

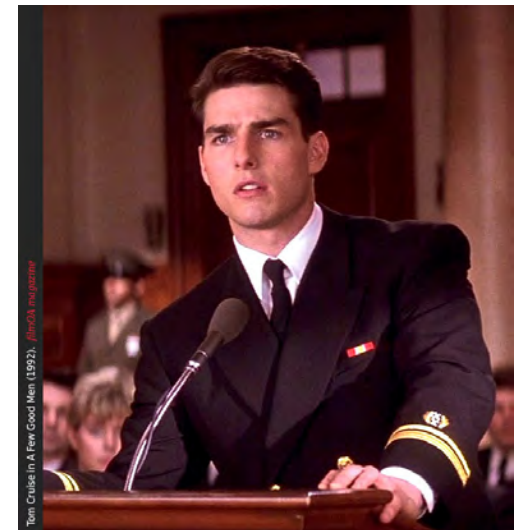
Intermediate Leader Legal Course





Who are Judge Advocates

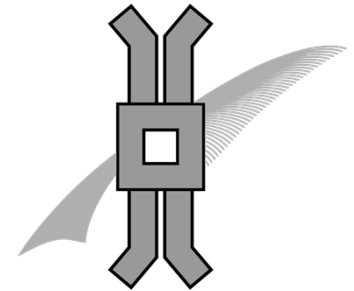
- Navy Judge Advocates
 - Must graduate from ABA accredited law school
 - Must pass state bar exam
 - Officer Development School (unless already commissioned)
 - Naval Justice School
 - Initial Tour Judge Advocate Program





Who are Legalmen

- Legalmen
 - Requires cross-rate
 - 13 weeks at Naval Justice School
 - Associate's Degree in Paralegal Studies
 - Supervised by judge advocates
 - “Independent duty” at sea (some LHA/LHD and all NMCBs are independent duty)





Legal Officers/Legal Clerks

- Legal Officers
 - All Navy commands that do not have an SJA must have trained Legal Officer
 - Legal Officer is a collateral duty
 - Graduate from Naval Justice School's Legal Officer Course
- Legal Clerks
 - Legal Clerk is a collateral duty
 - Graduate from Naval Justice School's Legal Clerk Course



Roadmap

Five Sections:

- 1) Intro to Legal Resources, the UCMJ, and Legal Authorities**
- 2) Investigations
- 3) Non-Punitive Measures and Naval Discipline
- 4) Government Ethics
- 5) Operational Law



Role of the Staff Judge Advocate

SJAs are legal advisors; commanders ultimately make decisions. We represent the interests of the Department of the Navy.

As a lawyer, we advise commanders on what factors to consider in making decisions with legal implications. Many decisions have legal implications.

We give guidance on the level of risk each potential course of action carries.



Which JAG to Use and Where to Find Them

<u>Staff Judge Advocate (SJA):</u>	<u>RLSO/LSSS Command Services Attorney:</u>	<u>RLSO/LSSS Legal Assistance Attorney:</u>	<u>Defense Attorney:</u>	<u>Victim's Legal Counsel (VLC):</u>
<p><u>Job:</u> Advises the commander they work for and sometimes their subordinate commanders, legal officers, and legalmen.</p> <p><u>Location:</u> -Flag/General Staff -O-6 Commands -Installation HQ</p>	<p><u>Job:</u> Advises command representatives who call the hotline number to receive command advice.</p> <p><u>Location:</u> RLSO and LSSS in each Region (contact info in QUICKMAN)</p>	<p><u>Job:</u> Advises individual Sailors/Marines and dependents on civil legal issues, such as wills, divorces, etc.</p> <p><u>Location:</u> RLSO and LSSS in each Region (contact info in QUICKMAN)</p>	<p><u>Job:</u> Advises individual Sailors/Marines on criminal and administrative or career-related issues.</p> <p><u>Location:</u> DSO in each Region (contact info in QUICKMAN)</p>	<p><u>Job:</u> Advises individual Sailors/Marines and dependents who are the victim of a qualifying offense (usually sexual assault).</p> <p><u>Location:</u> Contacted through the Victim Advocate or SARC₇</p>



JAG Corps Community Roles

Staff Judge Advocate Role

- DON is the client.

Region Legal Service Offices

- Trial Counsel
- Command Services
- Legal Assistance

Victims' Legal Counsel

- Complement care of SARCs, VAs, and FAP Personnel

Defense Service Offices

- Investigations, Administrative Separations, and Courts-Martial
- Complaints of Wrong



Legal Aid Distinction

- When does a Sailor go to DSO for legal advice?
 - If it is possible disciplinary action will be taken.
- When does a Sailor go to RLSO Legal Assistance for legal advice?
 - Commercial issues, landlord-tenant, family law, etc.



QUICKMAN



USN/USMC Commander's Quick Reference
Legal Handbook
(QUICKMAN)



March 2024

Most recent QUICKMAN available at:
<https://www.jag.navy.mil/>



- USN/USMC Commander's Quick Reference
Legal Handbook
- The most up-to-date version is available online.

<https://www.jag.navy.mil/about/organization/ojag/njs/publications/>

- The QUICKMAN is intended to help spot and recognize legal issues. It is **not** a substitute for seeking advice from a Staff Judge Advocate.



What are legal resources available to you?

Legal Officer/Legal Clerk
Legalman
SJA at higher HQ
QUICKMAN
Region Legal Service Office



Intro to Legal Authorities

Hierarchy of U.S. Law

Codified Law

U.S. Constitution is the supreme law of the land.

- Congress passes laws under *constitutional* authority.
- Executive Orders
- Executive Offices (e.g., FDA) and Executive Officers (e.g., SECNAV) promulgate rules by power given to them *by Congress*.
- Military officers issue orders by authority *given to them* by Congress, SECNAV, and the CNO.



- **Military law is federal law.**
- **Every law within the hierarchy must be consistent with the law above it.**



Intro to Legal Authorities

- “I, AB, do solemnly swear (or affirm) that **I will support and defend the Constitution of the United States** against all enemies, foreign and domestic; ” – 5 U.S.C. § 3331
- “The purposes of military law are to promote justice, to deter misconduct, to facilitate appropriate accountability, to assist in maintaining **good order and discipline** in the armed forces, to promote **efficiency and effectiveness in the military establishment**, and thereby to strengthen the **national security** of the United States.” – MCM Part I, Preamble



Purpose of Military Law

- Purpose of military law: Justice IOT strengthen national security
 - Good order and discipline
 - Accountable to the People
 - Actions scrutinized by enemies and allies
- For DIVO/DHs: protect your people while ensuring fair administration of justice and good order and discipline
- We respect the rights, constitutional and human, of others
- Ultimately: creates a service culture that enables us to adhere to LOAC in the stress of combat



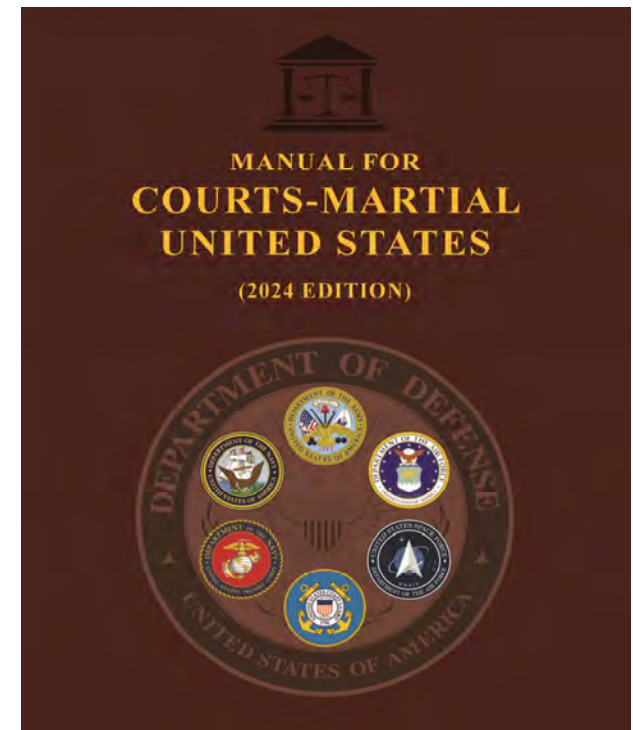
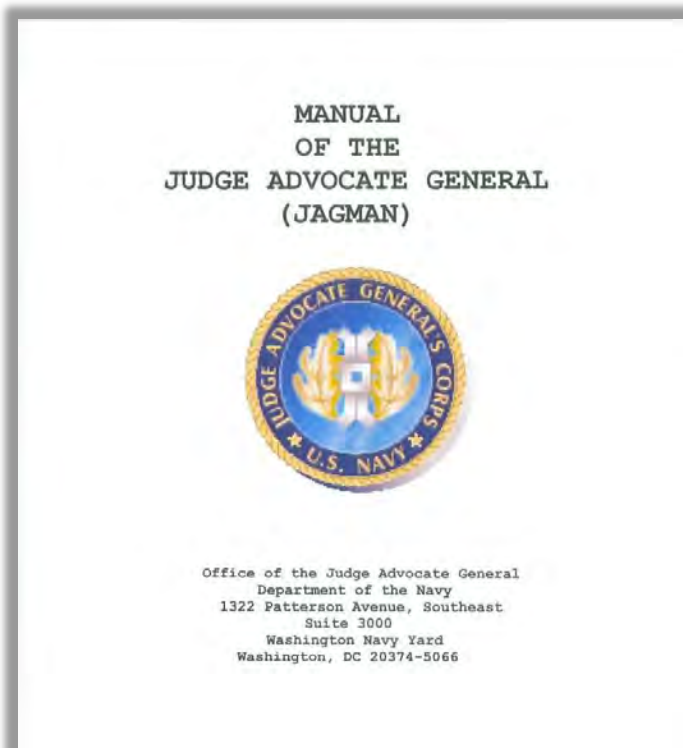
References

**Manual of the Judge
Advocate General
(JAGMAN)
JAGINST 5800.7G
CH-2**

**Manual for Courts-
Martial 2024 edition**

**JAGMAN
Investigations
Handbook**

**Complex
Investigations Guide**





QUESTIONS?



