



LOUISIANA NATIONAL GUARD

PROTECT WHAT MATTERSSM

MILITARY JUSTICE AND ETHICS



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Agenda

- The Role of CDR in Military Justice
 - Investigations
 - The role of JA and Paralegals
 - Soldiers' Rights
 - Nonjudicial Punishment
 - Courts-Martial
 - Unlawful Command Influence
- Ethics



References

- Louisiana Code of Military Justice – R.S. 29:101, et seq.
- LANG Reg 27-10
- Manual For Courts-Martial, U.S. (Misc. Pub. 27-7)
- Legal Annex
- Command Investigation Program, 1 July 2014.



CDRs Role in Military Justice

- CDR's Goal: Good Order and Discipline in the Unit
- Punishment is not the primary purpose, but an important tool
- CDR should act fairly, objectively, and calmly
- CDR should always consult with servicing Judge Advocate
- Use the paralegals for drafting of charge sheets and Article 15s!!!!



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Command Judge Advocate

- Who is your Command Judge Advocate?
- The Role of the CJA.
- Each Commander should have their BJA in their speed-dial.





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Role of the Judge Advocate



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Role of the Paralegal

- Tip of the Spear on legal issues at the BN level
- Trained by the Army to draft charge sheets, Article 15s, and other legal documents
- Should be the only person authorized to draft legal documents, other than Judge Advocate
- Must be supervised by a Judge Advocate
- LANG Reg 27-10 authorizes SJA of DRU to consolidate all BN paralegals at the DRU



CDRs Role in Military Justice

- CDR has the primary role in the administration of Military Justice.
- Responsible for:
 - Enforcing Good Order and Discipline in his/her unit.
 - Protecting the Rights of the Accused Servicemember.



CDRs Role in Military Justice

- Tools in CDR's Arsenal to deal with Misconduct:
 - Counseling and Mentorship
 - Adverse Administrative Actions
 - Nonjudicial Punishment – Article 15, LCMJ
 - Judicial Punishment – Courts-Martial
- CDR has duty to:
 - Investigate the circumstances of possible misconduct
 - Determine the appropriate disposition level for the action



CDRs Preliminary Inquiry

- R.C.M. 303 and Chapter 4, AR 15-6.
 - When a member of the command is suspected of committing an offense triable by court-martial, the immediate CDR shall conduct a preliminary inquiry into the suspected offenses
- Purposes
 - Ascertaining the magnitude of a problem
 - ID witnesses and recording statements
 - Determine the need for an investigation
 - Help with determining scope of investigation



AR 15-6 Investigations

- Purpose:
 - Ascertain facts
 - Document and preserve evidence
 - Report facts and evidence to the approval authority
- Advice of Judge Advocate during entire process is key to success
- JA should help drafting of appointment memos
- Paralegals can help with witnesses and preserving evidence



CDRs Duty to Investigate

- TAG Command Investigation Program (“CIP”)
- If misconduct falls within CIP, units will NOT undertake investigation unless TAG releases to unit
- Supersedes all local or “in-house” policies and programs.
- CCIR: TAG expects CDRs, staff, supervisors and directors to report issues up the chain.



CDRs Duty to Investigate

- CIP used to investigate all allegations of:
 - Sexual assault/sexual harassment
 - Serious misconduct or loss – involving and Officer, Senior NCO (E7 or above), civilian employee, accident involving a injury, death, or suicide of Soldier/Airman, loss of sensitive item or arrest of any member of LANG/LMD
 - Significant financial issues – lost to Govt. of \$5,000 or more



Disposition of Misconduct

- After investigation, CDR has to determine proper disposition to ensure maintenance of good order and discipline of the unit
- Factors:
 - Seriousness of Offense
 - Intent or lack of intent
 - Age, experience, and any special qualifications of offender
 - Past performance and service record of offender
 - State of moral and discipline in unit



LCMJ vs. UCMJ

- What is the difference between the LCMJ and the UCMJ?
 - UCMJ applies to all Components of the Army while on Title 10 orders, including the National Guard in Federal Service.
 - LCMJ applies to all members of the state military forces in all places and all times.
 - LCMJ applies to members of NG in Title 10 status if the Federal Convening Authority declines to convene a court-martial.





Soldier's Rights Under LCMJ

- **Presumption of Innocence**
- Under our legal system, everyone is presumed innocent until a court or commander find them guilty beyond a reasonable doubt. Even for Article 15 actions.
- A court or commander may make a fair and just decision only after hearing all of the evidence relating to the guilt or innocence of an accused.





