

UNITED STATES MARINE CORPS
Marine Corps University
Corporals Noncommissioned Officers Program

CPL 0207
Jan 99

STUDENT HANDOUT

Sexual Harassment and Fraterization

LEARNING OBJECTIVES:

- a. TERMINAL LEARNING OBJECTIVE: With the aid of the reference, identify the appropriate action taken to prevent sexual harassment, per the references. (CPL 24.1)
- b. TERMINAL LEARNING OBJECTIVE: With the aid of the reference, identify the appropriate action taken to prevent fraternization, per the references. (CPL 24.2)
- c. ENABLING LEARNING OBJECTIVE (CE): Without the aid of but per the references, identify key aspects within the following areas of sexual harassment:
 - (1) Definitions of key terms concerning sexual harassment. (CPL 24.1a)
 - (2) The impact of sexual harassment on the individual. (CPL 24.1b)
 - (3) The impact of sexual harassment on the Marine Corps. (CPL 24.1c)
 - (4) The individual's responsibility concerning sexual harassment. (CPL 24.1d)
 - (5) The purpose for rules concerning fraternization. (CPL 24.2a)
 - (6) Who is responsible for maintaining the customary and traditional standards of conduct. (CPL 24.2b)
- d. ENABLING LEARNING OBJECTIVE (CE): Without the aid of but per the references and when given an example of sexual harassment, identify the type of sexual harassment. (CPL 24.1e)
- e. ENABLING LEARNING OBJECTIVE (CE): Without the aid of but per the references and when given an example of sexual harassment, identify the type of violation of the UCMJ. (CPL 24.1f)

OUTLINE

1. SEXUAL HARASSMENT: Sexual harassment is a form of discriminatory behavior that erodes morale and discipline and, if not eliminated, can have an adverse effect on mission readiness. The Secretary of Defense has issued policy guidance which defines sexual harassment and emphasizes the Department's policy that sexual harassment will not be condoned or tolerated. Sexual harassment is unacceptable behavior for military or civilian personnel. Such behavior will

be dealt with immediately through the leadership/supervisory structures of the Marine Corps, to include the Uniform Code of Military Justice.

a. Sexual Harassment Defined: Sexual harassment is a form of sex discrimination that involves unwelcomed sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature when:

- * Submission to or rejection of such conduct is made either explicitly or implicitly a term or condition of a person's job, pay, career, or
- * Submission to or rejection of such conduct by a person is used as a basis for career or employment decisions affecting that person, or
- * Such conduct interferes with an individual's performance or creates an intimidating, hostile, or offensive environment.

This definition emphasizes that workplace conduct, to be actionable as "abusive work environment" harassment, need not result in concrete psychological harm to the victim, but rather need only be so severe or pervasive that a reasonable person would perceive, and the victim does perceive, the work environment as hostile or abusive. Any person in a supervisory or command position who uses or condones any form of sexual behavior to control, influence, or affect the career, pay, or job of a military member or civilian employee is engaging in sexual harassment. Similarly, any military member or civilian employee who makes deliberate or repeated unwelcomed verbal comments, gestures, or physical contact of a sexual nature in the workplace is also engaging in sexual harassment. To ensure an understanding of the definition, let's discuss the key terms.

(1) Career or Employment Decisions: The decision must concern some aspect of the employment, career, pay, duty assignment, benefits, or privileges of another.

(2) Condition: To make some aspect of another's employment, career, pay, duty assignment, benefits, or privileges contingent upon fulfillment of some requirement the maker thereof has no right to impose.

(3) Sex Discrimination: For purpose of this instruction, discrimination means the illegal treatment of a person or group based on handicap, race, color, national origin, age, religion, or sex. Sex discrimination refers to the practice of wrongfully treating men and women differently in the workplace, solely because of their sex. The Supreme Court has held that sexual harassment of both men and women is a form of sex discrimination.

(4) Hostile Environment: A type of sexual harassment that occurs when the unwelcome sexual behavior of one or more persons in a workplace produces a work atmosphere which is offensive, intimidating, or abusive to another person using the reasonable standard.

