

DEPARTMENT OF THE ARMY

United States Army Trial Defense Service

FORT JACKSON FIELD OFFICE

1. YOUR RIGHTS AS A SUSPECT.

a. This information paper describes your rights if you are suspected of committing a criminal offense. You should become familiar with the guidance below so you know what to expect if you are targeted as a suspect, and know how to act. You will know you are a suspect if you are apprehended by military police, CID agents, or called into the police office and advised of your rights. You may also think that you are a suspect from rumors from other soldiers or because you have been involved directly or indirectly in an incident that is being investigated by the police or your unit.

b. This information paper contains the opinions of its author and is not intended to reflect any official policy of the U.S. Army Trial Defense Service. The information below is designed to prepare you for an effective interview with your defense counsel and is not a substitute for the personal legal advice of an attorney. **If you are suspected of an offense you should seek advice immediately.**

2. BASIC RULE: KEEP YOUR MOUTH SHUT. As a suspect you cannot in any way improve your position by discussing the matter under investigation with anyone other than your defense attorney. Never agree to talk with civilian or military police or your chain of command about the offense you are suspected of until you talk to a lawyer and can have your attorney present during the interview.

3. A SUMMARY OF YOUR RIGHTS. Before you can use your rights you have to know what they are and why you have them.

a. RIGHT TO REMAIN SILENT AND SEARCHES. You have the absolute right to remain silent. You should cooperate with the police by giving them the basic identification information about yourself. You should tell them your name, unit, and show your ID card. The police may want to record your fingerprints, take hair samples, take your picture, etc. You should cooperate with the police for such matters. You do not have the right to refuse, nor do you have the right to have an attorney present. You should make careful note of everything the police do and how they do it because you will be asked about this later by your attorney. The police may only search you (this includes taking a blood sample) and your belongings if you have been arrested or if they have received a search authorization. If the police want you to give writing samples or ask you to

say certain words or phrases so that your voice can be recorded, ask to have an attorney present. If your request is denied, comply with any specific orders given to you by the police such as directions to unlock a car, locker, etc. Allowing police to make illegal searches does not give up your right to object to what they find later on and will avoid physical confrontations.

b. **RIGHT TO COUNSEL.** The Constitution guarantees you the right not to be questioned by the police or your chain of command without an attorney. This right ensures that you do not become the prosecutor's key witness at your own court-martial, unless you really want to after speaking to your attorney. You are entitled to be assisted by a military defense counsel at no cost to you or you may hire a civilian attorney. Your military attorney is not assigned to any local command and is not subject to command influence. Anything you say to your attorney will not be revealed to anyone without your consent. If a request for an attorney is denied, do not talk about the case to anyone. You are entitled to the services of a military defense counsel at no cost to you if you are suspected of an offense. You do not have to wait until charges are read to you to consult with an attorney.

c. **LINEUPS.** You have the right to have an attorney present if you are to be placed in an identification lineup. This right to an attorney develops if you participate in a lineup if the charges have been read to you or after you have been placed under pretrial restraint of any sort (for example: confinement, restriction, orders not to go to a certain place, or talk to certain people). A lineup is a critical stage in an investigation and if the police are not monitored by an attorney you may be identified as the offender. An improperly conducted lineup may focus the attention of the witness on you. For example, others in the lineup may be dressed differently, have glasses, moustaches, etc. Request an attorney if you are a suspect and are told there will be a lineup. If your request is denied after you have made your request clear, do as you are told.

4. **WHAT TO EXPECT.** Though you have the right to remain silent, the police may still encourage you to talk to them about the case. There are some legal tactics that the police may use to get you to give up your right to remain silent and to have an attorney present. Whether the police use improper tactics, proper tactics, or no tactics at all will depend on the investigator and the pressure he feels to solve the case. Remember whatever you are told by the investigators is not going to be recorded, and you can expect the investigator's version of what was said to you to be very different from your version at trial. Unfortunately, the police version of what was done to get you to talk, and how it was done, will probably be the version the judge accepts as being true.

5. LEGAL TACTICS. Police investigators can lie to you about evidence they say they have in order to get you to talk to them and to get you to confess. Military courts have said the following:

An investigator's use of trickery or some other forms of deception is permissible as long as the trickery is not likely to produce an untrue confession.

Police investigators can lie to you about finding your fingerprints on some object at the scene of the crime. They can try to trick you into admitting involvement in an incident by telling you that several eyewitnesses saw you, that they have you on video tape, or that your license plate number was recorded. They can tell you that several people overheard you make incriminating statements already, when it is not true. You can also expect police agents to remind you of your conscience and religious beliefs and tell you that if you don't tell the truth, they will put you on a lie detector and use the results against you; this is untrue, but it is legal. Often, the evidence the police have is weak, and there may not be enough evidence to charge you unless you admit to doing something. As long as the police tactics are not so outrageous that they overbear your ability to voluntarily give up your rights, they may be used. You may be certain that if the courts gave police a license to lie to you, this license will often be used to the maximum. Without assistance from counsel, you will not know how much of what the police tell you is true or false and you will not know if what you may say is incriminating.

