



DEPARTMENT OF THE ARMY

United States Trial Defense Service
Fort Rucker Field Office
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Suspect Rights

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 and how to act if you become a “suspect.” You should consider yourself a “suspect” if you are:

- a. Apprehended (arrested) by military or civilian law enforcement personnel (generically called the “police,” including your chain of command).
- b. You are called in to talk to and are advised of your rights by any military or civilian police, including your chain of command.
- c. You believe you are a “suspect” from rumors you have heard from other Soldiers or because you have been involved directly or indirectly in an incident that is being investigated by the police or your chain of command.

This information paper is designed to prepare you for an effective interview with your defense attorney, and is not a substitute for the personal legal advice of a defense attorney.

Your rights as a suspect:

You have the right to remain silent: As a suspect, you cannot improve your position by discussing the matter under investigation with anyone prior to talking to a defense attorney. You should never agree to talk with civilian or military police, or your chain of command about an offense you are suspected of until after you talk to a defense attorney. If you want to talk, you can always do so later, after talking with a defense attorney. Regardless of what they may tell you, remember that the police do not want to talk to you just “to get your side of things.” They suspect you of a criminal offense and they are there to get evidence against you.

Basic rule: keep your mouth shut!

The police may want to record your fingerprints and take your picture; 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 a defense 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 defense attorney. 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 a defense attorney present. If your request is denied, comply with any specific orders given to you by the police. Allowing the police to make illegal searches does not give up your right to object to what they find later on and will avoid physical confrontations.

You have the right to counsel: The United States Constitution guarantees you the right not to be questioned by the police or your chain of command without the opportunity to consult with a defense attorney. This right ensures that you do not become the government's key witness at your own court-martial. You are entitled to be assisted by a military defense attorney from the Trial Defense Service at no cost to you, or you may hire a civilian defense attorney at your own expense. You do not have to wait until charges are read to consult with a defense attorney. If a request for a defense attorney is denied, do not talk about the case to anyone.

The military defense attorneys assigned to the Trial Defense Service are qualified defense attorneys who have attended civilian law schools, passed state bar examinations and are licensed to practice law in at least one state. Trial Defense Service attorneys are not under the command of local commanders and are thus free to represent you as zealously as possible without fear for their own careers. Anything you say to your Trial Defense Service attorney is confidential.

You have the right to stop talking or to talk to a defense attorney at any point: Even if you decide to make a statement and waive your right to remain silent and your right to counsel, you can invoke those rights at any point during questioning by police. If at any point during the questioning you feel that you do not understand what is going on or you feel that the police are "getting the best of you" you should invoke your rights and consult with a defense attorney.

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 both your right to remain silent and your right to consult with a defense attorney.

Legal tactics: Courts have given the police leeway in informing or implying to suspects that they have evidence where none is present, and while this is not condoned, it is not illegal unless an investigator's use of deception is likely to produce an untrue confession.

For example, police may claim they found fingerprints on some object at the scene of the crime, or they may try to get you to admit 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. Often, the evidence against you is weak, and there may not be enough evidence to charge you unless you admit to doing something. As long as the law enforcement tactics are not so outrageous that they overbear your ability to voluntarily give up your rights, they may be used. Because these tactics are effective on even the smartest people, you should not give a statement to the the police until after you have talked to a defense attorney.

You may be told that the investigator will recommend leniency if you cooperate, but the offer will still stand and be better enforced if you involve your defense attorney in the agreement.

Illegal tactics: Police cannot use force or threats of force to get you to talk to them. Police might promise that if you talk you will not be prosecuted, or that you will only get an Article 15,

but that is also improper; they simply do not have that authority. Although you may be told that it is urgent to cooperate right now, don't be hesitant to talk to a defense attorney if you feel the need. Nothing is so urgent that you can't take the time to get advice from a defense attorney. If an offense is being investigated at the unit level, the unit commander or first sergeant may promise not to take certain action if you talk. Although the commander or first sergeant do not have the legal authority to grant immunity from prosecution, any such promises should be witnessed or in writing, as they may be enforced against the command.

