



Military Legal Assistance

CDR Andrew House, JAGC, USN
Deputy Judge Advocate General
for Legal Assistance



Military Legal Assistance

- The Military services provide "legal assistance" (LA) support for servicemembers, their dependents, and other eligible beneficiaries in the course of executing their legal services mission for the Department of Defense
- This support typically entails individual aid in various civil law matters, including: estate planning, consumer law, family law, military rights & benefits, SCRA protection, and deployment-related services
- Provision of LA services advances individual Servicemember Readiness and thus larger Mission Readiness
- These services are provided free of charge by Military Judge Advocates, Enlisted personnel, and Civilian Attorneys and personnel stationed all around the globe



Navy Legal Assistance – Clients

- Active Duty
- Active Duty Dependents
- Reservists on 30+ Day Orders or preparing for Mobilization/Deployment
- Military Retirees & their Dependents
- DoD Civilians (under certain conditions)

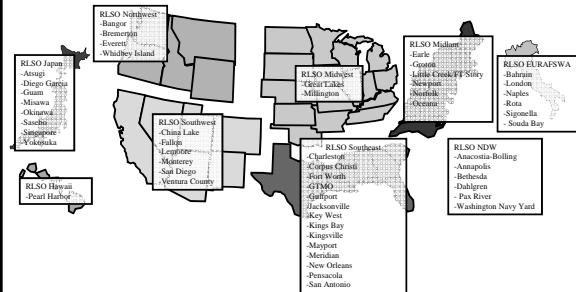


Navy Legal Assistance – Numbers

- Total Legal Assistance Services Provided:
 - 2011: 47,047
 - 2010: 55,220
 - 2009: 58,410
 - 2008 : 51,144



Navy Legal Assistance Providers "Region Legal Service Offices (RLSOs)"





Transitional Compensation

- Assists Domestic Violence victims with transitioning from the military following report of the offense
- Eligibility:
 - When Sponsor is court-martialed or administratively separated for family member abuse
 - Payments for 12 – 36 months to families
 - Full Medical, Commissary & Exchange benefits for 1-3 years
 - Cannot live with or remarry sponsor
 - Benefits terminate if remarry
- DFAS sends recipient a Certificate of Eligibility each year
 - Payments suspended without timely response
- DD Form 2698 *Application For Transitional Compensation*
- **MUST** certify court-martial/separation is related to dependent abuse!



Retirement Benefits

- Domestic Violence victims who report offenses may be protected from losing accumulated Retirement Benefits
- Process:
 - When Sponsor loses vested retirement (20 year minimum) via a court-martial sentence related to family member abuse
 - And Spouse was married to Sponsor for at least 10 years of his/her 20(+) years of service
 - Divorce court may award Spouse a portion of Sponsor's accumulated Retirement Pay
- May also include Medical, Commissary, and Exchange benefits related to Retirement
- Terminates on re-marriage
- Apply via DFAS



Restitution

- "It is the purpose of [restitution law] to encourage the compensation of victims by the person most responsible for the loss incurred by the victim, the offender."
- Rule for Courts-Martial (RCM) 705 (c)(2)(C) makes it a permissible term of a Pre-Trial Agreement (PTA) to pay restitution; such that a failure to do so will allow the Convening Authority to vacate the PTA
- Article 139 Claims, UCMJ



Additional Sources of Potential Support

- Travel and Transportation of Dependents
- Article 58b, UCMJ
- Article 57a, UCMJ



Military Protective Orders (MPOs)

- Similar to Civilian Restraining Orders
- Have the effect of a "Lawful Order" and can result in independent disciplinary action if violated
- Executed by the relevant Commanding Officer and can be closely tailored to meet protective objectives



Questions?



