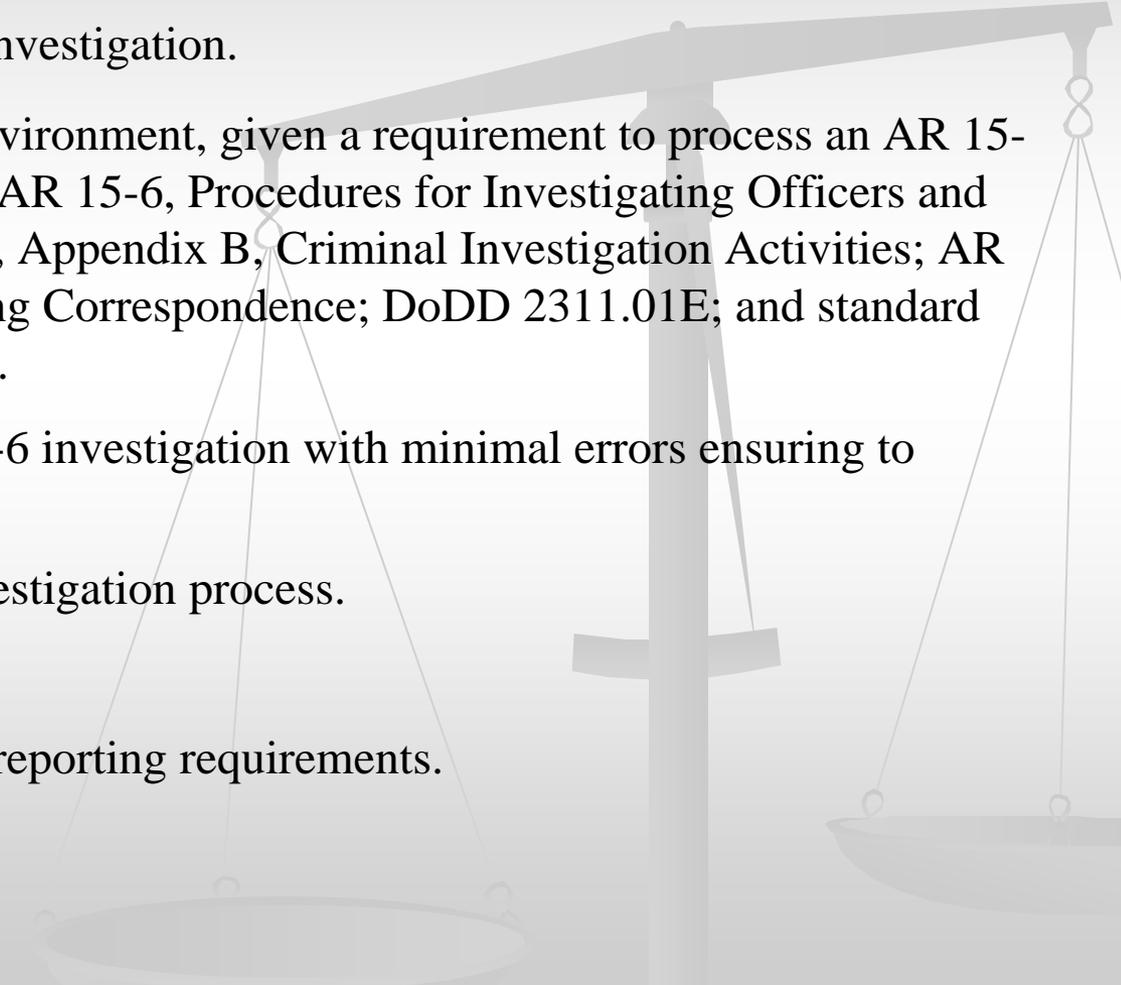


Terminal Learning Objective



Action: Process an AR 15-6 Investigation.

Conditions: In a classroom environment, given a requirement to process an AR 15-6 Investigation, and access to AR 15-6, Procedures for Investigating Officers and Boards of Officers; AR 195-2, Appendix B, Criminal Investigation Activities; AR 25-50, Preparing and Managing Correspondence; DoDD 2311.01E; and standard office supplies and equipment.

Standards: Process an AR 15-6 investigation with minimal errors ensuring to properly:

- Analyze the AR 15-6 Investigation process.
- Prepare a DA Form 1574.
- Analyze the Law of War reporting requirements.

Enabling Learning Objective A

Analyze the AR 15-6 Investigation Process

- Action: Analyze the AR 15-6 Investigation Process.
- Conditions: In a classroom environment, given a requirement to analyze the AR 15-6 Investigation process, and access to AR 15-6, AR 195-2, Appendix B, and standard office supplies and equipment.
- Standards: Analyze the AR 15-6 process with minimal errors ensuring to properly:
 - Define the Purpose of AR 15-6 investigations.
 - Compare Formal and Informal Procedures.
 - Define the role of Key Personnel in the AR 15-6 Process.
 - Describe the steps in the AR 15-6 Process.