Soldier's Rights Under LCMJ

- **Right to Legal Counsel**
- Right against self-incrimination
 - Anyone suspected of committing a crime has the right to consult with a lawyer.
- 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.
- Commanders must protect their unit member's rights and preserve the government's case by ensuring compliance with LCMJ Article 31 and the right to counsel requirements.





Right to TDS

- Soldiers/Airmen have right to consult with TDS Counsel when facing Article 15 – Para. 4-8(b) of LANG Reg. 27-10
- Under the U.S. and Louisiana Constitutions, an accused has right to counsel for Special and General Courts-Martial – See also LCMJ Article 27





TDS Procedure

- TDS Attorneys are all M-day lawyers with a full-time practice
- Prior coordination is the key to successful and speedy disposition of actions
- Process: Soldier is given phone number to the TDS Paralegal (504-418-0814) and she takes basic information and then relays that information to a TDS attorney who then contacts the SM
- LANG Reg. 27-10, Para. 4-8(d) requires CDRs to give Soldiers a reasonable amount of time to consult with TDS for Article 15 proceedings
- The minimum amount of time is 48 hours, but more time may be necessary depending on the availability of TDS counsel and whether the consultation was coordinated in advance by the CDR or other unit personnel



Soldier's Rights Under LCMJ





Arrest Warrants

- **Battalion Commanders** initiate requests for warrants by completing the warrant packet checklist which includes:
 1. A memo signed by BN CDR giving a summary of the soldier's overall performance include days absent from duty as well as any specific actions the unit has taken to secure presence of the soldier.
 2. DD Form 458 charge sheet (prepared by a Paralegal).
 3. Arrest Warrant.
 4. Written Order to Report.
 5. DA Form 3744, Affidavit Supporting Request for Authority to Search and Seize or Apprehend ("Who, What, Where, When, and Why").





Arrest Warrants

_____ cannot initiate arrest warrants unless your unit provides the information and support needed.





NJP- Article 15

- Non-judicial punishment (NJP) is a disciplinary measure more serious than the administrative corrective measures, but less serious than trial by court-martial
- Article 15 exists to handle minor offenses committed under the LCMJ
- For Maximum Punishments, See Figure 4-1 of LANG Reg 27-10.
- **Rights of accused:**
 - Oral and written notification by Commander (DA Form 2627)
 - Right to demand trial by court-martial
 - Right to Remain Silent - LCMJ Article 31(b)
 - Right to consult counsel or representative. The SM should be given a reasonable amount of time, at least 48 hours, to consult with TDS (preferably 15 days) If the SM chooses not to avail himself to the right to counsel, then the commander may precede with the remainder of the Article 15 preceding.



Appendix B: Enlisted Maximum Punishment Table

	Company Level	Battalion/Squadron Level	(DRU) Brigade Level
Extra Duty	14 days	14 days	14 days
Restriction	14 days	14 days	14 days
Reduction	One pay grade (E1-E4)	One or more grades (E1-E4)	One or more grades (E1-E4)
		Not more than two grades (E5-E6)	Not more than two grades (E5-E6)
			Not more than two grades (E7-E8) with TAG Release of Disposition
Forfeiture	\$50	\$100	\$100
Fine		\$25	\$25
Reprimand	Yes	Yes	Yes

For TAG or His Designee - Officers/Senior Enlisted Maximum Punishment Chart

	Officers	E7- E9 (SGM/CSM)
Extra Duty	None	14 days
Restriction	None	14 days
Reduction	None	
		Not more than two grades (Only TAG can reduce an E9)
Forfeiture	\$1000	\$100
Fine	\$100	\$25
Reprimand	Yes	Yes



Court-Martial Process

- Commanders are responsible for the entire process, including protecting the rights of the accused.
- Commanders are responsible for providing administrative support to judicial proceedings, including ensuring availability of TDS.
- In addition to ensuring that accused SMs appear at all proceedings in uniform, Commanders will be required to provide witnesses, vehicles, drivers, escorts, and bailiffs for those proceedings.





Court-Martial Process

three types of courts-martial:

- Summary- Battalion level
- Special- Brigade level
- General- TAG level





Summary Court-Martial

- A court composed of one officer (Usually O-4 or above) who may or may not be a lawyer.
- SCM exist for minor crimes of enlisted soldiers and utilizes simple and streamlined procedures.
- The maximum punishment is limited to:
 - (1) Confinement of not more than 30 days;
 - (2) Reduction of enlisted personnel to the lowest grade;
 - (3) Fine of not more than \$100;
 - (4) Forfeiture of up to one month pay and allowances;
 - (5) Reprimand; or
 - (6) Any combination of these punishments.