Military Justice Overview

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Purpose and Overview

- A familiarization brief to describe:
- Fundamentals and Terms of Art
 - Key processes and personnel in military criminal cases
- Quasi-Judicial Role of Convening Authority (CA)
- Appellate Review
- Questions



Fundamentals and Terms of Art

- Convening Authority (CA) – officer in command with dispositional authority over violations of the UCMJ
 - Flag and general officers are usually general court-martial (felony-level) convening authorities
 - O-5 and O-6 Commanding Officers are usually designated as special court-martial (misdemeanor level) convening authorities
- Staff Judge Advocate (SJA) – Navy or Marine Corps judge advocate serving as legal advisor to the Convening Authority
- Trial Counsel – Military prosecutor



Defense

- Accused
 - Term used for "defendant" in the military when referring to a military service member accused of committing a criminal offense
 - Every service member charged with a crime that will be prosecuted in a Special or General Court-Martial is assigned an attorney at no expense to the service member - called "Detailed" defense counsel.
- Each accused is entitled to:
- Individual Military Counsel (IMC) – A military attorney of the accused's choosing and only at the request of the accused (if available) and/or;
 - Independent Civilian Counsel (ICC) – if privately retained by accused
 - Appellate Defense Counsel – Assigned in every case being reviewed by an appellate court



Court Personnel

- Military trial judge – assigned to Navy-Marine Corps Trial Judiciary under the Navy JAG and Chief Judge, Department of Navy
 - Presides over any General or Special Court-Martial
- Members – the military jury in a court-martial
 - Selection of Members to serve as "jurors":
 - "Members shall be persons who, in the opinion of the Convening Authority, are the best qualified by reason of their age, education, training, experience, length of service, and judicial temperament." (Art 25, UCMJ)

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The Investigative Process

- Naval Criminal Investigative Service (NCIS) – Primary Investigative agency for Navy and Marine Corps
- Certain offenses **must** be referred to NCIS for investigation:
 - Sexual assaults and major criminal offenses;
 - Controlled Substance offenses;
 - Suspected fraud against the government within the Department of the Navy (DON) such as theft of government property, or bribery;
 - Actual or suspected acts of espionage, terrorism, sabotage, compromise of classified information;
 - National security cases involving DON personnel;
 - Ordnance/Arson offenses;
 - Deaths

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The Rules

- Manual for Courts-Martial (MCM)
 - Uniform Code of Military Justice (UCMJ)
 - Cornerstone of good order and discipline
 - Places disciplinary authority in line commanders to maintain good order and discipline, also to consider rights of victims
 - Punitive Articles - Equivalent to criminal code, describes offenses, elements, defenses, and maximum punishments
 - Rules for Courts-Martial (RCM) – Promulgated by the President and serves as an equivalent to the Federal Rules of Criminal Procedure
 - Military Rules of Evidence (MRE) – Substantially the same as the Federal Rules of Evidence, also promulgated by Executive Order

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Charging Process

- "Preferral" (swearing) of charges by one with knowledge of the offense
 - Typically legal support staff personnel familiar w/ investigation
 - Charge sheet format provided in Manual for Courts-Martial
 - Includes "Charges" – the article of the UCMJ violated; and
 - "Specifications" – the "counts" of each charge including specific facts
- "Referral" – Convening Authority sends or refers charges to a court-martial he/she has convened by endorsement on the charge sheet
 - "Forum" refers to the level of court-martial designated
 - Summary court-martial (minor misconduct)
 - Special court-martial (misdemeanor)
 - General court-martial (felony)
- No "standing" courts as in civilian system

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Non-Judicial Punishment

- ARTICLE 15, UCMJ
- Dispose of the least serious of offenses
 - Either by type of offense or circumstances
- **Factors**
 - Nature of offense
 - Offender's rank, background and military service
 - Maximum sentence at court-martial
 - MINOR OFFENSES
 - Imposed by Commanding Officer
 - Not a "conviction"
 - Administrative Discharge may or may not follow
 - Accused not represented by an attorney

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Non-Judicial Punishment

- Standard of Proof
 - Preponderance of the evidence
 - Rules of evidence do not apply
- Right to refuse
- Maximum Punishment:
 - 60 days restriction
 - Forfeiture of ½ month's pay for 2 months
 - Reduction in rank (enlisted only)
 - Authorized punishments vary by rank of commanding officer imposing punishment and rank of service-member receiving NJP
 - May appeal NJP

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Summary Court-Martial

- Convening Authority appoints one officer as the Summary Court-Martial Officer who acts as the Military Judge, Trial Counsel, Defense Counsel all rolled into one.
 - Accused usually not represented by an attorney
 - Not a "conviction" unless represented by an attorney
 - Standard of Proof – Beyond a Reasonable Doubt
 - Can only try enlisted service-members at Summary Court-Martial
 - Trial by Summary Court-Martial may be refused
 - Rules of Evidence apply