Primary Types of Administrative Investigations

- AR 15-6 Investigations
- Financial Liability Investigations of Property Loss (**AR 735-5**)
- Line of Duty Investigations (**AR 600-8-4**)
- Safety Investigations (**AR 385-10**)

When to use AR 15-6 Procedures

- Regulation requires it
- Whenever an appointing authority needs/wants a report containing facts, findings, and recommendations

Key Mandatory Investigations

- Class A accidents (**AR 385-10**)
- Accidental death (**AR 385-10**)
- Hostile fire death (**AR 600-8-1**)
- DUSTWUN (**AR 600-8-1**)
- Death by suspected suicide (**AR 600-63**)
- Fratricide (death or wounding) (**AR 385-10/600-8-1**)
- LDDT of controlled items (**AR 735-5**)
- Questionable intelligence activity (**AR 381-10**)
- Formal EO/sexual harassment complaint (**AR 600-20**)

Check on Learning



Considerations when deciding which procedures to use

- Purpose
- Seriousness
- Complexity
- Need for documentation
- Desirability of providing a comprehensive hearing

Formal vs. Informal

Formal

- Respondent designated
- Hearing required
- Appointment of non-voting members (recorder and legal advisor)
- Due Process (notice, counsel, discovery)

Informal

- No respondent designated
- No hearing
- No appointment of non-voting members
- No entitlement to Due Process

Check on Learning



Key Personnel in AR 15-6 Investigations

- Appointing authority
- Investigating officer
- Legal Advisor
- Respondent
- Paralegal

