better if that determination could be made at the local level.

Senator NUNN. Why can't it? What is the blocking factor?

General McLENNAN. It is a combination of the Privacy Act, sir, and the great reluctance on the part of a number of States to provide any information as it relates to juveniles, and in some States they will also refuse to provide adult information.

Senator NUNN. Are you saying that the FBI, in making the ENTNAC examination, can get information the local recruiter cannot get?

General McLENNAN. In some cases. In some cases, the participating police authorities are subscribers to the National Crime Information System. They therefore provide their data into the National Crime Information Center. When the Defense Investigative Service receives the request for the police check, that is transmitted over to the Department of Justice, and any information on that computer will print out as it relates to the individual.

Now, not all police jurisdictions participate in that National Crime Information System, and some, because it is, again, contrary to their local law or ordinance as it relates to juveniles. Others will not provide juvenile information to us in the local area, but will enter the information into the Crime Information System, and it will appear then on those police checks.

Senator NUNN. Do you have any kind of percentage figure? When did you implement this new policy, in March?

General McLENNAN. March of this year.

Senator NUNN. Do you have any kind of statistical analysis of how many people have gone into service and are going through basic training, and do you get back an ENTNAC report on them that they have some criminal record?

General McLENNAN. In the report we furnished—let me say first I have checked. As a general rule, for the people in the delayed entry pool, about 1 percent of those who are in the delayed entry pool—that is, waiting 365 days before shipping—turn out to have police records that they did not admit during the recruiting process. That does not in every case mean they are disqualified. It may well be something they did not tell us that is not disqualifying as far as military service is concerned, if the service will waive whatever the particular act was, so only 1 percent have we had to discharge from the delayed entry pool because of the ENTNAC process.

Now, on active duty, we provided data to you that indicated that on the male side, we had sent 74,888 male recruits to the 2 recruit depots in the period October 1, 1976 through July 31. In that total, we provided data that related to reasons for discharge. If you have a copy of my report—

Senator NUNN. I have it.

General McLENNAN. That table is on page 10. You will notice that we split that to show attrition by recruit depot—that is, attrition that occurred within the recruit depot and then attrition that occurred subsequent to recruit depot—and we further broke it into enlistment-related reasons.

You will notice that error and fraud are the second and third entries. Now, an erroneous enlistment is an enlistment of an individual who for one reason or another did not meet Marine Corps standards for entering. That might be moral—that is, he arrived at the recruit depot with no previous indication of a police record—and subsequent to his ar-

rival, an ENTNAC came in that indicated he did have such a police record. It could mean that he did not meet our mental requirements, and that would mean that he passed the ASVAB at the recruit depot. and we are the only service that retests at the recruit training center. If he takes ASVAB 6 in Cleveland, Ohio, then he takes ASVAB 7 at either San Diego or Parris Island. Now, that second test is important to us. We use it for classification and assignment. Not only does it tell us that this man or young woman is qualified to be in the U.S. Marine Corps, but based on his or her scores on that test, we then make determinations as to what occupational field they will go into in the service.

Senator NUNN. Let me back up a minute on this police record before we get off of the subject. The figure I am looking for, really, is the figure that would indicate since you changed the policy and stopped checking on police records until the ENTNAC level, what number of people who have gone on to active duty actually have showed up in the ENTNAC check as having police records even though they indicated earlier, in answer to the question, that they did not have police records?

General McLENNAN. I am sure it is roughly the same percentage we had before. The ENTNAC has always been conducted. It is the final check on police records.

Senator NUNN. But the difference now, General, as I understand it, and I may not understand it correctly, is there is no preliminary check. The preliminary check before would have probably weeded out some that now get in and then are checked.

General McLENNAN. [Nods affirmatively.]

Senator NUNN. I am trying to relate this to the *Russo* decision, because if you have a lot of people out there in some stage of basic training, and their ENTNAC check does not come back until they are in basic training, then all of them are basically *Russo* enlistees as opposed to marines, because they have basically committed—I do not know whether they are under oath or not, but they have lied or misrepresented the facts on their entrance exams. So, to some extent, it is a fraudulent enlistment.

Now, I do not know how far *Russo* goes, whether it is strictly recruiter fraud or whether it can be enlistee fraud. Maybe you can answer that question.

General McLENNAN. May I take the first question first?

Senator NUNN. Sure.

General McLENNAN. The thing about the ENTNAC, as I indicated, in local jurisdictions where we are able to get the information at the local level, the recruiters are still going to the local police stations. If they can get the information at the local level, they are getting the information at the local level, and if that information is disqualifying, then the processing of the applicant stops.

In the jurisdictions where he could not get the local criminal record, then nothing is different under the ENTNAC system. He could not get it before, he cannot get it now, and hopefully we will get some information out of ENTNAC that we did not get previously, but that has to be a very small percentage, because I do not have anything that shows what that number might be.

Senator NUNN. Maybe you can furnish that for the record.  
[Additional information follows:]

APPLICANTS DISQUALIFIED BY ENTNAC

*Question.* How many applicants from the DEP or recruits after induction, receive disqualifying information as a result of the ENTNAC reports?

General McLENNAN. The ENTNAC procedure instituted over a year ago established the policy that ENTNAC results for those recruits in the DEP for over 44 days were returned to the recruiting station, the same results for recruits in the DEP less than 44 days are forwarded to the appropriate recruit depot. In either case, the ENTNAC results are filed in the individual's service record book. To determine the actual number of cases of disqualifying information as a result of ENTNAC reports would require the screening of each Marine's record. This is viewed as impractical, based on the number of enlistments each year. During fiscal year 1978, the recruit depots received 47,348 recruits. The only information available indicates that there were approximately 100 cases of disqualifying information that were surfaced at the recruit depots as a result of ENTNAC'S received during the fiscal year. However, these 100 cases only reflect the results of those applicants who were delayed for less than 44 days. No information is available on the results returned to the recruiting stations on applicants delayed for more than 45 days nor how many of the 47,348 recruits were delayed for more than 45 days.

General McLENNAN. I will certainly look into it, sir.

Senator NUNN. Go ahead with what you were saying on the test now, if you would like to.

General McLENNAN. I was really talking about the broad category of erroneous enlistment, and the reasons we have erroneous enlistments, one being the police check and the second being the testing process. As I said, we give another examination, the alternate form of the ASVAB, when the man arrives at the recruit depot. We do it for a number of reasons, one, as I indicated, to absolutely assure ourselves that we have the most honest score we can get out of the system, because it is primary to his classification and assignment process.

Second, it is a check on our recruiters, because we are able to measure the variance between the first and second tests. Now, I would remind you that for many of the people who take that test, the time interval between the two tests can be anything from 4 days to 1 year, and in our successful areas we are involved in what we call out-month recruiting. We are not recruiting this month to ship someone this month. Everyone that we take in is not shipped for several months after he has gone through the enlistment process in his home community. Cleveland is probably a very good example of that, so that second examination provides us the opportunity to validate one against the other.

Now, that test score gives you general technical scores that once again equate to our requirements for entry into the Marine Corps. Let me illustrate. For a non-high school graduate, a young man has to have a GT score of 95. For a high school graduate, he must have a GT score of 85. Now, he may score 95 if he is a non-high-school graduate at AFEES or 85 if he is a high school graduate, but when he comes to the depot, if he scores below those levels, if a non-high-school graduate scores 90, then he is an erroneous enlistment, and we return him home.

Similarly, that is true with the high school graduate as well.

Senator NUNN. Doesn't it have to be a 30-point spread before it is even a problem?

General McLENNAN. On the 30-point spread, that is when we report it back. We identify each applicant. He is tied to his recruiter by his social security number, and in every case where the score variance is 30 points or more, there is a requirement for an investigation at the district director's level.

Senator NUNN. Of course, what the recruiters have said—you have probably heard them—there is no problem at all in coaching a recruit, having him pass the test, or even putting a ringer in there to make sure the differences do not come to 30 points.

General McLENNAN. Senator, as I say, with the majority of those individuals, there are  $\approx$  number of months between the two tests. They are brought into a completely different environment at the recruit training center. That test is usually given about the third or fourth day of their arrival at the recruit training center. I find it difficult to believe that it is that easy for applicants to retain that kind of information over an extended period of time and be able to produce it mentally under the new environment in which they find themselves in recruit training.

Senator NUNN. That would indicate, according to your statistics, that there is virtually no fraud going on between the two tests then, because, again according to your statistics, there is only one one-hundredth of 1 percent that have point spreads above 30.

General McLENNAN. That is correct.

Senator NUNN. So what you are saying is, we have been hearing testimony for 3 days about people beating the system all over the place, that it is impossible and cannot happen.

General McLENNAN. I do not believe in absolutes, Senator.

Senator NUNN. I am not saying in absolutes.

General McLENNAN. I am not saying it is impossible, sir. One of the outcomes of this investigation has been to propose that we narrow that range of score as far as investigation is concerned. As you look at that table, you see that 50 percent or more score equal to or greater at the recruit depot than they do at AFEEES, and when you get down to that more than 10-point level, as I recall, it is 7 percent. Their score is 10 points lower. The proposal is—

Senator NUNN. 7.63 percent score between 10 and 20.

General McLENNAN. Yes, sir. We plan to change our own standard in this respect to investigate all cases that are 20 points or more different.

Senator NUNN. Well, I do not know. You have studied it, and I have not, and I am not the expert here, but when you have only one one-hundredth above 30, that is almost tantamount to not having any real investigation at all in terms of discrepancies. It just seems to me, when you have one one-hundredth and you are not investigating anything except a discrepancy of 30, that the second test, unless it is for placement purposes, which may be valid in those terms, but as far as really kicking off any kind of investigation, that second test is not serving the purpose.

General McLENNAN. Well, I would like to say that our total history on that dual testing has not been as good as it is now. Those figures that you are looking at are a culmination of long and intensive effort to develop the process by which we can make these comparisons and identify recruits with applicants totally through the process.

When we started this 2½ years ago, those percentages were substantially different. It is only through this total process that we have, I think, been able to bring it into the range of scores you are looking at now. Are we satisfied with that? Absolutely not, sir. You have asked a lot of questions about ASVAB testing and what the service's

needs are in this respect, and we have needs. We have been a consistent proponent of going to computerized testing. We have been asking for that for a number of years. That costs dollars, and it costs resources. It was not mentioned this morning, but in two AFEES, I understand, during this fiscal year, there will be preliminary trials on computerized testing. We think that is much, much needed.

Until that totally computerized process can be started, we need additional forms of the ASVAB.

Senator NUNN. What would be the advantage of computerized testing?

General McLENNAN. The test is totally scrambled for each applicant. As he comes in, he takes the test. It is a man-machine type of testing.

Senator NUNN. It will be scrambled, and you will have a different—

General McLENNAN. Totally different. The computer will pick at random the type of questions, the number of questions. There would be no way that a recruiter could compromise that system. It is within the state of the art. It is used in many other testing efforts not associated with the military, but it is one that has superb potential, I think.

Senator NUNN. Is someone looking at that now?

General McLENNAN. Yes, sir.

Senator NUNN. Who?

General McLENNAN. There will be a test in AFEES, as I understand it, during this fiscal year.

Senator NUNN. General—

General McLENNAN. Sir, I sort of bridged off. There was one final point I wanted to make in comparing Army processing with Marine Corps processing, and that is, the process you heard the Army describe through the AFEES processing, we go one step beyond. When the individual gets to the recruit training depot, we go back through the total enlistment package with each man and again try to solicit from him any information that does not appear on that package, and we do advise him that if he fails to do so at that time, that he is subject to a \$5,000 fine and 2 years in prison for failure to provide all the information he has relative to his own situation.

Senator NUNN. At what level is this? When is this?

General McLENNAN. In the first 4 days of processing at the recruit depot.

Senator NUNN. Do you mean after he goes through his AFEES?

General McLENNAN. After he goes through his AFEES, his first act with the Marine Corps is to go through that same process of validation and examination of his recruiting practice.

Senator NUNN. Do you ask him if he has ever used marihuana?

General McLENNAN. Yes, sir, we do.

Senator NUNN. What percentage answer that they have?

General McLENNAN. With us it is 5 to 10 percent. I can give you some stronger figures for the record.

[Additional information follows:]

#### ADMISSION OF MARIHUANA USE

General McLENNAN. A recent survey by the Military Enlistment Processing Command of three target AFEES in each of the three MEPCOM sectors (eastern, central and western) queried applicants to determine how many would respond

in a positive manner to the marijuana use question on the DD Form 1966. The results revealed that of the 1401 applicants that were processed during the 2-day period, 81 indicated that they had used marijuana. This represented a 6 percent positive response to marijuana usage. Additionally, of the total enlistment waivers granted for Marine Corps applicants during the same period, 7 percent of them were for preservice marijuana experimentation.

Senator NUNN. If the National Council on Drug Abuse is accurate, there are about 60 percent in that age group in the country. This means the Marine Corps would have something like one-tenth the number of people going into the Marine Corps that have used marijuana than the society as a whole. Do you think Marines are that much different?

General McLENNAN. Our last drug survey, conducted in 1976—this followed the A. D. Little drug survey made for the Department of Defense—indicated to us there were 53 percent of the Marines who said they had had prior service use of marijuana.

Senator NUNN. But only 5 percent answered that question affirmatively?

General McLENNAN. Five to ten percent.

Senator NUNN. That means if the statistics are correct a great number of those recruits, let's say almost 50 percent of them are lying on that question, aren't they?

General McLENNAN. That certainly is possible, Senator.

Senator NUNN. Well, doesn't that tell you something? Either the question is wrong, or you have a process that is corrected almost ab initio, or from the beginning.

General McLENNAN. Well, we do have waiver authority, you know.

Senator NUNN. But you do not ask for waiver except on the 5 percent, do you?

General McLENNAN. That is correct. When they admit it, we ask for the waiver. That waiver of authority, incidentally, is granted at the local level, the recruiting officer, if it is experimental use of marijuana.

Senator NUNN. General, I conducted a considerable number of hearings on the West Point cheating scandal, and of course this is totally different, but it is apparent in this situation. I do not think that the whole question of whether you use marijuana is the crux of these hearings, by any means. There are a lot more important things, but it tells anybody who reads anything about national statistics, who knows anything about human nature—which all military officers should, and I think most do—that there are lies being told in tremendous numbers on that question.

