



MILITARY JUSTICE

LEGAL INSTRUCTION

40th Support Command





OBJECTIVE

- **Action:** Identify the principles of military justice including criminal misconduct, jurisdiction, investigations, soldiers' rights, search and seizure, restriction, administrative separations, non-judicial and judicial punishments, and unlawful command influence.
- **Condition:** Given classroom instruction and detailed discussion by an Army JAG attorney.
- **Standards:** IAW Manual for Courts-Martial, AR 27-10, AR 601-280, and AR 635-200.



OBJECTIVE



- If this instruction is provided by a non-JAG officer, meaning a non-attorney, the content is provided for informational purposes only.
- For legal guidance and opinions, consult a JAG officer to include a Legal Defense Attorney, Trial Defense Attorney or a Private Attorney (at your own expense) as appropriate.



OVERVIEW



- Sources of Military Law
- Military Jurisdiction
- Search & Seizure
- Interrogations & Soldiers' Rights
- Administrative Action
- Non Judicial Punishment
- Court-Martial Process
- Crimes & Related Misconduct
- Homosexual Policy
- Fraternization



OSJA

Office of the Staff Judge Advocate



JAG OFFICE

CLIENT

- LEGAL ASSISTANCE** SOLDIER
- ADMINISTRATIVE LAW** ARMY
- OPERATIONAL LAW** ARMY
- CLAIMS** ARMY
- CONTRACT LAW** ARMY
- ENVIRONMENTAL LAW** ARMY
- CRIMINAL LAW** ARMY
- TRIAL DEFENSE SERVICE ACCUSED**



ATTORNEY-CLIENT PRIVILEGE



- **Generally, only information provided to legal assistance attorneys or Trial Defense Service (TDS) attorneys is afforded attorney-client privilege.**
- **Do not seek personal advice from attorneys other than legal assistance or TDS.**
- **Do not confess to your instructor.**



SOURCES OF MILITARY LAW



U.S. Constitution

- Federal – UCMJ, Uniform Code of Military Justice
- State - California Military & Veterans Code
- Judicial Opinions
- Articles (Scholarly)
- Administrative Action versus Military Justice:
Governed by regulations by Executive authority



JURISDICTIONS



- SOVEREIGN -- Any Nation
- UNITED STATES
- STATE
- COUNTY
- CITY





PERSONS SUBJECT TO UCMJ



- Active Duty Soldiers
- Service Academy Cadets (not ROTC)
- Reservists and Guardsmen
- Active Duty Retirees (HQDA approval)
- California State Military Reserve



MILITARY JUSTICE



SEARCH AND SEIZURE



PROBABLE CAUSE SEARCHES



Commander's Search Authorization:

- Based on Probable Cause:
 - Reasonable Belief (more likely than not) that evidence or person will be found at location to be searched;
 - Timely information (not a Stale Tip); and
 - Reliable Source of information (Credible).



PROBABLE CAUSE SEARCHES



Commander's Search Authorization:

- **Search only areas where evidence could reasonably be expected to be found.**
- **Seize any other items of contraband found during a lawful search.**



CONSENT SEARCHES



- Consent must be freely given and may be limited.
- Scope of search may be limited by the soldier and may be withdrawn at any time.
- Article 31 rights advisement (similar to a civilian 'Miranda Rights' admonition) is recommended, but not required.



APPREHENSION SEARCHES



- You must have a reasonable belief that the soldier has committed an offense.
- You may search the person of the suspect and the area within the suspect's immediate control.
- *Purpose:* Safeguard destructible evidence and protect apprehending officials from weapons or persons which may cause harm.



INSPECTIONS & INVENTORIES



- Probable cause NOT required.
- Purpose : To ensure property accountability, health, welfare, military fitness, good order and discipline of the unit, in whole or in part.
- Also called “Health and Welfare” inspections.
- An inspection may not be a subterfuge (ruse) for a search for evidence.



INTERROGATION & ARTICLE 31 RIGHTS



- **BEFORE** questioning a suspect:
- (1) Advise soldier of their rights against self-incrimination.
- (2) Advise soldier of their right to legal counsel at all critical stages of the criminal process.
- (3) Ensure soldier understands their rights. If soldier decides to waive their rights and submit to questioning, ensure their decision is made voluntarily (DA Form 3881).



