

Military Justice



Leader Brief

MJ LEADER BRIEF

Training Objectives

- Compare Military & Civilian Justice Systems
- UCMJ Overview
- Discuss Investigations
- Compare Searches/Administrative Inspections
- Discuss Nonpunitive Administrative Actions
- Discuss Nonjudicial Punishment, Article 15
- Discuss Pretrial Restraint
- Understand Initiation of Court-Martial Charges
- Discuss Unlawful Command Influence

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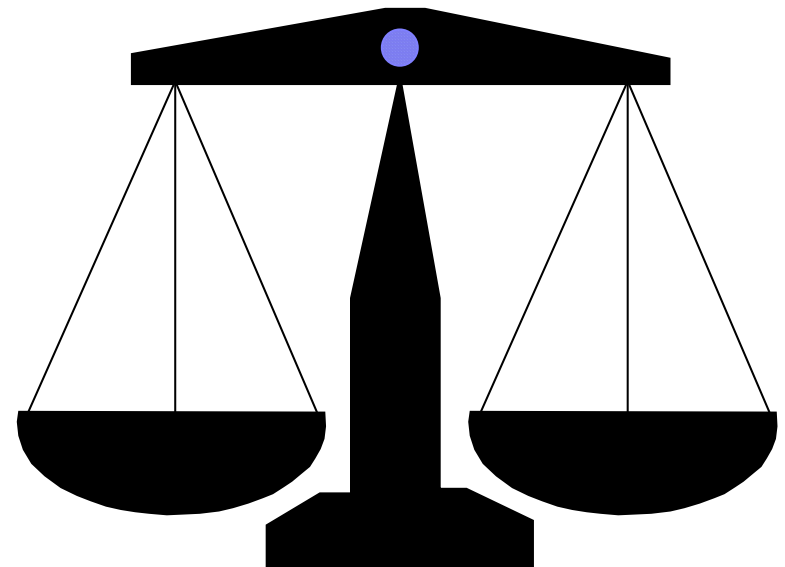
Why do we Have a Military Justice System?

- Promote Justice
- Help Maintain Good Order and Discipline in the Armed Forces
- Promote Efficiency and Effectiveness in the Military
- Strengthen National Security



Comparison of Military and Civilian Justice Systems

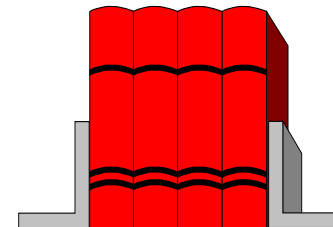
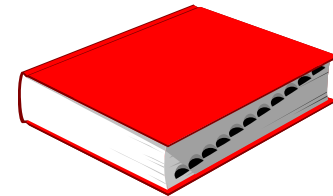
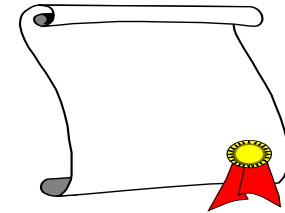
- Article 32 Preliminary Hearing v. Grand Jury
- Right to Counsel
- Article 31 Rights
- Jury System
- Guilty Pleas



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Legal Sources of Military Justice

- US Constitution
- Uniform Code of Military Justice (UCMJ)
- Manual for Courts-Martial 2016 (M.C.M.)
- Army/Local Regulations
- Court Decisions



UCMJ Jurisdiction

Over the Person:

- Active Duty Soldiers and Reservists while on AD
- Military Academy Cadets and Midshipmen
- National Guard Personnel in Federal Service (Under Title 10, U.S.C.)
- Retirees
- Enemy Prisoners of War
- Others (Some Civilians deployed with units)

Over the Offense:

- Worldwide Jurisdiction
- Possible Concurrent Jurisdiction

Crimes Under the UCMJ

Common Law Crimes

- Murder/Manslaughter
- Rape/Sexual Assault
- Larceny/Burglary
- Drug Offenses
- Assault



Military Crimes

- Disrespect
- Disobedience
- AWOL/Desertion
- Conduct Unbecoming an Officer
- Conduct Prejudicial to Good Order and Discipline

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Soldier's Rights

- Presumption of Innocence
- Right Against Self-Incrimination
- Right Against Unreasonable Search/Seizure
- Fair and Impartial Hearings
- Right to Counsel (in most situations)
- Other Rights (discussed throughout this class)

Article 31(b) Rights

Article 31(b), UCMJ:

- To be informed of the nature of the suspected offense
- To remain silent
- To be informed that any statement you make can be used against you

Applies anytime a person subject to the UCMJ questions a Soldier suspected of an offense.