Now, if the process is corrupted on one question, and if lies are being told on one question, what makes generals and Pentagon officials think that there are not lies being told at every level? What makes you think that when the recruiters out there know that everyone is lying on this, or a great majority of them are, that that will not just spread like wildfire and corrupt the whole process and undermine it so that recruiters think that if all of my superiors know this is a joke, why not get the test and coach them? Why not cover up police records? Why not forge high school diplomas? I am just saying that it just seems to me that human nature is not being taken into account by the people in command.

General McLENNAN. That question is asked on the standard DOD Form 1966, as you rightfully point out.

Senator NUNN. I would be glad to include my criticism to the whole DOD so it would not be limited in any way whatsoever.

General McLENNAN. The requirement for that question comes from Public Law 92-129.

Senator NUNN. Do you mean the law says there has to be a question? Read the law, because I do not mind including Congress in this stupidity.

[General laughter.]

General McLENNAN. This is dated September 28, 1971. It is title V to that public law. "Identification and treatment of drug and alcohol dependent persons in the Armed Forces. The Secretary of Defense shall prescribe and implement procedures utilizing all practically available methods and provide necessary facilities to, one, identify, treat, and rehabilitate members of the Armed Forces who are drug or alcohol dependent persons."

Senator NUNN. That says members, General. These people are not.

General McLENNAN. The next section, sir, "and two, identify those individuals examined at Armed Forces examining and entrance stations who are drug or alcohol dependent persons."

Senator NUNN. Drug or alcohol dependent persons?

General McLENNAN. Yes, sir. These individuals found to be drug or alcohol dependent persons under class 2 of the preceding sentence shall be refused entrance into the Armed Forces and referred to civilian treatment facilities.

Senator NUNN. On the alcohol question, as I understand it, you do not say, have you used alcohol. You say, has alcohol use led to a dependency. Is that right?

Mr. TRAVERS. The question is, has your use of alcohol ever resulted in loss of a job, police arrest, or medical treatment for alcoholism?

Senator NUNN. That law says the same thing with alcohol and drugs, but you do not say that with marihuana. I think it is a broad, sweeping generalization to say that Congress requires that on the application. Congress delegates the authority to the Secretary of Defense in this regard, and basically the words "drug" and "alcohol" are used in the same law, but your application has two different questions on that.

All I am saying, General, is, there is no way you can verify whether they are lying or not, and it is apparent they are, in massive numbers, if anything on national statistics means anything. I am just saying, in my opinion this is corrupting the process.

General McLENNAN. Yes, sir, and I share your concern, Senator. As I read the law, there was a need for the Secretary of Defense to implement procedures to identify individuals who use drugs or alcohol. Now, I think the culmination of that process is the question that appears on DOD form 1966. I am not trying to—

Senator NUNN. I agree with the way the alcohol question is asked, because that is something which is at least theoretically verifiable, whether your use of alcohol has led to a dependency, et cetera, et cetera. However, the way the drug question is asked, it is ludicrous to think you are going to get honest answers there.

[Pause.]

Senator NUNN. Do you want to rebut that?

General McLENNAN. Do you want me to comment on your comment?

Senator NUNN. Well, do you want to?

General McLENNAN. I agree, it is not a good question in the 1970's in the United States, but we have developed a process whereby we can waive, if the individual will so indicate. That, as I indicated, is used in a minimal number of cases, I think probably because both applicant and recruiter fear that delays or negatives would come back as a result of fully answering that question.

Senator NUNN. All I am saying is, when you see good men sitting here, and I think most of these Marine recruiters were, and I am not condoning things they confessed to, and so forth and so on, but when you see them after having had an outstanding military record go into the recruiting situation and come away confessing before this subcommittee and in affidavits that they have committed case after case of fraud and malpractice in recruiting, then it tells me that the system needs a real close look.

General McLENNAN. It is a human tragedy, yes, sir.

Senator NUNN. Major Schreiber is still here. I can imagine what would happen to one of his recruiters if he went through that application and got every young man or every young woman who came in here and really bore down on them and said, "you tell the truth about it, have you ever used marihuana?" Major Schreiber is sitting there, and every one of those applications came back, yes, yes, yes, yes, for a month. I do not imagine that recruiter would be there very long.

I am just saying, you start that process of getting away from rules and regulations revolving and it just keeps on winding. Let me get to another subject.

Sergeant Thompson indicated that Private McClure, the recruit who subsequently died in recent training about 3 years ago, was given a copy of the ASVAB test, but that even with a copy, McClure failed in Houston, and subsequently he was retested in the San Antonio area, and passed the test. Sergeant Thompson said, if action had been taken when he turned the copy of the test in in August 1975, the McClure incident could have been prevented.

My question is, have you reviewed this matter?

General McLENNAN. Yes, sir, I have. Also I was here and heard that testimony.

Senator NUNN. Tell us what your review has indicated.

General McLENNAN. Gunnery Sergeant Thompson, who was a recruiter, and a successful one in terms of production, in Houston, Tex., went on recruiting duty in 1973, and was transferred for cause in December of 1976.

Senator NUNN. Was that the cause we have heard about, the false address?

General McLENNAN. The false address, in part, sir. There were other elements of the case. In August of 1975, Gunnery Sergeant Thompson turned over what he claimed to be copies of the current examination being given at the AFEES in Houston, Tex. That document was turned over to one of the officers associated with the recruiting station in Houston.

Senator NUNN. You are not answering about McClure. You are talking about Thompson now. Go ahead. I am glad to get to that anyway, sir.

General McLENNAN. This question of tests, as I understood Gunnery Sergeant Thompson's comments, he felt that had the Marine Corps reacted to his turnover of this information in September of 1975, that Private McClure would not have been enlisted in November of 1975, suffered that tragic accident in December of 1975, and died, of course, on March 31, 1976. That information was turned over to one of the officers associated with the recruiting station in Houston, who then turned it over to the commander of AFEES in Houston. That is standard procedure for us. As you know, sir, we do not test. The testing is done at the AFEES station, and any information that relates to compromise of the testing process, it is the individual service's responsibility to so advise the local test commander who is the AFEES commander.

That material that had been turned in by Gunnery Sergeant Thompson was examined and returned to the commander of the recruiting station in Houston, with the information that the answer sheet was incorrect, and that the questions that appeared on that typewritten document appeared to be a compilation of questions, some of which related to ASVAB 3, which was the test currently being used, but that the questions were incorrectly stated and improperly answered.

Captain Wright, I believe, was the officer. He returned that material to Gunnery Sergeant Thompson and advised him that he had received this information from AFEES. It is not an individual service option to pull a test out of use. Again, it is an AFEES responsibility to do that.

In the following month, in September, Gunnery Sergeant Thompson presented another package of what he claimed to be testing material that he had found in the trunk of a recruiter's vehicle. That material also was turned over within the next day or so to the commander at AFEES. It was examined by AFEES and returned to the examining officer of the recruiting station in Houston with the advice that that was not an ASVAB test, it was an ACB 73 which had gone out of use about a year before, as one of the service entry examinations.

Sergeant Thompson was again informed that the testing material was not the testing material being used.

Senator NUNN. What testing material was that? Was it testing material that had previously been used?

General McLENNAN. It had been used the year before, yes, sir.

Senator NUNN. Was that material supposed to be widely disseminated, even the year before or after that? I mean, were recruiters supposed to have that?

General McLENNAN. Oh, no, sir, entry examinations are never supposed to be in the hands of recruiters.

Senator NUNN. The fact it was not being used, then, did not keep it from being wrong to be in the hands of recruiters, did it?

General McLENNAN. It was no longer a valid testing instrument. As far as I know, it was no longer kept in any kind of classified condition, and it may well have continued to be used as an example of the kinds of questions, the multiple-choice type questions.

Senator NUNN. So there was nothing wrong with that test being available to recruiters?

General McLENNAN. Not in the eyes of AFEES, although Lieutenant Colonel Beasley, who was the Army commander of the AFEES

station, reported that to his commanders. In November 1975, Gunnery Sergeant Thompson again presented testing material. This material he said he had found in a desk in one of the recruiting substations in the Houston area. That material as well was turned over to AFEES, and it was identified as being a typewritten portion of the ASVAB 3 examination that was being given at AFEES at that time, in view of the fact that Lieutenant Colonel Beasley, the commander, again reported that up the chain, but all the tests were going to change on January 1, 1976, because I believe that is when ASVAB 6 and 7 came into the process, and ASVAB 3 was no longer used.

What I am trying to indicate here, sir, is that Gunnery Sergeant Thompson did turn in testing material that the local——

Senator NUNN. Excuse me just a minute, General. Did McClure take the ASVAB 3 test?

General McLENNAN. He took the ASVAB 3 test, yes, sir.

Senator NUNN. Wasn't that one of the tests Sergeant Thompson found?

General McLENNAN. McClure took the ASVAB test on November 11, 1975. Gunnery Sergeant McClure turned in that test that later turned out to be——

Senator NUNN. Thompson?

General McLENNAN. I am sorry, Gunnery Sergeant Thompson turned in that test on the 29th of November, 18 days after McClure had gone through the testing process.

Senator NUNN. I see. Well, your point is that Sergeant Thompson was not correct in saying that if the Marine Corps had followed up on his original complaint, that that could have been prevented from happening?

General McLENNAN. Well, sir, the Marine Corps did follow up on his original complaints in turning the material over to the testing agent, which is ASVAB. That is what we are required to do by regulation.

Senator NUNN. Were any of the tests Sergeant Thompson turned in as being in the hands of recruiters improperly in the hands of recruiters?

General McLENNAN. These were not serial number tests, as I understand it, but were typewritten questions, not in the exact same sequence that appeared on the test. What I am trying to say is, it was not an identical copy of ASVAB 3, the document that was turned in in November 1975.

Senator NUNN. Was it right or wrong for the recruiters to have that material?

General McLENNAN. Oh, it was wrong.

Senator NUNN. Did you investigate to find out what recruiters had the material and did anything happen to those who did?

General McLENNAN. Yes, sir. The statements in the investigation indicate that one part of the material that Gunnery Sergeant Thompson had turned in was found in an envelope that had an Army recruiter's name on it, and the second set of documents that he turned in were found in the trunk of a recruiter vehicle that was a common-use vehicle. All recruiters had access to the car and to the trunk. So, the investigation itself could not determine which if any of the recruiters had that information.

Senator NUNN. The larger question is, did anyone report the test had been compromised and suggest the test be changed?

General McLENNAN. Yes, we reported it to AFEES, yes, sir.

Senator NUNN. Did anything happen? Did they keep using the same test?

General McLENNAN. They used it through November and December, and the test changed on the 1st of January.

Senator NUNN. Did you get a chance to check with the recruiter that recruited McClure in the first place as to whether he really did give him a test before he took it the first time?

General McLENNAN. I went back to the McClure investigation. The recruiter that was named by Gunnery Sergeant Thompson was a Gunnery Sgt. Manuel Rodriguez, who was the NCOIC at Lufkin, Tex. In the McClure investigation which took place in April of 1976, Gunnery Sergeant Rodriguez was interviewed by the investigating officer and acknowledged that McClure had come to see him, that McClure had passed the initial screening at Gunnery Sergeant Rodriguez's recruiting substation, and that he took him to the METS site, that is, the mobile AFEES entrance test site, and he was administered the ASVAB test.

The score from that test did not meet Marine Corps standards. Sergeant Rodriguez' statement indicated that he so advised McClure, that he did not meet the mental standards of the Marine Corps, and that was his last contact with the individual.

Senator NUNN. Did the Marine Corps investigation team ask the recruiting sergeant whether he had in fact given McClure a test or coached him improperly before he took the first test?

General McLENNAN. The statement in the investigation is a summarized statement.

Senator NUNN. It does not address that point?

General McLENNAN. It does not specifically address that point, no, sir.

Senator NUNN. You have no reason at this point, then, to disbelieve Sergeant Thompson's statement that the sergeant told him that he did give him the test and that he failed it anyway?

General McLENNAN. Well, I do have a bit of difficulty with it, sir, because if you will recall Gunnery Sergeant Thompson's testimony, you asked him the specific question, did he tell you this after McClure had died.

Senator NUNN. That is right.

General McLENNAN. Thompson said, yes, sir. Gunnery Sergeant Thompson was transferred to Okinawa in December of 1976. Throughout this total process of investigation, and in the investigation that was conducted relating to Gunnery Sergeant Thompson's request for request mast with the Commandant of the Marine Corps, he never raised this point in almost 3 years now.

Senator NUNN. Of course, he testified also that he kept sending these tests off, and they kept coming back with no results, and you have explained why that was. It may be plausible, but I am sure he did not understand it completely. He also testified after he complained a couple of times he was charged himself with a recruiter fraud, and I am sure it made him think he was being punished for that. I think it is a plausible explanation why he requested, without success, to meet with the

Commandant of the Marine Corps, because he felt going up the chain of command ended up in being prosecuted when he was trying to correct wrongs.

General McLENNAN. Sir, like I said, he wrote the letter to the Commandant in September of 1976. It raised the specter of recruiter malpractice, both in the ASVAB testing area and in the area of police record checks.

Senator NUNN. Go ahead and finish your answer. Counsel can listen to it. I must go vote. I will be right back.

Mr. TRAVERS. Are you finished with that answer?

General McLENNAN. No; in that letter he wrote to the Commandant of the Marine Corps in 1976, where he alleged recruiting malpractice, in describing that malpractice, he did not raise the issue of Private McClure, which was of great importance to the Marine Corps, one that would have received immediate attention at the highest levels. As a result of that letter, an investigation was conducted that contained some of the information I just related to the Senator. He refused to make a statement to the investigating officer giving any of the details relating to either McClure or any other aspect of the recruiter malpractice, so in terms of belief or disbelief of Gunnery Sergeant Thompson, I have difficulty in understanding why such a vital piece of information would have been concealed for such a long period of time.

Mr. TRAVERS. It was never mentioned before last Tuesday?

General McLENNAN. Not to my knowledge.

Mr. TRAVERS. All right. We will take a short break.

[Whereupon, a brief recess was taken.]

Senator NUNN. General, you said that one of the tests Sergeant Thompson sent in basically had the right questions and the wrong answers?

General McLENNAN. Yes, sir, and the questions themselves, as I understand the material, were not in the same sequence that the tests are normally, that ASVAB 3 ALPHA was in. In other words, questions No. 1 might have appeared as 22, or something like that.

Senator NUNN. Sergeant Thompson also said that he was told that McClure was given the test in advance the first go-around, and in spite of that failed it. Then he went on to the other station and took the test and passed it. Is that basically correct?