(5) "Quid Pro Quo" or "This for That:" A type of sexual harassment that occurs when submitting to or rejecting such behavior is used as a basis for decisions affecting any person's employment, job, pay, or career. This could be a promise of employment, a promotion, a threat of or an actual demotion, a duty assignment, or a positive or negative performance evaluation.

(6) Reasonable Person Standard: An objective test used to determine if behavior constitutes sexual harassment. This standard considers what a reasonable person's reaction would have been under similar circumstances and in a similar environment. The reasonable person standard considers the recipient's perspective and not stereotyped notions of acceptable behavior. For example, a work environment in which sexual slurs, the display of sexually suggestive calendars, or other offensive sexual behavior abound can constitute sexual harassment even if other people might deem it to be harmless or insignificant.

(7) Recipient: Anyone subjected to sexual harassment as defined in this instruction.

(8) Reprisal: The wrongful threatening or taking of either unfavorable action against another or withholding favorable action from another solely in response to a report of sexual harassment or violations of this instruction.

(9) Severe or Pervasive: These terms derive their meaning in the context of the conduct engaged in and the surrounding facts and circumstances. Obvious examples of severe conduct include indecent assaults or offensive requests for sexual favors. Pervasive conduct is that which is repeated or widespread, or evidences a pattern.

(10) Sexual Favors: Sexual privileges that are granted or conceded in the work environment.

(11) Sexual Nature.: Conduct that a reasonable person would find sexual in nature in light of the relevant facts and circumstances. Behavior does not need to be overtly sexual if it creates an offensive work environment. Examples include but are not limited to sexist remarks or slurs, sexual advances, displays of pornographic material, touching, language, gestures, mannerisms, and similar behavior.

(12) Unwelcome Advances: Conduct that is not solicited and which is considered objectionable by the person to whom it is directed and which is found to be undesirable or offensive using a reasonable person standard.

(13) Work Environment: The workplace or any other place that is work-connected, as well as the conditions or atmosphere under which people are required to work. (An expansive term for military members and may include conduct on or off duty, 24 hours a day.)

b. Three Types of Sexual Harassment:

(1) Verbal Sexual Harassment: This requires a conscious effort, such as:

- * Whistling or making cat calls at someone.
- * Sexual comments about clothing or body.
- * Personal sexual questions.
- * Telling sex related jokes or stories.
- * Turning discussions into sexual topics.
- * Using sexual connotations or innuendoes.
- * Telling lies or spreading rumors about a person's personal sex life.

- * Invitations by a senior to a subordinate to lunch, drinks, dinner, having an implied (perceived) purpose of leading to sexual favors.
- * Threats from hints such as: "Your life would be easier here if you were friendlier," to blunt statements: "If you want that training or assignment, maybe we'd better get to know each other better this evening."

(2) Nonverbal Sexual Harassment: Like verbal behaviors, nonverbal behaviors that constitute sexual harassment take on many forms. Some examples are:

- * Paying unwanted attention to someone by staring at their body.
- * Displaying sexually suggestive visuals (centerfolds, calendars, cartoons, etc.).
- * Ashtrays, coffee cups, figurines, and other items depicting sexual parts of the anatomy through actuality or innuendo.
- * Sexually oriented entertainment in organizations, base facilities, or officially sanctioned functions.
- * Making sexually suggestive gestures with hands or through body movement (blowing kisses, licking lips, winking, lowering pants, raising skirt, etc.).

(3) Physical Sexual Harassment: This must be unwelcome and of a sexual nature to constitute a violation of policy.

- * Hanging around, standing close to or brushing against a person.
- * Touching a person's clothing, hair, or body.
- * Hugging, kissing, patting, or stroking.
- * Touching, pinching, bumping, or cornering.
- * Blocking a passageway.

c. Impact of Sexual Harassment:

(1) On the Individual: Sexual harassment affects the individual in the following ways.

- * Detachment.
- * Denial.
- * Relabeling.
- * Avoidance.
- * Affects their work performance.
- * General psychological well being.
- * Physical health.

(2) On the Marine Corps. "The only reason the United States of America needs a Marine Corps is to fight and win wars. Everything else is secondary." Sexual harassment affects the Marine Corps in the following manner:

- * Low morale.
- * Loss of cohesion.
- * Undermines readiness and interpersonal work relationships.
- * Detracts from the mission.

d. Violations of the UCMJ. When sexual harassment occurs, the UCMJ is violated. See Table 0207-1 for a list of actions and violations of the UCMJ.