RIGHTS WARNING PROCEDURE/WAIVER CERTIFICATE			
For use of this form, see AR 190-30; the proponent agency is ODCSOPS			
DATA REQUIRED BY THE PRIVACY ACT			
AUTHORITY: Title 10, United States Code, Section 3012(g)			
PRINCIPAL PURPOSE: To provide commanders and law enforcement officials with means by which information may be accurately identified.			
ROUTINE USES: Your Social Security Number is used as an additional alternate means of identification to facilitate filing and retrieval.			
DISCLOSURE: Disclosure of your Social Security Number is voluntary.			
1. LOCATION	2. DATE	3. TIME	4. FILE NO.
5. NAME (Last, First, MI)		6. ORGANIZATION OR ADDRESS	
6. SSN	7. GRADE/STATUS		
PART I - RIGHTS WAIVER/NON-WAIVER CERTIFICATE			
Section A. Rights			
The investigator whose name appears below told me that he/she is with the United States Army _____ and wanted to question me about the following offense(s) of which I am suspected/accused: _____			
Before he/she asked me any questions about the offense(s), however, he/she made it clear to me that I have the following rights:			
1. I do not have to answer any question or say anything.			
2. Anything I say or do can be used as evidence against me in a criminal trial.			
3. <i>(For personnel subject to the UCMJ)</i> I have the right to talk privately to a lawyer before, during, and after questioning and to have a lawyer present with me during questioning. This lawyer can be a civilian lawyer I arrange for at no expense to the Government or a military lawyer detailed for me at no expense to me, or both.			
- or -			
<i>(For civilians not subject to the UCMJ)</i> I have the right to talk privately to a lawyer before, during, and after questioning and to have a lawyer present with me during questioning. I understand that this lawyer can be one that I arrange for at my own expense, or if I cannot afford a lawyer and want one, a lawyer will be appointed for me before any questioning begins.			
4. If I am now willing to discuss the offense(s) under investigation, with or without a lawyer present, I have a right to stop answering questions at any time, or speak privately with a lawyer before answering further, even if I sign this waiver below.			
5. COMMENTS (Continue on reverse side)			
Section B. Waiver			
I understand my rights as stated above. I am now willing to discuss the offense(s) under investigation and make a statement without talking to a lawyer first and without having a lawyer present with me.			
WITNESSES (If available)		3. SIGNATURE OF INTERVIEWEE	
1a. NAME (Type or Print)			
b. ORGANIZATION OR ADDRESS AND PHONE		4. SIGNATURE OF INVESTIGATOR	
2a. NAME (Type or Print)		5. TYPED NAME OF INVESTIGATOR	
b. ORGANIZATION OR ADDRESS AND PHONE		6. ORGANIZATION OF INVESTIGATOR	
Section C. Non-waiver			
1. I do not want to give up my rights <input type="checkbox"/> I want a lawyer <input type="checkbox"/> I do not want to be questioned or say anything			
2. SIGNATURE OF INTERVIEWEE			
ATTACH THIS WAIVER CERTIFICATE TO ANY SWORN STATEMENT (DA FORM 2823) SUBSEQUENTLY EXECUTED BY THE SUSPECT/ACCUSED			
DA FORM 3881, NOV 89 EDITION OF NOV 84 IS OBSOLETE USAFA 2.01			

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Key Personnel in the Military Justice System

- Commander
- Staff Judge Advocate
- Trial Counsel
- Defense Counsel
- Special Victim Counsel
- Military Judge
- Panel Members (Jury)
- Paralegal Specialist



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Commander's Responsibilities

- **Maintain Good Order and Discipline**
- Investigate/Report Offenses
- Enforce the Law
- Protect Soldiers' Rights
- Determine/Recommend Disposition of Case
- Keep Sexual Assault Victims Informed



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Conducting Investigations

Discovery of Incident

Initial Considerations: Who/What/Where/ When/How?

- Who reported incident?
- What evidence supports the allegation?
- Where did the incident occur?
- When did the incident occur?
- How credible is the allegation?
- Finally, what type of inquiry/investigation is best based on the type of misconduct at issue?