General McLENNAN. Yes, sir.

Senator NUNN. Well, is it possible that on that first test he was given the right questions and the wrong answers?

General McLENNAN. Sir, I cannot say it was impossible. All I can say is, the investigation and statements of the people involved did not acknowledge that such was the case.

Senator NUNN. But there was nothing in the investigation that indicates they were asked that question, is there?

General McLENNAN. The statements are summarized statements, so there is no evidence of the line of questioning that was followed.

Senator NUNN. So really you do not know whether they were asked the question about whether he had access to the test or not? You cannot tell it by looking at the report?

General McLENNAN. No, sir.

Senator NUNN. Who did that report?

General McLENNAN. It was Lieutenant Colonel Cartwright, who at that time was the senior marine associated with the Marine Corps Reserve in the Houston, Tex., area. He was a regular officer, not part of the recruiting service, who was assigned that responsibility.

Senator NUNN. Is he still in the Marine Corps?

General McLENNAN. I would suspect that he is, but I would have to supply that for the record, sir.

Senator NUNN. It seems to me the Marines should go back and do some talking to him and find out what he did ask and what he did not ask, and if there were omitted questions about this testing business, perhaps you should go back and talk to the recruiters again.

The House Armed Services Committee, as I understand it looked into the McClure matter, and this is the 1976 report on Marine Corps recruit training and recruit programs, House Armed Services Committee.

The entering mental test was administered to him in Lufkin, Tex., by Mobile Examination Team, and applicant was rejected due to his scoring in the seventh percentile or mental category 5. On November 12th, 1975, Private McClure was sent to San Antonio AFEEES where he took the exact same enlistment tests and scored in the 59th percentile, mental category 3. He was thereupon enlisted.

This discrepancy in test, according to an examination by experts employed during the Marine Corps investigation of the entire incident, indicated that McClure took both tests but that the variance was too great for the discrepancy to be a coincidence or the fact that he had taken the test once before.

I do not expect you to know the answer to all of that, but I point it out for your information.

General McLENNAN. Yes, sir. Obviously, under our present practice, that score would be a matter of investigation on its own right.

Senator NUNN. [Nods affirmatively.] General, the Marine Corps report that you did indicates that there is no compelling evidence of widespread recruiting malpractice at the Cleveland recruiting station. The report also indicated that 19 percent of allegations against Marine recruiters across the Nation are confirmed, that 7 percent of the recruiters have been relieved for cause, and that 6 percent of the individuals who actually enlist in the Marines are discharged for reasons relating to the recruiting process.

Now, with 19 percent of the allegations against the Marine recruiters being confirmed, 7 percent of the recruiters being relieved for cause, and 6 percent of the individuals actually enlisting being discharged for reasons relating to the recruiting process, according to your report, that leads me to the question in terms of the Cleveland investigation, what you mean by the words "widespread malpractice."

General McLENNAN. What I mean by that term is, and I believe the report acknowledges that there has been malpractice in the system, that the data that we collected indicates that that is so, that it occurred virtually at every recruiting station in the Marine Corps system, that it is widespread in a geographical sense, but that the number of cases of malpractice is not of great magnitude.

Senator NUNN. Of course, forgetting Cleveland for a moment, looking at nationwide, your report says 19 percent of all allegations against Marine recruiters are verified. My question is, if 19 percent does not fit your definition of "widespread," what would?

General McLENNAN. That is 19 percent of the 1,835 allegations that were made.

Senator NUNN. That is my understanding.

General McLENNAN. Yes; those allegations come from two different sources, as we tried to make clear in our report, one being those we report on ourselves; that is, for the type of discrepancy found during the process, the question of ASVAB tests 31 points greater. That is a discrepancy reported against a recruiter by name. It must be investigated. The other category is from sources external to the Marine Corps; that is, letters either from individuals, Congressmen and Senators, concerned families, and so forth. They constitute about half of that 1,800 total.

The allegations themselves range across a very broad spectrum of allegations. I have the data on the allegations as they relate to the congressional and what we call special interest entries into the system. In that category, during this time frame of October 1, 1976, to July 31, 1977, there were 185 allegations of recruiter malpractice nationally.

Again, if you will recall, this is during a period of time when we shipped 74,888 young men into the Marine Corps. The 1,835 allegations relate to periods of recruiting sessions prior to this data base. In other words, we did not eliminate from the allegation figures those that were not directly connected to the 74,888 young men we had brought in. That 1,835 was from the total population. Of 185 allegations of malpractice, of that total, 35 related to false promises for school, MOS, or wrong information on the GI bill; 40 were for concealing or falsifying police checks or inadequate screening for police checks.

Senator NUNN. Are these the ones that were verified? Is this related to the overall 100-percent allegation? Are you addressing the 19 percent that were verified at this point, or are you addressing the whole?

General McLENNAN. Looking specifically at that 900-odd that came from Congressmen or Senators or families, some source external to the Marine Corps.

Senator NUNN. What percent of those were verified?

[Pause.]

What I am trying to get at is whether you are identifying the number in each category of allegations or the number of verified allegations.

[Pause.]

General McLENNAN. Of the congressional requests and special interests, there were 873 such allegations.

Senator NUNN. Total allegations?

General McLENNAN. Of those, 206 were confirmed.

Senator NUNN. That is about the same percent. That is about 20 percent, isn't it?

General McLENNAN. Yes, sir, and of that 206, there were 175 cases of recruiter malpractice.

Senator NUNN. 175? All I am asking, really, is how you define the words "widespread malpractice." To me, 19 percent or 20 percent of allegations being verified would be very close to widespread. Now, you used the words that in Cleveland there was no compelling evidence of widespread malpractice. What percent of allegations being verified would cause you to say there was widespread malpractice?

General McLENNAN. Well, sir, you have to look at the number of people who could make allegations, and then the number of allegations that are made. During this period of time these allegations were made, the number in the Marine Corps—we have been at about 190,000. We bring in 50,000 every year and 50,000 go out, so I am talking out of

hundreds of thousands of potential allegations, there were 1,835 allegations made.

Senator NUNN. I understand what you are saying. You are saying just because 19 percent of the total allegations were verified, that there could potentially have been millions or hundreds of thousands of allegations, and therefore that number would not be widespread. Let me ask you this way, then. Seven percent of the recruiters across the country have been relieved for cause.

General McLENNAN. Yes, sir.

Senator NUNN. What percent of the recruiters being relieved for cause would you call widespread malpractice by recruiters?

General McLENNAN. Well, the recruiter population in terms of its performance is a bell-shaped curve. Seven percent of the recruiters were meritoriously promoted while on recruiting duty.

Senator NUNN. Let's say 20 percent were relieved for cause. Would that be widespread? [Pause.] You made a report on Cleveland, and you used a couple of adjectives here. You see, if you read your final conclusion and left out the two adjectives, it could change the entire meaning. You say, and I will quote again, "The Marine Corps report indicated that there is no compelling"—compelling—"evidence of widespread recruiting malpractice at the Cleveland station." If you read it and left out those two adjectives, it would be a totally different meaning. You could read it this way: "The Marine Corps report indicated that there is no evidence of recruiting malpractice at the Cleveland recruiting station."

By adding those two qualifying adjectives, it is a tremendous hedge in terms of the report. I think you have a good lawyer, whoever advised you to put this in there, because you covered the whole waterfront in terms of protecting yourself. We could come to the conclusion that there was widespread recruiting malpractice at Cleveland, but then we could come to the conclusion that it was not compelling evidence of that widespread, and you would still be correct, or we could come to the conclusion that there was compelling evidence of recruiting malpractice but it was not widespread, and you would be correct, so I would say your report covers the waterfront in terms of protecting the Marine Corps, both in terms of what you actually found and in terms of someone checking behind you. There is virtually no way anyone could disprove that statement.

Senator METZENBAUM. If the chairman would yield for a moment—

Senator NUNN. There have been a lot of murderers convicted with less than that degree of proof.

Senator METZENBAUM. I also would point out to the General, you made the statement, "There is no evidence to support allegations of large-scale recruiter malpractice in the Marine Corps." I guess the same kind of adjective perhaps gives you an out. When is it large scale and when isn't it? The fact is, the evidence here which talks about cities all over the country certainly indicates that it is broadbased. As to whether it is large scale, I do not know when it gets to be large scale, but it seems to me the evidence would certainly suggest it is pretty large scale.

General McLENNAN. Yes, sir. I acknowledge we have had malpractice across the broad breadth of this country, and that the numbers are larger, certainly, than we want. We would like to see the number zero,

in order to meet our responsibilities to both our individual marines and the American people. In using the word "compelling" as related to Cleveland, in looking at the broad base of testimony from the Cleveland area, we had allegations from several recruiters who refused to make sworn statements to the U.S. Marine Corps, and so we did not have the benefit of their precise definition of malpractice, so obviously there was evidence there of malpractice, but was it compelling, given that we did not have total information, and we had, of course, information that countered the allegations.

Senator METZENBAUM. General, what concerns me is, as the chairman indicates, your report has some words that give you some outs, but the fact is, I think we can all agree from these 2 days of hearings that there is a good deal of evidence of malpractice in the recruiting practices of the Marines, and there may or may not be a reason for it. What concerns me and has concerned me from the very moment I got into this matter is the fact that we originally received cooperation from the Marine Corps and when we asked for records, we got the records. Then the knob was turned, and we were shut off, and it suddenly became kind of a combative pursuit. We could not get the attrition records we asked for. We could not get the records of specific cases.

What bothers me as we wind this hearing down to a conclusion is why the Marine Corps, which knows that problems exist, knows that the Armed Services Committee and this Senator really are not out to do the Marine Corps harm, but if there is a problem, we have an obligation to expose the facts in connection with it and try to clean up the problem, really, what bothers me is the total lack of cooperation.

As a matter of fact, even the matter of bringing up recruiters on charges, one man, Robinette, was brought up on charges, and the Marines brought up a couple of others after that, but in the main you have not been bringing up recruiters on charges when you have found they have been doing things in this manner.

What bothers me is, what is going through the head of the leadership of the Marine Corps, and what is going to happen tomorrow as well as what has happened yesterday, and that is the thing I would like to find out from you. Why have you clammed up? Why have you issued, a report which—I said it originally, I will say it again—is pretty much of a whitewash? And why have we not received the kind of cooperation I think we in the Senate are entitled to from the Marine Corps?

Would you address yourself to that?

General McLENNAN. It was through the efforts of your office, sir, that the initial efforts were made in Cleveland relating to your real concerns about the treatment of your constituents and their relationship with the Marine Corps. I do not remember the exact dates, but I believe that that investigative process started in July, and Colonel Cryan to my left was the investigating officer who went to Cleveland in order to work on that investigation.

I believe that the relationship between Colonel Cryan and his assistant and your investigators in Cleveland was as frank and forthright as we could make it. At your urging, and as a result of your concern, you did ask that an investigation be conducted by the Department of Defense, and I believe you also asked the Senate Armed Services Committee to investigate.

When we got to that circumstance, it was our understanding that information that we had we should provide upon the request of the subcommittee for the Senate Armed Services Committee, and as I understand it, any request that your assistants had for information was made through the counsel of the subcommittee of the Armed Services Committee, and we provided that information.

One of your assistants, Mr. Phillips, visited our headquarters a number of times. We provided background briefings on issues like Catlow-Russo and our real concerns in this respect. So, at the moment, given the constraints of the Privacy Act, and our need to respond to the Senate Armed Services Committee, I am not aware of any specific request for information that came through that channel that we did not provide if we had the information available.

Senator METZENBAUM. Are you making a distinction between that which I, as a U.S. Senator, requested of you and that which was requested of you by the Armed Services Committee? Is that the distinction you are making?

General McLENNAN. We had a number of specific requests from Mr. Phillips which I believe—

Senator METZENBAUM. Who represents me?

General McLENNAN. Yes, sir, I believe we responded to.

Senator METZENBAUM. He requested on my behalf the attrition list. Those were not forthcoming.

General McLENNAN. Sir, that was the request—the attrition list for Cleveland?

Senator METZENBAUM. The attrition list for more than Cleveland. He requested the attrition lists for a number of cities throughout the country. They were not forthcoming. We requested personnel records of certain individuals. We requested the overship quota documents. Those were not forthcoming. None of those would be protected, as I see it, by the freedom of information laws, possibly the personnel records, but certainly the first and third would not be.

Senator NUNN. Let me mention at this stage while the gentleman is looking through that. As I understand the Privacy Act, it provides that personnel records on individuals cannot be given except to the appropriate committee of jurisdiction or to the Senate as a whole. Now, I do not think that would apply to attrition records.

Senator METZENBAUM. I said perhaps there were personnel records which I could see might be protected, but attrition lists and overship quota documents would not, I do not think.

Senator NUNN. That has nothing to do with individuals.

Senator METZENBAUM. I think there might be something on personnel records, and I did mention that.

General McLENNAN. Yes, sir, I have a request dated October 4 to Lieutenant Colonel Barry, who is in our legislative liaison section here, and signed by Mr. Phillips.

Please provide the following information for the October 10 hearing: the print-out of regular and overship quotas, and for Cleveland and other cities in the same district, fiscal year 1977-78, the attrition lists for Mr. Schreiber's recruits thus far. Please provide the number—

and so forth and so on. I have an indication that that data, the regular mail shipments for the time frame requested were—I have a sheet dated here October 6, 2 days later. There was a difficulty in obtaining some of the data because of the way we maintain records.

We were able to provide information on the number of discharges from the delayed entry pool.

I do not know the date of your request. October 3?

Senator METZENBAUM. I think we asked for the attrition records. Did we ever get those?

General McLENNAN. Sir?

Senator METZENBAUM. Attrition records, the number of discharges.

General McLENNAN. The attrition records is where we had some difficulty. I have a comment on it.

Senator METZENBAUM. We had asked for any requests or requirements placed on the Cleveland recruiting stations for recruitments in excess of normal quotas for the period January 1, 1977, through June 30, 1978. What you gave us back were what were actually shipped, the numbers actually shipped, but you did not tell us what the requirements were.

General McLENNAN. Yes, sir, we gave you part 1 of that request and did not give you part 2.

Senator METZENBAUM. No; I do not think you gave us part 1. We have asked for any requests or requirements placed on the Cleveland RS for recruitments in excess of normal quotas, and we then went on to say that these statements were for the period January 1, 1977, through June 31, 1978.

General McLENNAN. I hold the response to that in my hand, Senator.