IF THE SEXUAL HARASSER	TYPE OF VIOLATION OF THE UCMJ	ARTICLE
Influences or offers to influence the career, salary or job of another in exchange for sexual favors	Extortion	Article 127
Makes threats to elicit sexual favors	Communicating a threat	Article 134
Offers rewards for or demands for sexual favors	Bribery and graft	Article 134
Makes sexual comments	Indecent, insulting or obscene language or conduct prejudicial to good order and discipline	Article 134
	Provoking speech or gestures or disrespect	Articles 89, 91, and 117
Makes sexual contact	Assault	Article 128
	Assault & Battery	Article 128
	Indecent liberties with a female	Article 134
	Rape	Article 120
Engages in sexual harassment to the detriment of job performance	Dereliction of duty	Article 92
Is an officer	Conducting unbecoming an officer	Article 133
Is Commanding Officer	Wrong committed by the Commanding Officer	Article 138

Table 0207-1.

e. Marine Corps Policy on Sexual Harassment. Sexual harassment, as defined above, is unacceptable behavior for military or civilian personnel. Such behavior will be dealt with immediately through the leadership/supervisory structures of the Marine Corps, to include the Uniform Code of Military Justice. Leaders and supervisors have a responsibility to create an environment of mutual respect in which all personnel can work toward mission accomplishment.

f. Commander's Responsibilities.

(1) General Responsibilities.

(a) Ensure the contents of MCO 5300.10A are brought to the attention of all military members and civilian employees.

(b) Conduct training to promote an understanding of sexual harassment and its potential adverse impact on mission readiness.

(c) PREVENTION of sexual harassment is a leadership responsibility. Such behavior is degrading to the individual, destructive of morale, and is punishable under the Uniform Code of Military Justice.

(2) In the Event of a Sexual Harassment Situation. Complaints of sexual harassment will be dealt with by the leader in the same manner as any complaint of violation of the UCMJ. It is the responsibility of the leader to maintain proper standards of behavior by all Marines in accordance with the Marine Corps' traditional requirement for good order and discipline. The leader must take some form of action. The action taken will be appropriate for the individual situation.

(a) Inform the chain of command, if appropriate.

(b) It may be possible to refer parties involved to support services, such as:

- * Legal Office.
- * Employee Employment Opportunity Counselor (civilians).
- * Family Service Center.
- * Medical Treatment Facility.
- * Chaplains.
- * Equal Opportunity Advisors.

(c) Most importantly, the leader is responsible for ensuring that subordinates do not suffer any repercussions for reporting sexual harassment.

g. Individual Marine's Responsibility. Every Marine shares responsibility for maintaining proper behavior with one another so that everyone can contribute their best efforts to the accomplishment of the unit mission.

2. FRATERNIZATION: Fraternization was not mentioned in the Uniform Code of Military Justice when it was first enacted; improper relationships between seniors and subordinates were prosecuted as conduct unbecoming an officer. In 1984, however, fraternization was explicitly recognized as an offense under military law. The Marine Corps policy regarding fraternization is the product of naval service customs. The Marine Corps specifically, and military society in general, has historically imposed social constraints on personal relationships between individuals of different rank, grade, or position. It is important to keep in mind that because customs vary between branches of the armed forces, the Marine Corps' view of fraternization can be different (stricter) than that of the Air Force or the Army.

a. Purpose for the Rules Concerning Fraternization. Fraternization rules date back to the time of the Roman army. The purpose of such constraints is to:

- * Maintain good order and discipline.
- * Promote relationships of mutual respect and confidence between juniors and seniors.
- * Prevent adverse impact upon a junior's response to orders, the senior's exercise of command, or the perception of others regarding the senior's impartiality.
- * Preserve the integrity of the chain of command.

b. Definition. Fraternization is a social or business relationship between Marines of different grades in violation of a custom of the naval service which, in the eyes of one experienced in

military leadership, impacts adversely on good order and discipline, or degrades or at least threatens to degrade the character or status of the position that a Marine holds. Let us examine the parts of this definition in detail.