INTERROGATION & ARTICLE 31 RIGHTS

(CONTINUED)



- (4) If you know the soldier is represented by a lawyer, you must notify the lawyer and give legal counsel an opportunity to be present during all questioning.**
- (5) Stop the interview if the suspect invokes their rights or requests a lawyer.**



COMMANDER'S DISCIPLINARY OPTIONS:

- ADMINISTRATIVE ACTION
- NONJUDICIAL PUNISHMENT
- COURT-MARTIAL



ADMINISTRATIVE ACTIONS



- COUNSELING
- REPRIMANDS
- CORRECTIVE TRAINING
- BARS TO REENLISTMENT
- WITHHOLDING PASS PRIVILEGES
- ADVERSE EVALUATION REPORTS
- REVOCATION OF SECURITY CLEARANCE
- MOS RECLASSIFICATION
- ADMINISTRATIVE REDUCTION IN RANK
- ADMINISTRATIVE SEPARATIONS





ADMINISTRATIVE ACTIONS



Purpose: To Correct, Train and Educate

- **Counseling**
 - Positive and negative
 - DA Form 4856
- **Corrective Training**
 - Must address a deficiency
 - Not a form of punishment
- **Withholding Privileges**
 - Unlike rights, privileges can be withheld without due process
 - Should be related to the deficiency



ADMINISTRATIVE SEPARATIONS



AR 635-200

- **CHAPTER 5-8 -- Parenthood**
- **CHAPTER 5-13 -- Personality disorder**
- **CHAPTER 9 -- Alcohol/Drug Rehab. Failure**
- **CHAPTER 10 -- In Lieu of Court-Martial**
- **CHAPTER 11 -- Entry level**
- **CHAPTER 13 -- Unsatisfactory Performance**
- **CHAPTER 14 -- Misconduct**
- **CHAPTER 15 -- Homosexuality**
- **CHAPTER 18 -- Overweight**



CHAPTER 14

Misconduct



- Paragraph 14-5 -- Civilian conviction
- Paragraph 14-12a -- Pattern of minor military infractions
- Paragraph 14-12b -- Pattern of misconduct
- Paragraph 14-12c -- Serious offense
- Honorable, general, or OTH discharge



AR 635-200, PAR. 1-18

MAGIC COUNSELING



- At least one “magic counseling” before a soldier can be separated under Chapter 5-13, 13, 14-12a and 14-12b (but NOT 14-12c).
- Must state:
 - Reason for counseling;
 - That separation could occur if soldier does not improve; AND
 - What could happen if soldier is separated (loss of benefits, prejudice in civilian employment, etc.)



CHARACTERIZATION OF DISCHARGES



UNCHARACTERIZED:

Entry Level (1-180 days Active duty)

ADMINISTRATIVE DISCHARGES:

Honorable

General

Other Than Honorable (OTH)

PUNITIVE DISCHARGES:

Bad Conduct Discharge (BCD)

Dishonorable Discharge (DD)



NONJUDICIAL PUNISHMENT (ARTICLE 15s)



Article 15 Types

- Summarized (No Right to Counsel)
- Formal (Right to Counsel)
 - Company Grade
 - Field Grade
 - General Officer

Burden of Proof (for “Guilty”):

Beyond a Reasonable Doubt



Article 15 Punishment

Punishment

Company Grade

Field Grade

- Extra Duties 14 Days 45 Days
- Restriction 14 Days 60 Days
- Reduction (E1-E4) One rank All Rank
- Forfeiture 7 Days Pay 1/2 month x 2
- Summarized Art 15: 14 Days Extra Duty & 14 Days Restriction only!



Article 15 Appeals

Imposing Commander may:

- Recommend denial of appeal
- Suspend any or all punishment
- Remit
- Restore any or all rank or pay
- Set Aside



Article 15 Appeals

- Appeal Authority May:
 - Deny the appeal
 - Take any other action the imposing commander may take
- Neither the imposing commander nor the appeal authority can increase the punishment



FRATERNIZATION

To inform soldiers and DA Civilians about changes in Army policy on 1 March 1999, regarding good order and discipline as they pertain to relationships between military members of different rank.



APPLICABILITY

- This revised policy applies to
 - Relationships between Army personnel (Active or Reserve soldiers)
 - Relationships between Army personnel and personnel of other military Services
- The term “officer” includes both commissioned and warrant officers
- This revised policy is effective immediately except as noted.