Senator METZENBAUM. This is that executive correspondence, and I do not see anything there which refers to the quotas, what the quota percentage is. You show what the quota is, but you do not show what the normal quota would be. You do not show what the overshipment is. You show what the quota is, what the number shipped is, and what the percentage is, but not the requirements, and we are asking for overshipped demands, and that we never received.

General McLENNAN. The percentage overshipped would be as a result of approval from some echelon higher than Cleveland.

Senator METZENBAUM. No, General, I do not wish to quibble with you, but you might get a request for 15 percent overship and you might wind up with a 2-percent overshipped or a 2-percent undershipped. All we were attempting to do was to find what the requests were, because we wanted that as an indication that was placed upon the recruiters. That you never did provide us with, but I will not hold this hearing up further. What about the attrition lists?

General McLENNAN. I now hold in my hand the delivery of that document, sir, dated October 12, and it apparently was held for some type of correction. I had assumed from my copy that it had been delivered. I apologize.

Senator METZENBAUM. The 12th of October is today.

General McLENNAN. Yes, sir.

Senator METZENBAUM. That I have not seen. We also asked on September 13, please provide me personal access to computer printouts and to recruiter attrition. I would like to have the printouts of the name of the person separated as well as the name of the recruiter who recruited them. I would hope to look at such printouts with respect to some 10 or 15 recruiters. I do not think we got any answer on that. We got no response on that at all, but even so, General, I do not wish to quibble with you as to whether you did or did not in some particular

detail. I am talking about the general question of cooperation and concern, trying to be helpful.

I think that Gunnery Sergeant Thompson certainly sounded as if he were trying to be helpful in this area, and instead wound up, as I see it, being somewhat behind the eight ball. As I understand, you suggested at an earlier point there were other things about that case. Were the other things the fact that he was charged with insubordination for seeking to have his court-martial tape recorded? Is that the other thing you are talking about?

General McLENNAN. I do not believe it was insubordination. I believe it was disrespect.

Senator METZENBAUM. Now, let's get that straight. Here is a man who has been in the Marine Corps for 20 years. He is charged, brought up on a court-martial—

General McLENNAN. No, sir. He asked for the court-martial, sir.

Senator METZENBAUM. He asked for the court-martial? Why did he ask for it?

General McLENNAN. Because he refused the office hours, the non-judicial approach to handling the problem.

Senator METZENBAUM. What was he found guilty of?

General McLENNAN. He was found guilty—there was the wrong information on one of the documents associated with the recruitment of a young woman into the Marine Corps.

Senator METZENBAUM. That is the one in the record where the woman in a recruiting statement had two different addresses. Is that right? We have the documents in the committee files.

General McLENNAN. Yes, sir, and we are supplying the investigation on Gunnery Sergeant Thompson as well.

Senator METZENBAUM. And for that he was found guilty and court-martialed?

General McLENNAN. He was brought into office hours because of that, the impropriety of that act. He elected not to go the office hour route, and asked for a court-martial, and in the normal course of events that would not have been a court-martial offense.

Senator METZENBAUM. General, answer me honestly. Would this young man with 20 years of service, a gunnery sergeant, ever have been brought before a tribunal of the U.S. Marine Corps if he had not blown the whistle and tried to take mast with his commanding officers about some recruiting practices that he knew were wrong? Would he have ever been brought up for such a minor charge, in your opinion?

General McLENNAN. Do you mean to the office hours process? Yes, sir.

Senator METZENBAUM. What was the office hour process? What did he do there?

General McLENNAN. The office hours is simply the appearance of the man before his commanding officer to discuss whatever that impropriety is. The commanding officer has certain prerogatives as far as correction if he determines that the impropriety deserves correction.

Senator METZENBAUM. That is like coming in and sort of pleading guilty to something. Is that it?

General McLENNAN. Or fully stating your case.

Senator METZENBAUM. But the sole charge against him was this question of a wrong address of a woman recruit who had two addresses on

her application, on two separate applications, and for that he was brought up on office hours, refused to go to office hours, then was courtmartialled, and you have adversely affected his whole Marine career by reason of that kind of charge. You cannot tell me that that really would have happened to any other marine.

You have recruiting officers who do far worse things. You have a man over there, Major Schreiber, who said he was falsely swearing in people regularly. You never brought him up on office hours or on any courtmartial, but this one man who had the temerity to speak up to his officers, he is the one who is made the fall guy. Isn't that really the case?

General McLENNAN. Sir, there was an applicant who testified, the young woman herself, that a wrong address was placed on the form. How does the commanding officer react to that? There is a charge of impropriety. He has got to hear the case.

Senator METZENBAUM. Is it proper to have RS swear-ins?

General McLENNAN. It is proper to have RS swear-ins?

Senator METZENBAUM. Yes.

General McLENNAN. In my opinion, no, sir.

Senator METZENBAUM. Has anything ever been done to Major Schreiber in connection with those RS swear-ins?

General McLENNAN. We continue to collect information on that as well as the actions of other individuals in the Cleveland area related to that malpractice that did occur. There is not only the swear-ins. There is the question of the promotions in the delayed entry pools.

Senator METZENBAUM. To the PFC's?

General McLENNAN. That is correct.

Senator METZENBAUM. And as a matter of fact, Major Schreiber has been given one of the highest honors and the happiest thing that ever happened to him by being sent to the War College in Germany as a consequence of his actions. But Gunnery Sergeant Thompson, for having two names with respect to an applicant, was brought up on office hours and then courtmartialled. Is there a difference?

General McLENNAN. Major Schreiber was selected to go to an intermediate level school in Germany as a result of a competitive selection process that was conducted last fall, a year ago, and at that time none of the information that has developed as a result of this investigation was available to us. He is now assigned to that installation. Our investigative process continues, and it is being reviewed at the Commandant's level.

Senator METZENBAUM. What are you investigating? He has testified that is the procedure he was using. What are you investigating?

General McLENNAN. Sir, there is a lot of information we expect to get out of this hearing that will be most helpful to us in dealing with the problem, and in all cases we go back to some of the applicants or recruits who were involved in the process, to get statements from them so that we have as complete a picture of what actually transpired as we can get, so it is not really proper for me to comment on pending disciplinary action on Major Schreiber, only to assure you the case is not closed.

Senator METZENBAUM. I want to have you look at a document. General, that is the document from, ostensibly, the Akron public schools. It was used to admit or to accept a recruit. It is, ostensibly, signed by

John Yovich. The principal, has, I think, three words misspelled in a short paragraph. It is wrong grammatically in several places.

Wouldn't you think that a commanding officer of a recruiting area would have no difficulty at all in picking up a letter of this kind and checking with the principal as to the validity of that kind of statement?

General McLENNAN. Yes, sir. I do not think he would have any difficulty in checking the validity, if the school is one that will confirm the information and if it is during a time of year when the school is open.

Senator METZENBAUM. On your report of June 29, you had a list of RS and recruiters and you indicated a number of inappropriate, improper swear-ins or recruiting practices and there is one Sergeant Dorsey, North Evening Night School, high school graduate. When you checked into it to verify the education you found no record of attendance. Has anything been done with any of the people on this record as far as the recruiters are concerned? Has any action been taken?

General McLENNAN. I am not familiar with that specific entry, sir. As you know, the investigative process went into the files, and of the 947-odd applicants examined 245 or so cases, and found 15 similar documents.

Senator METZENBAUM. What I am really asking is, have any of the recruiters who were guilty of malpractice—other than Robinette and two others who subsequently were brought up after he was brought up on charges—been brought up on charges?

General McLENNAN. Yes, sir. If you recall, there were eight recruiters suspected of falsification of high school documents as a result of that investigation for having one or more false high school documents in the file. So far, I believe four, including Gunnery Sergeant Robinette, have been to the office hours level of correction. That leaves four of the original eight who have not as yet received any disciplinary action.

Senator METZENBAUM. Have any higher-ups been brought in on charges of any kind?

General McLENNAN. Sir?

Senator METZENBAUM. Anyone over the recruiting officers themselves?

General McLENNAN. No, sir.

Senator METZENBAUM. Anywhere in the country, has anyone over the recruiting sergeants or recruiters been brought up on charges?

General McLENNAN. During the course of my investigation? Do you mean, has it ever happened?

Senator METZENBAUM. Any time you can remember. You have been in the Marine Corps a long time. Can you remember any time where a person other than an NCO was brought up on charges, any commissioned officers?

General McLENNAN. I do not recollect, sir. We have had officers relieved for cause or relieved for the good of the service.

Senator METZENBAUM. I think I have nothing further, Mr. Chairman.

Senator NUNN. General McLennan, let me ask you a question about the high school education documents. What is the practice in terms of the procedure to get those documents? Do you get the applicant to

bring in the document, or do you directly contact the high school? What is the modus operandi in terms of your procedure?

General McLENNAN. The applicant is to provide the document, the original high school diploma, if he has one. If he is currently in school, of course, that does not pertain. If he has dropped out, we still need a letter of certification or a letter from the institution indicating that he has completed such-and-such grade. In those cases, again, it is an applicant responsibility to bring that to the recruiter.

Senator NUNN. Couldn't there be a procedure that would expedite? Maybe, it is better to put the burden on the applicant. Couldn't there be a procedure where the high school diploma, there was a waiver signed to the Right to Privacy Act when the applicant came in, that he would give the name of the high school, and then a direct communication from someone above the recruit level to check on that applicant? Couldn't you eliminate almost all the fraud there rather simply?

General McLENNAN. One of the things we have learned from this experience is that our methods of quality assurance, that is, as distinguished from quality control, are not as effective as they might be, and as a result, we intend to have a verification process, which is what I think you are talking about, somebody independent of the recruiter and the applicant who in fact determines, did the young man either attend or graduate from the school.

Senator NUNN. I do not know the best way to do that. It just seems to me there are a lot of problems around here that are not curable. It seems to me this is a curable problem, and I do not know the best way, but it should be solved pretty easily.

General McLENNAN. I agree with you. The present proposal we are looking at is a random sampling. That would be done 400 or more marines per quarter per each depot, 800 per quarter, about 3,000 per year. The recruiters, of course, would not know who might be selected under this random process, that we would verify the source, not only the high school documentation but police records, standing in the community, and so forth.

Senator NUNN. Is this Colonel Cryan?

General McLENNAN. This is Colonel Cryan.

Senator NUNN. Colonel Cryan, you had, I think, primary responsibility for this investigation, did you not?

Colonel CRYAN. Yes, sir, I did.

Senator NUNN. Mr. Robinette testified yesterday that in conversation with you, basically you said something to the effect that everyone knows there is widespread compromise of the tests, and that the tests are all over the place. I do not remember the exact words. Was there anything like that said to Robinette?

Colonel CRYAN. At that time, Robinette made a statement to me under article 31. He admitted that the ASVAB was around R.S. Cleveland. When asked, did he have the ASVAB—

Senator METZENBAUM. What, sir?

Colonel CRYAN. He admitted to me that the ASVAB was in existence around RS Cleveland. When asked, did he have it, he refused to make any answer to that question. In regard to all of the allegations that you, Senator Metzenbaum, made, he had no comment whatsoever. It is common knowledge, Senator, that the ASVAB is compromised.

Senator NUNN. That is pretty much common knowledge.

Colonel CRYAN. That is common knowledge among all the recruiting services. It is a given, and that is exactly why the Marine Corps for 3 years, at least, has been attempting to get either new versions of the ASVAB or, better than that, automate the whole system and eliminate the written work.

Senator NUNN. Did you run into police record coverups in the Cleveland investigation?

Colonel CRYAN. No, sir. What I first came up with was the name of a man, Andy Ladeka, who was supposed to be one of the clerks in the juvenile court of Cuyahoga County. There was no evidence that I could find to indicate that he was giving any false police checks. What did come out was that he was, if nothing else, an expediter, a fast response on police checks for all services, and he was known as that by all service recruiters. There was some inference that there were payoffs, money, liquor, cigarettes.

I looked into what was called the Flower Fund at RS Cleveland, and tracked their transactions through, and could find no indications of any money being used to "pay off" police or juvenile officials.

Senator NUNN. No evidence of that?

Colonel CRYAN. Educators or anything else.

Senator NUNN. Did you have any evidence of recruiters going to the commissary and buying things for the juvenile officials?

Colonel CRYAN. No, sir. There were disbursements out of the Flower Fund for what they called their parties, a recruiting station's NCOIC conference. They used this to defray the sandwiches or beers, or whatever they would have after the conference. I could not find any indication of any money going from that fund to anybody other than those that were in that recruiting station.

Senator NUNN. Did you uncover any instances where ringers were used to take tests?

Colonel CRYAN. No, sir.

Senator NUNN. General, what is your opinion about access to high schools, as to whether that would be an important tool in the current recruiting under the All-Volunteer Force?

General McLENNAN. Yes, sir. I think it is absolutely essential to us.

Senator NUNN. Can you get your service chiefs to address that problem, the other chiefs? I have asked them all—and this is before you got here—to get the Department of Defense to come up with some recommendations if they have any on that.

General McLENNAN. We most strongly will support that, Senator. This same topic was discussed in the hearings before the House in 1976 and General Barrow, who was then the Deputy Chief of Staff for Manpower, when he was asked by the House what can be done to help the Armed Forces, listed a number of items. No. 1 is legislation to permit obtaining information pertaining to juvenile offenses. No. 2, resources for development of automated testing systems to eliminate mental test compromise, and in his testimony he strongly supports the ability to have access to the high schools on some carefully controlled process.

It is more important to us today than ever, because, as you know, under General Wilson, we have made enormous efforts to improve the quality of the young marine, both male and female, in the corps.

Senator NUNN. I know that, and I have commended you for it before.

General McLENNAN. And the source. Our data tells us that the high school graduate has the greatest potential for the kind of productive performance that we expect from Marines and are so happy to get from so many of them, but obviously if the high school market is the one in which we wish to deal, then we need to have information about that market, so we need to have the support of the high schools, and I can assure you, sir, that we will very vigorously push for legislation to help us in this respect, and I so comment in my investigation.

Senator NUNN. Of course, we can draft the legislation over here, but we really need the Department of Defense, who are experts in this area, to tell us exactly what kind of legislation and what form of compulsion to whatever extent is needed. You are the ones with the experience, and I know that the military has to go through the civilian chain of command over there to get legislative recommendations, but it seems to me the personnel chiefs would all be willing to push this and at least get some kind of decision.