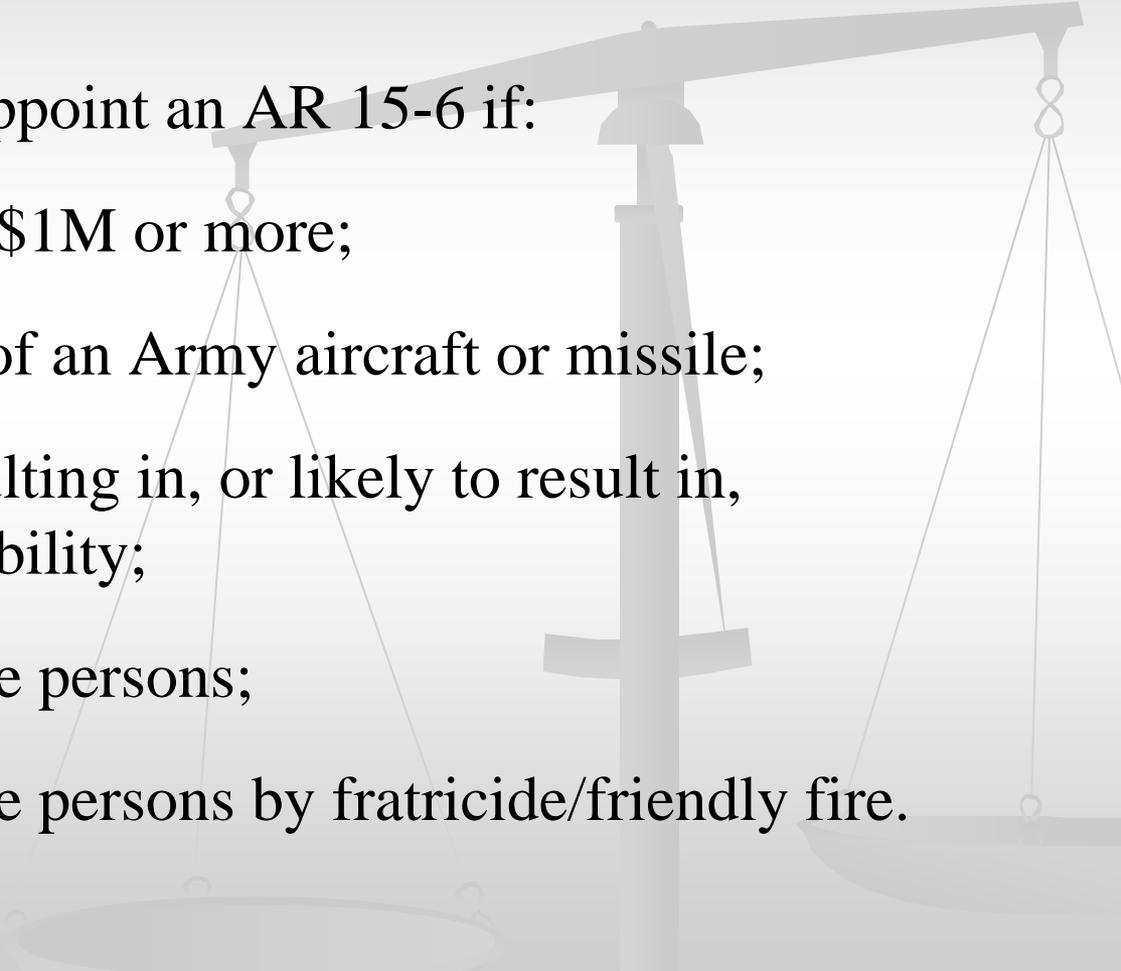
Formal 15-6 Appointing Authority

- Any GCMCA or SPCMCA, including those who exercise that authority for administrative purposes only
- Any general officer
- Any commander or principal staff officer in the grade of colonel or above at the installation, activity, or unit level
- Any State adjutant general
- A DA civilian supervisor permanently assigned to a position graded as a GS-14 or above and who is assigned as the head of an Army agency or activity as a division or department chief.

Informal 15-6 Appointing Authority

- Any officer authorized to appoint a formal board
- A commander at any level
- A principal staff officer or supervisor in the grade of Major or above

Special Situations



- Only a GCMCA may appoint an AR 15-6 if:
 - Property damage of \$1M or more;
 - Loss or destruction of an Army aircraft or missile;
 - Injury or illness resulting in, or likely to result in, permanent total disability;
 - Death of one or more persons;
 - Death of one or more persons by fratricide/friendly fire.

Special Situations (Continued)

- The GCMCA may delegate appointing/approval authority to a SPCMCA for hostile fire death investigation(s) involving a deployed force.
- If evidence discovered during a hostile fire investigation indicates the death was the result of fratricide/friendly fire, the IO must immediately suspend the investigation and inform the appointing authority.
- The appointing authority must forward all fratricide/friendly fire incident investigations to the next higher Army HQs for review.

