

## **INDEX OF MILITARY JUSTICE TERMS**

### **Accused**

A person who is charged with an offense under the UCMJ (civilian equivalent: defendant).

### **Accuser**

Any person who signs and swears to charges; any person who directs that charges be signed and sworn to by another.

### **Admission**

A self-incriminatory statement falling short of a complete acknowledgment of guilt.

### **Appellate Review**

After review of the record of trial by a judge advocate and action by the Convening Authority (to approve or reduce the findings and sentence of a court-martial), military accused are afforded automatic appellate review of their case by the Navy-Marine Corps Court of Criminal Appeals (NMCCA) if the sentence approved by the Convening Authority includes a punitive discharge or confinement for a year or more. Decisions of the NMCCA can be challenged before the Court of Appeals for the Armed Forces (CAAF), if that court grants review. Likewise, decisions of the CAAF may be reviewed by the US Supreme Court upon grant of a writ of certiorari.

### **Apprehension**

The taking of a person into custody.

### **Arraignment**

The formal, in-court reading of charge(s) and specification(s) to the accused (unless the accused waives the reading), coupled with the request that the accused enter pleas (guilty or not guilty).

The accused may reserve pleas.

### **Arrest**

Moral restraint imposed on a person by oral or written orders of competent authority limiting the person's personal liberty pending disposition of charges.

### **Arrest In Quarters**

Moral restraint limiting an officer's liberty, imposed as a nonjudicial punishment by a flag or general officer in command.

### **Article 15**

The UCMJ article providing a procedure for investigating and punishing minor misconduct by military members. The commander hears evidence from both sides and decides whether and how much punishment to impose. That decision can be appealed to the next level of command. The member is allowed access to military counsel to assist in responding to the charge.

### **Article 39a Session**

A session of a court-martial without the members (jurors) of the court present. Article 39a sessions are called by the military judge: (1) in cases in which the accused has elected to be tried by military judge alone; (2) before the members are seated; or (3) during trial with members to dispose of matters appropriately addressed outside the hearing of the members.

**Bad Conduct Discharge**

One of two types of punitive discharges that may be imposed on an enlisted person. Less severe than a Dishonorable Discharge. May be imposed on an enlisted member in a Special or General Court-Martial.

**Military Judge Alone Trial**

A trial in which the military judge alone hears the evidence, determines guilt and imposes a sentence. An accused may elect trial by military judge alone rather than by a court composed of members.

**Capital Offense**

An offense for which the maximum punishment includes the death penalty. In the military, these offenses include: desertion in time of war; assaulting, willfully disobeying superior commissioned officer in time of war; mutiny and sedition; misbehavior before the enemy; subordinate compelling surrender; improper use of a countersign; forcing safeguard; aiding the enemy; spying; espionage (for certain listed subsections); willfully or wrongfully hazarding a vessel; misbehavior as a sentinel (in wartime); murder (premeditated or while committing other serious offense); and rape.

**Challenge**

Formal objection to a member of the court or the military judge being allowed to continue to sit on a court-martial. There are two types, for cause and peremptory. Challenges for cause are based on a fact or circumstance (such as conflict of interest) which has the effect of disqualifying the person challenged. A peremptory challenge is where each side is allowed to challenge one member (but not the military judge) and is not required to give any reason at all.

**Charge**

A formal statement identifying the Article of the UCMJ which an accused is alleged to have violated.

**Specification**

A description in writing of the offense which an accused is alleged to have committed. Each specification, together with the charge under which it is alleged, constitutes a separate accusation.

**Clemency**

Discretionary action by person authorized to reduce the severity of sentence. The CA, for example, may grant clemency by reducing the amount of confinement imposed by a court-martial.

**Command**

The authority that a commander in military service lawfully exercises over his subordinates by virtue of being placed in command by a superior officer. This status is distinct from rank or position. It is the legal basis for imposition of nonjudicial punishment.

**Convening Authority**

An officer who has authority to convene a court-martial. A Convening Authority (CA) is the commanding officer empowered by the UCMJ to review evidence and refer charges to a court he

or she (or a predecessor in command) has convened if the CA believes trial by court-martial is warranted. Upon receipt of preferred charges, the CA may refer the charges for trial by Summary, Special or General Court-Martial (if a GCMCA) or make other appropriate recommendations. The CA also assigns court members (jurors) based on their age, education, training, experience, length of service and judicial temperament. If an enlisted service member requests enlisted members on the panel, at least one-third of the members will be enlisted personnel.

### **Convening Order**

The document by which a court-martial is created. It specifies the type of court, the names of the members, the authority by which the court-martial is created, and may designate where the court will meet.

### **Court-Martial**

A military proceeding composed of one or more members of the armed forces (the number depending on the type of court), the functions of which are to decide whether a person subject to military law has committed a violation of the Uniform Code of Military Justice and, if it finds him guilty, to adjudge punishment for the offense.