What Has Not Changed



- The Army continues to prohibit all unprofessional relationships that:
 - compromise the chain of command
 - cause partiality or unfairness
 - involve the improper use of rank for personal gain
 - are exploitative or coercive in nature
 - create an adverse impact on discipline, authority, morale, or mission accomplishment



What Has Not Changed



- Relationships that present the appearance of violating any of these standards may also be prohibited.



What Has Changed

- Certain types of relationships between officers (commissioned and warrant) and enlisted personnel are now prohibited.



Personal Relationships



- **Dating, shared living accommodations, and intimate or sexual relationships between officer and enlisted personnel are prohibited.**
- **Exceptions:**
 - Marriages that exist now or are entered into prior to 01 MAR 2000.
 - Relationships that violate policy only because of promotion or change in status of one military member (for instance, two enlisted soldiers are married and one is commissioned through OCS).



Personal Relationships



- For Reserve only, personal relationships that exist due to civilian acquaintanceship (unless individuals are on active duty other than Annual Training)
- For Regular Army, personal relationships with a member of the Reserve that exist due to civilian (off duty) association (unless the Reserve soldier is on active duty other than Annual Training).



Business Relationships

- **On-going Business relationships between officers and enlisted personnel are prohibited!**
- **Exceptions:**
 - Landlord / tenant relationships
 - One time transactions (such as sale of an automobile or house), but does apply to borrowing and lending money.
 - For Reservists only, business relationships which exist due to previous arrangements.



Business Relationships



- Existing business relationships between officers and enlisted personnel that were authorized under previous Army policy are no longer exempt as of 01 MAR 2000.



Social and Family Relationships



- Associations between officer and enlisted that occur in the context of community organizations, religious activities, athletic teams and events, unit-based social functions, or family gatherings are not prohibited.



Gambling

- **Gambling between officers and enlisted personnel is prohibited.**
- **There are no exceptions!**





Commander's Options



- **Wide Range of Responses**
 - counseling/education
 - administrative
 - non-judicial punishment
 - court-martial
- **Goal is to use response that is warranted, appropriate, and fair**



COURT-MARTIAL



The Court-Martial Process



- Investigation
- Preferral
- Article 32 Investigation (GCM)
- Referral
- Motions
- Trial
- Clemency (RC 1105)
- Appellate process



MILITARY COURT LEVELS



- Courts-martial (Trial Court)
- Army Court of Criminal Appeals
- U.S. Court of Appeals for the Armed Forces
- U.S. Supreme Court



MILITARY JUSTICE

- **COURTS-MARTIAL:**
 - SUMMARY
 - SPECIAL
 - BAD CONDUCT SPECIAL
 - GENERAL COURT-MARTIAL (GCM)



Summary Court-Martial



- **Required Membership**

- 1 Commissioned Officer

- **Convening Authority**

- Battalion Commander

- **Persons Triable**

- **Maximum Punishment**

- Enlisted Soldiers

- **Confinement – 1 month**

- **Reduction, Forfeiture:** Offenses Triable

- **2/3 of 1 month's pay**

- Any non-capital offense

- Punishable by the UCMJ



SPECIAL Court-Martial



- Required Membership Convening Authority
- Military Judge Division / Post Commander
- 3 or more members
- Trial/Defense Counsel Maximum Punishment
- Persons Triable Bad Conduct Discharge
- Enlisted Soldiers Confinement - 6 months
- Offenses Triable Reduction, Forfeiture: 2/3 of
 Pay per month for 6 months
- Any non-capital offense
- punishable by the UCMJ Fine



GENERAL Court-Martial



Required Membership

- Military Judge
- 5 or more members
- Trial/Defense Counsel

Persons Triable

- Enlisted Soldiers
- Commissioned Officers
- Warrant Officers

Offenses Triable

- Any capital offense
- punishable by the UCMJ

Convening Authority

Division/ Post Commander

Maximum Punishment

Dishonorable/Bad Conduct

Discharge

Life / Death

Reduction

Forfeiture

Fine



Crimes





CAPITAL CRIMES

Article

- **Desertion (Wartime)** 85
- **Disobeying Order of Superior Commissioned Officer (Wartime)** 90
- **Mutiny & Sedition** 94
- **Misbehavior before the Enemy** 99 (9)
- **Subordinate Compelling Surrender** 100
- **Improper use of a Countersign** 101
- **Forcing a Safeguard** 102