(1) "...A Social or Business Relationship Between Marines of Different Grades...."

Military court decisions and the Manual for Courts-Martial make clear that fraternization can occur between enlisted Marines. The classic case involves an officer-enlisted relationship, but it is not the only case. The key issue is whether a relationship has developed in which mutual respect of grade is ignored. The relationship need not be male-female. While improper relationships within the same chain of command are the most obvious, there is no blanket requirement under the UCMJ that the relationship be within the same chain of command to be improper.

(a) Some possible examples of activities encompassed by the term "fraternization" are:

- * Playing cards or gambling together.
- * Going to private homes or clubs together.
- * Dating or engaging in sexual activities.
- * Engaging in commercial transactions, except for one time sales or leases.
- * Showing favoritism or partiality.
- * Using one's authority for personal gain.

(b) Though not a rigid test, normal social or business relationships between Marines within the following six divisions do not constitute fraternization. (However, under some instructor-student relationship, even relationships within a particular group, would be considered fraternization.)

- * General officers.
- * Field grade officers.
- * Company grade officers (to include warrant officers).
- * Staff noncommissioned officers.
- * Noncommissioned officers.
- * Junior enlisted Marines.

(2) "...In Violation of a Custom of the Naval Service...." "Custom" is a long-established practice which, by common consent, has attained the force of law within the military. The relevant custom within the Marine Corps is that "duty, social, and business contacts among Marines of different grades will be consistent with traditional standards of good order and discipline and the mutual respect that has always existed between Marines of senior grade and those of lesser grade."

(3) "...Which in the Eyes of One Experienced in Military Leadership, Impacts Adversely on Good Order and Discipline or Dockyards or at Least Threatens to Degrade the Character or Status of the Position a Marine Holds." Improper personal relationships between Marines occupying different positions may influence the senior's judgment as to mission accomplishment. The threat to discipline and order need not be perceived by the parties involved in the fraternization. It is enough that the ill effects could be perceived by a reasonably prudent Marine

experienced in military leadership. Thus, each case must be scrutinized by applying this "hypothetical leader" test.

c. Marriage: a Special Problem. The Marine Corps cannot legally act to prevent marriages between service members. A marriage between Marines of differing grades will constitute fraternization when the impact of the marriage detracts or tends to detract from the respect due a senior, or is perceived by others to do so. A marriage stemming from a previously existing improper relationship does not excuse those involved from responsibility for their activities prior to the marriage. Further, there are cases where fraternization would not exist. For example, if two sergeants get married and one of them is selected for warrant officer. Since the marriage existed while the Marines were both sergeants. The Marine Corps would not withhold a promotion or a commission simply because of the Marine's spouse's rank. In this case, the Marine Corps would ensure that both Marines were not in the same immediate chain of command. However, normal rules of decorum still apply for these Marines. For example, if they both want to attend the Officer's Marine Corps Ball together, the warrant officer should attend in uniform while the enlisted spouse should attend in appropriate civilian attire. The same would apply when attending the Enlisted Marine Corps Ball. The enlisted Marine would dress in uniform, while the warrant officer spouse would dress in appropriate civilian attire. Remember, the Marine Corps Ball is a time for celebration and remembrance, not for explanations and embarrassment.

d. Avenues for Prosecution. When contact and relationships exceed these standards and become those of "buddies" or peers, then fraternization exists.

(1) Facts and Circumstances. Look at the facts and circumstances of each case:

(a) Is there a compromise of the chain of command?

(b) Is there an appearance of partiality? (REMEMBER: when dealing with the subject of fraternization, perceptions are as deadly as reality.)

(c) Is there the potential for good order, discipline, morale, or authority to be undermined?

(2) UCMJ.

(a) Article 134, UCMJ. Fraternization has been a listed offense under the UCMJ since 1984. Maximum punishment is dismissal, forfeiture of all pay and allowances, and confinement for two years.

(b) Article 133, UCMJ. Whenever a commissioned officer, cadet, or midshipman engages in behavior which dishonors or disgraces the officer, such as dishonesty, unfair dealing, indecency, lawlessness, injustice, or cruelty, that officer may be prosecuted under Article 133. Maximum punishment is dismissal, forfeiture of all pay and allowances, and confinement for a period usually not longer than one year.