Notify Trial Counsel Early!

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Conducting Investigations

Types of Investigations

Preliminary Inquiry: RCM 303

- Required for any offense reported to the Commander
- No formal requirements
- Can be conducted by Commander or assigned to an investigating officer



AR 15-6:

- Usually initiated for more complex offenses
- Requires appointment of Investigating Officer (JAG will prepare appointment letter)
- Investigating officer must adhere to requirements of AR 15-6 and will be provided a legal advisor

MPI/CID:

- MPI/CID jurisdiction detailed in AR 195-2; Command must report offenses within MPI/CID purview to these organizations

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Search and Seizure

- 4th Amendment Protections
- Who can Authorize a Search?
- What is Probable Cause?
- Exceptions to Authorization Requirement
- Consent Searches
- Health & Welfare Inspections, Inventories, and Urinalysis

Search and Seizure

4th Amendment Protections

“The right of the people to be secure. . . against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause . . .”

“Unreasonable” is the key term that defines what you can and can’t do and how you do it.



Search and Seizure

Authorizing a Search

The following persons can issue search authorizations based upon Probable Cause:

- Civilian Authority (Judge)—issues search warrants
- Military Judges
- Military Magistrates
- Commander or Acting Commander (authority cannot be delegated; can ONLY authorize searches of persons and places within the individual's command, such as assigned Soldiers and unit barracks)

Searches should be conducted by an officer, warrant officer, NCO, or law enforcement (MPI/CID).

Search and Seizure

What is Probable Cause?

“[A] Reasonable Belief that the person, property, or evidence sought is located in the place or on the person to be searched.” M.R.E. 315(f)(2)

- Mere suspicion is not enough

Reasonable Belief is formed from information that is:

- Supported by verifiable evidence
- Timely
- Credible
- AND NOT based on mere suspicion

Search and Seizure

Authorization Not Required

- Item in Plain View (when official legally present)
- Consent
- Exigent Circumstances (e.g., destruction of evidence; medical emergency)
- Incident to Lawful Apprehension/Stop (generally only applies to law enforcement)

Search and Seizure

Consent Searches

If a person voluntarily consents to a search of person or property under his/her control, no probable cause or search authorization is required.

- Must exercise control over property to consent.
- Consent may be withdrawn at any time.
- Must be VOLUNTARY and NOT COERCED.

Search and Seizure

Exigent Circumstances

“[T]hose circumstances that would cause a reasonable person to believe that entry (or other relevant prompt action) was necessary to prevent physical harm to the officers or other persons, the destruction of relevant evidence, the escape of the suspect, or some other consequence improperly frustrating legitimate law enforcement efforts.”

United States v. McConney, 728
F.2d 1195, 1199 (9th Cir. 1984)

Search and Seizure

Administrative Inspections

A.K.A. “Health & Welfare” Inspections

An inspection is an examination of the whole or part of a unit conducted as an incident of command.

Primary purpose of inspection must be to ensure the security, military fitness, or good order and discipline of the command.

- Can include an examination to locate and confiscate unlawful weapons and other contraband.
- An inspection must NOT be a cover (“subterfuge”) for an unlawful search.
- Evidence/Contraband found during a legitimate inspection may be used as evidence at court-martial if otherwise admissible.

Search and Seizure

Administrative Searches—Urinalysis

Urinalysis Program (AR 600-85)

Types of Tests:

- Searches based on Suspicion: Need probable cause and prior authorization; no limits on use
- Fitness for Duty/Command Directed: Limited use only
- Inspections/Health & Welfare (Random or 100%): No limits on use

Actions after Positive Results:

- Call CID; impose flag; enroll in Army Substance Abuse Program
- Initiate separation (AR 635-200, Ch. 14)
- Consider UCMJ action

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Search and Seizure Handling Evidence