I would hope that the Department of Defense could come up with a recommendation, or at least a statement that they are not going to recommend anything by early next year. I think this committee and I think the House side, would be very receptive to something like that.

General McLENNAN. Yes, sir. Along that line is the need for help with *Catlow-Russo*.

Senator NUNN. We would like your recommendations on that. I do not know of any recommendation that has come from DOD on that.

General McLENNAN. We have gone forward to the Secretary of the Navy with recommendations in this regard, and the Chief of Naval Operations has joined us in those recommendations, and I would hope that we would be able to move it so that it could be considered by the Congress in the next session.

Senator NUNN. There is so much going on here that unless we have someone who comes up with these kinds of recommendations, it is unusual to see something go through. If the Department of Defense sits back and does not do anything on this, it is awfully hard. I know it is not your fault, but I am telling you the way it is.

General McLENNAN. I will accept part of that blame, sir, because I think that to push it through the process, they need to have a strong, clear, and informed voice on what the problems are so that an adequate job can be done in terms of drafting that legislation, so I pledge to you the Marine Corps will not hesitate in this respect.

Senator NUNN. General, how long, have you been chief of personnel?

General McLENNAN. Sir, I took over on the 1st of August, and my first real official assignment was your letter to the Commandant directing the investigation into recruiting practices.

Senator NUNN. Well, as Marines would say, we are trying to break you in right.

General McLENNAN. Well, it has been an experience, let me describe it in that way, vital to me, I believe, to have had this opportunity to delve as deeply as I have into this very critical area of our operations this early in my tenure as deputy chief of staff for manpower. I know there was some early comment here about "compelling" and "wide-spread." It is too much. I am positive we can do a better job. I think

we have the tools to do a better job. I think we are smarter than that. I think there are a lot of young people out there who want to join the Marine Corps, who have the kinds of backgrounds we want, and I think we can reach them.

In many ways, it is a hostile environment out there for the recruiter, because he is faced with a very complex job, and a very difficult, competitive market. We have high expectations of our Marines. A gunnery sergeant in the Marines who may be a superb performer in his primary occupational field will be sent out to a town he does not know to do something that he was not really fully trained over many years of service to do. He succeeds because of his love of the corps and his desire to be successful, and I think in many ways that recruiting has to be the ultimate test of integrity. It is a tough job.

We prescribe numbers to get, with an ever-increasing requirement for quality, and we need them in accordance with a fixed schedule. It is a difficult and demanding job to adjust to that. I am heartsick at the kind of personal tragedies that Mr. Robinette and Sergeant Goode and Sergeant Bletz and Gunnery Sergeant Thompson represent here.

There are institutional problems and individual problems associated with this process. Given what I know now, I am committed to work with my Commandant to improve to the degree possible recruiter working conditions, to seek new answers to old problems. We may have to ask for additional resources, or the permission to use the resources we have now in different ways, but I think we do have eyes that see, Senator.

Senator NUNN. I appreciate your attitude, General, and I commend you for your frank acknowledgement of the problems. The only way we can help you up here on the Hill is if you let us know what they are.

General McLENNAN. Yes, sir.

Senator NUNN. I know that is a great compulsion on the Department of Defense to come up and say, everything is fine, we can do the job. But, sometimes there are impossible jobs, given the laws and given the constraints, and I think when they are impossible jobs, you should say so. If you do not say so, the job of that recruiter down at the bottom becomes impossible, and he has no one to talk to, and it never gets up here. You are speaking for him, too.

General McLENNAN. Yes, sir.

Senator NUNN. Just because you can do your job in the Department of Defense and your record can look good in 2 years when you leave, if in the process all of the recruiters out there are having an extremely difficult job and are corrupting themselves—I don't mean all of them, but a good portion of them—then someone has not given us the message, and I think the time has come for candor in the volunteer force. Maybe it will work. I hope it will, but I think the overriding question is, will the volunteer force work, or are these problems inherent in it. If you cure one, do you have another one?

One thing I was going to ask you about is, do you know anything about this report that is supposed to be due on December 31?

General McLENNAN. No, sir. I heard you describe it on Tuesday, and we welcome an opportunity to examine and look at options in this respect.

Senator NUNN. Has anyone talked to you about it?

General McLENNAN. No, sir, not yet.

Senator NUNN. Who is your assistant here? Do you have an assistant here who was in the manpower area of the Marine Corps before you came on board in August?

General McLENNAN. No, sir. All of the principal executive jobs changed in the period of July and August of this year. My predecessor was Lt. Gen. Bob Nichols, who retired, as you know, sir, on July 31.

Senator NUNN. Again, this is not your fault, but I am a little bit perplexed that no one has told you the report is due December 31. The Department of Defense has know about it for a long time, and if they are not talking to the personnel chiefs, where are they going to get the information to make a report to us?

General McLENNAN. Yes, sir. As I say, I am not aware of it, but as you appreciate, sir, for the past several months I have been deeply involved in this particular project, and I would think certainly that some of the data we have developed here will be most helpful to us in trying to look at, I think, the problem that the committee is interested in.

Senator NUNN. I will ask the staff to get in touch with the appropriate officials over at the civilian level of the Department of Defense and ask them to give us at this stage exactly that procedure they are following in making this report. This is not something that we are taking lightly. The entire conference committee of both the House and Senate Armed Services Committees talked about this situation at length in conference. There was a unanimous agreement that we need to begin to look toward ways of improving the current practices if we are going to make the volunteer forces work, but at the same time we need to begin looking at alternatives.

This is something both committees are very serious about, and so far the indications I get from the Department of Defense are that they are not taking the report seriously at all.

Colonel, did you help write this Cleveland report?

Colonel CRYAN. Sir, I wrote the Cleveland report.

Senator NUNN. Are you a lawyer?

Colonel CRYAN. No, sir. I am an infantry officer.

Senator NUNN. Did you ever think about being a lawyer?

Colonel CRYAN. No; and I never will.

Senator NUNN. You have a lot of legal instincts. Did you write the sentence, "The Marine Corps report indicated there was no compelling evidence of widespread recruiting malpractices?"

Colonel CRYAN. I sure did, Senator.

Senator NUNN. Sir?

Colonel CRYAN. I sure did.

Senator NUNN. I am sure you have been in combat areas.

Colonel CRYAN. Yes, sir.

Senator NUNN. What is your combat experience?

Colonel CRYAN. Vietnam, sir.

Senator NUNN. If you sent out a patrol and asked them about enemy activity, and the man came back and reported, "Sir, I find that there is no compelling evidence of widespread enemy activity in that region," what would be your reaction?

Colonel CRYAN. I would be somewhat hesitant to believe them. However, Senator, let's get to compelling reasons, if you will. The information that was fed to headquarters Marine Corps was that there were

widespread recruiting malpractices in the Recruiting Station Cleveland area. Now, I know what widespread means, sir. That means it is rampant throughout the recruiting station.

Senator NUNN. You say there was evidence of that?

Colonel CRYAN. That was the allegation that was made, sir. Widespread evidence of recruiting malpractice in approximately seven areas, testing, undue pressure, police records, educational—the whole spectrum we have been through. When I started, the question was how to start. There were approximately 53 recruiters in the Recruiting Station Cleveland. There were 13 substations, and how I started there was to just pick one recruiter at random in those 13 substations for openers. If I took a hit on checking the records that that recruiter had put through, then I checked the entire substation, and in some 900 odd cases that were looked at for the entire period January 1 through July, there were 272 cases where there were questionable practices.

We backtracked those and came up with, there were 15 recruiters or 15 cases where it was a case on verifying with the high school that the certification or the diploma or the completion of the 10th grade was in error. The recruiters involved amounted to, I believe it was 11. I am not too sure of my numbers at this point.

Now, that took me and the people with me roughly 9 days of working throughout, starting extremely early and going extremely late, and a master sergeant from my office at Parris Island going around to police departments and schools. In that 9 days of tracking all of these pieces of information down, it would be impossible for me or anyone else who was there in the time constraints that were imposed to look at every recruiter. If I were looking at every recruiter, I would probably still be there.

We looked at investigations that had been conducted for the entire past year. We looked at the attrition out on Parris Island. We looked at every kind of measurement tool, and when I came up with roughly 28 percent of the cases, what I came up with was 15 cases of malpractice. I did not consider that widespread when I looked at the entire number of people who were put in by the recruiting station.

Now, that is my rationale, sir. I found no compelling reason to suspect widespread recruiting malpractices.

Senator NUNN. I am a lawyer. I admire your wording. [General laughter.]

Colonel CRYAN. I am trying to rationalize it to you, sir. It is like being a little bit pregnant. What is a little bit pregnant, or what is widespread pregnant? Is that 8 or 9 months or 3 months?

Senator NUNN. What is compelling pregnancy?

Colonel CRYAN. That is when they say you are. [General laughter.]

Again, I am not a lawyer, but those are my words, and that is the way I saw it.

Senator NUNN. Let me just ask you one more question, and I will not pursue this. What if we dropped the word "compelling?" Would you still stand by the statement, "There is no evidence of widespread recruiting malpractice in the Cleveland station?"

Colonel CRYAN. Yes, sir, I would.

Senator NUNN. You would stand by that statement, "no evidence of widespread recruiting malpractice?"

Colonel CRYAN. No evidence of "widespread." That is the operative word, sir, "widespread."

Senator NUNN. All right, sir.

General, I look forward to working with you, and we will have many other opportunities to talk about these problems. We will have questions for the record that we did not get to cover.

Colonel, we appreciate your being here today, and we thank you for your report. I look forward to communicating with you in the future about steps you are taking to curb abuses we have heard about, and also the broader question of what we can do to improve the current recruiting mechanisms and the volunteer force.

I would also like to get your assurance that you will be candid with us all along about problems with the volunteer force, and I would hope you would come before the committee and tell us if you think at some point it is not going to work.

General McLENNAN. Thank you for that invitation, Senator, and let me thank you for the opportunity to testify today. I assure you that many positive things are going to come out of this from the Marine Corps' viewpoint.

[Questions with answers supplied follow:]

QUESTIONS SUBMITTED BY SENATOR SAM NUNN, ANSWERS SUPPLIED BY LT. GEN. KENNETH McLENNAN, U.S. MARINE CORPS, DEPUTY CHIEF OF STAFF FOR MANPOWER/DIRECTOR OF PERSONNEL

Senator NUNN. General McLennan, on page 17 of the Marine Corps report it is stated that 272 high school documents were selected for verification from the Cleveland Recruiting Station, and 15 documents (about 6 percent) were found to be false.

Senator Metzbaum Tuesday introduced nine allegedly false educational documents into the record. I should add that because of previous allegations, the subcommittee contacted the principals at three of the schools involved who verified these documents were indeed forgeries. I will ask that those documents be placed in the record.

In addition, our inquiries to high school principals on two additional documents which I will also put in the record indicated they too were false. That is a total of 11 documents. I would agree that our verification was not a random sample but was based on specific allegations. I will ask the clerk to give you a list of the applicants' names involved in these documents.

[Documents retained in committee files.]

#### FALSE HIGH SCHOOL DOCUMENTS

QUESTION. Are you saying that there are only 15 false documents and that we have 11 of the documents?

General McLENNAN. No, sir. Of the 943 total shipped from 1 January to 21 July 1978, 272 were checked, which is a percentage of 28.8. A total of 15 discrepancies were found for a 5.5 percentage of those checked.

QUESTION. Can you verify that these 11 documents were also uncovered as false as a part of your investigation?

General McLENNAN. No, sir. We can only verify that 4 of the names listed were uncovered as being false as a result of Colonel Cryan's investigation. The names identified by Colonel Cryan which are the same as your list are as follows: Paul Bard, Jim Hall, Gerald Joseph Oliver, and Michael Perry Wayne Sneed.

#### ASVAB TEST COMPROMISE

QUESTION. Do you feel there is widespread compromise of the test?

General McLENNAN. The test has been in use for a number of years, and there are only two forms. Thus, it would be a simple matter to develop unauthorized copies of the test. However, if you mean by compromise that applicants are being given the answers beforehand, the feeling is that this practice is not widespread (i.e., done to a large degree).

QUESTION. In Tuesday's testimony, Mr. Robinette claimed that Colonel Cryan had said to him that copies of the test are available. Colonel Cryan, do you think there has been widespread compromise of the test?

Colonel CRYAN. No, not in the sense that people in the recruiting service are giving out the answers indiscriminately. Our statistics from the re-test given at the recruit depots to measure this very factor indicate that the practice of unauthorized coaching is not widespread (i.e., frequent).

#### COMPUTER ASSISTED ENTRY TESTING

QUESTION. Lt. Gen. McLennan, one of the recommendations in the Marine Corps report is that there be an introduction of computer assisted entry mental examinations as soon as possible. This must indicate that you feel there are problems with the test.

General McLENNAN. Needless to say, with the recruiters of all services under some degree of pressure to meet goals, there is a temptation to obtain the test questions and answers for improper use. There are only two forms of the test, both of which have been in use for a number of years. It would be an easy matter for recruiters to develop copies of the questions and answers. I suspect it has been done. Thus, the temptation to use improper means to ensure an applicant is qualified is there. The computer assisted test will absolutely remove this temptation and that is our responsibility as leaders. It is noted that an interim measure to achieve that aim would be to introduce many more forms of portions of the test. This should be relatively inexpensive and not too difficult.

#### ASVAB TEST COMPROMISE

QUESTION. If there is widespread compromise of the test, then why doesn't the Marine Corps procedure of retesting everyone at boot camp indicate more of a problem? As I understand it, a deviation of more than 30 between the original test and the test given at boot camp requires an investigation. The table on page 7 of the Marine Corps report indicates that only  $\frac{1}{100}$  of 1 percent of the tests showed that much variation.

General McLENNAN. Rather than ask why the results do not show widespread compromise, we take this quality control measure at face value and accept that there is not widespread malpractice in this area.

#### ASVAB SCORE DEVIATION

QUESTION. Do you think there should be an investigation when there is a deviation by as many as 10 or 15 points? (instead of 31).

General McLENNAN. We believe that any compromise of the test is improper and we desire to investigate whenever there is probable cause to believe it has occurred. Toward this end we are revising our procedures, such that each instance of a variance of 21 or more will be investigated. In view of the small number of deviations in the 21-30 range, the extra administrative burden of doing so will be manageable. Further, since the test scores are sensitive to other factors besides test question content (e.g., mood, surroundings, health, etc.) investigating deviations below 21 would cost far more in time and effort than would be gained.