### **Court of Appeals for the Armed Forces (CAAF)**

A civilian appellate court composed of five judges appointed by the President and confirmed by the Senate, each holding a 15-year term. This court hears appeals from cases decided by the Service courts of criminal appeal. CAAF's decisions can be appealed to the Supreme Court of the United States.

### **Court of Criminal Appeals**

A military appellate court (established by the Judge Advocate General) composed of not less than three officers (civilians may also be appointed) which reviews records of certain courts-martial. Each service has its own court. For the sea services, this is the Navy-Marine Corps Court of Criminal Appeals.

### **Dereliction of Duty**

Willfully or negligently failing to perform assigned duties or performing them in a culpably inefficient manner.

### **Dishonorable Discharge**

The most severe punitive discharge that may be awarded to an enlisted member. It is reserved for those who should be separated under conditions of dishonor, after having been convicted of offenses requiring severe punishment.

### **Dismissal**

The punitive discharge imposed on officers and warrant officers. Like the dishonorable discharge, it is reserved for individuals who should be separated under conditions of dishonor.

### **Disrespect**

Acts or language that detracts from the respect due the authority and person of a superior commissioned officer.

**Defense Counsel**

An attorney who represents a military member in a court-martial.

**Elements**

The essential ingredients of an offense which are to be proven at the trial; the acts or omissions which form the basis of any particular offense.

**Judge Advocate**

A commissioned officer and military attorney who is admitted to the bar of the highest court of any State or federal court and has been designated as a judge advocate by the Judge Advocate General.

**Legal Officer**

Any commissioned officer of the U.S. Navy, Marine Corps or Coast Guard designated to perform legal duties of a command. Not an officer certified by the Judge Advocate General as a Judge Advocate. Not a military attorney.

**Manual for Courts-Martial**

Often referred to as the "MCM," this compilation includes the Rules for Courts-Martial, the Military Rules of Evidence, the punitive articles as well as the Uniform Code of Military Justice.

**Matter in Aggravation**

Evidence as to any aggravating circumstances directly relating to or resulting from the offenses of which an accused has been found guilty.

**Matter in Extenuation**

Any circumstance serving to explain the commission of the offense; including the reasons for committing the offense that do not constitute a legal justification or excuse.

**Matter in Mitigation**

Any circumstance which is introduced for the purpose of lessening punishment awarded by a court-martial or at NJP.

**Military Judge**

The commissioned officer certified by the JAG who acts as the judge in courts-martial.

**Minor Offense**

Whether an offense is minor depends on its nature and circumstances, the offenders rank, age, record, duty, assignment and experience, and the maximum punishment imposable for the offense.

**Negligence**

The failure to exercise due care, i.e. that care that a reasonable person would demonstrate under the same or similar circumstances.

**Nonjudicial Punishment**

Punishment imposed under Article 15, UCMJ, for minor offenses. Often referred to as "NJP" or "Article 15." Authorized punishments for enlisted personnel include restriction, reduction in rank, forfeiture of pay and extra duties.

**Preferral of Charges**

The formal procedure for making an accusation against an accused. The accuser signs and swears to the charges and specifications.

**Pretrial Agreement**

An agreement between the accused and the CA, usually to limit the amount of punishment that can be imposed in a court-martial in return for a plea of guilty to some or all of the charges. Other conditions are sometimes agreed to by the accused and the CA. The agreement is often called a "PTA."

**Pretrial Investigation**

A formal investigation under Article 32, UCMJ, that is required before convening a General Court-Martial, unless it is waived by an accused. At an Article 32 hearing or investigation, the accused is present and represented by counsel and can offer evidence.

**Punitive Articles**

Articles 77 through 134 of the UCMJ (codified at 10 U.S.C. §877-934). These articles describe various crimes and state the maximum punishment for each.

**Referral of Charges**

The action of the CA in directing that a particular case be tried by a particular type of court-martial.

**Restriction in Lieu of Arrest**

Moral restraint, less severe than arrest, imposed upon a person by oral or written orders, limiting him to specified areas of a military command, with the further provision that he will participate in all military duties and activities of his organization while on restriction.

**Senior Member**

The senior-ranking member of a court-martial panel. This officer announces the findings and sentence of the members in a fashion similar to that of the foreman on a civilian jury. The President has no judicial authority in the court-martial and no member of a court-martial panel, including the President of the court, may use rank or position to influence deliberations.

**Set Aside**

Action by proper authority voiding all or part of the proceedings of a court-martial.

**Suspension**

Action by proper authority to withhold the execution of a punishment for a probationary period.

**Trial Counsel**

The judge advocate (military attorney) who serves as the prosecutor in a court-martial.

**Uniform Code of Military Justice**

Often referred to as the "UCMJ," this comprehensive statute (10 U.S.C.A. §801-946) forms the basis for military criminal law. It contains the requirements for jurisdiction, trial procedure, sentencing and NJP. It also contains punitive articles, which set forth acts that are crimes under

military law. This statute is implemented by Executive Order, in the form of the Manual for Courts-Martial.