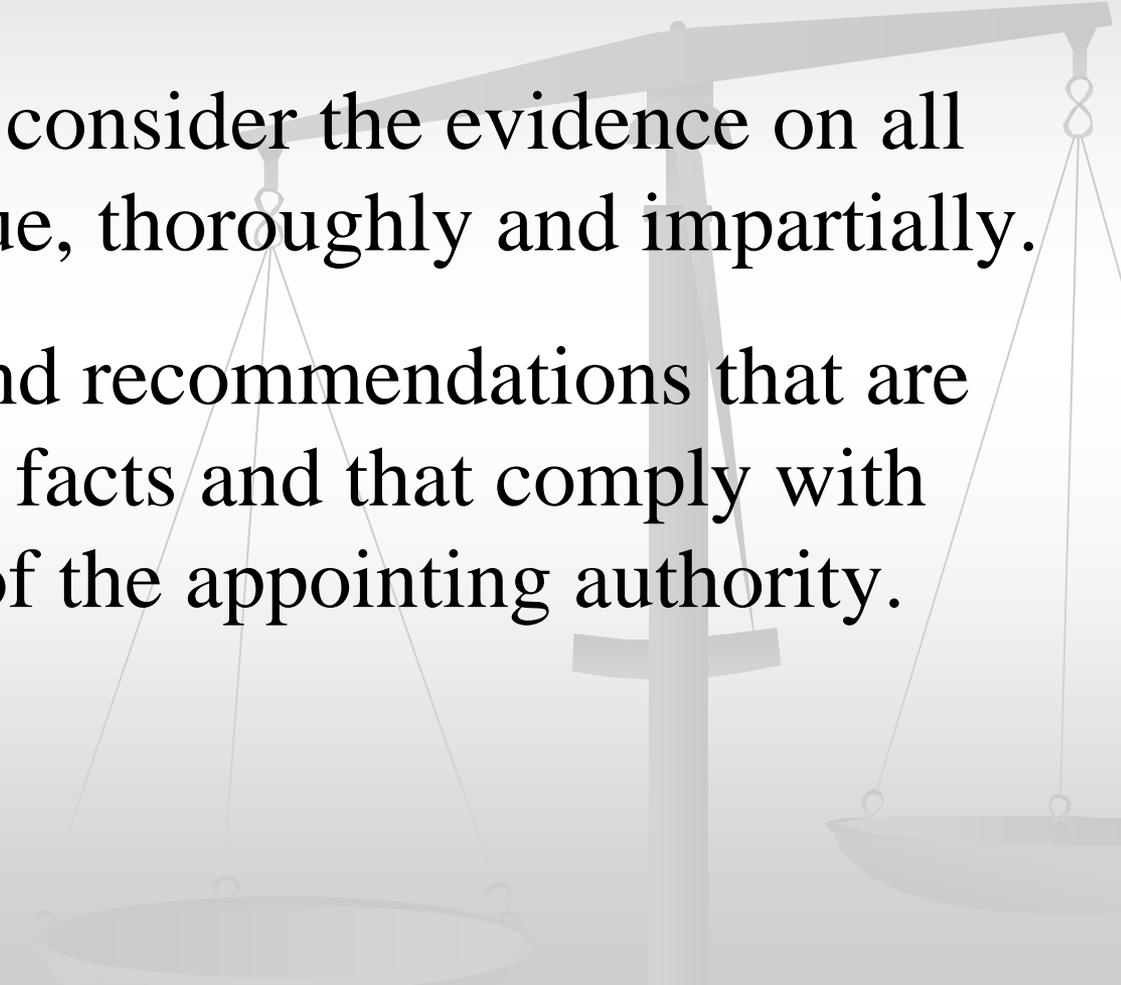
Actions of the Appointing Authority

- Approve
- Disapprove
- Return to IO
- Approve with exceptions and substitutions

Who May be Appointed as an IO?

- Commissioned officers
- Warrant officers
- GS-13 and above

Duties of an IO



- To ascertain and consider the evidence on all sides of each issue, thoroughly and impartially.
- Make findings and recommendations that are warranted by the facts and that comply with the instructions of the appointing authority.

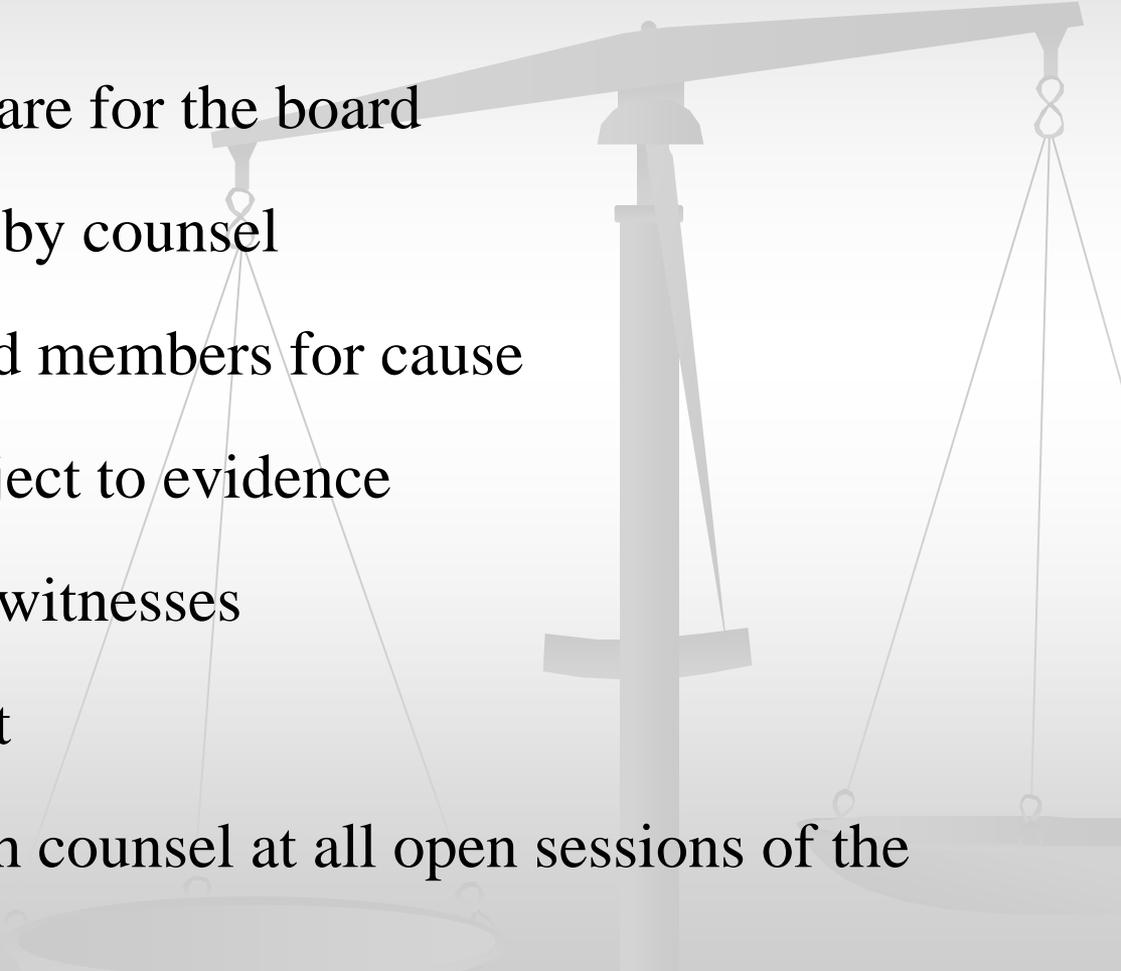
When can a JA/Civilian Attorney be appointed as a LA?

