

Prologue: Before the Gavel Falls

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Glossary of abbreviations

- UCMJ: Uniform Code of Military Justice
- MCM: Manual for Courts-Martial
- MJ: Military Judge
- TC: Trial Counsel (*i.e.* prosecuting attorney)
- DC: Defense Counsel
- ACC: Accused
- CA: Convening Authority
- PTA Pre-trial Agreement (*i.e.* plea bargain)

Types of disciplinary proceedings under the UCMJ

- Non-Judicial punishment (NJP)
 - Imposed by accused's CO
 - Limited punishment available
 - No right to counsel
- Right to refuse (with some exceptions)
- Summary court-martialc (SCM)
 - Presided over by one officer, not necessarily an attorney
 - Limited punishment available
 - No right to counsel
 - Right to refuse

Types of disciplinary proceedings under the UCMJ

- Special court-martial (SPCM)
 - Presided over by a MJ
 - Right to counsel
 - 4 or more court-members
 - Max confinement: 1 year
 - Bad Conduct Discharge
- General court-martial (GCM)
 - Presided over by a MJ
 - Right to counsel
 - 5 or more members
 - Max confinement is computed based on offenses
 - Dishonorable or Bad Conduct Discharge

Findings phase

Forum selection (accused's option)

- Contested case:
 - Members (“jury”) hear evidence and vote on guilt or innocence, or
 - Bench trial, if accused requests it
- Guilty plea:
 - MJ accepts G plea and decides sentence, or
 - MJ accepts G plea and instructs members, who decide sentence

When I say that the MJ “accepts the G plea”

- That is often the longest and most tedious part of the case, requiring the most careful preparation and alertness by all three of the JAG officers in the courtroom
- The MJ must prepare and conduct a thorough inquiry into the elements of the offense, the accused’s understanding of the rights that are waived by a guilty plea, and of the consequences of pleading guilty
- The DC must prepare the accused for the inquiry
- The TC must backstop the MJ to protect the record

After a finding of Guilty (based on either a G plea or findings at trial)

- The sentencing hearing is an adversarial proceeding, and usually follows immediately after announcement of guilty findings
- Both sides can introduce evidence supporting a heavier or lighter sentence
- The accused has the option of testifying as a witness, making an unsworn statement not subject to cross-examination, or remaining silent
- Each side presents argument to the court, which announces (MJ) or is instructed and retires to deliberate and vote (members) on the sentence

The role of the Convening Authority

- Ordinarily a CO or other commander in the chain of command over the accused
- The CA creates the court, refers charges to it, and exercises prosecutorial discretion
- After the trial, the CA does the first review of the case, and has plenary power to reduce the severity of findings and/or sentence
- This allowed for the introduction of plea bargaining into the military justice system in a manner that differs from civilian practice

Military Plea Bargaining

- An offer of a G plea must originate with the accused
- Negotiations proceed until there is an agreement
- The agreement sets an upper limit to the sentence that the CA will approve
- The MJ reviews the PTA as part of the guilty plea inquiry
- In a judge alone trial, the sentence limits are on a separate sheet, which the judge does not see until after announcing sentence.
- In a members for sentencing trial, the MJ reviews the entire PTA before accepting the G plea and seating members

PTA bottom line

- Members are told what the accused pled guilty to, but aren't told that there is a PTA
- In a bench trial, the MJ knows that there is a PTA, but not what the sentence limits are
- The PTA, unlike a civilian plea bargain, does not reflect the sentence to be imposed by the court, but the maximum that the CA will approve, and
- Because sentencing is an adversarial hearing, the defense has a chance to beat the deal.

Appellate review

- Each service has a Court of Criminal Appeals
 - USCAAF Court of Appeals for the Armed Forces: 5 civilian judges
 - SCOTUS
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- Note: the service CCAs have an independent right and duty to make their own decisions as to the appropriateness of sentence. Thus, they have the same clemency powers as a convening authority. CAAF and SCOTUS are limited to the traditional appellate court task of deciding appeals on issues of law.

Executive actions

- Article 74, UCMJ, A service secretary may remit or suspend any unexecuted part of a sentence, and may substitute an administrative discharge for a punitive discharge included in a court-martial sentence
- The President can issue a pardon covering a court-martial, just as with any other federal conviction

Any questions?