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Summary Court-Martial Punishment

- Maximum punishment depends on rank of accused
 - 30 days confinement
 - 60 days restriction
 - Reduction in rank
 - Forfeiture of 2/3 pay per month for up to two months
- A punitive discharge is not permitted
- May be appealed to OJAG - Article 69, UCMJ

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Special Courts-Martial

- Commanding Officers may convene.
- Full criminal trial for officer and enlisted.
- Consists of a Military Judge, at least 3 Members, Trial Counsel and Defense Counsel
- Military Rules of Evidence apply
- Standard of Proof – Beyond a Reasonable Doubt
- Convening Authority takes action on findings & sentence

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Special Courts-Martial Punishment

➤ Maximum Sentence

- Confinement for 12 months
- Forfeiture of 2/3 pay per month for 12 months
- Reduction to E-1
- Bad Conduct Discharge
- Automatic Appeal or Review

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General Courts-Martial

- Only flag/general officers may convene a GCM.
- Article 32 investigation required prior to referral to GCM.
- General Courts-Martial involve a military judge, at least 5 members, TC, and DC
- Standard of Proof – Beyond a reasonable doubt
- General Courts-Martial have authority to issue maximum punishment listed for any UCMJ offense.
- GCMCA takes action on findings and sentence

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Article 32 Investigation

- Required before referral of charges to a General Court-Martial
 - Article 32, UCMJ, Investigation – pre-trial hearing to determine whether there is probable cause
 - Government and Accused both represented by counsel
 - Adversarial proceeding – differs from civilian grand jury presentment
 - Article 32 Investigation Officer (IO)
 - must be field grade officer (O-4 or above) or judge advocate (JA)
 - IO sends findings/recommendation to convening authority
 - Convening Authority must receive advice from Staff Judge Advocate

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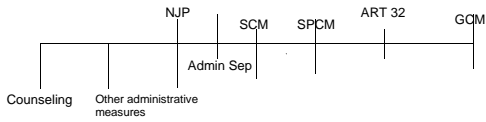
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Good Order and Discipline A Continuum of Options

- Some minor misconduct cases are adequately addressed with admin measures – but some cases belong in court – forum discretion is the CA's
- Allegations of offenses should be disposed of in a timely manner at the lowest appropriate level of disposition listed in . . . this rule [no action, administrative, action, nonjudicial punishment, etc.]” R.C.M. 306(b)





Guilty Pleas and Pre-trial Agreements

- "Providence" Inquiry in guilty pleas:
 - Detailed inquiry by the Military Judge
- Convening Authority is quasi-judicial officer with ability to reduce severity of sentences
 - Sentencing options can be tailored to accused, victims, families and other circumstances
- Advantages of common PTA terms similar to those in private sector
 - Expedites trial date
 - Secures guilty finding
 - Reduces need for testimony by victim/witnesses
 - Promotes expeditious administration of justice
 - Expedites review



Sentencing

- Sentencing is a separate adversarial hearing
- Principals of Sentencing
 - Protection of society from the wrongdoer
 - Punishment of the wrongdoer
 - Rehabilitation of the wrongdoer
 - Preservation of good order and discipline in the military
 - Deterrence of the wrongdoer (specific deterrence) and those who know of his crime and his sentence (general deterrence)
 - Convening Authority may approve, disapprove, modify, suspend both findings and sentence
 - May grant clemency to accused



Post-Trial Review

APPELLATE REVIEW

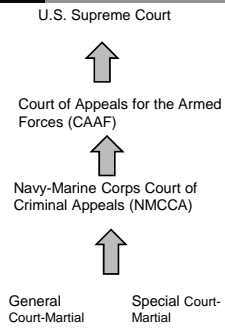
- Navy-Marine Corps Court of Criminal Appeals
- Mandatory review of all cases in which sentence includes
 - Death
 - Punitive discharge (Bad Conduct Discharge, Dishonorable Discharge, Dismissal – for officers); or
 - Confinement of 1 year or more

LEGAL REVIEW

- Office of the Judge Advocate General
 - Reviews cases for legal sufficiency or alleged errors that do not receive appellate review



Appellate Review After NMCCA





Questions?