CAPITAL CRIMES

Article

- Aiding the enemy (knowingly) 104
- Spies (mandatory if wartime) 106
- Espionage 106a
- Improper hazarding of vehicle 110
- Misbehavior of sentinel (lookout) 113
- Murder (premeditated or felony) 118
- Rape 120
- Conduct unbecoming an officer 133



CRIMINAL MISCONDUCT



Rape	DD & Life
Indecent Assault	DD & 5 Yrs
Fraternization	DD & 2 Yrs
Assault	3 MOS to DD & 20 Yrs
Extortion	DD & 3 Yrs
Threat	DD & 1 Yr
Indecent Exposure	BCD & 3Yrs
Disrespect	BCD-DD & 1-5Yrs
Sodomy	DD & 5-20 Yrs
Indecent Language	DD & 2 Yrs
Prostitution/Pandering	DD \$ 1, 5 Yrs
Attempts, Solicitation, Conspiracy	



Unlawful Command Influence



- A superior commander cannot tell a subordinate commander how to dispose of disciplinary problems under the UCMJ.
- Each commander is required to exercise independent judgment in all UCMJ cases.



HOMOSEXUAL CONDUCT



- The UCMJ recognizes homosexual conduct in the workplace as inappropriate.
- “SAM” - STATEMENT, ACT, MARRIAGE.
- Marriage means Statement and Act being joined together in union.
- Bottom line: Inappropriate behavior is prohibited regardless of rank, gender or orientation.



HOMOSEXUAL CONDUCT



You have violated the DoD policy on homosexuality if:

- 1. You are not a commander and you initiate an investigation.**
- 2. Accuse a soldier without credible evidence.**
- 3. Require a soldier to reveal their sexual orientation.**



Extremist Organizations



- **Participation is inconsistent with military service**
- **Organizations or activities which advocate racial, gender, ethnic hatred or intolerance**
- **Commanders have widespread authority to prohibit soldiers from participating in these activities**



Extremist Organizations



Prohibitions:

1. Public demonstration or rally
2. Attending in Uniform
3. Fundraising
4. Recruiting or Training
5. Visible Leadership Role
6. Distributing Literature



HAZING

- Any conduct by a service member regardless of rank, that is cruel, abusive, humiliating, repressive, demeaning or harmful to another service member, regardless of rank.



Hazing

- Abusive or Harmful Practical Jokes
- Branding
- Tattooing
- Body Painting
- Pinning Ceremonies (insignia pushed into skin)
- Forced Consumption of Alcohol



Lautenberg

- Convicted of a domestic violence crime to disqualify persons from possessing or receiving firearms or ammunition; includes shipping, transporting and training with an unloaded or limited function firearm.
- Military, government and privately owned firearms.
- Disclosure is mandatory if you interact with the prohibited arms and ammunition.
- DA 2760 – Lautenberg Compliance Form.



Lautenberg

- If you are convicted of misdemeanor or felony domestic violence (federal, state or military laws):
 1. May not possess or receive a firearm or ammunition.
 2. Continuing obligation to notify commander or supervisor.
 3. Return military firearm or ammunition.
 4. You must relinquish possession of any privately owned firearms or ammunition.
 5. Previous authorizations to possess a firearm or ammunition are revoked.



Lautenberg

- Special exceptions for prohibited status:
 1. Summary Courts Martial convictions.
 2. Imposition of non-judicial punishment (Article 15).
 3. Deferred prosecutions (Civilian Court).
 4. Conviction is expunged (removed) or pardoned or civil rights restored (and civil rights allow you to possess or receive firearms and ammunition).



Lautenberg

- DA 2760 – Lautenberg Compliance Form.
- Must complete form within 10 days, usually completed immediately.
- Read the form for listed conviction requirements.
- Normally completed (yearly) before training, shipping or transporting firearms or ammunition, POF (personally owned firearms) / CCW (carry concealed weapon) status.
- Document is in effect until revoked, updated or replaced by a subsequent form, such as a new firearms qualification.
- Mandatory disclosure if you interact with prohibited firearms and ammunition.



Lautenberg

- Failure to provide information or providing false information:
 1. Criminal or administrative penalties for failing to obey a lawful order.
 2. Criminal or administrative penalties for knowingly making false statements or providing inaccurate information.
- Questions: Consult a Legal Defense Lawyer, a Trial Defense Lawyer or a Private Attorney (at your own expense).



CYA



CALL
YOUR
ATTORNEY

A brass balance scale with a black handle, centered behind the text.