#### AVAILABLE RECRUITING MARKET

QUESTION. Do you think we have arrived at the point where straining for numbers has become such a problem that the military is just not able to meet its recruiting needs under current regulations?

General McLENNAN. No. The Marine Corps' experience has been that recruiting goals have been attainable without devoting an inordinate amount of resources to the task. Further, it is questionable whether or not the volunteer market has yet been fully tapped. That is to say, it is conceivable that by devoting more resources (e.g., personnel, advertising dollars, etc.) more people could be attracted to volunteer. There are indications that this is particularly true for females.

QUESTION. Do you agree that if the Marine Corps strength were reduced by five percent, many of these problems would be eliminated?

General McLENNAN. On the surface it would appear that the pressure and strain for numbers would be lessened with a reduced annual accession requirement. This is not necessarily true. Although the Marine Corps has attained its recruiting goals over the past two years while significantly increasing the degree

of quality accessions the problems associated with recruiting did not experience a corresponding turn around. The Marine Corps considers that end strength should be driven by the Marine Corps assigned mission. The current end strength requirements can be met with quality accessions, and as reflected in my previous testimony the corrective action being taken and contemplated by the Marine Corps should eliminate many of these recruiting problems without reducing end strength.

**QUESTION.** Do you agree that since we are now facing a 15 percent decline in the number of young people over the next few years, that the current policy of recruiting may require a 15-percent reduction in our military forces or if we were to include the five percent clearly giving problems now, that a reduction of 20 percent or more may be necessary.

**General McLENNAN.** We are not familiar with those precise figures, but do recognize that the number of potential enlistees will decline in the future. Assuming the figures are valid, it does not necessarily follow that the Armed Forces must be decremented proportionately. Force strength is driven primarily by needs of the Country for defense. If the needs remain the same, measures will have to be taken to keep the strength up (e.g., commit more resources to recruiting, establish some form of required national military services, etc.).

#### PRESSURE ON RECRUITERS

**QUESTION.** Do you think there is excessive pressure on recruiters to meet quotas and that this drives at least some to use illegal means?

**General McLENNAN.** There is pressure to achieve goals; however, we do not agree it is excessive. Recognizing that this pressure is inherent in recruiting, we go to some lengths to compensate for it. First by selecting people who have proven they are quite capable and, to the extent practicable, who do not have other pressures to contend with (e.g., inadequate finances or domestic problems). Then there is a complete training program which ranges from a formal school to structured follow-on training at the recruiting station, to on the job training before going on production. There are a number of assistance techniques provided periodically thereafter. Through these methods and others, we try to equip a person for the job and support him as he goes about doing it. Despite that some—a relative few—do resort to illegal means.

#### RECRUITER WORK HOURS

**QUESTION.** Tuesday's testimony indicated that good recruiters frequently work from 5:00 a.m. to 9:00 p.m. Do you think this kind of schedule itself represents a good deal of pressure?

**General McLENNAN.** The hours are certainly not the norm. That is, not every recruiter works a 16 hour day frequently. There are, of course, occasions when such is necessary. For example, on a day when a recruiter must bring an applicant to the AFEES for early processing, he gets an early start on that day, and he may work into the evening which is a prime time for working with applicants and visiting their families. The hours referred to are not directed by the recruiter's supervisors. Quite the contrary, every recruiting station is very much aware of the demands of recruiting duty, and to the extent possible, the commanding officers endeavor to minimize occasions when long hours are necessary. It must also be noted that recruiting is in fact selling, and a measure of pressure inheres in selling if success is to be achieved. Further, selling must be done when the customer is available; this means evening and Saturday work in many cases. In summary, there are days when the demands of the job require long hours. Long hours are not directed routinely. Many times long hours are the result of the recruiter's own initiative and dedication to do his very best for the Marine Corps, his local leaders and, of course for enhancement of his own record.

#### RECRUITER VOLUNTEERS

**QUESTION.** Your report indicates that about one-half of the recruiters are volunteers. Do you notice any difference in performance between recruiters who volunteer or recruiters who are assigned?

**General McLENNAN.** We do not track this factor and, therefore, cannot quantify the answer. There would be little value in measuring this factor, since there are not enough volunteers to fill all the billets and, for better or worse, we must use non-volunteers. Having said that, it should be noted that the people selected for recruiting duty are among the finest. Thus, once selected, trained

in our formal school and afterwards in the field, most recruiters carry out their orders and perform their duties in a manner you would expect from fine NCO's.

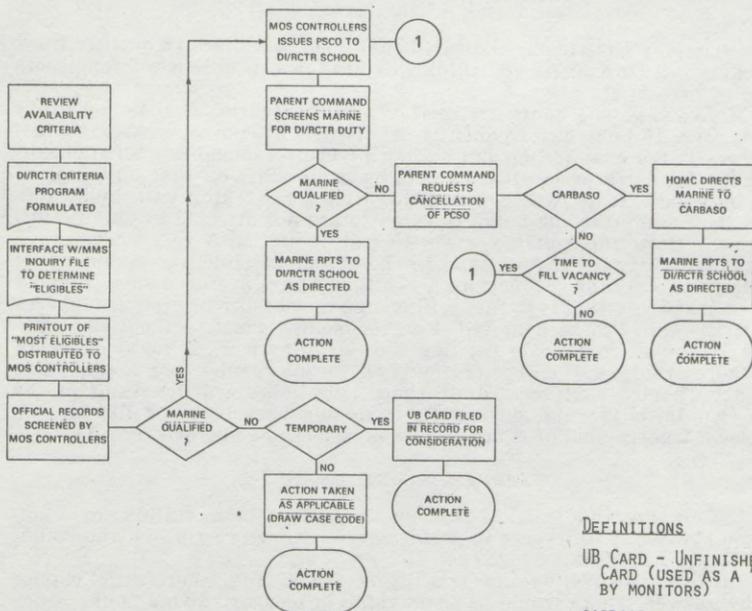
#### RECRUITER SELECTION

**QUESTION.** What selection procedures do you go through to assign someone to recruiter training?

**General McLENNAN.** The screening process has several filters which focus on physical, dental, and medical fitness as well as the maturity and emotional, financial and moral stability of both the Marine and his or her family. In addition, certain performance and personal traits are stressed. The current process works like this:

Semiannually, a HQMC screening team, consisting of former recruiting personnel, visits major CONUS commands for the purpose of interviewing career Marines who have at least 12 months on station. Marines to be interviewed will have already been prescreened by their parent commands in accordance with criteria outlined in Marine Corps Order 1326.6. The HQMC team (which was reinstated in January 1978) interviews and administers a personality profile questionnaire to each candidate. Additionally, the screening team conducts an information seminar for candidates and their spouses. Results of these semiannual visits are compiled and entered into a data bank at HQMC for the purpose of building a pool of pre-screened candidates who are identified as meeting the criteria at the time of interview.

The next step takes place at HQMC. Bimonthly, a printout of eligibles is generated from the Manpower Management System. Automated eligibility criteria focuses upon time-on-station, grade, age, education, noncriticality of occupational specialty, nonstandard performance indicators, and other selectivity factors. This run will generate a list of names from which monitors select the most eligible. Prior to making subjective evaluations, monitors draw the personnel files of nominees and focus particularly on volunteers, those previously screened by the HQMC team, those having the longest time on station and certain qualitative factors revealed by performance evaluations and other documents resident in the personnel file. Once the monitor has made his selection, orders are prepared for final review and release at the monitor control unit level (normally a field grade officer). The following flow chart reflects the steps involved at HQMC.



Upon receipt of orders, the parent command is tasked to conduct a final screening in accordance with MCO 1326.6. This screening not only considers objective and quantifiable criteria but again subjectively evaluates and reviews personal traits such as self-image, persistence, communication skills and maturity. Frequently, information surfaces during this final screening which necessitates the modification or revocation of orders, in which case HQMC is notified for appropriate action.

The final gates occur at Recruiters' School where an arrival inventory is conducted and students are further attrited prior to graduation if they fail to meet academic, salesmanship and other criteria.

#### RECRUITER ASSIGNMENT

QUESTION. Do you think it is considered a good assignment?

General McLENNAN. From the perspective of volunteers, personnel managers and promotion boards, recruiting duty is considered to be a challenging and career enhancing duty which requires top-notch talent. From the perspective of some nonvolunteers, recruiting duty is viewed as career jeopardizing. For those who possess technical skills in rapidly changing occupational fields, there is always the concern that extended periods away from working in their primary occupational specialties will cause them to be technically outdated when they return to their occupational field.

#### RECRUITER QUALITY

QUESTION. General Wilson has expressed his concern to this Committee that the many high quality Marines assigned to recruiting duty could affect the quality of the NCO's assigned to other units. Do you share this concern?

General McLENNAN. I certainly do. Screening requirements are rather stringent and the numbers involved are significant. We currently have 2,180 regular recruiter billets, of which 1,961 are production recruiters. The remaining recruiter billets are for Armed Forces Entrance and Examination Station (AFEES) liaison NCO's, Officer Selection Officer Assistants, and a variety of supervisory requirements. In addition, the Marine Corps is staffing 1,235 drill instructors billets which share screening criteria similar to recruiters. These Marines are drawn from a population of approximately 46,000. Taken together, recruiters and DI's comprise about 7% of the USMC sergeant and above population. Since recruiters and DI's are the cream of the crop, and reflect the spectrum of occupational fields, the rest of the Marine Corps will obviously be deprived of this talent.

#### ENLISTMENT APPLICATION READING LEVEL

QUESTION. According to Department of Defense officials the enlistment application requires a 16th grade reading comprehension level to understand; that means, and equivalent comprehension level of a senior in college. Would you agree that this means that most recruits would not be able to understand the application form?

General McLENNAN. Not necessarily. The applicant is only required to complete specified segments of the form, e.g., personal data, such as name and address. These portions of the form appear to be so simple that persons far less qualified than college seniors can understand them. And, in fact, many do everyday. Moreover, the recruiter reviews the form and ensures that the applicant has understood the applicable portions. In addition, the AFEES Liaison NCO goes over the entire application with the applicant prior to the swearing in ceremony.

#### CATLOW-RUSSO ISSUE

QUESTION. General McLennan, do you agree with the serious consequences and the recommendations made by the panel of lawyers this morning on the problems caused by *Catlow-Russo* decision and subsequent policies?

General McLENNAN. I certainly agree with the difficulties we face as a result of the *Catlow-Russo* decisions.

*Catlow*, decided in June 1974, *Russo*, decided in August 1975, and cases following them, have carved out a unique and heretofore unrecognized exception to the amenability of military personnel to the Uniform Code of Military Justice. Simply stated, under the rule of law that has evolved from these cases, an individual who is improperly enlisted through recruiter misconduct is not subject to the UCMJ.

The *Catlow-Russo* issue, as it has come to be known, arises in a number of contexts. It is most frequently encountered in the trial arena, when criminal charges

against a service member must be dismissed on the grounds that recruiter misconduct at the time of enlistment places the member beyond court-martial jurisdiction. The trial court's decision, however, does not necessarily turn on whether recruiter misconduct actually occurred. To sustain its burden of proof that recruiter misconduct did not occur, the government must produce witnesses, invariably including the recruiter, to refute the accused's allegations. All too often, such witnesses are far removed from the situs of trial and their recollections concerning the particular enlistment, which may have taken place years ago, are hazy. As a result, even where recruiter misconduct did not in fact occur, the military judge resolves the issue in favor of the accused because the recruiter's testimony is not sufficiently precise or compelling to carry the government's burden. Faced with this prospect, the commander concerned sometimes simply concedes the *Catlow-Russo* issue, rather than going to the time and expense of producing distant witnesses in an unpromising attempt to prove a negative.

The inability of the command to prosecute accused personnel because of the application of *Catlow-Russo* is an unsettling event. The adverse impact on discipline and morale that results when such members escape trial and punishment is obvious. Members return to their commands immune from prosecution for the instant offenses and armed with the knowledge that they are not subject to the UCMJ. Under these circumstances, they may refuse to obey any further orders and even commit additional offenses—with military authorities able to do little, if anything, about it. Of course, the command will take appropriate steps administratively to separate such members. Although arrangements have been made with Department of Justice authorities to assume jurisdiction in serious felony cases, a broad range of military offenses, such as desertion, insubordination, disobedience dereliction of duty and malingering are barred from civilian prosecution under the shield of *Catlow-Russo*.

The *Catlow-Russo* issue may also arise outside the scope of disciplinary proceedings. Security clearance procedures and other background investigations may disclose the possibility of recruiter misconduct. Similarly, the individual may raise the issue simply by coming forward and claiming a fraudulent enlistment with recruiter complicity. Given the ease with which the recruiter misconduct issue can be raised, and the difficulty the government normally encounters in attempting to disprove it, there will be, at any given time, a number of men and women in uniform whose amenability to the UCMJ is subject to doubt. Numbers alone, however, do not provide a meaningful assessment of the problem.

In a memorandum for the Secretary of the Navy of 2 October 1978, the Commandant of the Marine Corps pointed out the vexing consequences that flow from these decisions and, additionally, expressly noted the considered judgement of both the Commandant of the Marine Corps and the Chief of Naval Operations that this jurisdictional issue is detrimental to good order, discipline and the even-handed administration of justice in the armed forces.

I intend to take under study all of the recommendations made by the panel of lawyers and specifically would like to comment on several of them.

The recommendation that recruiters be vigorously prosecuted for instances of malpractice does not admit to easy implementation. To be sure, Headquarters Marine Corps can emphasize the importance of attaining high quality recruits, and, in any case, the necessity for full compliance with recruiting regulations. Similarly, Headquarters Marine Corps can stress the fact that recruitment of unqualified individuals is not in the best interests of the Marine Corps and, if done in knowing violation of applicable regulations, is an offense under the Uniform Code of Military Justice. To go beyond this, however, is to run the risk of allegations of unlawful command influence. Both statutory and decisional law preclude superior authorities from abridging the discretion of a subordinate in the exercise of discipline over his command. In the case of recruiters, disciplinary authority is the responsibility of command levels far removed from that of the Commandant of the Marine Corps. Absent a blatant abuse of discretion, he is prohibited from intervening in disciplinary matters of subordinate commands.