(c) Article 92, UCMJ. Whenever a local command has established regulations or orders as to the conduct of relationships or fraternization, a Marine may be subject to prosecution

for fraternization as a violation of an order. Published orders are often used by commands to define acceptable conduct in the context of officer-officer and enlisted-enlisted relationships. Maximum punishment is a dishonorable discharge, forfeiture of all pay and allowances, and confinement for two years.

e. Remedies.

(1) Non-punitive administrative remedies.

- * Formal or informal counseling.
- * Transfer of one or both parties.
- * Fitness report comments.

(2) Non-judicial punishment (often followed, in the case of officers, by processing for administrative separation).

(3) Court-martial.

f. Responsibility. The responsibility for maintaining the customary and traditional standards of conduct lies with the senior. The line between acceptable conduct and fraternization will not be crossed unless the senior allows it to happen. The leader must be careful to avoid even the perception of fraternization without destroying the traditional fraternal bond between Marines of all grades.

g. Summary. The regulations and customs that we have against fraternization are not meant to prevent us from associating with our Marines. In fact, just the opposite is true. The regulations against fraternization are meant to ensure that the relationships we maintain with our Marines are of the most professional and productive nature. If we expect our Marines to respect us, there can't be even the hint of favoritism. Fraternization gives the appearance of favoritism whether or not any instance of favoritism has taken place. The negative effect on morale and unit cohesion is obvious. Additionally, we must demand an obedience to lawful orders that is unhesitating. If the chain of command is allowed to be weakened by a lax attitude toward fraternization, we will not be able to depend on our traditional levels of discipline when it counts the most. The military services demand a regard for authority by juniors towards their seniors which experience has shown is enhanced by the observance of decorum, tradition, custom, usage, and conventions which are peculiar to the services alone. The unquestioned obedience mandated in time of battle rests on regard and respect for authority. This respect is lessened by the failure to observe niceties of military courtesy and other traditions and customs.

REFERENCES: Marine Corps Values and Leadership User's Guide for Discussion Leaders
DoD Directive 1350.2
SECNAVINST 5300.26
MCO 5300.10A
MCO P5354.1(C)
Manual for Courts Martial

APPENDIX A

FRATERNIZATION SCENARIOS

1. SCENARIO 1. 1stLt Blank, a legal officer with Legal Team E, Marine Corps Base Camp Pendleton, conducted a PFT for the Marines in his section and several of them did not perform up to standards. He organized a remedial program for his Marines, having all five of them run with him every day from 1100-1200. Are there any perceived problems with improper relations between senior and subordinates? As the month continues, the PT group dwindles to the female LCpl running with the lieutenant. The runs have increased to two hours and now are through wooded running trails.

- a. Is there a compromise of the chain of command?
- b. Is there an appearance of partiality?
- c. Is there the potential for good order, discipline, morale, or authority to be undermined?

2. SCENARIO 2. GySgt Wrench, the squadron maintenance chief, has been with the section for three years. He is a gruff and impersonal Marine. Over the past few weeks, you (the section OIC) have noticed a slight change in his behavior. Whenever the new avionics tech, PFC Jones, is in the office he seems much more pleasant to be around. You overheard a conversation between PFC Jones and GySgt Wrench, in which you found out that PFC Jones played football on the same high school team as GySgt Wrench's younger brother. He has been frequenting the E-Club after hours, saying "the troops keep inviting me." However, the talk in the shop is that he has been seen with the PFC frequently at the Club and has had him over to his house on several occasions to work on the gunny's classic '67 Porsche 911 -- they both share in interest in classic cars. PFC Jones' work performance as of late has been slipping. However, this week he was recommended for a squadron commander's meritorious mast for continued outstanding performance of duty by the maintenance chief. This morning, you saw the gunny and PFC Jones arrive to work together.

- a. Is there a compromise of the chain of command?
- b. Is there an appearance of partiality?
- c. Is there an the potential for good order, discipline, morale, or authority to be undermined?
- d. What should the section OIC, do?