Roadmap

Five Sections:

- 1) Intro to Legal Resources, the UCMJ, and Legal Authorities
- 2) Investigations**
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- 4) Government Ethics
- 5) Operational Law

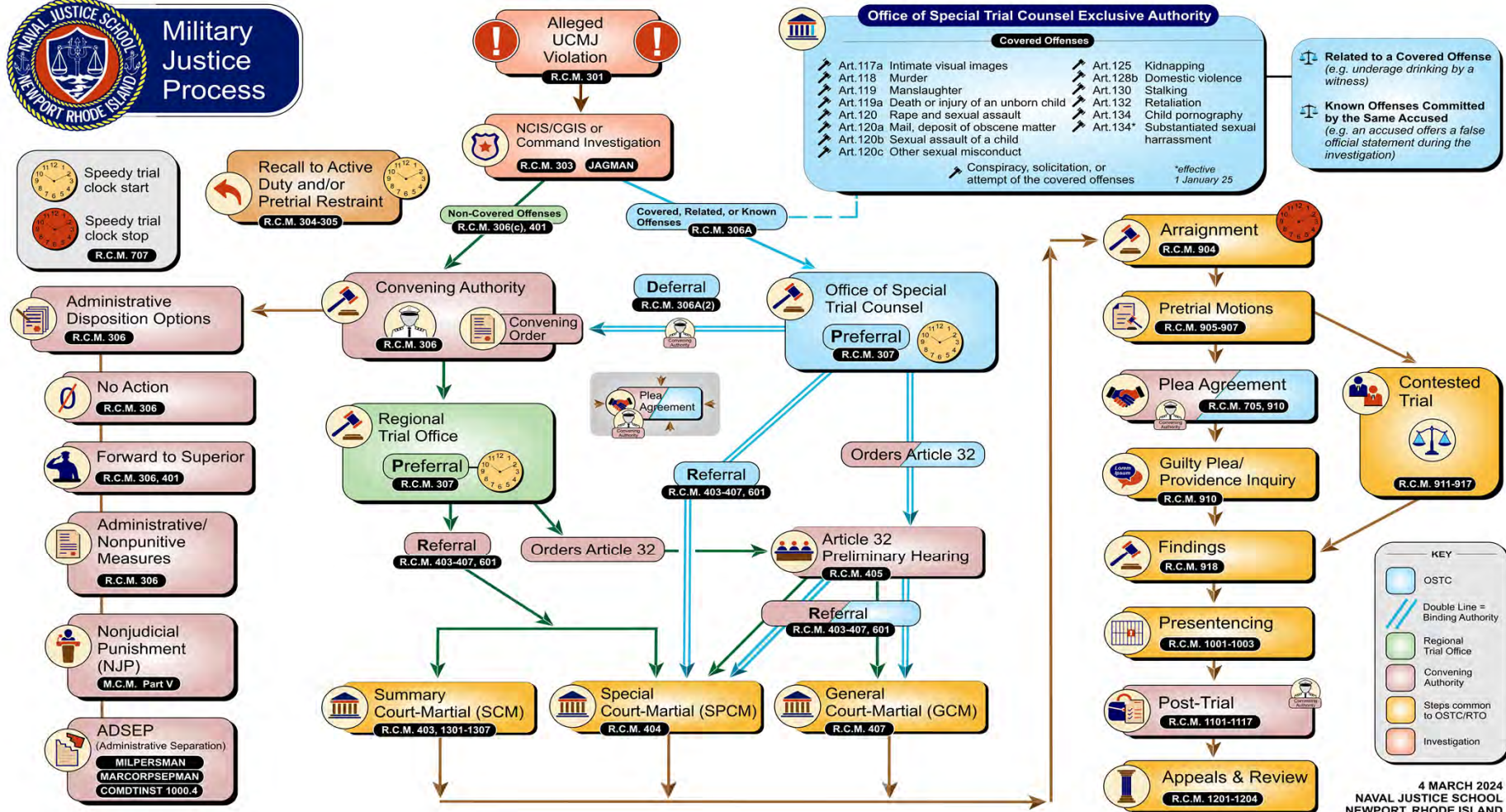


Investigations

1. Types of Investigations
2. Where to Begin
3. 31(b) Rights Advisement
4. Search Authorization
5. Inspections and Inventories
6. Line of Duty Investigations



Military Justice Process





Administrative Investigations

QUICKMAN § III

JAGMAN Ch. 2, 11

Types of investigations include:

- **Preliminary Inquiry**
- **Command Investigation**
- **Litigation-Report Investigation**
- **Admiralty Letter Report**
- **Dual Purpose Investigation**
- **Court/Board of Inquiry**
 - “Major Incidents” – beyond scope of this course



Preliminary Inquiry

QUICKMAN § III

JAGMAN 0203

R.C.M. 303

- Quick way for convening authority (CA) to get information
- Typically complete within three days
- Can be written or oral
- Can be done by CA or by appointed preliminary inquiry officer
- Gives enough information for CA to take next step:
 - No further action
 - Conduct an investigation
 - Consult a Judge Advocate
 - (Take disciplinary action)



QUICKMAN § III

JAGMAN 0209

Command Investigation

- Formal tool to gather, analyze, and record relevant information
- Used for significant property loss/destruction, groundings, collisions, some line of duty determinations, some deaths
- Typically complete within thirty days
- Always written by appointed investigating officer (IO)
- Format specified in JAGMAN – must be in writing
- Reviewed by GCMCA unless “no interest outside unit”



R.C.M. 303
JAGMAN 0203,
0209

Misconduct Investigation

- Upon report of suspected misconduct, commanders “shall make or cause to be made a preliminary inquiry into the charges or suspected offenses.”
- Degree of investigation required depends on seriousness or complexity of case
- While technically not an administrative investigation, format typically similar to JAGMAN PI or CI
- May be helpful or required to seek law enforcement/NCIS assistance



Investigations

1. Types of Investigations
- 2. Where to Begin**
3. 31(b) Rights Advisement
4. Search Authorization
5. Inspections and Inventories



JAGMAN Ch. 2, 11

R.C.M. 303

Investigation Factors

Factors to decide type of investigation to order include:

- Seriousness of the incident
- Complexity of issues involved
- Need for documentation
- Potential for litigation by or against USN/USMC
- Type of incident
- Input from immediate senior in command (ISIC)



QUICKMAN § I

DoDI 6495.02

SECNAVINST
5430.107A

Mandatory Referral to NCIS

- Major criminal offenses (punishable by more than one year of confinement)
- Sexual assault (120 offenses) - **If the command received the report before it was restricted (under the new rules) or from a 3rd party, you are still required to contact NCIS**
- Non-combat deaths, not due to disease or natural causes
- Missing command members when foul play cannot be ruled out
- Loss or compromise of classified information
- Fires or explosions of unknown origin
- Theft or loss of weapons, ordnance, or controlled substances
- Espionage, terrorism, sabotage, defection

If NCIS declines case, get it in writing (i.e., email)



Office of the Special Trial Counsel (OSTC)

FY22 NDAA

FY23 NDAA

FY24 NDAA

Executive Order
14103

Manual for Courts-
Martial, 2024 Ed.

Effective Date: 27 December 2023

- Reports alleging a covered offense must be sent to OSTC for exclusive determination of whether the reported offense is a *covered offense*
- OSTC shall exercise exclusive authority over covered offenses committed on or after 28 December 2023
 - Covered offenses occurring before 28 December 2023 operate under current convening authority rules...but...
 - Language in NDAA's and new MCM gives OSTC authority over Covered offenses occurring on or after 28 December 2023



FY22/23/24 NDAAAs

Executive Order
14103

Manual for Courts-
Martial, 2024 Ed.

