

DUTIES OF A CONVENING AUTHORITY

I. JUSTICE DECISIONS BY COURT-MARTIAL CONVENING AUTHORITY.

A. BOTTOM LINE: Military justice demands that each commander exercise his/her independent discretion at each stage of military justice proceedings. NO UCI.

B. Convening Authority: commander with authority to refer charges to trial, detail members to hear case, and take action after sentencing.

C. Selection of court personnel: The most sensitive part of the process.

1. Court members (Art. 25, UCMJ) - select those members determined to be best qualified by reason of age, education, training, experience, length of service, and judicial temperament.
2. Beware of: race, gender, command experience, and branch/duty assignment.
3. Power to excuse up to 1/3 of court membership before assembly of court may be delegated to SJA, chief of staff or deputy commander (recommend SJA).

D. Before trial.

1. Disposition decision:

- a. **No action.**
- b. **Administrative.**
- c. **NJP.**
- d. **Court-Martial.**
- e. **Forward:** down or up for disposition (e.g., if you are accuser and disqualified from referring case to trial).

Administrative Measures	Nonjudicial Punishment	Judicial Punishment
On-the-spot Correction	Summarized Art 15	Summary Court-Martial
Corrective Training	Company Grad Art 15	Special Court-Martial
Counseling	Field Grade Art 15	General Court-Martial
Pass Revocation	General Officer Art 15	
Bar to Continued Service		
Administrative Reprimand		
Administrative Separation	(minor offenses)	(major offenses)
Preponderance	Beyond a Reasonable Doubt	

2. Grant pre-referral delays.
3. Appoint an Article 32 hearing officer (usually at brigade level).
4. Refer charges to court-martial – SCM, SPCM, or GCM.
5. Only Convening Authority can approve/disapprove **pretrial agreements**.
6. Only GCMCA can grant witness **immunity**.
7. Only GCMCA can approve/disapprove Chapter 10, AR 635-200 (discharge in lieu).
8. Only GCMCA can order Reserve Component soldiers to active duty for purposes of Article 32 investigation, court-martial, or Article 15 proceedings.
9. **WITHHOLD jurisdiction.**
10. GCMCA has special role in determining whether prosecution in national security case would be harmful to national security.
11. GCMCA can grant an exception to allow court-martial or NJP action over an offense previously tried in civilian court (AR 27-10).

E. After trial.

1. Convening Authority must take action on sentence (findings is discretionary).
2. Grant **clemency** if appropriate.

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- a. Findings - may set aside **certain** findings of guilty or change to lesser included offense (not sex offenses or others over 2 years max punishment).
 - b. Sentence - may amend **certain** sentences in whole or part; cannot increase sentence (cannot reduce below mandatory minimums).
 - c. **Must** consider all written **clemency** submissions and input from victim.
 - d. Do not consider adverse matters outside the record (unless defense notified).
 - e. Clemency action must be explained/justified in writing.
3. Act on requests to defer confinement and defer/waive forfeitures.
 4. GCMCA can order excess leave (e.g.: BCD and no confinement).

II. KEY PERSONNEL.

- A. Convening authority – quasi-judicial role.
- B. Staff judge advocate (SJA).
- C. Military judge – independent; detailed by Trial Judiciary.
- D. Trial counsel – belongs to Brigade Commander and SJA.
- E. Defense counsel – independent; detailed by Trial Defense Service.
- F. Special Victim Counsel – detailed by OSJA; the victim is the client; loyalty to victim.
- G. Special Victim Prosecutor – regionally aligned to assist/oversee SA cases.

IV. OTHER ISSUES.

- A. Removal of character and service record as considerations on disposition.
- B. Review of decisions *not* to send cases to trial (potential for UCI).
- C. Victim input in clemency process.
- D. Caution to avoid group punishments or ostracism related to sex assault reporting.

V. CONCLUSION:

- A. As convening authority, you refer charges, select members, and act on the findings and sentence – these are among the most sensitive and controversial components of the military justice system.
- B. In order to properly exercise your authority to select members, you must:
 1. Personally select them;
 2. Use the criteria set forth by Congress (Article 25); and
 3. Exercising “pure motives.”
- C. In order to properly exercise your post-trial role, you must consider written submissions from the defense and the victim, if any, prior to your action. You may grant (limited) clemency if you believe it is appropriate.
- D. Use your SJA/JA, and encourage subordinate commanders to do the same.