EVIDENCE/PROPERTY CUSTODY DOCUMENT

EVIDENCE PROPERTY CUSTODY DOCUMENT						OFFICE REFERENCE NUMBER CAPTURE TAG #
For use of this form see AR 190-40 and AR 190-8; the proponent agency is US Army Criminal Investigation Command						
RECEIVING ACTIVITY APPENDING UNIT INCLUDE MSC NAME, GRADE AND TITLE OF PERSON FROM WHOM RECEIVED: <input checked="" type="checkbox"/> COMMANDER FULL NAME IF POSSIBLE EX. AYDE FEYAD MEHDI AL MOHAMADA <input type="checkbox"/> OTHER				LOCATION NAME OF FOB OR CAMP OR CITY ADDRESS (include Zip Code) ADDRESS OF PERSON FROM WHOM RECEIVED TRY AND GET AS MUCH OF THE ADDRESS AS POSSIBLE		
LOCATION FROM WHERE OBTAINED EXACT LOCATION OF WHERE EVIDENCE WAS SEIZED I.E. ROOM, BLDG., YARD/ ADDRESS IF NOT THE SAME AS ABOVE				REPORT OBTAINED EVIDENCE:		TINSGATE OBTAINED SELF EXPLANATORY EX. 223528NOV95
ITEM NO. QUANTITY DESCRIPTION OF ARTICLES <small>(Include model, serial number, condition and physical marks or markings)</small>						
A	1	AK-ET BLACK AND BROWN IN COLOR. WOODEN/PLASTIC STOCK. INCLUDE ANY IDENTIFYING MARKS.				
B	3	BLUET EN COLOR NOKIA CELL PHONES, SER#S XXXXXXXXXXKKKXXXXXXXXHHHHHHHHDDI MODEL # NZJ80 LE. ANY OTHER				
C	45	ROUNDS OF 7.62MM AMMUNITION. INCLUDE ANY IDENTIFYING MARKS.				
D	1	GREEN IN COLOR STANDARD AMMO BOX FOR 7.62MM AMMUNITION. INCLUDE ANY IDENTIFYING MARKS ON BOX. XXX				
CHAIN OF CUSTODY						
ITEM NO.	DATE	RELEASED BY	SIGNATURE	RECEIVED BY	SIGNATURE	PURPOSE OF CHANGE OF CUSTODY
A,B	27NOV95	NAME, GRADE OR TITLE JOHN DOE, SFC, TITLE/UNIT	<i>[Signature]</i>	NAME, GRADE OR TITLE JANE DOE, SGT, TITLE/UNIT	<i>[Signature]</i>	TEMPORARY CUSTODY FINGERPRINT ANALYSIS EXPLOSIVE TESTING
C,D	27NOV95	NAME, GRADE OR TITLE JOHN DOE, SFC, TITLE/UNIT	<i>[Signature]</i>	NAME, GRADE OR TITLE ROB SMITH, SFC, TITLE/UNIT	<i>[Signature]</i>	TEMPORARY CUSTODY SAFEKEEPING
C,D	28NOV95	NAME, GRADE OR TITLE JOHN DOE, SFC, TITLE/UNIT	<i>[Signature]</i>	NAME, GRADE OR TITLE CLAY SMITH, SGT, TITLE/UNIT	<i>[Signature]</i>	EVIDENCE CUSTODIAN SAFEEKEEPING IN EVIDENCE ROOM
A,B	28NOV95	NAME, GRADE OR TITLE JANE DOE, SGT, TITLE/UNIT	<i>[Signature]</i>	NAME, GRADE OR TITLE CLAY SMITH, SGT, TITLE/UNIT	<i>[Signature]</i>	EVIDENCE CUSTODIAN SAFEEKEEPING IN EVIDENCE ROOM
		NAME, GRADE OR TITLE _____	SIGNATURE _____	NAME, GRADE OR TITLE _____	SIGNATURE _____	VERY IMPORTANT CONTINUE FOR EVERY CHANGE OF CUSTODY

Received 26 August 2011; in final form 14 August 2012

WISCONSIN 67-0

- Call MPI/CID to Collect Contraband
- Do not Unnecessarily Handle
- Preserve Condition of Evidence
- Preserve Chain of Custody

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Disposition of Offenses

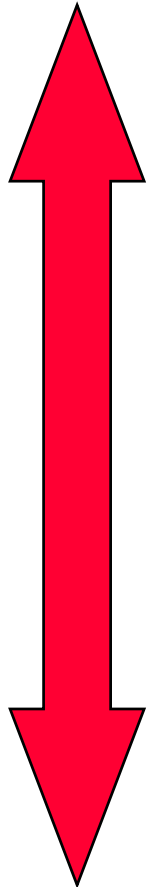
Command Considerations

Once the investigation is complete, Commander must consider:

- What are the facts and circumstances surrounding the offense and the seriousness of the underlying offense?
- How well is the allegation substantiated (quality of evidence collected)?
- What are command priorities (speed, good order and discipline, justice)?
- What are the victim's preferences?
- Are there sentencing factors to consider (rehabilitation of the accused, general deterrence, specific deterrence, social retribution)?