10 U.S.C. § 801(17)

OSTC - Covered Offenses

Covered Offense means commission, attempt or conspiracy to commit, or solicitation of:

- Art. 117a (Intimate Visual Images)
- Art. 118 (Murder)
- Art. 119 (Manslaughter)
- Art. 119a (Death or Injury of an Unborn Child)
- Art. 120 (Rape and Sexual Assault)
- Art. 120a (Mail, Deposit of Obscene Matter)
- Art. 120b (Sexual Assault of a Child)
- Art. 120c (Miscellaneous Sex Offenses)
- Art. 125 (Kidnapping)
- Art. 128b (Domestic Violence)
- Art. 130 (Stalking)
- Art. 132 (Retaliation)
- Art. 134 Child Pornography)

As of 1 Jan 2025, with formal substantiated complaint:

- Art. 134 (Sexual Harassment)



Investigating Officers

JAGMAN Ch. 2

R.C.M. 303

JAGMAN
Investigations
Handbook

Complex
Investigations Guide

- No required rank of IO, but:
 - IO should be senior to anyone who may be involved in incident under investigation
 - IO should not be within chain of command of those investigated or in affected division/departments
 - IO does not have to be within command
- IO should consult judge advocate ASAP
- Key to writing a good investigation is good organization
- May need to manage IO's workload



Investigations

1. Types of Investigations
2. Where to Begin
- 3. 31(b) Rights Advisement**
4. Search Authorization
5. Inspections and Inventories



QUICKMAN § I

UCMJ Article 31(b)

Military Rule of
Evidence (M.R.E.) 305

JAGMAN 0176, A-1-o

OPNAV 5580/3

- Article 31(b) rights include:
 - Right to remain silent
 - Consequence of waiving right to remain silent
- Right to an attorney applies to custodial interrogation – best practice is to include it for all rights advisements
- Can use OPNAV 5580/3 or JAGMAN A-1-o

Article 31(b) Rights

DEPARTMENT OF THE NAVY MILITARY SUSPECT'S ACKNOWLEDGEMENT AND WAIVER OF RIGHTS	
Place: _____	
I, _____	
have been advised by _____	
that I am suspected of _____	
I have also been advised that:	
(1) I have the right to remain silent and make no statement at all.	
(2) Any statement I do make can be used against me in a trial by court-martial or other judicial or administrative proceeding.	
(3) I have the right to consult with a lawyer prior to any questioning. This lawyer may be a civilian lawyer retained by me at no cost to the United States, a military lawyer appointed to act as my counsel at no cost to me, or both.	
(4) I have the right to have my retained civilian lawyer and/or appointed military lawyer present during this interview, and	
(5) I may terminate this interview at any time, for any reason.	
I understand my rights as related to me and as set forth above. With that understanding, I have decided that I do not desire to remain silent, consult with a retained or appointed lawyer, or have a lawyer present at this time. I make this decision freely and voluntarily. No threats or promises have been made to me.	
Signature: _____	Date & Time: _____
Witnessed: _____	Date & Time: _____
At this time, I desire to make the following voluntary statement. This statement is made with an understanding of my rights as set forth above. It is made with no threats or promises having been extended to me.	
OPNAV 5580/3 (Rev. 11/2006) PREVIOUS EDITION IS OBSOLETE. FORM OFFICIAL USE ONLY (When filled in)	



Article 31(b) Rights

JAGMAN A-1-o

JAGINST 5800.7G, CH-2

SUSPECT'S RIGHTS ACKNOWLEDGEMENT/STATEMENT

(See JAGMAN 0176)

FULL NAME (ACCUSED/SUSPECT)	RATE/RANK	SERVICE
ACTIVITY/UNIT	DATE OF BIRTH	
NAME (INTERVIEWER)	RATE/RANK	SERVICE
ORGANIZATION	BILLET	
LOCATION OF INTERVIEW	TIME	DATE

RIGHTS

(1) I am suspected of having committed the following offense(s):

- (2) I have the right to remain silent; -----
- (3) Any statement I do make may be considered by the convening authority and used as evidence against me in trial by court-martial; -----
- (4) I have the right to consult with counsel before any questioning. This counsel may be a civilian lawyer retained by

A-1-o

JAGINST 5800.7G, CH-2

me at my own expense, a military lawyer appointed to act as my counsel without cost to me, or both; -----

(5) I have the right to have such retained civilian lawyer or appointed military lawyer present during this interview; and -----

(6) If I decide to answer questions now without a lawyer present, I will have the right to stop this interview at any time. -----

WAIVER OF RIGHTS

I further certify and acknowledge that I have read the above statement of my Rights and fully understand them, and that, ---

(1) I expressly desire to waive my right to remain silent. -----

(2) I expressly desire to make a statement. -----

(3) I expressly do not desire to consult with either a civilian lawyer retained by me or a military lawyer appointed my counsel without cost to me before any questioning. -----

(4) I expressly do not desire to have such a lawyer present with me during this interview. -----

(5) This acknowledgement and waiver of rights is made freely and voluntarily by me, and without any promises or threats having been made to me or pressure or coercion of any kind having been used against me. -----

(6) I understand that, even though I initially waive my rights to counsel and to remain silent, I may, during the interview, assert my right to counsel or to remain silent. -----

NOTE: IF THE SUSPECT INDICATES HE OR SHE IS WILLING TO MAKE A STATEMENT, HE OR SHE SHOULD FIRST BE ASKED WHETHER HE OR SHE

A-1-o



Cleansing Warnings

Cleansing warnings are used when previous statement may be inadmissible – use A-1-o

- While rules of evidence are not applicable for NJP or ADSEP, violation of rights could make statement inadmissible at court-martial.
- Appeal authorities can also decide to set aside NJP if rights are violated

JAGINST 5800.7G, CH-2

HAS MADE A STATEMENT IN RESPONSE TO QUESTIONS ABOUT THE SUSPECTED OFFENSE TO ANYONE HE OR SHE BELIEVED WAS ACTING IN A LAW ENFORCEMENT CAPACITY BEFORE THE PRESENT INTERVIEW. IF THE SUSPECT INDICATES HE OR SHE HAS PREVIOUSLY MADE SUCH A STATEMENT, ADVISE THE SUSPECT AS FOLLOWS:

PREVIOUS STATEMENTS

I certify and acknowledge by my signature and initials set forth below that, before the interviewer requested a statement from me, the interviewer warned me that:

(1) My previous statement may not be admissible at courts-

martial and may not be usable against me. (It may not be possible to determine whether a previous statement made by the suspect will be admissible at some future court-martial; this suggests it may be wise to treat it as inadmissible and provide the cleansing warning).

(2) Regardless of the fact that I have talked about this offense before, I still have the right to remain silent now.

having been made to me or pressure or coercion of any kind having been used against me.

SIGNATURE (ACCUSED/SUSPECT)

A-1-o



Sailors in your division were involved in an incident at a concert. A physical altercation ensued when ABHAN Jones slapped the buttocks of ABHAR Smith, followed by a third Sailor punching ABHAN Jones in the in the face. Your LCPO recommends divisional DRB.

- A. Allow the LCPO to proceed as planned.
- B. Allow the DRB to proceed so long as they read ABHAN Jones his UCMJ art. 31(b) rights.
- C. Do not allow your LCPO to proceed because this may constitute a sexual assault.



Instead of taking ABHAN Jones to
DRB, should the command use a
JAGMAN investigation to investigate
this allegation of sexual assault?

Yes or No.



Which of the following allegations of misconduct can the command investigate with a JAGMAN investigation?

- A. sexual assault;
- B. sexual harassment;
- C. loss of classified info;
- D. drug use.



Investigations

1. Types of Investigations
2. Where to Begin
3. 31(b) Rights Advisement
- 4. Search Authorization**
5. Inspections and Inventories



Search

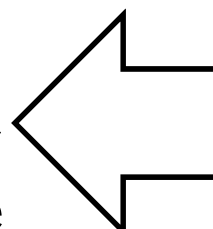
QUICKMAN § I

U.S. Constitution,
4th Amendment

Military Rule of
Evidence (M.R.E.)
311

What is a search?

- A **quest** for evidence
- Conducted by a **Government Agent**
- Where a **reasonable expectation of privacy** exists

- 
- **NCIS?**
 - **CMC?**
 - **Department Head?**
 - **MA2?**
 - **Civilian?**



QUICKMAN § I

QUICKMAN App. C

M.R.E. 311-316

JAGMAN 0176

“PASS” vs. “CASS”

- Command Authorized Search and Seizure (CASS)
- Best Practice: Start by asking for consent – Permissive Authorized Search and Seizure (PASS)
 - Get this authorization in writing!
 - Even if using PASS, still have CASS ready in case suspect revokes consent to search
- If you question whether suspect is able to consent to search, use a CASS



Search Authorization

OPNAV 5580/16
OPNAV 5580/9
JAGMAN A-1-p
JAGMAN A-1-q

DEPARTMENT OF THE NAVY	
PERMISSIVE AUTHORIZATION	
after being advised by _____	
that the _____	
is conducting an investigation into the offense(s) of _____	

have been requested to permit a search of my _____	

2. CONSTITUTIONAL RIGHT	
I have been informed of my constitutional right to refuse to permit this search in the absence of a search warrant. In full understanding of this right, I have nevertheless decided to permit this search to be made.	
3. PERMISSION	
This search may be conducted on (date) _____	
by _____	
and I hereby give him/her/them my permission to remove and retain any property or papers found during the search which are desired for investigative purposes.	
4. FREE DECISION	
I make this decision freely and voluntarily and it is made with no threats having been made or promises extended to me.	
a. Date _____	b. Signature _____
5. WITNESSES	
a. Signature _____	b. Signature _____
6. TIMES OF SEARCH	
a. Start _____	b. End _____

OPNAV 5580/16 (Rev. 11/2006) PREVIOUS EDITION IS OBSOLETE. FOR OFFICIAL USE ONLY (When filled in)
S/N 0107-LF-983-8000

UNITED STATES OF AMERICA	
COMMAND AUTHORIZATION	
VS. _____	
To _____	
Affidavit(s) having been made before me by _____	
That there is reason to believe that on the person of and/or on the premises known as: _____ Identify the person and/or describe the premises with particularity and in detail	

There is now being concealed certain property, namely: _____ which is/are under my jurisdiction. Here describe the property	
I am satisfied that there is probable cause to believe that the property so described is being concealed on the person and/or premises above described and that grounds for application for issuance of a command authorized search exists as stated in the supporting affidavit(s).	
YOU ARE HEREBY AUTHORIZED TO SEARCH the person and/or place named for the property specified and if the property is found there to seize it, leaving a copy of this authorization and receipt for the property taken. You will provide a signed receipt to this command, containing a full description of every item seized.	
Any assistance desired in conducting this search will be furnished by this command.	
Date this _____ day of _____ 20 _____	
Signature of Person Authorizing Search _____	
Rank, Service, Title _____	
Command _____	

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Command Authorized Search Authorization

QUICKMAN § I

QUICKMAN App. C

M.R.E. 315

JAGMAN 0176

- From commanding officer
- Can be oral or in writing
- **Based on probable cause** determination based upon evidence
- Search authority determined by location of evidence sought



Probable Cause

QUICKMAN § I

M.R.E. 315

What is probable cause?