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Special Court-Martial





General Court-Martial

- A GCM exists to handle the most serious offenses.
- Consists of the military judge, at least six panel members (unless the accused elects to be tried by a military judge alone), a trial counsel, and a defense counsel.
- Unless waived by the accused, a Preliminary Hearing (an “Article 32 Hearing”) must occur before a general court-martial may try the case.
- The maximum punishment is limited to:
 - (1) A fine of not more than \$1,000;
 - (2) Forfeiture of pay and allowances;
 - (3) Reprimand;
 - (4) Dismissal, bad conduct, or dishonorable discharge;
 - (5) Reduction of a noncommissioned officer to the ranks;
 - (6) Confinement of not more than two years; or
 - (7) Any combination of these punishments.





Unlawful Command Influence

- UCI is the improper use, or perception of use, of superior authority to interfere with the court-martial process.
- Accusatory (how the case is brought to trial) vs. Adjudicative (how the case is tried).
- Accusatory UCI includes issue related to preferral, forwarding and referral of charges.
- Adjudicative relates to interference with witnesses, judges, members, and counsel.



UCI

- Article 37 of the LCMJ prohibits UCI.
- No person subject to LCMJ may:
 - Attempt to coerce or, by an unauthorized means, influence
 - the action of a court-martial . . . or any member thereof,
 - in reaching the findings or sentence in any case, or the action of any convening authority, approving, or reviewing authority with respect to his judicial acts.



Who Can Commit UCI?

- Convening Authorities – prohibited from censuring members, the military judge, or counsel with respect to findings or sentence or the exercise of their functions in the proceeding (OERs).
- Anyone Subject to the Code – prohibited from attempting to coerce or improperly influence the CM or the members, or a convening, reviewing, or approving authority in respect to his judicial acts.



Who Can Commit UCI?

- SJAs
 - In order to avoid UCI, SJAs and legal advisors need to be clear when they are giving their personal legal views and when they are expressing the views of their commander.
- “Mantle of Authority”
 - Using rank or authority to try to influence action.
 - Friendship, neutral mentorship, or peer pressure not enough.



Final Takeaways

- Get to know your Command Judge Advocate
- Ensure that BN Paralegals are utilized when preparing Charge Sheets, Article 15s, and other legal documents
- If your JAG is always telling you “yes”, question him/her more about the issues at hand



Final Takeaways

- Be objective and fair
- The manner in which you handle Military Justice will set the tone for good order and discipline in your unit
- The standard, even at Article 15, for guilt is “beyond a reasonable doubt”
- LANG Reg 27-10 (Annex S to OPORD) is the MJ Bible - Skim it and have it handy
- **WHEN IN DOUBT – CYA – CALL YOUR ATTORNEY**



Ethics

- When does it apply?
- Gifts
- Fundraising
- Endorsements



Joint Ethics Regulation

- DODD 5500.07-R
- Applies to NG Soldiers while performing official duties or functions under Titles 10 or 32, or while engaged in an activity related to the performance of such duties or functions
- AGR – all the time
- M-day – usually when in a status (IDT, AT, Orders)



What is a Gift?

- Anything of value
- Does not include:
 - Coffee, donuts, modest refreshments
 - Greeting cards, plaques, trophies, and other items with little intrinsic value intended solely for presentation
 - Rewards & prizes for contest open to the public
 - Commercial discounts available to public or military
 - Anything for which an employee pays full market value



JER Gift Restrictions

- DOD employee may not accept a gift from a lower paid (or ranking) employee
- May not give a gift to a superior
- Exceptions:
 - Traditional gift giving occasions (birthdays, holidays) – less than \$10
 - Special, infrequent occasions (marriage, change of command, PCS, retirement)
 - \$300 per donating group
 - Employee may not “buy down” the value of the gift
 - Must be voluntary



Gifts from Outside Sources

- You may not accept a gift given:
 - By a prohibited source
 - Because of your official position
- Exceptions:
 - \$20/\$50 Rule - \$20 per occasion/\$50 per year
 - Gifts given based on preexisting personal relationship
 - Widely attended gatherings



Prohibited Source

- Any person who is:
 - Seeking official action by DOD or LANG
 - Doing or seeking to do business with DOD or LANG
 - Regulated by DOD, or
 - Substantially affected by the performance of your official duties



Fundraising

- Fundraising is not allowed in the Federal Workplace!
- Exceptions for Combined Federal Campaign and Army Emergency Relief Fund



Endorsement

- Soldiers are prohibited from using their grades, titles, or positions in connection with any commercial enterprise
- No endorsement of commercial products
- Cannot suggest any official endorsement or preferential treatment of any non-Federal Entity



Ethics Takeaway

- WHEN IN DOUBT, ASK YOUR JAG FIRST



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Questions?