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Disposition of Offenses Commander's Options



- Take No Action (after investigation)
- Take Administrative Action
- Impose Nonjudicial Punishment (Article 15)
- Court-Martial

Administrative Actions

- Counseling (AR 600-20)
- Corrective Training (AR 600-20)
- Administrative Reprimands (AR 600-37)
- Bar to Reenlistment (AR 601-280)
- FLAG (AR 600-8-2)
- MOS Reclassification (AR 614-200)
- Revoke Security Clearance (AR 380-67)
- Relief from Duties
- Adverse NCOER/OER
- Removal from Special Status
- Rehabilitative Transfer
- Administrative Reductions (AR 600-8-19)
- Administrative Separations (AR 635-200)

Administrative Actions Counseling Soldiers

Intent of counseling is to rehabilitate the Soldier

- Soldier must understand where he/she failed to meet expectations and the commander's expectations for future conduct.
- Written counseling is preferred.
- Leaders should assess the Soldier's performance and adherence to the plan of action after sufficient time has passed.

DA Form 4856 (Counseling Form)

- Include requirements of AR 635-200, para. 1-16 and Chapter 17.

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Administrative Actions

Counseling “Magic Phrase”/“Silver Bullet”

“You are hereby counseled for the above indicated misconduct and/or unsatisfactory duty performance in accordance with AR 635-200, paragraph 1-16. Continued behavior of this kind may result in initiation of separation action to eliminate you from the Army. If you are separated for unsatisfactory performance, you could receive an Honorable, General, or Other than Honorable (OTH) Discharge. A General or OTH Discharge could severely prejudice you in civilian life. Additionally, an OTH Discharge could deprive you of many or all military and Veterans benefits to include forfeiture of all educational benefits. Any further misconduct or unsatisfactory performance may cause you to be eliminated without further counseling.”

Administrative Actions

Corrective (Remedial) Training

Training or instruction must be directly related to the deficiency observed and oriented to correct that particular deficiency, e.g.:

- Remedial PT
- Check-in requirements for FTRs

Training, NOT Punishment

Must not be humiliating or degrading

Leader should be present

Administrative Actions

Administrative Reprimand

Documents misconduct or poor performance in a Soldier's official files

- Formal Procedures (Soldier entitled to notice and opportunity to rebut)
- Soldier assisted by Legal Assistance (or TDS in some cases)

Filing Options

- Local File
- AMHRR (General Officer directed)



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Administrative Actions

Bar to Reenlistment

The Army desires to retain Soldiers of high moral character, competence, and demonstrated adaptability.

- Soldiers who do not meet this standard will be barred from further service.

Bars may be initiated for a variety of misconduct or general poor performance

Initiation of administrative separation or bar to reenlistment required for:

- Failure to make satisfactory progress in Army Body Composition Program.
- 2 consecutive APFT failures.
- Removal for cause from NCOES courses.
- Full list in AR 601-280

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Administrative Actions

Administrative Separations

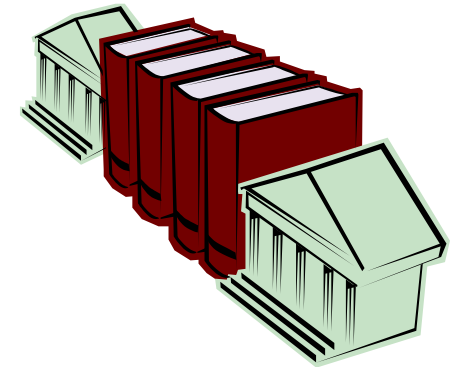
Soldier's Rights:

- Notice and Opportunity to Respond
- Attorney (TDS Consultation/Board Representation)
- Hearing Before a Separation Board if:
 - > 6 Years of Service
 - Other Than Honorable Discharge Initiated



Characterization of Service (Options):

- Honorable (No misconduct; Entitled to all benefits)
- General (Minor misconduct; Entitled to most benefits)
- Other than Honorable (More serious misconduct; Forfeits most benefits)



Standard of Proof:

- "Greater weight of the evidence"
- Preponderance of the evidence (51%)

