

LEGAL GUIDE FOR COMMANDERS

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Preface

This manual is a guide to military law for company commanders--officers and noncommissioned officers. It will acquaint you with military law as reflected in military justice, administrative law, and personal rights, responsibilities, and restrictions. It outlines basic responsibilities and daily procedures for administering military justice and administrative law in the unit. It will assist you in safeguarding the personal and civil rights of the soldiers under your command.

The "Powell Report" on the Uniform Code of Military Justice stresses military law's role of maintaining discipline in the Army:

Discipline— a state of mind which leads to a willingness to obey an order no matter how unpleasant the task to be performed— is not characteristic of a civilian community. Development of this state of mind among soldiers is a command responsibility and a necessity. In the development of discipline, correction of individuals is indispensable; in correction, fairness or justice is indispensable. Thus, it is a mistake to talk of balancing discipline and justice— the two are inseparable.

Once a case is before a court-martial, it should be realized by all concerned that the sole concern is to accomplish justice under the law. This does not mean justice as determined by the commander referring a case or by anyone not duly constituted to fulfill a judicial role. It is not proper to say that a military court-martial has a dual function as an instrument of discipline and as an instrument of justice. It is an instrument of justice, and in fulfilling this function it will promote discipline.

(Powell Report: Report to Honorable Wilbur M. Brucker, Secretary of the Army, 1960)

This manual is more useful in a loose-leaf binder, enabling you to file local forms and directives with it. You may find that local directives will modify some procedures in this guide. Direct questions about this material to the local staff judge advocate office.

The proponent of this publication is The Judge Advocate General's School, US Army. Send comments and recommendations on DA Form 2028 to Commandant, The Judge Advocate General' School, US Army, ATTN: JAGS-ADA, Charlottesville, VA 22903-1781.

Unless this publication states otherwise, masculine nouns and pronouns do not refer exclusively to men.

MILITARY JUSTICE

CHAPTER 1

Military Criminal Law**SOURCES OF AUTHORITY**

The military justice system derives its authority from three major sources:

- The Uniform Code of Military Justice (UCMJ).
- The Manual for Courts-Martial (MCM).
- Army Regulation (AR) 27-10.

The UCMJ is a federal law and the basis of our military justice system. It determines what conduct is criminal, establishes the various types of courts, and sets forth the procedures to be followed in the administration of military justice. You can find the UCMJ in Appendix 2 of the MCM, United States, 1984 or in 10 United States Code (USC) §§801-940.

The MCM is an executive order that details the rules for administering military justice. For example, it sets forth the rules of evidence for courts-martial and contains a list of maximum punishments for each offense. Each company-size unit should have a copy of the MCM.

AR 27-10 supplements the MCM and is the basic Army regulation for administering military justice.

ROLE OF COMMANDERS

As company commanders, you are responsible for both enforcing the law and protecting soldiers' rights. Their discipline and morale may depend on how wisely you exercise your authority.

The military justice system needs adequate administrative support to work effectively. As a company commander, when you forward charges your involvement in a case does not end. In addition, you must ensure that the accused appears at all proceedings in a clean, proper uniform. You may also be required to provide witnesses, vehicles, drivers, escorts, and bailiff's from your unit. Military witnesses are especially

important to the success of a proceeding. A court may dismiss a case when a witness is not available. **Under no circumstances will you interfere with an accused's right to present witnesses at a court-martial or with the testimony of any witness.** (See UCMJ, Article 37.)

RIGHTS OF SOLDIERS

The military justice system provides for certain fundamental rights and safeguards that must be considered in any case involving criminal conduct.

Presumption Of Innocence

Under our legal system, everyone is presumed innocent until a court finds them guilty beyond a reasonable doubt. A court may make a fair and just decision only after it has heard all the evidence relating to the guilt or innocence of an accused.

Counsel

Laws prohibit compulsory self-incrimination and provide that anyone suspected of committing a crime has the right to consult with a lawyer. Congress realized that soldiers may not understand their rights and may be intimidated by the mere presence of a superior. Therefore, under military law no one may question a suspect without first determining that the suspect understands the nature of the offense, the right to remain silent, and the right to counsel.

If interrogators violate these rights, the evidence obtained may not be used against the accused. You must protect your unit members' rights and preserve the government's case by ensuring that your subordinate commanders understand and comply with UCMJ, Article 31, and right-to-counsel requirements.