Police are interested in solving cases and a confession gives the prosecution the best evidence possible. Your defense attorney has your best interests in mind, and negotiating often occurs between prosecutors and defense attorneys about cases. You may not have anything left to bargain with if you have already confessed.

When you exercise your rights:

When you tell the police that you do not want to talk to them without a defense attorney, all questioning must stop. If questioning does not stop, you should continue to firmly ask to see a defense attorney. Be persistent, but never become belligerent or combative. Be sure and make an appointment to see a defense attorney as soon as possible.

If a military defense attorney is available, you will be sent to his office. Your defense 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 defense attorney the names of witnesses who may be helpful. Your defense attorney will talk to the police and obtain accurate information about what they know and what they do not know.

If you and your defense attorney decide that it might be to your advantage to speak to or cooperate with the police, then you and your defense attorney can decide the best way to do so. This may include your defense attorney drafting a written statement that you submit to the police.

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 judgement; for more serious incidents you should discuss the matter with a defense attorney first.

Other considerations:

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 to make matters worse by lying.

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. 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 of, or charged with buying cocaine 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 cocaine.

Do not talk to or make statements to anyone about the case under investigation:

"Anybody" includes "everybody": CID Agents, MPI, MPs, social workers, psychiatrists, your commander, your first sergeant, platoon sergeant, squad leader, section chief, co-workers, friends, roommates, drinking buddies, girl or boyfriends, even spouses and ministers. All these people are potential witnesses against you. What they don't know can't hurt you. If they ask you what's going on, just tell them your defense attorney advised you not to discuss the case with anyone.

- 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 "about the offense" include: admissions of guilt, partial admissions of guilt, denials of guilt and comments about circumstances surrounding the offense. They also include 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.

Your duty performance from now on should be outstanding: Because of the allegations or charges against you, your conduct is "under a microscope." If you develop a bad attitude, become disrespectful, display poor duty performance, 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.

Prepare a list of names: List 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 defense attorney, and provide your defense attorney with specific and accurate details of what you know. Do any tasks your defense attorney gives you to assist in defending your case.

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

Never lie to your defense attorney: Or anyone else about your case. If you do, it will come back to haunt you later. Keep your defense attorney informed of any developments in your case.

If anyone tries to question you about these offenses, tell them you wish to remain silent, you have a defense attorney, or that you want to talk to a defense attorney.

After the investigation:

After the investigation involving you has been completed, a copy of the final police report will be given to your unit commander and the prosecutor. Your commander will discuss the case with the prosecutor to decide what level of action is appropriate. This will depend on the severity 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 a field grade Article 15. 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.

If your commander feels that the case is too serious for an Article 15, he/she 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:

- 1) A Summary Court-Martial is the lowest level of court-martial. A single 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 defense attorney at a Summary Court-Martial. The maximum punishment at a Summary Court-Martial is 30 days confinement (for Soldiers E-4 and below), reduction to the grade of E-1 (for Soldiers E-4 and below) or reduction one grade (for Soldiers E-5 and above) and forfeiture of two thirds pay per month for one month.
- 2) The next level of court-martial is a Special Court-Martial. You have the right to be represented by a military defense attorney at no cost to you at a Special Court-Martial. Convictions by this type of court are federal convictions. If your brigade-level commander sends your case to a Special Court-Martial, the maximum punishment you could receive is six months of confinement, reduction to E-1 (regardless of your rank) and forfeiture of two thirds pay per month for six months.

- 3) The third level of court-martial is a Bad Conduct Discharge Special Court-Martial. A BCD Special Court-Martial may adjudge the same sentence as a Special Court-Martial, as well as give you a Bad Conduct Discharge.
- 4) The highest level of court-martial is a General Court-Martial. 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 E-1.

Before a case can be sent to a General Court-Martial, an investigating officer will be appointed to examine all the charges to determine whether they are supported by the evidence. This investigation is called an Article 32(b) pretrial investigation, or "Article 32" for short. You have the opportunity to be present during this Article 32, to call witnesses and present evidence in your own behalf and to have your defense attorney question the witnesses against you.

For further information contact the Trial Defense Service at (334) 255-3919.