A **reasonable belief** that:

- A crime has been committed; and
- The person, property, or evidence sought is located in the place to be searched.

Commander must never rely on another's probable cause determination!



Investigations

1. Types of Investigations
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- 5. Inspections and Inventories**



Inspections and Inventories

QUICKMAN § I

M.R.E. 313

An inspection is not a search, so long as it is done primarily for a military purpose:

- Security
- Military Fitness
- Good order and discipline
- Readiness

Probable cause and a search authorization are not required for an inspection.



QUICKMAN § I

M.R.E. 313

Inspections and Inventories

An inspection/inventory will be suspect if:

- Unscheduled
- Follows a report of an offense
- Directed at selected individuals
- Involves different levels of intrusion

Evidence found during an improper inspection/inventory may be inadmissible at court-martial



BM2 showed up to work slurring his words, with blood shot eyes, and smelling of alcohol. You decide BM2 is intoxicated and cannot perform his duties. You want to see if anyone is hiding liquor. Can you order a health and comfort inspection of BM2's Rack?

Yes or No.



Can you authorize the search of BM2's rack?

Yes or No.



Line of Duty Determinations

QUICKMAN § III

JAGMAN 0212-
0232

MILPERSMAN
1770-030, 1770-060

A line of duty determination is required when injury or disease may result in:

- Permanent disability; or
- The inability to perform duties for more than 24 hours; or
- Death

At minimum, all injuries/disease triggering a line of duty determination require a preliminary inquiry



Line of Duty Determinations

QUICKMAN § III

JAGMAN 0213,
0214, 0215

Line of duty determination could impact:

- Disability retirement and/or severance pay
- Survivor benefits
- Dependency and Indemnity Compensation (DIC)
- Dependents' Educational Assistance

If member found not in line of duty, all of these benefits could be affected

If you are assigned one of these, you need to consult an SJA prior to starting



QUESTIONS?



Roadmap

Five Sections:

- 1) Intro to Legal Resources, the UCMJ, and Legal Authorities
- 2) Investigations
- 3) Non-Punitive Measures and Naval Discipline**
- 4) Government Ethics
- 5) Operational Law



Naval Discipline-Misconduct Overview

- Non-Punitive Measures:
 - Extension of Working Hours
 - Liberty Risk
 - Extra Military Instruction
- NJP
- ADSEP



Extension of Working Hours

QUICKMAN
Section II

JAGMAN 0104

Deprivation of normal liberty as a punishment is illegal.

Exceptions:

- Awarded as non-judicial punishment
- Sentenced by a court-martial
- Pretrial restraint/confinement
- Liberty risk



Extension of Working Hours

QUICKMAN
Section II

JAGMAN 0104

Deprivation of normal liberty is permissible if:

“Service members are required to perform duties outside of normal working hours to accomplish essential tasks or work necessary to maintain operational readiness.”



QUICKMAN
Section II
JAGMAN 0104

Liberty Risk

Deprivation of normal liberty is permissible:
“...commanders may lawfully restrict normal liberty for nonpunitive purposes such as pretrial restraint, liberty-risk programs for the protection of foreign relations...”

This must be done by the CO, cannot be done at the DIVO/DH level.

Liberty risk may **ONLY** be used in foreign countries.



Extra Military Instruction

QUICKMAN
Section II

OPNAVINST
3120.32D CH-1 (Navy
SORM)

JAGMAN 0103

EMI is a bona fide training technique that attempts to improve performance by fixing a deficiency in the individual's performance of duty

Step 1: Identify a specific deficiency

Step 2: Assign a logically-related corrective task

Step 3: Assign a judicious quantity



QUICKMAN
Section II

JAGMAN 0103

OPNAVINST
3120.32D (SORM)

Extra Military Instruction

Restrictions:

- Limited to two hours per day
- EMI outside normal working hours conducted consecutively with member's workday
- When deficiency corrected, EMI must cease
- Not on the member's Sabbath
- Not used in lieu of punishment
- **If outside working hours, EMI only assigned by CO/OIC or officer/petty officer with written delegation from CO**



On a WESTPAC deployment headed to your first port call in Hawaii, AO3 gets into a fight on the mess deck. AOC wants to put him on liberty risk for the port call in Hawaii because he's likely to get into a fight out in town. Is this permissible?

Yes or no.



AOC also tells you he plans to assign EMI to correct AO3's perpetual tardiness to divisional muster. What type of EMI might be best for this situation?

- Extra watches on AO3's Sabbath
- Cranking on the mess decks for the next month
- Arriving 15 minutes early to all divisional musters for the next week to help setup



QUICKMAN
Section II

UCMJ Art. 15

MCM Part V

JAGMAN Ch. 1

Non-Judicial Punishment

Authority to award Non-Judicial Punishment:

- COs → All members of the command, including those who are TAD (TAD member's parent command can also award NJP)
 - Non-delegable for non-Flag Officers
- OICs → Enlisted members only

A commander cannot direct a subordinate to award NJP, but can withhold the authority for certain types of offenses, categories of persons, specific cases, or certain punishments.



Non-Judicial Punishment

QUICKMAN
Section II

JAGMAN Ch. 1

Disciplinary Review Board (DRB):

- Fact finding?
- Behavior Correction?

Executive Officer Inquiry (XOI):

- Additional opportunity for corrective action



Non-Judicial Punishment

****ALNAV 091/23****

**QUICKMAN
Section II**

UCMJ Art. 15

MCM Part V

JAGMAN Ch. 1

- Right to refuse NJP unless attached to or embarked upon an “operational vessel”**
- May exercise the right to refuse until NJP is actually awarded
- Cannot “demand” a court-martial
 - CO’s decision



Non-Judicial Punishment

QUICKMAN
Section II

UCMJ Art. 15

MCM Part V

JAGMAN Ch. 1

Unit attached/embarked on a vessel:

- NJP authority defaults to ship CO, but ship CO can refer it to unit CO

Unit aboard for transportation purposes only:

- NJP authority defaults to embarked unit CO

➤ Air wings
➤ Security Forces
➤ USMC dets attached to Ship's Company

A diagram consisting of a rectangular box with a black border. Inside the box, there is a list of units in red text, each preceded by a red arrowhead. A black arrow points from the box towards the text "ship CO can refer it to unit CO" in the "Unit attached/embarked on a vessel:" section.



Non-Judicial Punishment

ALNAV 091/23

QUICKMAN
Section II

UCMJ Art. 15

MCM Part V

JAGMAN Ch. 1

UPDATE—VESSEL EXCEPTION

- Vessel Exception only applies to “operational vessels”:
 - Not in Maintenance and Modernization Phase (per Optimized Fleet Response Plan)
 - Not in a pre-commissioning status
 - Not otherwise designated as not operational by a higher authority

*Incorrect use of the vessel exception is grounds to appeal NJP as unjust



Non-Judicial Punishment

ALNAV 091/23

QUICKMAN
Section II

UCMJ Art. 15

MCM Part V

JAGMAN Ch. 1

UPDATE—Pre-NJP Attorney Consultation

- All accused (vessel exception or not) shall be afforded the opportunity to consult with military defense counsel when operationally feasible and it can occur via appropriate means of communication within a reasonable time
- Operationally feasible means when taking reasonable steps to allow it would:
 - not preclude accomplishment of a military order or objective; and
 - not compromise safety



Non-Judicial Punishment

QUICKMAN
Section II

UCMJ Art. 15

MCM Part V

JAGMAN Ch. 1

Rights of the Accused at NJP hearing:

- Be present
- Remain silent [Article 31(b) rights apply]
- Have a personal representative present (need not be a lawyer, not at government expense)
- Examine evidence (not entitled to personal copy)
- Present extenuating and mitigating evidence
- Have hearing open to the public (vs. Closed mast)
 - public is not the same as an all-hands mast