- TJAG authorizes the appointment
- Another directive requires the appointment
- The appointing authority is a GCMCA
- The appointing authority is not a GCMCA, and has a JA assigned to his/her organization or a subordinate element

Exceptions to Appointing Authority designating Respondent

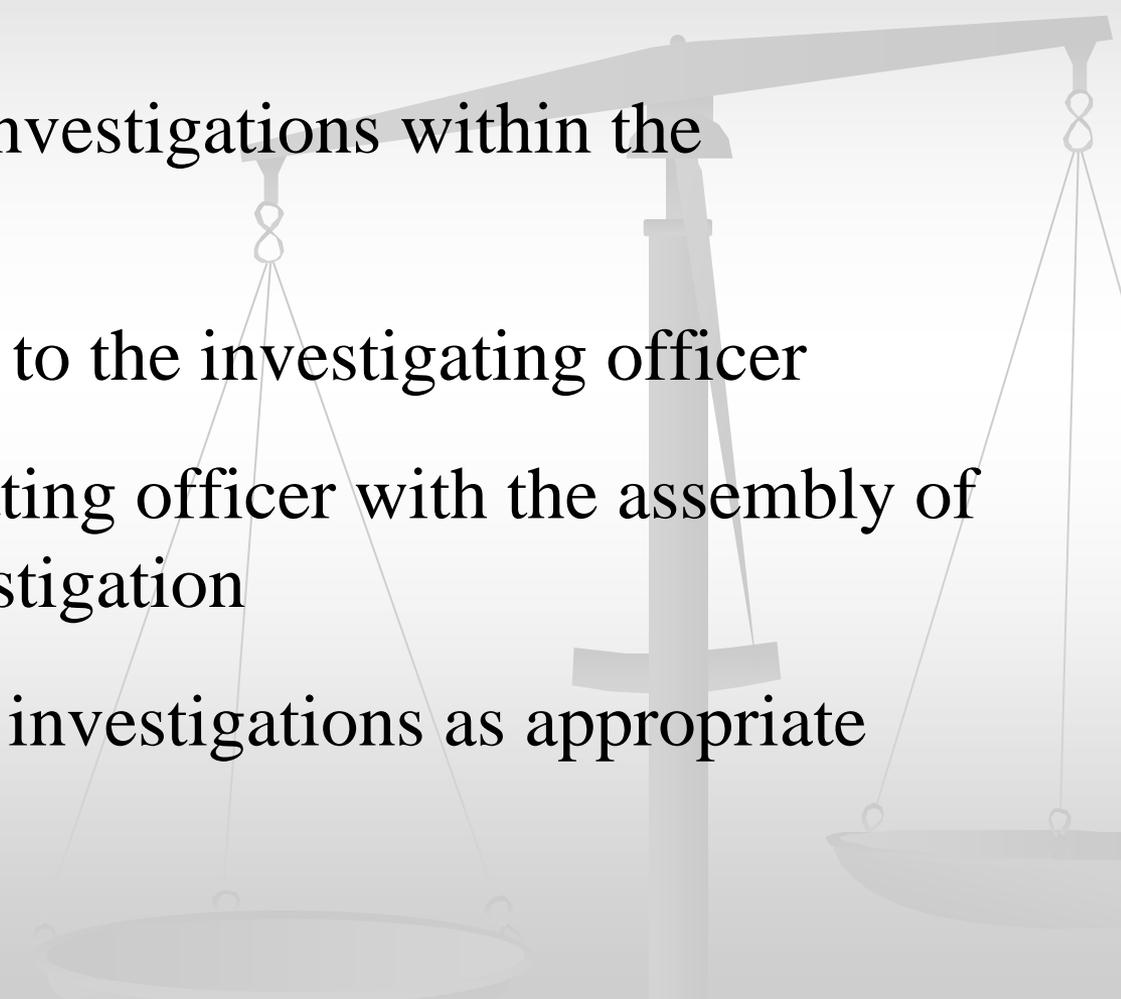
- Where authorities senior to appointing authority direct designation as respondent;
- When designation as a respondent is required by regulation or directive; or
- Where procedural protections available only to a respondent under this regulation are mandated by other regulation or directive.