6. ILLEGAL TACTICS. Police may not force, use threats of force, or use threats of prosecution to get you to talk to them. Police cannot promise that if you talk you will not be prosecuted or that you will only get an Article 15. Although you may be told that it is urgent to cooperate right now, nothing will happen to you by taking the time to get your attorney present. No promise for favorable treatment can be kept. Police simply do not have this authority. You may be told that the investigator will recommend leniency if you cooperate, and this may be true, but the offer will still stand and be better enforced if your attorney is there. If an offense is being investigated at the unit level, the unit commander or first sergeant may promise certain action if you talk or refuse to talk. Again, although you do not have as much to lose as with talking to the police, you should still be cautious. Remember, police are not just curious about a case. They want to solve it and they want to solve it with minimum effort. If you cooperate, you can save them a lot of time and effort and provide the prosecution with the best evidence possible. Often negotiating occurs between prosecutors and defense attorneys about cases. If you have already confessed, you may not have any bargaining chips left to offer. Still, many soldiers waive their rights and talk without their attorney present and they will usually come to regret it. In fact, some soldiers end up confessing to offenses the police have no evidence to prove and additional charges are sometimes added.

7. OTHER CONSIDERATIONS.

- a. If you talk without an attorney present, the information you provide may not be accurately recorded. Everything you say and everything the police

think you said will be recorded. But you will not be told what goes into the report. You will be asked to make a written sworn statement. These statements are typed by the investigator as he talks to you. The investigator is trying to solve a case and what ends up on the paper may be much more damaging to you than you can imagine. The police know what the true facts are and they know what they must prove to nail you. Unless an attorney is present, you may ignorantly sign a statement under oath that contains information that is not accurate. It is very difficult to challenge statements later. If you try to change the statement you may be accused of false swearing or lying.

b. The reason the Constitution gives you the right to have an attorney present during questioning is fundamental to our free society. The police enforce criminal law to give citizens additional incentive to obey the law. Likewise, there are many laws and regulations which give police investigators certain authority as well as place limits on that authority. Your defense attorney is the only person who can effectively enforce your rights and keep the police within their legal bounds.

8. WHEN YOU EXERCISE YOUR RIGHTS.

a. When you tell the police that you do not want to talk to them without an attorney, all questioning must stop. If questioning does not stop, you will know that the police are out of line and you should continue to firmly ask to see a lawyer. If a military defense attorney cannot be reached, continue to ask for someone from your unit to be contacted. Be persistent but never become belligerent or combative. Be sure and make an appointment to see an attorney as soon as possible.

b. If a military defense attorney is available, you will be sent to his office or he will come to the police station. Your attorney will be permitted to talk to you in confidence and you should tell him what you know about the incident under investigation. Be sure to give your attorney the names of witnesses who may be helpful. Your attorney will talk to the police and obtain accurate information about what they know and what they do not know.

c. If you and your attorney decide that it might be to your advantage to speak to the police, then your attorney will be with you during the interview. Your attorney will make sure you are interviewed fairly and without mental or physical coercion. Your attorney will read any written statement you make carefully to make sure it is accurate and does not contain incriminating information.

d. After you are sure you have been given accurate information about the case, you, with the assistance of your attorney, may wish to cooperate with the police. Without the assistance of your attorney, you are not in the position to decide whether you are innocent or guilty. Many soldiers make the mistake of thinking they are guilty and the only way to help themselves is to talk. Your attorney knows the law and what the police must prove in order for you to be found guilty. If you decide that you want to tell the police everything, you have the right to do so even if your attorney advises you not to. If you decide to confess, your attorney should be present to make sure the statement you give is accurate. This will avoid your confessing to a crime that is more serious than the offense you may have committed and it will prevent you from confessing to crimes that the police cannot prove.

e. Although the advice above is primarily intended to apply to police investigations, it also applies to unit investigations as well. Do not make a distinction between the two. Police usually do not get involved with a case unless it involves serious misconduct. Unit investigations usually deal with minor breaches of discipline. Consequently, it may not be important to always invoke your rights when questioned by your commander or first sergeant. For example, you may be late to formation and your first sergeant reads you your rights and wants to know why you were late. If you were late because you had a flat tire, then it is probably best to admit you were late so you can give him your reason for being late. Responding to this type of questioning so you can defend yourself may put an end to the matter on the spot. Be sure to use your judgment in cases involving minor disciplinary infractions, but for more serious incidents you should discuss the matter with an attorney.