Whether it is reasonable to expect that interview/screening by a lawyer of all first term enlistees to determine whether irregularities in their enlistment processing occurred or not is open to doubt. In this connection, it should be noted that in the majority of cases, in which the *Catlow-Russo* issues have been raised by the enlistee himself, it has been under circumstances involving duress; namely, pending trial by court-martial. Moreover, disclosing the facts sufficient to raise this issue usually involves a declaration against self-interest on the part of the individual (i.e.: his knowing participation in the fraud).

Finally, with respect to legislation to eliminate the *Catlow-Russo* jurisdictional loophole, the Judge Advocate General of the Navy is presently staffing a proposed amendment to the jurisdictional provisions of the UCMJ, which, if enacted into law, will lay the *Catlow-Russo* issue to rest. Further, the Commandant of the Marine Corps has requested that the Secretary of the Navy recommend to the Secretary of Defense that legislation, along the lines of that developed by the Judge Advocate General for presentation before the Code Committee, be introduced at the next session of Congress.

#### ENLISTMENT READING COMPREHENSION LEVEL

QUESTION. According to the Department of Defense officials, the reading comprehension level necessary to understand the application for enlistment for military service is the 16th grade level. That is, someone must have the comprehension of the college senior to fully understand the application. I understand Defense has established a task force to lower the needed comprehension level to the 12th grade. Do you consider this to be an appropriate level for the enlistment application? Would you agree that the vast majority would not have this high comprehension level?

General McLENNAN. A reading comprehension level of the 12th grade would be too high for the majority of Marines enlisted in the Marine Corps. Based upon a Reading Survey of Marines conducted in 1976 the mean reading grade level is approximately 9.96.

#### AVERAGE NUMBER OF USMC RECRUITING PERSONNEL

QUESTION. Lt Gen McLennan, for the record please submit the monthly average number of Marine Corps recruiting personnel authorized and assigned for fiscal years 1976, 1977 and 1978.

General McLENNAN. The average production recruiter strength in fiscal year 1976 was 1,787; in fiscal year 1977 it was 1,850 and 1,879 in fiscal year 1978. For the same period the authorized strength for production recruiters was 1,961.

#### ALLOCATION OF RECRUITING PERSONNEL

QUESTION. Lt. Gen. McLennan, for the same fiscal years, provide a detailed allocation of duties within the recruiting structure.

General McLENNAN. This chart reflects the Congressionally authorized strengths, by billet, for those same fiscal years.

	Fiscal year 1976	Fiscal year 1977	Fiscal year 1978
Headquarters' staff.....	89	125	121
Administration/supply personnel.....	333	369	372
Field supervisory personnel.....	165	234	361
AFEES liaison.....	74	74	75
Enlisted production reactors.....	1,961	1,961	1,961
Officer selection teams.....	227	227	227
Congressional limitation.....	2,849	2,990	3,117

#### SELECTION PROCEDURES TO RECRUITING DUTY

QUESTION. For the record, please submit the qualifications required and the selection procedures used for both officer and enlisted personnel assignments to recruiting duty.

General McLENNAN. The selection procedures for assigning officers to recruiting duty is a very tedious process which focuses on the mental, physical and emotional stability of the officer assigned. In addition, several performance traits such as leadership ability, integrity, maturity, and management ability are closely scrutinized to ensure that the officers selected possess those important characteristics. The current selection process is described below:

The officer monitors responsible for making assignments to recruiting duty continually screen records of officers who possess the traits previously described. The records of volunteers (fitness reports) are also screened, however, in all cases their records may not support their nomination to recruiting duty. An important factor in the selection process is the officer's availability for transfer. Current DOD constraints, combined with overseas commitments in some instances

preclude assigning an officer to recruiting duty who is highly qualified. Other factors considered are grade, age, education (both professional and civilian), criticality of occupational field, professional performance in both command and staff billets, personal appearance, self-confidence, the ability to mix well socially, and present a favorable impression within the civilian community.

Once the monitor has made his selection, he forwards his nomination to the Director, Personnel Procurements Division for review. After approval by the Personnel Procurement Division, orders are prepared and issued.

The selection procedures for enlisted assignments to recruiting duty have several filters which focus on physical, dental, and medical fitness as well as the maturity and emotional, financial and moral stability of both the Marine and his or her family. In addition, certain performance and personal traits are stressed. The current process works like this:

Semiannually, a HQMC screening team, consisting of former recruiting personnel, visits major CONUS commands for the purpose of interviewing career Marines who have at least 12 months on station. Marines to be interviewed will have already been pre-screened by their parent commands in accordance with criteria outlined in Marine Corps Order 1326.6. The HQMC team (which was reinstated in January 1978) interviews and administers a personality profile questionnaire to each candidate. Additionally, the screening team conducts an information seminar for candidates and their spouses. Results of these semi-annual visits are compiled and entered into a data bank at HQMC for the purpose of building a pool of pre-screened candidates who are identified as meeting the criteria at the time of interview.

The next step takes place at HQMC. Bi-monthly, a printout of eligibles is generated from the Manpower Management System. Automated eligibility criteria focuses upon time-on-station, grade, age, education, noncriticality of occupational specialty, non-substandard performance indicators, and other selectivity factors. This run will generate a list of names from which monitors select the most eligible. Prior to making subjective evaluations, monitors draw the personnel files of nominees and focus particularly on volunteers, those previously screened by the HQMC team, those having the longest time on station and certain qualitative factors revealed by performance evaluations and other documents resident in the personnel file. Once the monitor has made his selection, orders are prepared for final review and release at the monitor control unit level (normally a field grade officer).

Upon receipt of orders, the parent command is tasked to conduct a final screening in accordance with MCO 1326.6. This screening not only considers objective and quantifiable criteria but again subjectively evaluates and reviews personal traits such as self-image, persistence, communication skills and maturity. Frequently, information surfaces during this final screening which necessitates the modification or revocation of orders, in which case HQMC is notified for appropriate action.

The final gates occur at Recruiters School where an arrival inventory is conducted and students are further attrited prior to graduation if they fail to meet academic, salesmanship and other criteria.

#### QUALIFICATIONS FOR RECRUITER DUTY

**QUESTION.** Are there any special qualifications required and/or desired of officers assigned to recruiting duty? For enlisted personnel?

**General McLENNAN.** There are no specific prerequisites for officers assigned to recruiting duty in addition to those qualifications previously mentioned.

Specific prerequisites for enlisted recruiters, in addition to those general qualifications previously mentioned, are as follows:

Minimum Age—21.

Grade—Corporal through Master Sergeant.

Education—High School graduate or equivalency and General Classification Test (GCT) score of 90 or above.

Maximum Dependents—Corporal and Sergeant (2) Staff NCO (4).

Must have valid state and government motor vehicle operator's license.

Must be medically fit with no indication of prior alcohol or psychological problems.

Must be dentally qualified (Class I).

The Marine's family should not require unusual or recurrent medical/dental care.

There should be evidence, as indicated by completion of the financial statement worksheet, that the Marine and his family live within their means.

The Marine must have attained a passing score on the most recent physical fitness test.

The Marine should exhibit the following traits: credibility, competence, approachability, acceptance of others, confidence, a sense of purpose, poise, good personal appearance, a "can-do" attitude, motivation, outgoing personality, resourcefulness, good communications skills, self-discipline, stable family life, ability to work independently and maturity.

#### VOLUNTEERS TO RECRUITING DUTY

QUESTION. General McLennan, information provided to the Committee in 1973 indicated that during fiscal year 1973 311 (40 percent) of the 776 enlisted Marines reporting to Recruiters' School were volunteers. Would you provide for the record an update of those figures for the past three fiscal years?

General McLENNAN. While the date for the requested fiscal years is unavailable, the average volunteer rate for Recruiters' School classes since mid-fiscal year 1977 has been 52 percent.

#### OFFICER RECRUITER VOLUNTEERS

QUESTION. The Committee was also informed that no information was available on the number of officers who volunteered for recruiting duty. Is this still the case? If not, would you provide for the record those figures for the past three fiscal years?

General McLENNAN. The Marine Corps does not have a specific requirement to maintain statistical data on officers who volunteer for recruiting duty; therefore, this information is still not available. However, the officer fitness report and direct liaison between the officer and his monitor is a source of information used by the monitor to assist in making assignments to recruiting duty.

#### RECRUITER AWARDS/INCENTIVES

QUESTION. General McLennan, would you outline for the record what awards and incentives are available for recruiting personnel?

General McLENNAN. The awards and incentives associated with enlisted recruiters cover the spectrum from the Recruiting Station to Headquarters Marine Corps. Specifically, awards are in the form of recognition as the outstanding recruiter at the station, district or headquarters level; meritorious mast; community acknowledgement and personal awards. There is a greater opportunity for meritorious promotion, and successful recruiters have a better chance for normal promotion. As an incentive recruiters receive special duty assignment pay of \$50, \$100 and \$150 based upon length of time on the duty. Upon completion of a tour, each recruiter is authorized a duty station option for either a type of duty, a duty station or a specific geographic area.

#### CATLOW/RUSSO MOTIONS

QUESTION. What type discharge is now given Marines whose *Catlow/Russo* motions are upheld? What is the basis for this current procedure? Is the number increasing or decreasing?

General McLENNAN. Marines who are administratively discharged as a result of their *Catlow/Russo* motions being upheld are awarded either an honorable discharge, a general discharge or a discharge under conditions other than honorable. The type discharge awarded is dependent upon the circumstances of each individual case and whether the Marine is processed for discharge by reason of convenience of the Government due to erroneous enlistment or misconduct due to fraudulent enlistment. The current procedure of processing those Marines whose *Catlow/Russo* motions are upheld for either administrative discharge or retention in the service is based upon a decision by the Comptroller General of the United States, i.e., file number B-189465 dated 16 December 1977. This decision stated in part that the decision by a military court that it does not have personal jurisdiction over an individual does not automatically void the individual's enlistment nor preclude the service from processing the individual for retention or administrative discharge pursuant to its current regulations governing administrative discharge. The number of *Catlow/Russo* discharge motions decreased from 483 in fiscal year 1977 to 315 in fiscal year 1978.

## PROPOSAL TO SECRETARY OF THE NAVY RE: CATLOW/RUSSO

QUESTION. What specific proposal has been made to the Secretary of the Navy regarding legislative action to correct the *Catlow/Russo* dilemma?

General McLENNAN. The Commandant of the Marine Corps forwarded the following Memorandum for the Secretary of the Navy on 2 October 1978:

Subject: The *Catlow/Russo* Issue.

Enclosure: (1) Proposed Memorandum from the Secretary of the Navy to the Secretary of Defense.

1. The purpose of this memorandum is twofold: first, to express my deep and continuing concern over the impact on the Marine Corps of the Court of Military Appeals decisions in the *Catlow* and *Russo* cases; and secondly, to request the personal assistance of the Secretary in developing a solution to the vexing problems that these cases have created.

2. *Catlow*, decided in June 1974, *Russo*, decided in August 1975, and cases following them, have carved out a unique and heretofore unrecognized exception to the amenability of military personnel to the Uniform Code of Military Justice. Simply stated, under the rule of law that has evolved from these cases, an individual who is improperly enlisted through recruiter misconduct is not subject to the UCMJ. Put another, and more troubling way, the member is not subject to discipline. Whatever the legal rationale of this rule, it is unmistakably clear that its consequences are inimical to the legitimate and vital interests of military society.

3. The *Catlow/Russo* issue, as it has come to be known, arises in a number of troubling contexts. By far, the most familiar situation is in the trial arena. In the typical case, criminal charges are dismissed on the grounds that recruiter misconduct at the time of enlistment places the accused beyond court-martial jurisdiction under the *Catlow/Russo* rule. The trial court's decision, however, does not necessarily turn on whether recruiter misconduct actually occurred. Rather, it may depend entirely on whether the government is able to prove that it did not occur. To sustain its burden of proof, the government must produce witnesses, invariably the recruiter, to refute the accused's allegations. All too often, these witnesses are far removed from the situs of trial and their recollections concerning the particular enlistment, which may have taken place years ago, are hazy. Even if there was no recruiter misconduct involved, it often comes down to the recruiter's word against that of the accused—a conflict that judges not infrequently resolve in favor of the latter. Given this prospect, it is not surprising that, in a number of cases, particularly those involving minor offenses, the government simply concedes the *Catlow/Russo* issue, rather than going to the time and expense of calling witnesses from all over the world in an unpromising attempt to prove a negative.

4. A dismissal of charges on *Catlow/Russo* grounds, whether or not the government concedes the issue, is, to put it mildly, an extremely unsettling event. Service members return to their units, immune from prosecution for the instant offenses, and armed with the knowledge that they are not subject to the UCMJ. Under these circumstances, they may refuse to obey any further orders and even commit additional offenses—with military authorities able to do little if anything about it. Of course, the command will take immediate steps to separate these personnel administratively, but this cannot be accomplished overnight. In the meantime, the *Catlow/Russo* enlistees pose a direct threat to military authority. Moreover, their presence in the command raises a host of troubling questions; for example, whether they can be required to perform duties; whether they can be restrained in the event of attempts to leave; whether they are entitled to pay, subsistence, and medical care while awaiting separation. As might be expected, when these questions have arisen overseas they have proved extremely onerous. To be considered also, is the adverse impact on discipline and morale that results when individuals escape trial and punishment by way of the *Catlow/Russo* loophole. In this connection, it should be noted that successful arrangements have now been made with local federal authorities to take jurisdiction in the more serious felony type cases. A broad range of military offenses, however, such as desertion, insubordination, disobedience, dereliction of duty, and malingering, will continue to escape prosecution under the shield of *Catlow/Russo*.

5. The *Catlow/Russo* issue also arises outside the scope of disciplinary proceedings. Routine checks for security clearances and other types of background investigations, for example, may disclose the possibility of recruiter misconduct.

Similarly, the individual can raise the issue simply by coming forward and claiming a fraudulent enlistment with recruiter complicity. This brings us to what is unquestionably the most pernicious aspect of *Catlow/Russo*; namely, once the government is on notice that an enlistment may be tainted by recruiter misconduct, it cannot discount the possibility that the individual is not, or will not be, subject to the UCMJ. Necessarily, the government must be concerned with when, and under what circumstances, the question will ultimately be resolved—in boot camp, aboard ship, in a foreign country, or following the commission of serious crimes. More troubling is the realization that resolution of the question may not always depend on the truth of the matter, but on the government's ability to produce witnesses to an enlistment process that may have occurred years ago.

Finally, we come to a conclusion that strains credulity—because of the ease with which the recruiter misconduct issue can be raised, coupled with the difficulty the government normally encounters in attempting to disprove it, there will be, at any given time, literally thousands of men and women in uniform whose amenability to the UCMJ is open to doubt.