Rights of a Respondent



- Notice and time to prepare for the board
- Right to be represented by counsel
- Right to challenge board members for cause
- Right to present and object to evidence
- Right to cross examine witnesses
- Right to make argument
- Right to be present, with counsel at all open sessions of the board

Paralegal Duties

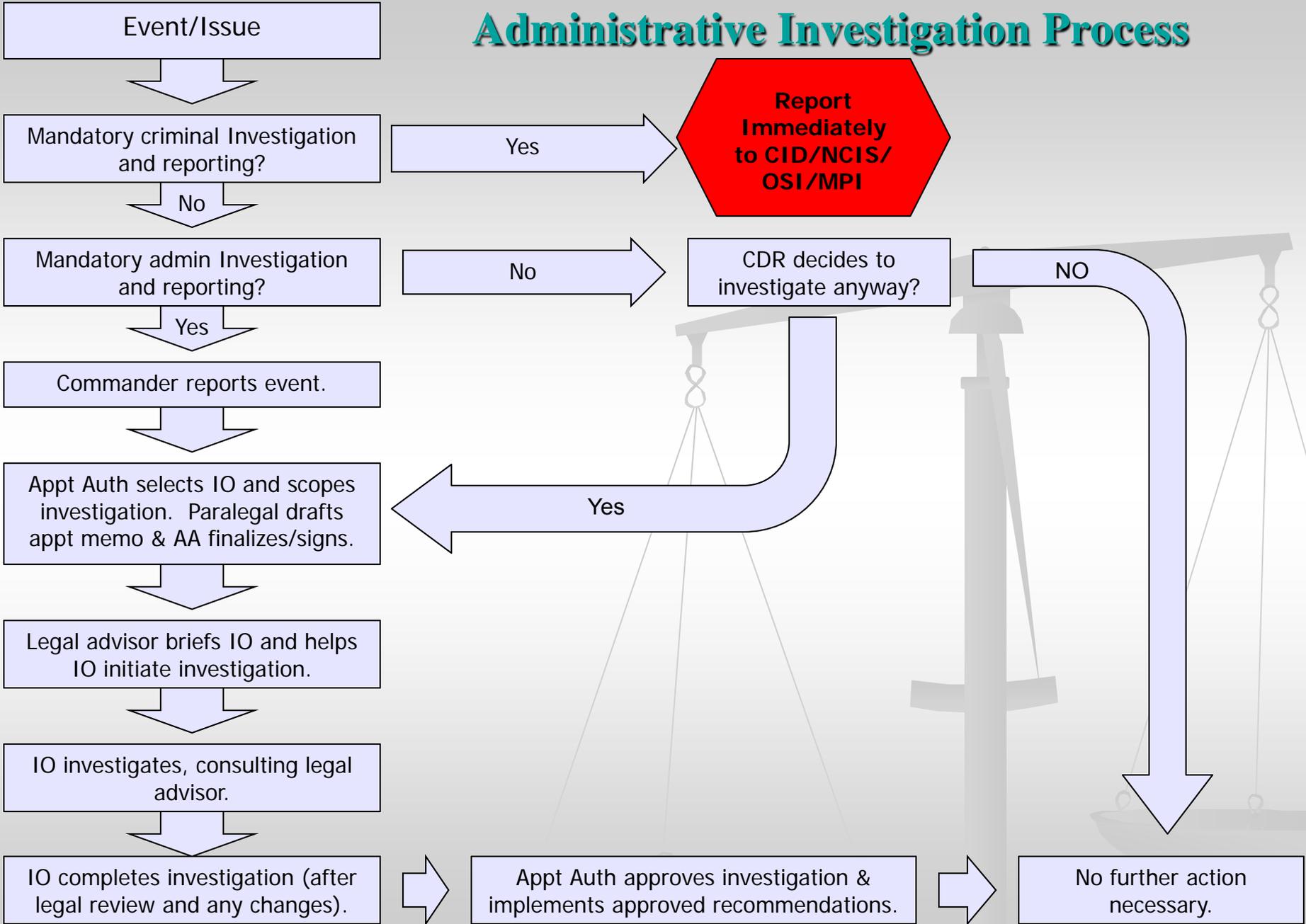


- Tracking all open investigations within the jurisdiction
- Serve as a resource to the investigating officer
- Assist the investigating officer with the assembly of the completed investigation
- Archive completed investigations as appropriate

Check on Learning



Administrative Investigation Process



Who Investigates What?

(AR 195-2, Appendix B)

CID

- Major felonies (robbery, stalking, etc.)
- Nonconsensual sexual acts
- Larceny, fraud, & other property crimes \geq \$5000

MPI

- Assaults: simple and some aggravated
- Simple arson
- Larceny, fraud, & other property crimes $<$ \$5000
- Most false official statements

Command

- Consensual sexual offenses
- Simple assaults in unit area
- Larceny in unit area \leq \$1500
- Bigamy w/o fraud
- Everything else

What to Provide to the IO?

- Signed appointment memorandum
- Copy of AR 15-6
- Blank copies of Sworn Statements, Rights Warning Procedure/Waiver Certificates, and Report of Proceedings by IO/Board of Officers
- Applicable publications
- Initial information collected on the incident

Considerations When Drafting Appointment Memorandum

- Written appointment memorandums are preferred.
- Describe the facts as they are known at the time.
- Adequately scope the investigation.
- Provide adequate guidance and special instructions to the IO.