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Administrative Actions

Types of Involuntary Separations

Chapter 5 - Convenience of the Government

- 5-8: Parenthood
- 5-13: Personality Disorder
- 5-17: Other designated physical or mental condition

Chapter 7 - Defective/Fraudulent Entry

Chapter 9 - Alcohol/Drug Abuse Rehab. Failure

Chapter 11 - Entry Level Performance and Conduct

Chapter 13 - Unsatisfactory Performance

Chapter 14 - Misconduct

- 14-12a: Minor Disciplinary Infractions
- 14-12b: Pattern of Misconduct
- 14-12c: Serious Misconduct

Chapter 18 - Failure to Meet Body Fat Standards

Chapter 19 - Qualitative Management Program

Military Justice Leader Brief

End of Part I

Questions?

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Military Justice Leader Brief

Part II

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Punitive Disposition Options

- Nonjudicial Punishment (Article 15)
- Summary Court-Martial
- Special Court-Martial
- General Court-Martial



Nonjudicial Punishment

- Imposed by commanding officer (company commander, field grade commander, or general officer).
- Intended to be prompt means to correct Soldier behavior and dispose of minor offenses.
- Limited punishment options.
- Soldier always has right to demand trial by court-martial.
- Burden of proof: beyond a reasonable doubt.

Article 15

Initial Commander's Responsibilities

Preliminary Investigation

- Was an Offense Committed?
- Was the Soldier Involved?
- Character & Military Record of The Soldier

Coordinate with paralegal for drafting of DA Form 2627 (Formal) or DA Form 2627-1 (Summarized).

Notify the Soldier and give him/her the opportunity to consult with TDS.

Article 15

Soldiers' Rights

- Notice of the Alleged Offense and Intent to Initiate Article 15
- Remain Silent
- Examine Evidence
- Present a Defense
- Confront Witnesses
- Demand Trial by Court-Martial
- Appeal to a Superior Authority

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Article 15

Soldiers' Rights (Formal Article 15)

- Consult With Counsel
- Call Witnesses
- Have a Spokesperson Present
- Ask For an Open Hearing

Article 15

Hearing

Purpose: Commander determines if the accused committed the offense, and if so, imposes punishment.

Commander's actions:

- Determine whether the hearing will be open or closed
- Consider the evidence presented by the Government and matters submitted by the Soldier
- Decide guilt or innocence
- Impose appropriate punishment
- Explain rights to appeal

Burden of Proof: Beyond a reasonable doubt

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Article 15

Punishment Options

- Admonishment/Reprimand
- Forfeiture of Pay
- Restriction
- Extra Duty
- Reduction in Rank
- Correctional Custody (If installation has an approved facility)

Amount of punishment depends on rank of accused and rank of commander.

Article 15

Enlisted Types & Punishments

<u>Types</u>	<u>Summarized</u>	<u>Company</u>	<u>Field Grade</u>
Forfeiture	No	7 Days Pay	1/2 of 1 Mo. For 2 Mo.
Reduction	No	1 Grade (E1-4)	E1-E4: Total E5-E6: 1 Grade
Restriction	14 Days	14 Days	60 Days*
Extra Duty	14 Days	14 Days	45 Days

Article 15

Officer Types & Punishments

Company Grade

Written reprimand/
admonition

30 days restriction

Field Grade

Written reprimand/
admonition

30 days restriction

General Officer

Written reprimand/
admonition

60 days restriction, or

30 days arrest in
quarters

Forfeiture of ½ of 1
month's pay for 2
months

Article 15 Appeals

Procedure:

- Written Appeal (Generally due within 5 days of imposition of punishment)
- Submitted Through Imposing Commander

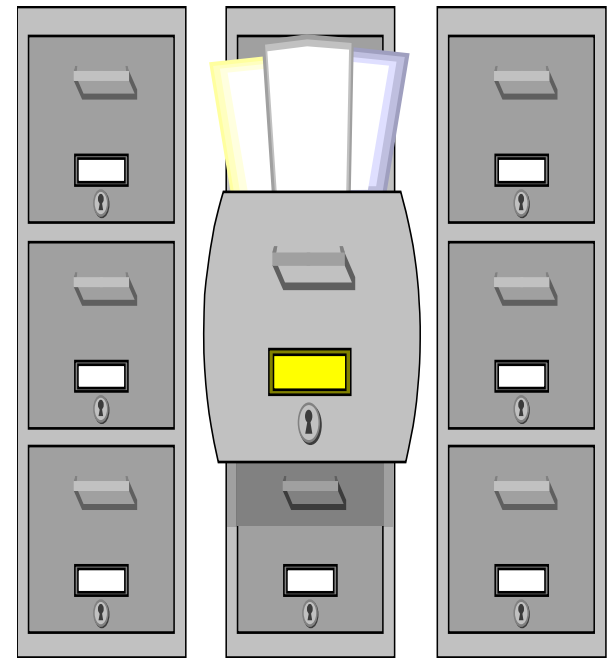
Appellate Authority:

- Next Higher Level Commander
- Can Take Any Action

Article 15

Filing

- Summarized: kept in unit (local) file for two years or transfer
- Formal: Depends largely upon pay grade of accused
 - E-4 and below: Filed Locally
 - E-5 and above: Filed in AMHRR
 - Guilty of any sex-related offense: Filed in AMHRR



Courts-Martial

Types:

- Summary Court-Martial
- Special Court-Martial
- General Court-Martial

Summary Courts-Martial

Convening Authority:

- SCMCA—Battalion or Higher Commander

Soldier's Rights:

- No Right to Representation (Counsel)
- May Refuse SCM
- Cross-Examine Witnesses/Call Witnesses

Procedure/Jurisdiction:

- Summary Courts Officer (usually a MAJ)
- Cannot Try Officers
- Rules of Evidence Apply
- Maximum Punishment:
 - Forfeiture of 2/3 of 1 month's pay for 1 month **AND**
 - E-4 & below: 30 days confinement, reduction to E-1
 - E-5 & above: 2 months restriction, 1 grade reduction

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Special Courts-Martial

Convening Authority:

- Special Courts-Martial Convening Authority (SPCMCA—Usually Brigade Commander)

Soldier's Rights:

- Right to Representation (Counsel)

Procedure/Jurisdiction:

- 3 Panel Members and/or Judge
- Maximum Punishment
 - No punitive discharge (unless referred to BCD Special—enlisted only)
 - 12 months confinement (enlisted only)
 - 2/3 forfeiture (pay only) for 12 months
 - Reduction to E-1 (enlisted only)



General Courts-Martial

Convening Authority:

- General Courts-Martial Convening Authority (GCMCA—Commanding General)

Soldier's Rights:

- Right to Representation
- Article 32 Preliminary Hearing
- Officer/Enlisted Panel

Maximum Punishment

- Confinement up to maximum authorized by law
- Total forfeiture of all pay/allowances
- Reduction to E-1
- Bad Conduct/Dishonorable Discharge
- Dismissal (Officers)



MJ LEADER BRIEF

Preferring & Forwarding Charges

- Trial Counsel and Paralegals typically draft the DD Form 458 Charge Sheet.
- An accuser prefers the charges based on personal knowledge or investigation of the misconduct (accuser is typically the Company Commander).
- Company Commander notifies the Accused of the charges.
- Charges are forwarded to the SCMCA with a disposition (level of court-martial) recommendation.
- SCMCA either refers charges to a summary court-martial or forwards to the SPCMCA with a recommendation for a special court-martial or general court-martial.

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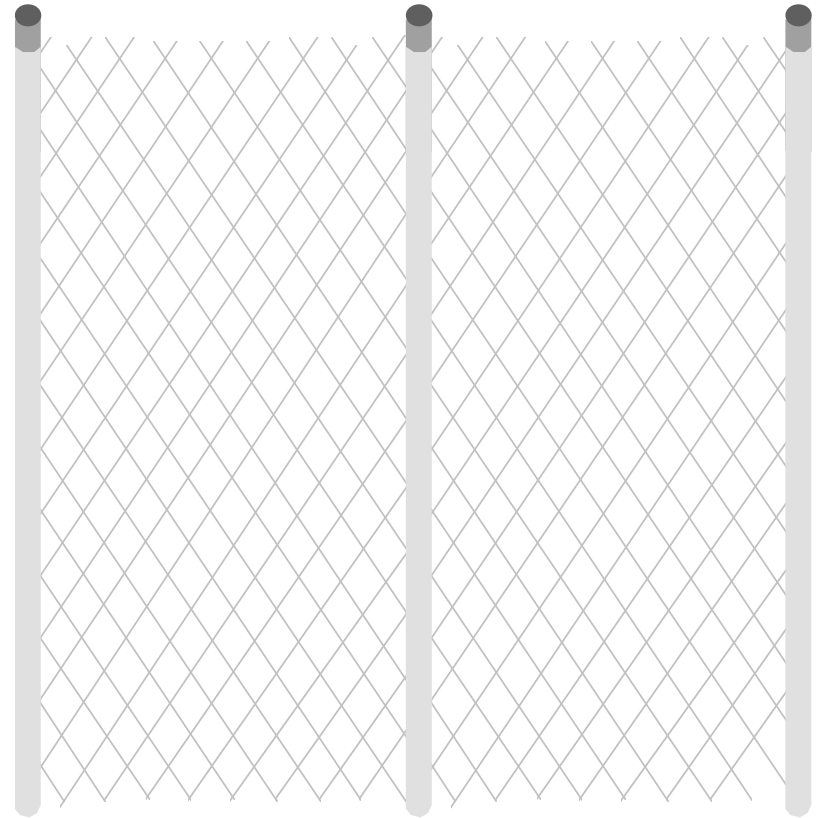
Pretrial Restraint