Use the Rights Advisement found in the JAGMAN**



Appendix I of
the
QUICKMAN

ARTICLE 15 PUNISHMENT LIMITATIONS

Navy and Marine Corps

Imposed By	Imposed On	Confinement 3 days (1)	Correctional Custody (2)	Arrest in Quarters (3)	Forfeitures (4 & 5)	Reduction (4 & 6)	Extra Duties (7)	Restriction (7)	Reprimand or Admonition (4)
Flags/Generals in Command (8)	Officers	No	No	30 Days	1/2 of 1 Mo. for 2 Mos.	No	No	60 Days	Yes
	E-4 to E-9	No	No	No	1/2 of 1 Mo. for 2 Mos.	1 Grade	45 Days	60 Days	Yes
	E-1 to E-3	Yes	30 Days	No	1/2 of 1 Mo. for 2 Mos.	1 Grade	45 Days	60 Days	Yes
O-4 to O-6 (8)	Officers	No	No	No	No	No	No	30 Days	Yes
	E-4 to E-9	No	No	No	1/2 of 1 Mo. for 2 Mos.	1 Grade	45 Days	60 Days	Yes
	E-1 to E-3	Yes	30 Days	No	1/2 of 1 Mo. for 2 Mos.	1 Grade	45 Days	60 Days	Yes
O-3 / Below & OICs (9 & 10)	Officers	No	No	No	No	No	No	15 Days	Yes
	E-4 to E-9	No	No	No	7 Days	1 Grade	14 Days	14 Days	Yes
	E-1 to E-3	Yes	7 Days	No	7 Days	1 Grade	14 Days	14 Days	Yes

- (1) May be awarded only if attached to or embarked in a vessel and may not be imposed with correctional custody, restriction, or extra duties (JAGMAN 0111(c), MCM, Part V, para. 5(d)(2))



Non-Judicial Punishment

ALNAV 091/23

QUICKMAN
Section II

UCMJ Art. 15

MCM Part V

JAGMAN 0116-0117

UPDATE—Post-NJP Attorney Consultation

Appeals:

- Submitted within 5 working days (CO can grant extension)
- Right to consult with military defense counsel concerning available opportunities to appeal and whether they should be pursued
- Only two bases for appeal:
 - Punishment was unjust
 - Punishment was disproportionate to the offense
- Appeal Authority:
 - USN: GCMCA
 - USMC: Next superior in chain of command
- Reviewed by GCMCA's SJA



SN Duncan has admitted to gun decking maintenance reports over the last several months. The command thinks that NJP might be appropriate. Does the command need to send the case to DRB & XOI before NJP?

- (1) Yes, they must be completed prior to NJP
- (2) No, once the CO decides NJP is appropriate the command can no longer send it to DRB
- (3) No, but the command has the discretion to send it to DRB if they want



Since you are at a shore command, can SN Duncan require the command to take him to court-martial instead of NJP?

(1) Yes

(2) No, he cannot refuse NJP

(3) No, he can refuse NJP but cannot force the command to take him to court martial



If SN Duncan refuses NJP but the command decides not to take him to court-martial, what alternative action could be appropriate?



Enlisted Administrative Separation

QUICKMAN Section V

DODI 1332.14

“DoD will provide enlisted Service members with the training, motivation, and professional leadership to enable them to meet required standards of performance, conduct, and discipline.

- (1) Reasonable efforts should be made by the chain of command to identify enlisted Service members who exhibit the likelihood for early separation and improve their chances for retention through counseling, retraining, and rehabilitation.
- (2) **Enlisted Service members who do not demonstrate the commitment or potential for further service should be separated.”** [DODI 1332.14]



Enlisted Administrative Separation

QUICKMAN
Section V

DODI 1332.14

MILPERSMAN
1910

Reasons for Administrative Separation:

Expiration of Service Obligation	Security
Selected Changes in Service Obligation	Disability
Convenience of the Government	Misconduct
Alcohol Abuse Rehabilitation Failure	Unsatisfactory Performance
Drug Abuse Rehabilitation Failure	Defective Enlistments/Inductions
Entry-Level Performance and Conduct	Secretarial Plenary Authority
Separation in Lieu of Trial by Court-Martial	



Enlisted Administrative Separation

QUICKMAN
Section V

MILPERSMAN
1910-140

MILPERSMAN
1910-142

Common Misconduct Bases for ADSEP:

- Drug Abuse
- Commission of a Serious Offense
 - Punitive discharge warranted under UCMJ
 - Does not require Court-Martial or NJP
- Pattern of Misconduct
 - Two or more incidents in the same enlistment
 - USN: NJP → Page 13 → NJP



Enlisted Administrative Separation

QUICKMAN
Section V

DODI 1332.14

MILPERSMAN
1910-233 (9 Oct 19
update)

Mandatory Bases for Separation Processing:

- Sexual misconduct
- Sexual harassment (certain circumstances)
- Violent misconduct which resulted in, or had potential to result in, death or serious bodily injury
- Possession of drug paraphernalia
- Drug abuse
- Unlawful use of designer drug/OTC drugs/prescription drugs
- Supremacist or extremist conduct
- FAP failure
- Alcohol Rehabilitation failure
- Second substantiated DUI
- Nonconsensual distribution or broadcasting of an intimate image



Enlisted Administrative Separation

QUICKMAN
Section V

DODI 1332.14

MILPERSMAN
(1900 series)

ADSEP Procedures:

Notification Procedure:

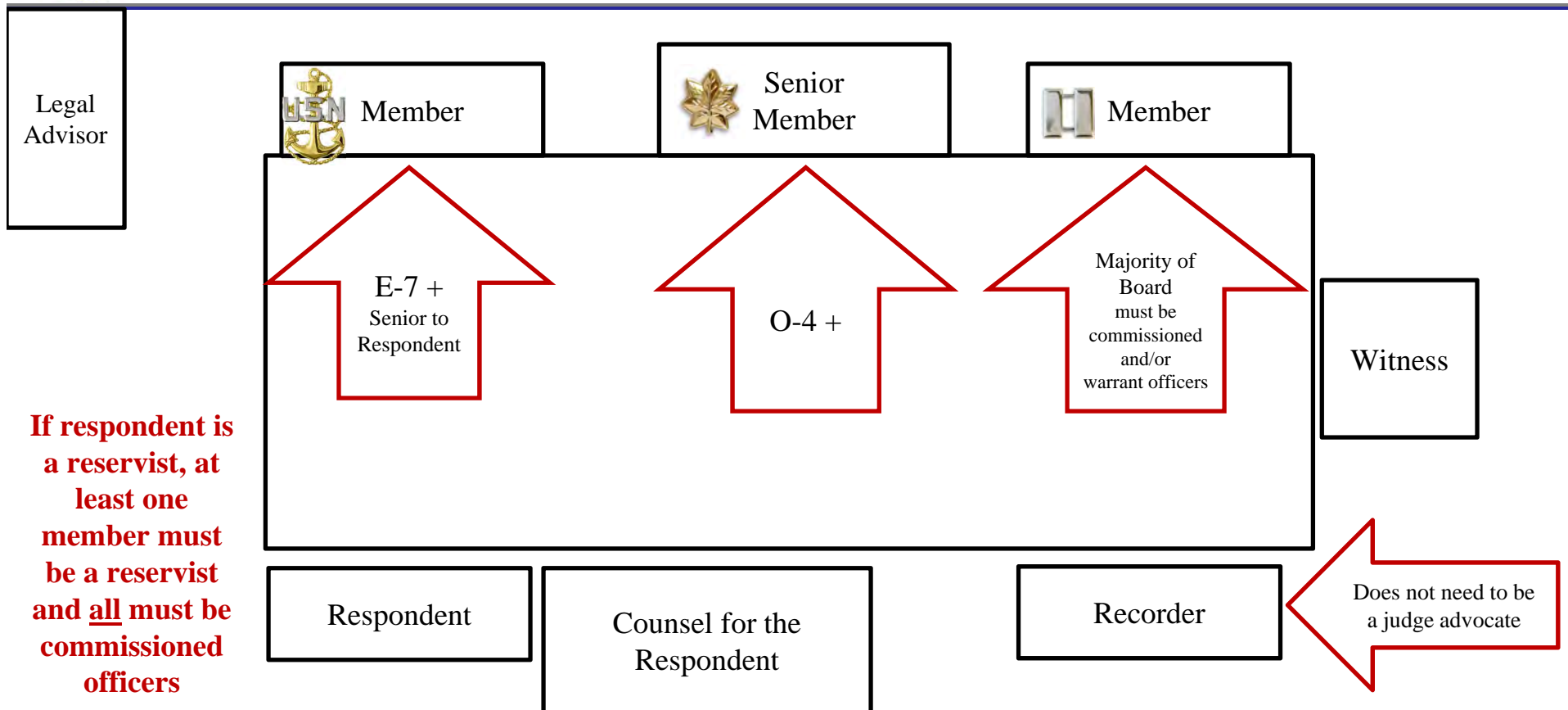
- Least favorable characterization is HON or GEN
- Members with 6 years or more of service can still elect a board

Board:

- Least favorable characterization is OTH
- Always involves a board (unless waived)