What is the Purpose of the IO's Legal Briefing?

- Provides the IO with the general rules that apply to the investigation.
- Assists the IO in developing an investigative plan.
- Informs the IO of the LA's availability.

An Investigative Plan Consists of:

- An understanding of the facts required for the IO to make a conclusion;
- A strategy for obtaining evidence; and
- Identifying the readily available information to determine the additional information needed for the IO to reach a conclusion.

Key Points the DA 1574 Should Cover

- Facts are clear, concise, and readily deduced from the evidence gathered.
- Findings are supported by a preponderance of the evidence.
- Recommendations are consistent with the findings.

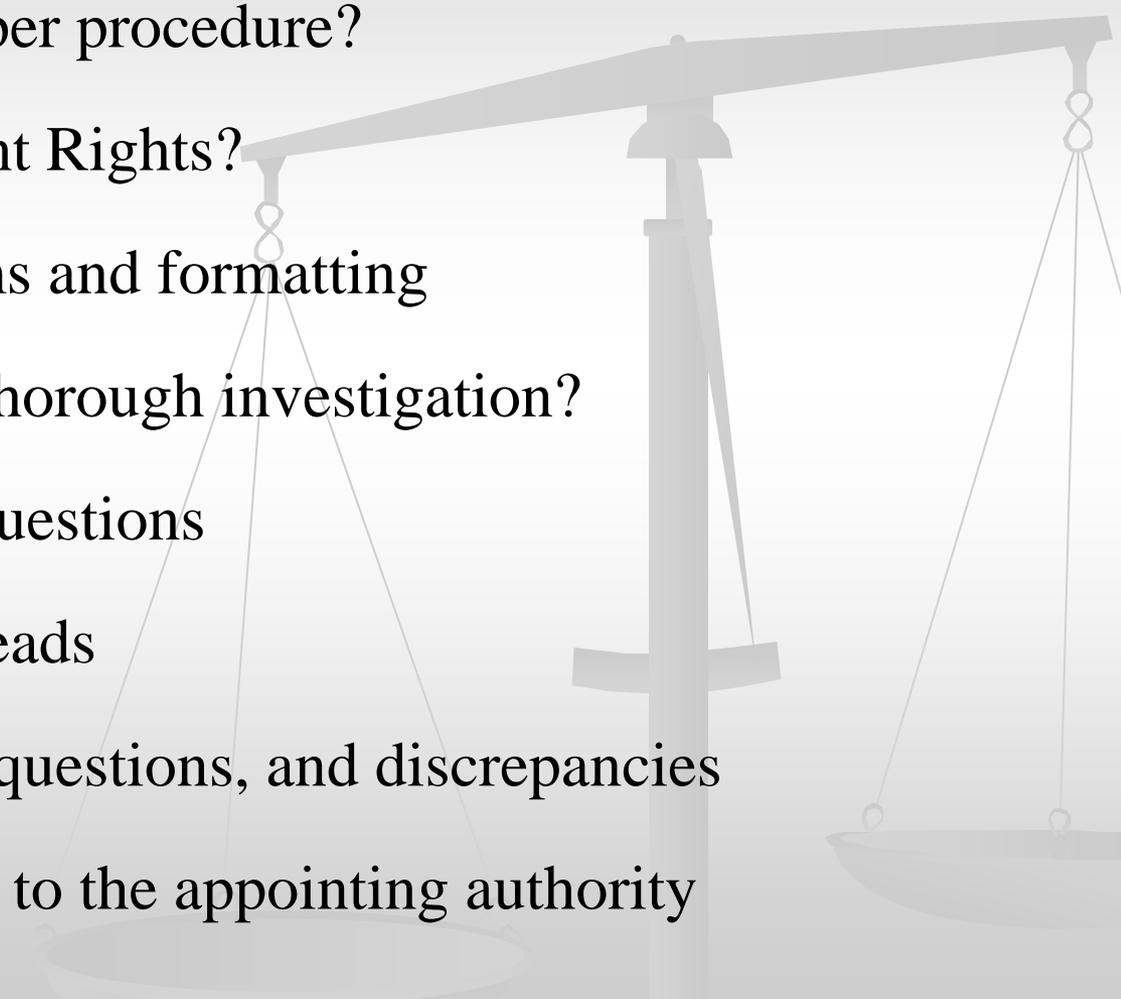
When is a Legal Review Required?

- All cases involving serious or complex matters.
- Whenever the findings and recommendations may result in adverse action being contemplated.
- Investigation will be relied upon by a higher HQ.

The JA's Review Determines...