6. In view of the foregoing, it hardly needs saying that the Marine Corps' experience with *Catlow/Russo* has been, in a word, intolerable. Nor is the prospect of living with it in the future any less odious. To date, according to records at this Headquarters, approximately 800 Marines have been separated based on a *Catlow/Russo* infirmity in their enlistments. For reasons previously discussed, however, this figure must be taken with the caveat that *Catlow/Russo* statistics are susceptible to varying interpretations. In any event, the numbers are not essential to a meaningful assessment of what these decisions have meant to the Marine Corps. The impact of *Catlow/Russo* is more appropriately measured in terms of seemingly insurmountable administrative burdens, uneven application of justice, and erosion of discipline. When viewed in this light, its impact on the Marine Corps has been of far-reaching significance.

7. Given this situation, it is tempting to inquire why the Marine Corps, or for that matter all the armed forces, do not seize upon the obvious solution; namely, the elimination of recruiter misconduct. This, apparently, was the thinking of the Court of Military Appeals. Such a view, however, ignores what experience in the field has made agonizingly clear—that *Catlow/Russo* problems result not only from recruiter misconduct; they also result from allegations of recruiter misconduct. This is not intended to downplay the significance of recruiter malpractice. In a number of cases, too many in fact, it has been documented. To be sure, it is a matter of continuing concern to the Marine Corps, as it is to all of the armed forces. It is essential to understand, however, that the *Catlow/Russo* "ordeal" is triggered whenever the service member claims that he was improperly recruited. For this reason, I have concluded that the Court of Military Appeals has given us a cure that is worse than the illness and that an antidote is urgently needed.

8. As you know, the Manpower and Personnel Subcommittee, of the Senate Armed Services Committee, will hold hearings on Marine Corps recruiting practices, commencing on 10 October 1978. Officials from this headquarters will be testifying. Undoubtedly, the *Catlow/Russo* problem will be addressed during these hearings. In this connection, it is of interest that this headquarters has received several independent Congressional inquiries concerning *Catlow/Russo* problems in the Marine Corps, and members of my staff have already provided two formal briefings on the subject. These members of Congress were alarmed, upon learning of the vexing consequences that these decisions have created, and expressed an interest in legislation to remedy the problem. It would be most opportune if, during the October hearings, the subcommittee could be advised that remedial legislation authored by the Department of the Navy is presently being staffed by DoD, with a view toward introduction at the next session of Congress.

9. The adverse impact of the *Catlow/Russo* issue on good order and discipline is not, of course, peculiar to the Marine Corps. It has a pernicious effect on the operational readiness of all of the Services. Indeed, the Chief of Naval Operations and I have discussed these matters in detail and Admiral Hayward confirms that *Catlow/Russo* constitutes a very serious impediment to the effectiveness of the military justice system throughout the fleet. As a result of these discussions, it is our considered judgment that the *Catlow/Russo* exception to UCMJ jurisdiction is now, and will continue to be, detrimental not only to good order and discipline, but to the even-handed administration of justice in the armed forces. The statutory demise of this jurisdictional aberration is overdue.

10. The Judge Advocate General of the Navy is presently staffing a proposed amendment to the jurisdictional provisions of the UCMJ, which, if enacted into law, will lay the *Catlow/Russo* issue to rest. The prevailing view in the military legal community is that such an amendment will pass muster under future judicial scrutiny. Notwithstanding the Judge Advocate General's commitment to expedite this effort, I believe that the proposed amendment should not be staffed through the Code Committee pursuant to Article 67g, UCMJ, the traditional mechanism employed by the Service Judge Advocates General for recommending legislation. The Code Committee process is just too time-consuming. It is my view, and that of the Chief of Naval Operations, that the *Catlow/Russo* issue must be resolved as soon as possible. Admiral Hayward joins me in requesting that you recommend to the Secretary of Defense that legislation, along the lines of that developed by the Judge Advocate General for presentation before the Code Committee, be introduced at the next session of Congress. The enclosed proposed memorandum, prepared for your consideration and signature, is designed to accomplish that purpose.

LOUIS H. WILSON,  
General, U.S. Marine Corps,  
Commandant of the Marine Corps.

(Proposed language to amend Article 2, UCMJ attached.)

The attached proposed amendment of Article 2, UCMJ, styled after that being developed by the Code Committee, is provided for your consideration should you concur in this recommendation.

Attachment.

PROPOSED AMENDMENT TO ARTICLE 2, UCMJ

Add, at end of article, the following language:

"For the purpose of this article, the enlistment of any person who possesses the capacity to understand the significance of enlisting in the armed forces, and who does so voluntarily, shall be valid; and a change of status from civilian to member of the armed forces shall be effective upon the taking of the oath of enlistment."

IMPACT OF CATLOW/RUSSO ON COMBAT READINESS

QUESTION. What is the Marine Corps' evaluation of the impact of *Catlow/Russo* on combat readiness?

General McLENNAN. As of early October 1978 approximately 800 Marines have been separated for reason of a *Catlow/Russo* infirmity in their enlistments. This is significant not only in terms of total personnel separated prior to completion of their enlistments but also in the large administrative burden incident to their separation. Furthermore, a dismissal of criminal charges for lack of jurisdiction on *Catlow/Russo* grounds is clearly prejudicial to the good order, morale and discipline inherent in the Marine Corps. These factors can and do present a pernicious effect on combat readiness. In a combat environment the problems are greatly exacerbated. It is untenable to expect a commander to lead his troops into an operational theater knowing he may not be able to exercise disciplinary authority as defined by the UCMJ.

The major problem in terms of combat readiness is the potential for personnel turmoil, excessive administrative burdens, lower morale, and increased disciplinary problems. Such problems would obviously have an adverse impact on combat readiness. However, experience has repeatedly demonstrated that personnel problems tend to quickly decrease in face of potential danger to the United States or when Marines are needed for noncombat missions such as evacuations, large scale relief operations, etc. Consequently, the impact *Catlow/Russo* is not considered a debilitating one. Nevertheless, serious problems could result if statutory action is not taken to cure this jurisdictional aberration.

RELIEF FOR CAUSE; GYSGT JAMES L. THOMPSON

QUESTION. What were the circumstances surrounding the relief for cause of GySgt James L. Thompson, and his trial and conviction by Summary Court-Martial?

General McLENNAN. In January 1973 GySgt Thompson (then a staff sergeant) was ordered to attend Recruiters' School. He successfully completed the course and was subsequently assigned to duty in Houston, Texas. He established him-

self as an effective recruiter. His production average was well above the 18 other recruiters of his grade assigned to the station. He received numerous certificates recognizing his performance of duty, and was promoted to his present rank on 1 May 1975. Subsequent to this, GySgt Thompson began experiencing problems that eventually resulted in his relief for cause.

In May of 1975 GySgt Thompson's reporting senior praised his abilities as a recruiter; however, his opinion of him as a total Marine was not nearly as high. GySgt Thompson had problems harmoniously working with his peers and immediate superiors. He did not gain the trust and confidence of those he worked with. The situation was aggravated to the point that several individuals requested a transfer.

A change of commanding officers occurred. The new commanding officer decided that it would be in the best interest of the Marine Corps to allow GySgt Thompson to continue to serve. For the next 9 months his performance was described as excellent to outstanding. During a portion of this period he was assigned as an NCOIC of a recruiting substation and his attitude was described as improving.

However, during the next reporting period GySgt Thompson's performance was such that it was necessary to relieve him from his position as NCOIC of a recruiting substation and to recommend him for relief from recruiting duty. He had demonstrated an inability to direct his recruiting substation and to associate with others on a professional basis. His recruiters did not receive the leadership required and went to other sources for guidance and directions. The request for relief was approved at Headquarters Marine Corps on 11 October 1976.

Incident to his relief, GySgt Thompson submitted a request for mast with the Commandant of the Marine Corps. The request contained allegations regarding illegal recruiting practices and prejudice. This Headquarters directed an investigation, the results of which did not substantiate the allegations. It was determined that a personal audience with the Commandant would serve no useful purpose, and his petition for request mast was denied.

Prior to being transferred from recruiting duty GySgt Thompson was tried by Summary Court-Martial for Violation of Articles 89 and 107 UCMJ. He was found guilty of Article 107—falsifying an official paper in order to effect the enlistment of an applicant. The punishment awarded GySgt Thompson was an official letter of reprimand. GySgt. Thompson has filed for relief of the court-martial under Article 69 UCMJ. Action is still pending regarding this matter and consequently further comment would not be appropriate.

#### CHRONOLOGY : MENTAL TESTING OF PRIVATE M'CLURE

QUESTION : What was the chronology of events regarding the mental testing of Private McClure and the report of GySgt Thompson that indicated compromise of the ASVAB 3 Test?

General McLENNAN. The following is a chronology of the mental testing of Pvt Lynn E. McClure incident to his enlistment in the Marine Corps and of the reports of test compromise made by GySgt James L. Thompson: Early August 1975. GySgt Thompson, a Marine recruiter assigned at Palm Center, Texas, turned in several sheets of typewritten material to SgtMaj C. A. Loker at his senior headquarters, the Marine Recruiting Station (RS) Houston, Texas. This material appeared to be a study guide for the Armed Services Vocational Aptitude Battery (ASVAB) test with answer sheets. This material was taken to the local Armed Forces Examining and Entrance Station (AFEES) Houston, Texas, by a Marine officer assigned at RS Houston, Captain E. F. Wright, and shown to the AFEES testing officer and commander, Lieutenant Colonel John D. Beasley, USA. Captain Wright and LtCol Beasley compared the material to the ASVAB test sheets then in use (ASVAB 3) and determined that the typewritten scoring sheets did not correlate to the actual test answer sheets. No further action was taken.

27 August 1975. GySgt. Thompson turned in additional typewritten material to his superior from RS Houston, Captain James M. Ivy, USMC. This material was taken by Captain Ivy to the AFEES commander, LtCol Beasley, who determined that this material was taken from the Army Classification Battery (ACB) test which was in use for several years prior to the institution of the ASVAB 3. LtCol Beasley reported this incident to his superiors.

24 September 1975. Lynn E. McClure was administered the ASVAB 3 at his hometown of Lufkin, Texas, by a Mobile Examining Team from AFEES Houston. He failed to meet the entrance score required for a non-high school graduate and was denied enlistment by his local Marine recruiter.

11 November 1975. McClure applied for enlistment at the Marine Corps Recruiting Substation at Austin, Texas, some 187 miles from his hometown. Because of the late hour he was told to return the following morning.

12 November 1975. After initial processing, McClure was sent to the San Antonio, Texas AFEES (approximately 80 miles from Austin).

13 November 1975. McClure was tested at San Antonio on the ASVAB 3 and passed with significantly higher scores than on the same test taken less than two months previously at Lufkin. He subsequently enlisted in the Marine Corps and died at recruit training as the result of a head injury.

28 November 1975. GySgt. Thompson turned over four sheets of typewritten material to Major Don C. Satcher, the Commanding Officer RS Houston. Maj. Satcher took this material to LtCol Beasley the following day and the two officers compared it with the ASVAB. Although there were some differences in the words used, the questions and correct answers on the typewritten sheets were in fact the same as the ASVAB 3 test. This incident was reported by LtCol Beasley.

1 January 1976. The ASVAB 3 test series was replaced nationwide.

#### DISCLOSURE OF POLICE/CRIMINAL RECORDS

**QUESTION.** If full disclosure of police or criminal records of applicants is not feasible, what less specific (summary) information would be useful to the recruiting process?

**General McLENNAN.** This Headquarters considers an applicant's record of involvement with police or judicial authorities pertinent to his or her qualifications for enlistment. The Commandant of the Marine Corps is obligated to ensure that applicants coming into the Corps will not be thrown into close association with criminals or chronic offenders. Each applicant must respond to the following questions presented on the DD Form 1966:

(a) Have you ever been arrested, charged, cited or held by Federal, State, or other law enforcement or juvenile authorities regardless of whether the citation was dropped or dismissed or you were found not guilty?

(b) As a result of being arrested, charged, cited, or held by law enforcement or juvenile authorities have you ever been convicted, fined by or forfeited bond to a Federal, State, or other judicial authority or adjudicated a youthful offender or juvenile delinquent (regardless of whether the record in your case has been "sealed" or otherwise stricken from the court record)?

(c) Have you ever been detained, held in, or served time in, any jail or prison, or reform or industrial school or any juvenile facility or institution under the jurisdiction of any City, State, Federal or foreign country?

(d) Have you ever been awarded, or are you now under suspended sentence, parole, or probation or awaiting any action on charges against you?

(e) Have you been released from parole, probation, juvenile supervision, or given a suspended sentence or relieved of charges pending on condition that you apply for or enlist in the US Armed Forces?

(f) Are you now involved in or a party to or connected with any court action or civil suit? (Explain "YES" answer in Item 41).

(g) Explain below "YES" answers in "a" through "e". Be careful to include all incidents with law enforcement authorities that you discussed with your recruiter.

Under current conditions confirmation of the individual's responses to the above questions cannot be made with law enforcement agencies. Consequently, the Marine Corps must rely on the information provided by the applicant as well as that which may be reported on the results of Entrance National Agency Checks (ENTNAC) conducted by the Defense Investigative Service. The information obtained under this system may be complete or fragmentary. Ideally, complete information regarding the applicant's police record would be best to properly decide whether or not he or she is acceptable.

If it is not feasible to get complete information regarding an applicant's police record, then summary information would be useful. For example, if police jurisdictions were required to provide the Services, on request, information which showed whether or not he or she had offenses, whether or not they were minor or major, and how many of each, this information could be used to validate the applicant's response to the questions on the DD Form 1966. The summary information could also be used to confront the applicant and thereby induce him or her to give needed details upon which to base a decision as to the applicant's acceptability for enlistment.

In sum, complete information is best, but summary information would be useful to enhance the applicant screening process.

Senator NUNN. Thank you, General. I will also thank Senator Metz-enbaum's staff for all of the assistance they have given to this sub-committee. I know you are not primarily in military activities, but you have furnished us a great deal of information. We appreciate that, and even though Senator Metzenbaum had to go back to the floor, I wanted to again commend him for his interest and pledge to continue to work with him in trying to correct these and other problems, so if you will thank him for me.

The subcommittee is adjourned.

[Whereupon, at 4:15 p.m., the subcommittee was adjourned.]



