

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.

Search and Seizure

The United States Constitution protects every citizen from unreasonable searches and seizures; however, the right to privacy is not absolute. Courts have balanced individuals' rights against society's needs and have established rules for determining when a search is reasonable. The evidence obtained from unreasonable searches may not be used in a trial. This discourages indiscriminate invasion of privacy by government officials. **Under military law, you may authorize searches if you determine such searches will not violate soldiers' rights. However, a court-martial may well review your decisions.**

Prompt Action

The Sixth Amendment to the Constitution and UCMJ, Article 10, guarantee the right to a speedy trial. The accused soldier has the right to be advised of the charges against him as early as possible. Normally, the accused must come to trial within 120 days of either arrest or preferral of charges, whichever is earlier. An accused may not remain in continuous pretrial confinement more than 90 days for the same or related charges. (See MCM, Chapter VII, Rule for Courts-Martial 707, Analysis.) A speedy trial assists both the government and the accused. Testimony given soon after an incident is more reliable than that given after a long period. Also, witnesses are likely to leave the area during a delay.