Enlisted Administrative Separation





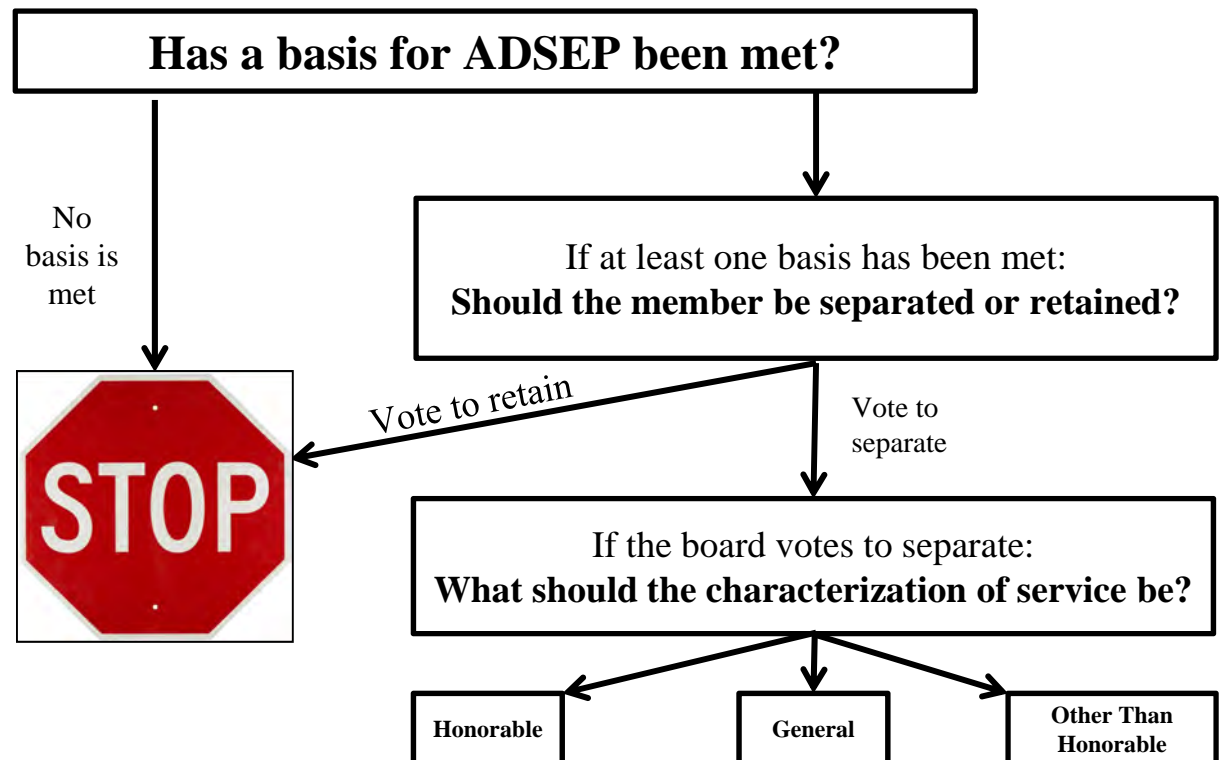
Enlisted Administrative Separation

QUICKMAN
Section V

DODI 1332.14

MILPERSMAN
1910-516

Board Findings:





Your superstar Airman pops positive for THC. He comes clean at NJP and pleads guilty. What are the command's next steps?

- A) Do nothing. Keep your superstar
- B) Zero tolerance means they must be separated
- C) Send it to an ADSEP board for them to decide
- D) Write a letter to PERS recommending a finding of no wrongful use



The command decides on an ADSEP board and CMC offers to keep the board in-house using only members from the Chief's Mess. What are some issues with the command moving forward with CMC's proposal?

- A) No issues.
- B) Need an O-4 and a second officer.
- C) Defense counsel needs to be assigned before board occurs.
- D) Using members of the command creates a conflict of interest.



QUESTIONS?



Roadmap

Five Sections:

- 1) Intro to Legal Resources, the UCMJ, and Legal Authorities
- 2) Investigations
- 3) Non-Punitive Measures and Naval Discipline
- 4) Government Ethics**
- 5) Operational Law



Why Standards of Conduct Training?

“Those entrusted by our nation with carrying out violence, those entrusted with the lives of our troops, and those entrusted with enormous sums of taxpayer money must set an honorable example in all that we do.”

--Former Secretary of Defense James Mattis



Why Standards of Conduct Training?

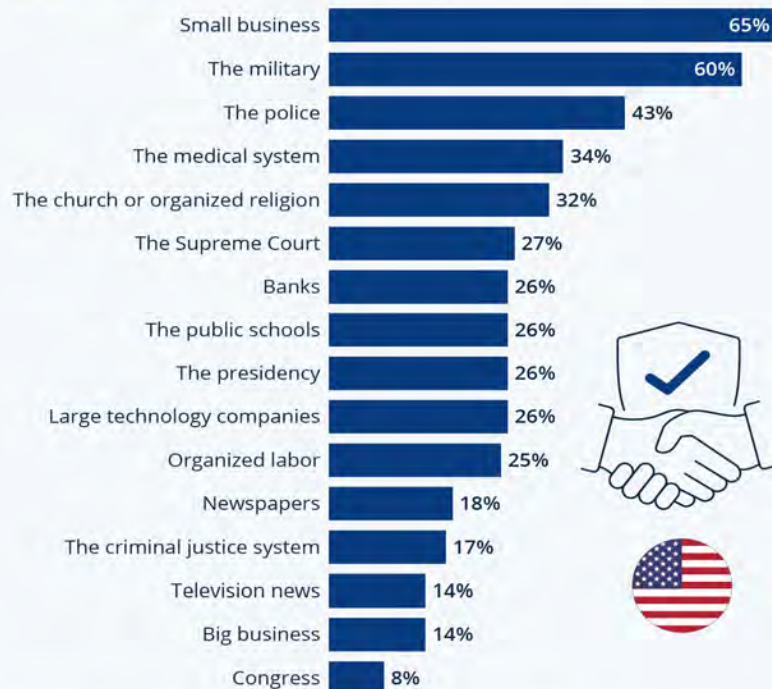
“The principle that Public Service is a Public Trust forms the basis for these [Standards of Ethical Conduct]. Public service also comes with the responsibility to place our loyalty to the Constitution, laws, and ethical principles above private gain. The basic principle of public service and the responsibility that comes with it are not aspirational goals. These are requirements that we must put into use every day when making decisions in both our personal and professional lives.”

--- Secretary of the Navy Carlos Del Toro



The Institutions Americans Trust Most And Least

Share of U.S. respondents who say they have a great deal/ quite a lot of trust in the following institutions



1,013 U.S. respondents (18+ y/o) surveyed Jun. 1-22, 2023
Source: Gallup



statista

Why do we care?

- Doing the right thing
- International credibility
(which we need to get the mission done)
- Domestic credibility
(which we need to keep our budget/resources)
- It's the law
(you can get in trouble, and so can your boss)



References

- Standards of Ethical Conduct for Employees of the Executive Branch (5 C.F.R. 2635)
- Joint Ethics Regulation (DoD Directive 5500.07-R)

These rules are punitive!



Gifts

5 C.F.R. § 2635.202

General Rule: An employee shall not solicit or accept a gift:

- From a prohibited source; or
- Given because of the employee's official position



Gifts

5 C.F.R. §
2635.203(b)

What is a gift? Anything of value, including:

- Gift Certificates/Money
- Meals
- Tickets
- Discounts
- Upgrades
- Favors





Prohibited Sources

5 C.F.R. §
2635.203(d)

What is a prohibited source?

Any entity or person:

- Doing/seeking to do business with the DoD/DoN;
- Seeking official action by the DoD/DoN; or
- Whose interests are substantially impacted by the performance of your official duties (e.g. contractors)



Gifts - Exceptions

5 C.F.R. § 2635.204

5 C.F.R. § 2635.205

5 C.F.R. § 3601.103

- 20/50 Rule
- Personal Relationship
- Awards and honorary degrees
- Outside employment
- Spouse's employment
- Informational Materials
- Generally-available discounts



Gifts

5 C.F.R. §
2635.203(b)

These things are not considered gifts:

- Coffee/Donuts
- Plaques, Certificates, Trophies
- Loans available to the public
- Prizes from contests/events
- Things you pay fair market value for
- Attendance if presenting information on behalf of the DoD





Gifts—Common Questions

**Last night at the movies I asked
if they had a military discount.
Was that improper?**



Gifts—Common Questions

**I went to a meeting with my boss and
they gave me an \$8 lanyard and a
\$14 notepad.
Can I keep them?**



Gifts—Common Questions

Last weekend my friends and I were in our SDBs and ate at a restaurant in town. Someone picked up the tab to thank us for our service. What do we do?



Gifts Between Employees

5 C.F.R. § 2635.302

5 CFR § 3601.104

QUICKMAN § XV

General Rule 1: Subordinates should not give gifts to superiors.

General Rule 2: An employee may not, directly or indirectly, accept a gift from an employee receiving less pay

These rules have several exceptions



Gifts Between Employees - Exceptions

5 C.F.R. § 2635.304

5 CFR § 3601.104

Unsolicited gifts given on an **occasional** basis, if:

- \$10 or less per occasion
- Shared food/refreshments in an office
- Personal hospitality at a residence
- Hostess gifts



Gifts Between Employees - Exceptions

5 C.F.R. § 2635.304

5 CFR § 3601.104

Special **infrequent** occasions:

- Marriage
- Condolence
- Birth/adoption of child
- Occasions that terminate the senior/subordinate relationship



Group Gifts

5 C.F.R. § 2635.304

5 CFR § 3601.104

May solicit funds for gift to superior or other employee, but:

- Contributions must be voluntary
- Cannot ask for more than \$10
- Total value of the gift cannot exceed \$480 (went up from \$300 on 30Mar2023)



Scenario and Knowledge Check 8

**What if the Chief's Mess, the
First Class Petty Officers'
Association, and the Wardroom
all want to give a gift to the CO
when he retires?**



Commercial Dealings

JER § 2-504

General Rule: Do not sell things to your subordinates or their family members.