9. AFTER THE INVESTIGATION.

a. After the investigation involving you has been completed, a copy of the final police report will be given to your unit commander and his prosecutor. Your commander will discuss the case with the prosecutor to decide what level of action is appropriate. This will depend on the seriousness of the offense, the facts and circumstances of the case, and the type of job you have done as a soldier. Your commander may decide to do nothing about the matter or he may give you a reprimand or take other administrative action against you. The commander may decide to offer you an Article 15 or refer the matter to a superior officer for field grade Article 15 punishment. If you are found guilty of the offense under Article 15 procedures, the punishment you receive is limited and you will not have a federal conviction.

b. If your commander feels that the case is too serious for Article 15 punishment, he may recommend trial by court-martial. The case will then

be referred to your battalion or higher level commander for action. Your case may be referred to one of four levels of court-martial.

c. A Summary Court-Martial (SCM) is the lowest level of court-martial. A line or staff officer is appointed by your battalion commander to investigate the charges and decide whether you are guilty. If you are found guilty, the summary court officer recommends a punishment to your battalion commander. Your battalion commander may approve all or part of the recommended punishment, but may not increase it. You do not have the right to be represented by a military attorney at a Summary Court-Martial and a finding of guilty is not a federal conviction. The maximum period of confinement at a Summary Court-Martial is 30 days.

d. You have the right to be represented by a military attorney at no cost to you at a Special or General Court-Martial. Conviction by either of these types of courts is a federal conviction. If your brigade level commander sends your case to a Special Court-Martial (SPCM), the maximum punishment you could receive is six months of confinement, reduction to E1, and forfeiture of two-thirds pay per month for six months.

e. If the general takes action on your case, he may refer the case to a Bad Conduct Discharge Special Court-Martial (BCD-SPCM), or a General Court-Martial (GCM). A BCD Special Court-Martial may adjudge the same sentence as a Special Court-Martial and give you a Bad Conduct Discharge. A General Court-Martial may adjudge any sentence up to the maximum authorized by law for each offense with which you were charged. This may include a Dishonorable Discharge or a Bad Conduct Discharge, confinement, forfeiture of all pay and allowances, and reduction to E1. Before a case is sent to a General Court-Martial, an investigating officer will be appointed to examine all the charges to determine whether the charges are supported by the evidence. You have the opportunity to be present during this Article 32 Investigation and have your attorney question witnesses against you.

10. DO'S AND DON'TS. Below is an outline of guidelines that you must keep in mind if you are a suspect.

a. If, for some reason, you decide to waive your rights and talk to the police, never lie to them. If you talk and do not tell the truth, then you can expect to be charged with false swearing or false official statement. You don't need this.

b. Do not get into trouble while you are under investigation. Don't add fuel to the fire and give your commander a reason to place you on restriction or into pre-trial confinement pending trial. If you are on restriction, comply strictly with the terms of your restriction. Engaging in

misconduct while you are suspected or charged with offenses is devastating to your case. You must not do anything illegal or anything that even "appears" illegal. Choose your friends carefully. Example: If you are suspected or are charged with buying hashish downtown in a bar, do not continue to frequent that establishment, hang around with others that continue to frequent that establishment, or hang around with others suspected of using or buying hashish.

c. Do not talk to anyone about the case under investigation. "Anybody" includes "everybody": CID agents, MPI, MP's, social workers, psychiatrists, your commander, your first sergeant, platoon leader, platoon sergeant, squad leader, section chief, co-workers, friends, roommates, drinking buddies, girl or boyfriends, even spouses. All these people are potential witnesses against you.

(1) Statements include all kinds of statements: written, oral, signed, unsigned, sworn, unsworn, verbal and physical. (Nodding your head in response to a question is a physical statement.)

(2) Statements related to the offenses include: admissions of guilt, partial admissions of guilt, denials of guilt, and comments about circumstances surrounding the offense. It also includes statements that could be used to establish a motive or intent for the offense. Example: Soldier X is charged with stealing money. Soldier X then goes around making statements complaining about his debt problems. These statements could be admitted into evidence later against soldier X at his court-martial to establish his motive for stealing money.

(3) Don't put your roommate, girlfriend / boyfriend, or friends in the position of having to lie in court to protect you. If you do talk to these people, don't tell them anything incriminating and don't lie to them. If they ask you what is going on, just tell them your attorney advised you not to discuss the case with anyone. Following this advice is the best way to improve your bargaining position with your case.

d. Your duty performance from now on should be outstanding.

(1) Because of the allegations or charges against you, you are in effect under a microscope. Attention has been drawn to you and your chain of command will be paying closer attention to you. If you develop a bad attitude, become

disrespectful, display poor duty performance, or neglect your military appearance and bearing, you risk losing the support of your chain of command. In addition, you may also risk pre-trial confinement, restriction, and additional charges.

(2) Prepare a list of names of people who know something about the incident under investigation. Also make a list of people who can testify as to your character and good duty performance. Give this to your attorney, and provide your attorney with specific and accurate details of what you know. Do any tasks your attorney gives you to assist in defending your case.

e. Do not talk to victims of an offense or other persons who may be government witnesses. It is a separate and serious offense to threaten, or make promises or bribes to witnesses. Let your attorney do the talking to all government witnesses.

f. Don't ever lie to your attorney, or anyone else about your case. If you do, it will come back to haunt you later. Keep your attorney informed of any developments in your case.

g. If anyone tries to question you about these offenses, tell them you wish to remain silent, you have a lawyer or wish to consult with one, you would like to have your lawyer present, and to call the local Trial Defense Service Office if they have any questions.

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