Authorized upon Probable Cause that:

- UCMJ offense has been committed;
- Accused committed it;
- Restraint is required to ensure the accused's presence OR to prevent foreseeable serious criminal misconduct; AND
- Lesser forms of restraint are inadequate

Forms of Pretrial Restraint

- Conditions on Liberty
- Restriction (In Lieu Of Arrest)
- Arrest
- Pretrial Confinement



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Pretrial Confinement

Physical restraint (i.e., jail) pending special or general court-martial; confinement is not appropriate for Soldiers facing only summary court-martial.

Requirements for pretrial confinement:

- An offense triable by court-martial has been committed;
- Accused committed it;
- Confinement is required under the circumstances to ensure Accused appears (i.e., flight risk) or to ensure Accused does not commit additional serious criminal misconduct; AND
- Lesser forms of restraint are inadequate.

Speedy Trial Rules

R.C.M. 707:

- The accused must be brought to trial within 120 days of:
 - 1) Preferral of charges;
 - 2) Imposition of restriction, arrest, or pretrial confinement; OR
 - Excludable delays can be approved by the CA or MJ and will toll the 120-day clock
 - 3) Entry onto active duty of Reserve personnel for trial.

Article 10:

- If a Soldier is in pretrial confinement the case **MUST** be **DISMISSED** if the government fails to act with “reasonable diligence” in bringing the accused to trial.
- Meeting the 120 Speedy Trial Clock does not necessarily meet “reasonable diligence.”

Unlawful Command Influence

Article 37 of the UCMJ prohibits anyone subject to the UCMJ from attempting to coerce, or unlawfully influence the action of a court-martial (applies during both accusatory and adjudicatory stages).

There are three populations that can be impacted by UCI:

- Potential panel members
- Subordinate commanders
- Witnesses or potential witnesses.

Each level of command must exercise independent judgment on disposition of offenses.

A superior may act or withhold authority from subordinates to act in particular cases, but a superior officer cannot order and should not suggest to a subordinate commander how to dispose of a case.

10 Commandments of Unlawful Command Influence

- 1) Do not stack the panel, nor select nor remove court members in order to obtain a particular result in a particular trial.
- 2) Do not disparage the defense counsel or military judge.
- 3) Do not communicate an inflexible policy on disposition or punishment.
- 4) Do not place outside pressure on the judge or court members to obtain a particular decision.
- 5) Do not intimidate witnesses or discourage them from testifying.

10 Commandments of Unlawful Command Influence

- 6) Do not order a subordinate to dispose of a case in a certain way.
- 7) Do not coach or mentor subordinates on military justice without talking to your legal advisor first.
- 8) Do not disparage the accused or tell others not to associate with him, and do not allow subordinates to do so, either.
- 9) Ensure that subordinates and staff do not commit unlawful command influence, inadvertently or not.
- 10) If a mistake is made, raise the issue immediately and cure with an appropriate remedy.

Key Takeaways

- UCMJ Jurisdiction
- Conducting Inquiries/Interviews
- Searches/Administrative Inspections
- Nonpunitive Administrative Actions
- Nonjudicial Punishment, Article 15
- Courts-Martial
- Pretrial Restraint
- Unlawful Command Influence

Questions

MJ LEADER BRIEF