Exception: No coercion.

- Retail establishment off duty
- Non-commercial personal or real property



JER § 2-400

Fundraising

General Rule: Do not use your uniform, title, position, or authority to fundraise, and do not fundraise in the workplace.

Exceptions:

- CFC, NMCRS
- “By our own, for our own” (“BOOFOO”)

Contact a JAG before you fundraise!



DoD Directive 1344.10

Permissible Political Activity

You may:

- Register to vote and vote
- Encourage others to participate in the political process
- Join a political club
- Sign petitions
- Attend meetings/rallies as a spectator
- Donate money to political campaigns
- Express purely personal opinions (caution)
- “like” or “follow” a candidate/party on social media



Impermissible Political Activity

DoD Directive
1344.10

You may **not**:

- Campaign/fundraise for a candidate
- Hold public office (*special reservist rules)
- Speak on behalf of a candidate
- Distribute partisan political literature
- Have political posters in gov't housing
- Have large bumper stickers or signs on POV
- Wear your uniform to a political meeting/rally
- "share" a candidate/party/fundraising post on social media



Political Activity—Common Questions

Can my spouse host a political event in our home?



What To Avoid

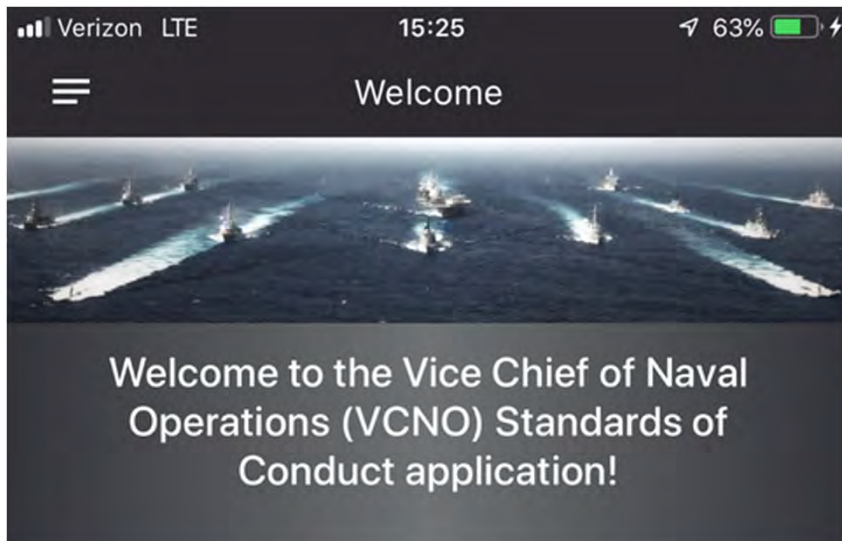
Sgt Gary Stein, USMC

- 9 years on active duty
- Created the Armed Forces Tea Party Facebook Group
- “As an active-duty Marine, I say, ‘Screw Obama,’ and I will not follow the orders from him.””
- The president is “the ‘domestic enemy’ our oath speaks about.”
- Other Than Honorable (OTH) discharge

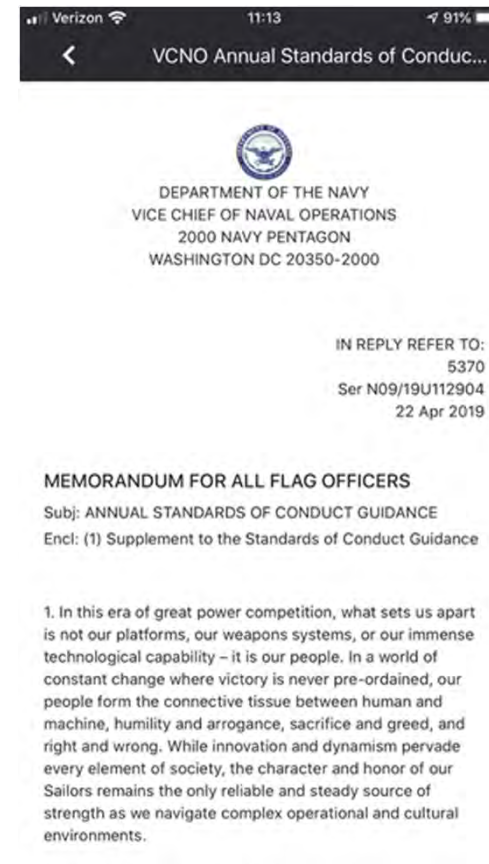




VCNO Standards of Conduct Guidance



This application provides overarching guidance on standards of conduct, as well as targeted summaries, tools, and references for the most frequently encountered standards of conduct topics.





Ethics Wrap-up

- If you have a question, ASK! Ignorance will not excuse a violation of the rules.
- Appearance itself is a violation.
- For travel, it's about convenience for the government, not convenience for you



Roadmap

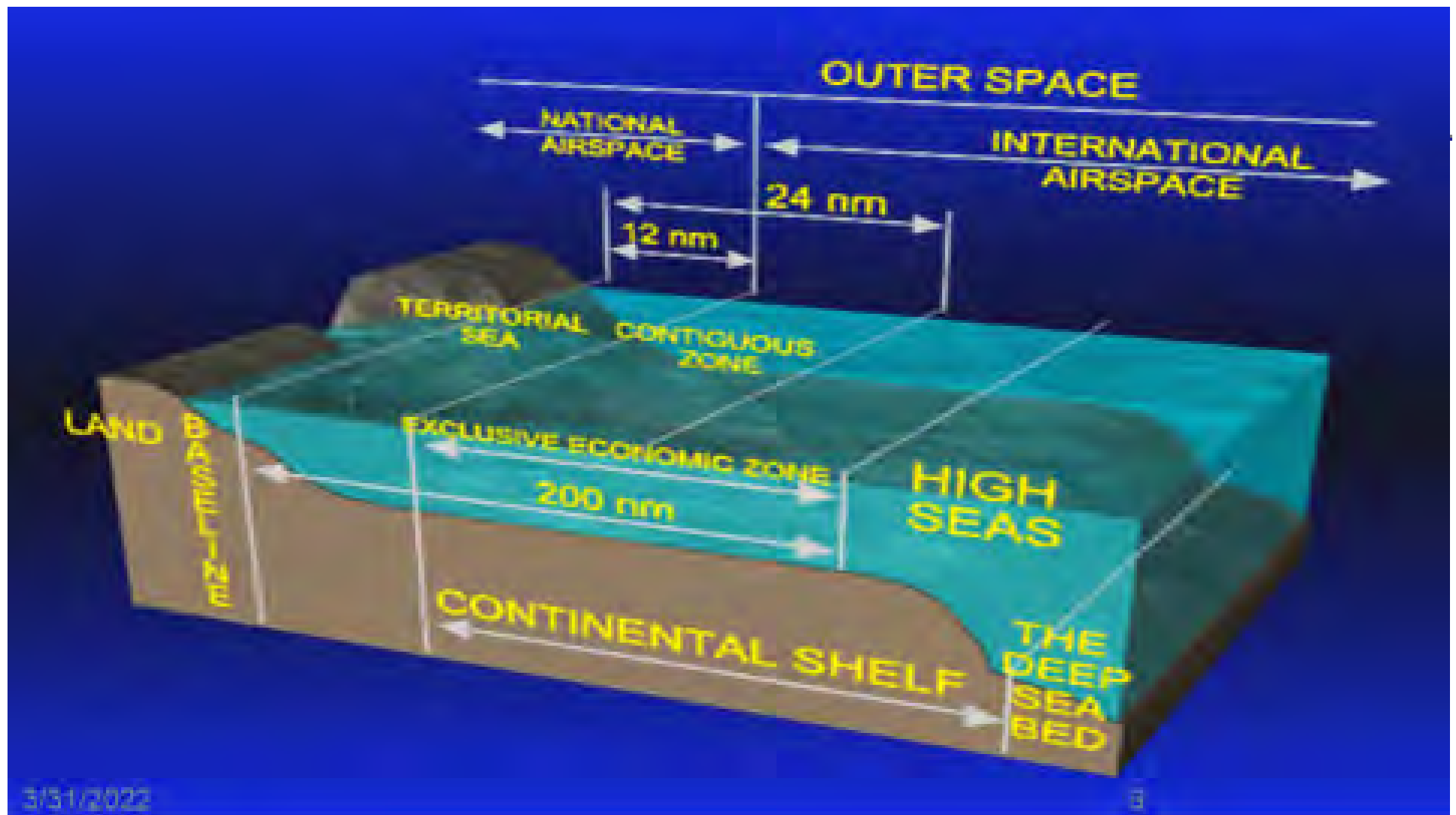
Five Sections:

- 1) Intro to Legal Resources, the UCMJ, and Legal Authorities
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- 5) Operational Law**



Operational Law

(Remember classification level of the room we are in)



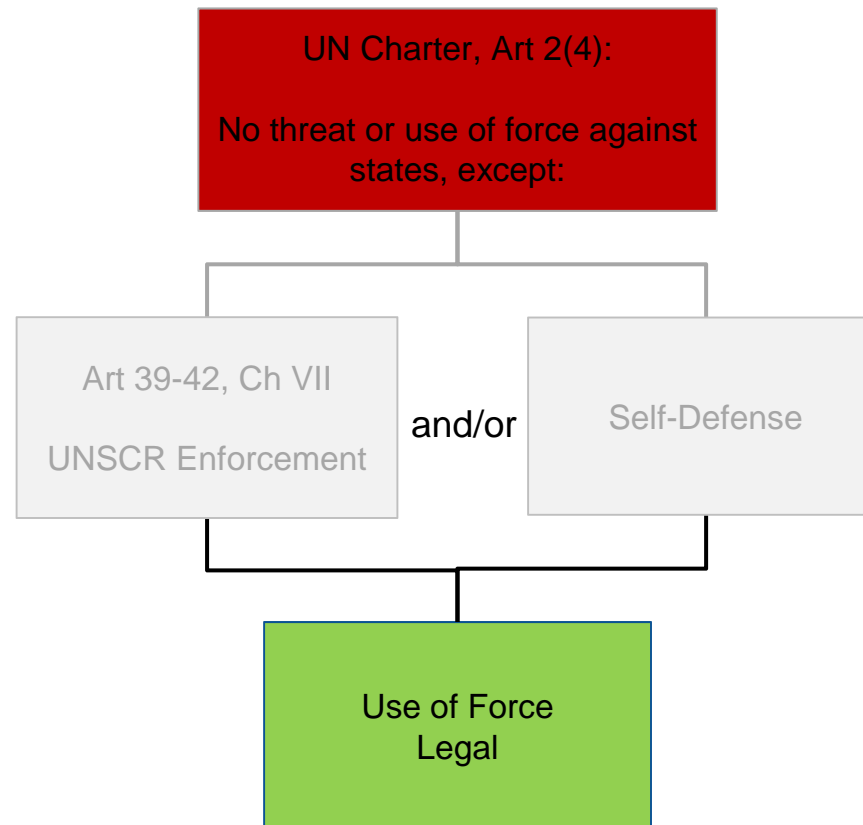


Q: When can I use force?

A: When authorized to by a Rule of Engagement (ROE) or Rule for the Use of Force (RUF)



When can US use force under Int'l Law?

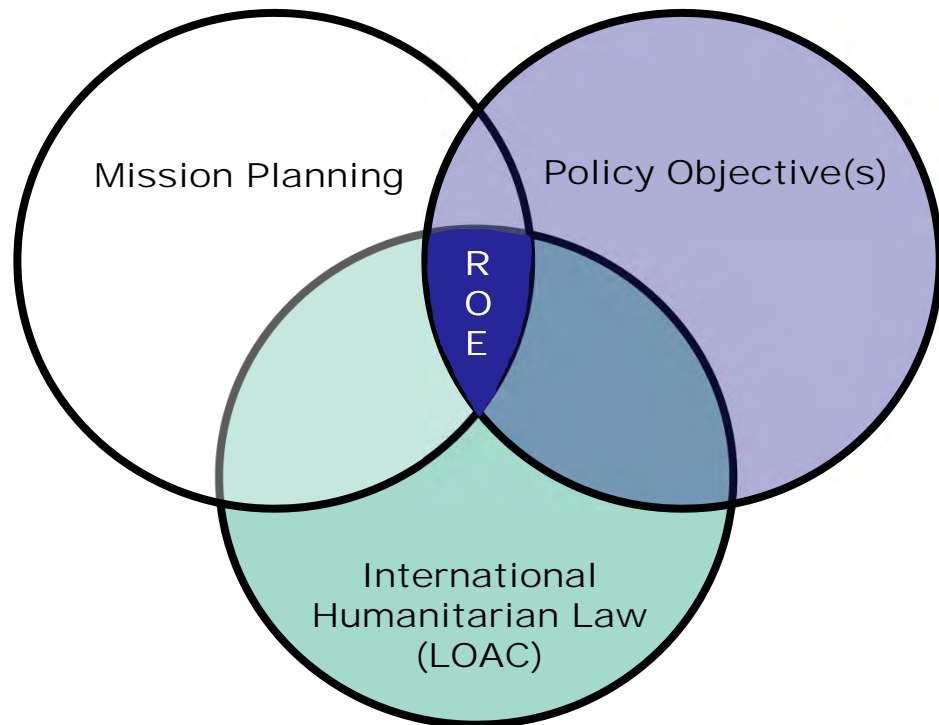




Where do ROE come from?

“War is not merely an act of policy but a true political instrument, a continuation of political intercourse, carried on with other means...the political object is the goal, war is the means of reaching it, and means can never be considered in isolation from their purpose.”

Carl von Clausewitz





ROE – Self-Defense

SELF-DEFENSE TYPES

INDIVIDUAL – Sailor, Marine, Coast Guardsman

- *May be limited by Unit Commander*

UNIT – ship, platoon, squadron

- *Unit commanders always retain the **inherent right** and obligation to exercise **unit self defense** in response to a hostile act or demonstrated hostile intent.*

Authority in SROE - inherent right and obligation to exercise unit self defense, all US forces in vicinity

NATIONAL – Other US forces, US civilians, US property including commercial property

Specific authorization in SROE and Supplementals in EXORDS

COLLECTIVE – Non-US forces or civilians and their property

Specific authorization required – NCA



ROE – Self-Defense

SELF-DEFENSE

National Right
Delegated via SROE
Limited within LOAC

**You can be limited
in your right to
defend yourself.**

SPECIFIC DELEGATION IN SROE

Unit commanders always retain the **inherent right** and obligation to exercise **unit self defense** in response to a **hostile act** or **demonstrated hostile intent**.

Unless otherwise directed by a unit commander, military members may exercise individual self-defense in response to a hostile act or demonstrated hostile intent



ROE – Self-Defense

HOSTILE ACT

Actual attack or use of force, or attempts to impede mission

HOSTILE INTENT

The threat of imminent use of force, including attempts to impede mission or duties of US forces.



Unit CO has the Right *and Obligation* to exercise Unit Self-Defense...

consistent with the principles of self-defense and use of force guidance from HHQ

“Imminent” ≠ immediate/instantaneous

Assessment of, “...whether use of force against US forces is imminent will be based on... all facts and circumstances known... at the time...”



ROE Principles of Self-Defense

HA/HI OCCURS --- NOW WHAT?

DE-ESCALATION

When time and circumstances permit, the forces committing HA/HI should be warned and given the opportunity to withdraw/cease threatening actions

NECESSITY

Exists when HA/HI occurs... ***but force is authorized only while HA/HI continues***

PROPORTIONALITY

Authorized to use amount of force required to *respond decisively* to HA/HI. May use force that exceeds the HA/HI, but not more force than required based on the nature, duration, and scope of threat

Concept of proportionality in self-defense should not be confused with attempts to minimize collateral damage during offensive operations



Do RUF apply?

BLUF: It depends on [1] WHERE YOU ARE; and [2] WHAT YOU ARE DOING.

Within US (or her TTW)

Performing:

Anti-Terrorism/Force Protection duties

Law enforcement and security duties at DoD Installation

Defense Support of Civil Authorities (DSCA) operations

Land Homeland Defense missions

Critical infrastructure protection on and off DOD installations

Civilian law enforcement cooperative missions

Counter Drug Support

Outside US

Performing Law enforcement and security duties at DoD Installation*

Exception: When under USCG control or supporting her law enforcement duties, different rules apply



When do RUF authorize the UoF?

as a **Last Resort** and **Only When Reasonable Under the Circumstances...**
the **Minimum Non-Deadly Force Necessary** is authorized:

- [1] to control a situation and accomplish the mission;
- [2] to provide protection for yourself or other DOD personnel,
- [3] to defend non-DOD persons in the vicinity, but only IF directly related to the assigned mission, or
- [4] to defend designated protected property by the on-scene commander or higher authority.

When all lesser Means have Failed or cannot reasonably be employed...
Deadly Force is authorized:

- [1] (*Inherent Right of Self-Defense*) to protect yourself and other DOD forces from the imminent threat of death or serious bodily harm;
- [2] to protect non-DOD persons in the vicinity from the imminent threat of death or serious bodily harm, *IF directly related to the assigned mission*;
- [3] to prevent the actual theft or sabotage of assets vital to national security or inherently dangerous property;
- [4] to prevent or stop a serious offense; and
- [5] to prevent the sabotage of a national critical infrastructure.



Q: When can I use force?

A: When authorized to by a Rule of Engagement (ROE) or Rule for the Use of Force (RUF)



COURSE WRAP-UP

- WHY IS IT IMPORTANT TO FOLLOW LEGAL PRINCIPLES?
- WHERE CAN I ACCESS LEGAL ADVICE?
- PUBLIC TRUST AND DUTY AS AN OFFICER TO CONDUCT ONESELF LAWFULLY AND ETHICALLY



QUESTIONS?