

Military Justice

Overview

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Military Justice

Military law (military justice) is the branch of the law that regulates a government's military establishment. It is entirely penal or disciplinary in nature and, in the United States, includes and is analogous to civilian criminal law. Its sources are many and varied, some considerably antedating the United States and its Constitution. However, since it is through the Constitution that our Public Law began to exist, the Constitution can properly be considered the primary source of the law governing our military establishments. Along with the Constitution, there are other sources, both written and unwritten, that govern the military as well: International law contributed the law of war and numerous treaties affecting the military establishment; Congress contributed the Uniform Code of Military Justice (UCMJ) and other statutes; Executive orders, including the Manual for Courts-Martial (MCM), service regulations; usages and customs of the Armed Forces and of war; and, finally, the court system has contributed its day-to-day decisions to clarify the gray areas.

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Military law is made up of:

- The US Constitution.
- Powers Granted to Congress.
- Authority Vested in the President.
- The Fifth Amendment.
- International Law.

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The US Constitution.

The constitutional source of military law stems from two provisions: those vesting certain powers in the legislative branch and those granting certain authority to the executive branch. In addition, the fifth amendment recognizes that offenses in the Armed Forces will be dealt with in accordance with military law.

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Powers Granted to Congress.

Under Section 8 of Article I, US Constitution, Congress is empowered to:

- define and punish offenses against the law of nations
- declare war, grant letters of marque and reprisal, and make rules concerning captures on land and water
- raise and support armies
- provide and maintain a navy
- make rules for the government and regulation of the
- land and naval forces
- provide for calling forth the militia
- provide for organizing, arming, and disciplining the militia and for governing such part of them as may be employed in the service of the United States; and
- in general, make all laws which shall be necessary and proper for carrying into execution the foregoing powers and all other powers vested by the Constitution in the government of the United States or in any department or officer thereof.

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Authority Vested in the President.

Under the Constitution, the President serves as Commander in Chief of the Armed Forces of the United States, and, when called to Federal service, the President also serves as Commander in Chief of various state militias. The Constitution also empowers the President, with concurrence of the Senate, to appoint the officers of the services. The President commissions all officers and has the duty to see that the laws of this country are faithfully served.

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The Fifth Amendment.

In the fifth amendment, the framers of the Constitution recognized that cases arising in the military services would be handled differently from cases arising in civilian life. The fifth amendment provides, in part, that "no person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger."

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International Law.

The law of armed conflict is the branch of international law that prescribes the rights and obligations of combatants, noncombatants, belligerents, and prisoners. It consists of those principles and usages that, in time of war, define the status and relations not only of enemies, but also of persons subject to military control.

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This briefing will focus on the following areas.

- General background of the United States Military Justice System
- Counseling, Reprimands, and Extra Training.
- Administrative Discharges.
- Article 15.
- Court Martials.
- Article 138 Complaints.
- Punitive Articles
- Articles 36, 92, 90, and 91

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Introduction and Background

When one joins the United States Military, one becomes subject to a completely new justice system. While the primary purpose of the United States justice system is to dispense "justice," that is not the primary reason for the creation of a separation justice system for America's Armed Forces. The primary purpose of the Military's system is to provide the military commander with necessary tools to enforce good order and discipline. That's why, for example, it's not considered a "crime" to be late for work at your civilian job, but it is a "crime" to be late for work in the Military (violation of Article 86 of the Uniform Code of Military Justice, or UCMJ). The military commander has several methods available to enforce good order and discipline within the unit, ranging from mild administrative measures such as formal or informal counseling, to full-blown General Court Martials, in which a person can be sentenced to hard labor, or even executed.

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Counseling, Reprimands, and Extra Training.

Counseling can be formal or informal. It can also be verbal or it can be in writing. It can be positive (pat on the back) or it can be corrective.

A reprimand or an admonition is a "chewing out." They can be verbal, or they can be written. Written reprimands and admonitions can provide a "track record," which could later be used to justify punishment under Article 15, or administrative demotions & discharges.

Extra Training is not the same as "extra duties" imposed under Article 15. Extra duties are "punishment," extra training is not. In order to be legal, "extra training" must logically relate to the deficiency to be corrected.

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Administrative Discharges.

Administrative discharges are authorized for a variety of reasons. The characterization for an administrative discharge can be Honorable, General (Under Honorable Conditions), and Other Than Honorable.

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Article 15.

Also known as "nonjudicial punishment," or "Mast" (In the Navy/Coast Guard, and Marines). This is sort of a "mini-court martial" with the commander acting as judge and jury. It's used for relatively minor (misdemeanor) crimes under the UCMJ. The punishment authorized is limited by the rank of the commander and the rank of the accused. In most cases, a person can refuse Article 15 punishment, and demand a trial by court martial instead.

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Court Martials.

There are three types of court martials: Summary, Special, and General. A conviction by a Special or General Court may be a "felony conviction." Court Martials can award fines, reductions, "punitive discharges," and prison time (at hard labor). General Court Martials can even impose the death sentence for certain offenses.

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Article 138 Complaints.

The UCMJ provides a method for military members to file a complaint if they are "wronged" by their commanding officer. This is one of the most powerful, yet under-used tools in the military justice system, for members to assert their rights.

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Sub Chapter X of the UCMJ contains Punitive Article 77, Principals, through Article 134, General Article.

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Article 36, UCMJ, specifically authorizes the President to prescribe the procedures (including rules of evidence) to be followed before the various military tribunals. Pursuant to these executive powers, the President has established the MCM to implement the UCMJ. The President and Congress have authorized the Service secretaries and military commanders to implement various provisions of the UCMJ and the MCM and to promulgate orders and regulations. Our courts have consistently held that military regulations have the force and effect of the law if they are consistent with the Constitution or statutes. Regulations and orders issued at lower levels of command are enforceable by Article 92, UCMJ, which prescribes violations of general orders and regulations, and Articles 90, and 91, UCMJ, which prohibit disobedience of the commands of superiors.

Training and Doctrine Command

Deputy Chief of Staff, Operations, and Training



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