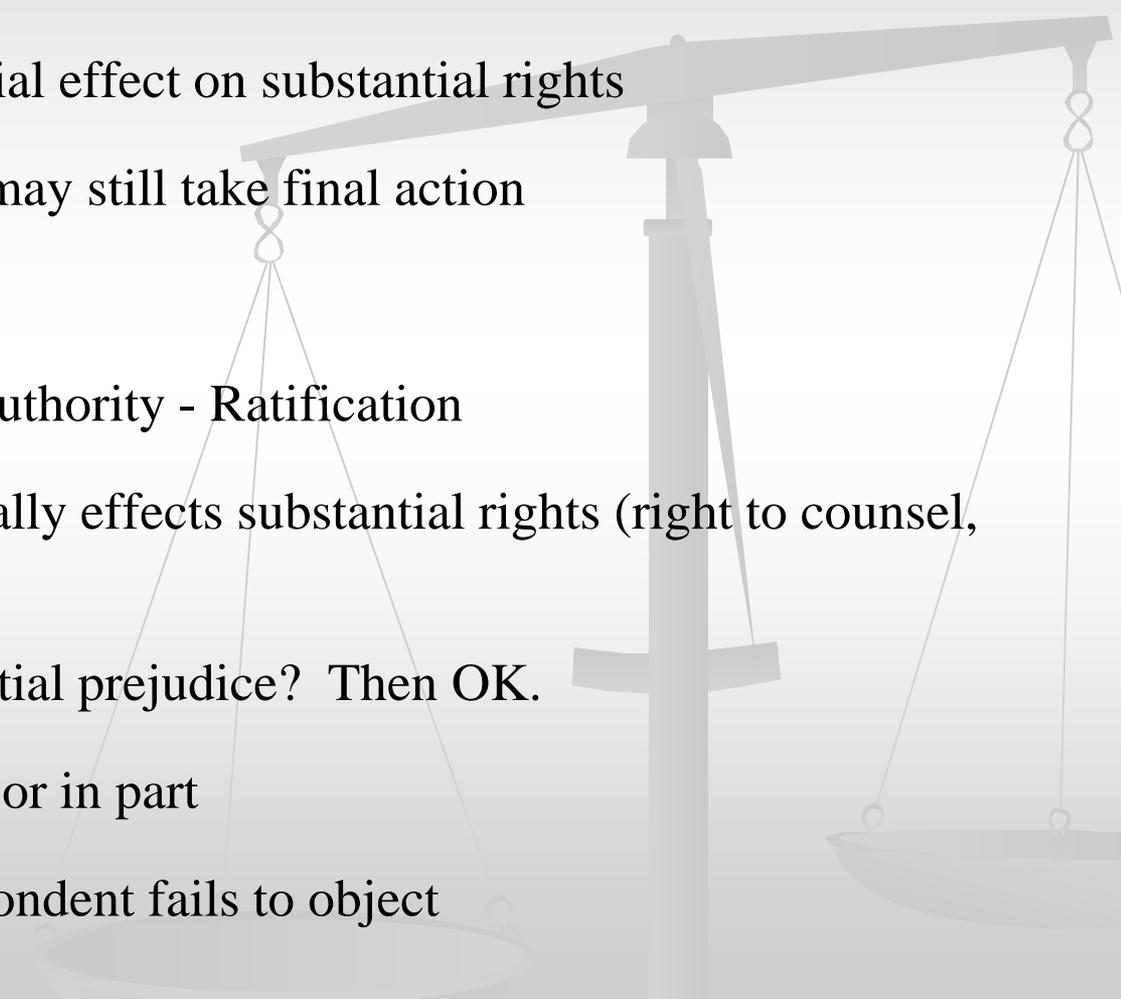
- Whether the proceedings comply with legal requirements.
- Effects any errors will have.
- Whether sufficient evidence supports the findings of the investigation or those substituted or added by the appointing authority.
- Whether the recommendations are consistent with findings.

Qualitative Legal Review



- Did the IO follow proper procedure?
 - Witness/Respondent Rights?
 - Use of correct forms and formatting
- Did the IO conduct a thorough investigation?
 - Answer all of the questions
 - Follow all proper leads
 - Resolve all issues, questions, and discrepancies
- LA's recommendation to the appointing authority

Effect of Errors



- Harmless Error
 - Defects with no material effect on substantial rights
 - Appointing authority may still take final action
- Appointing Error
 - Improper appointing authority - Ratification
- Substantial Error – materially effects substantial rights (right to counsel, board composition, etc)
 - Corrected w/o substantial prejudice? Then OK.
 - If not, set aside whole or in part
 - Not substantial if respondent fails to object

Check on Learning



Enabling Learning Objective B

Prepare a DA Form 1574

- Action: Prepare a DA Form 1574.
- Conditions: In a classroom environment, given a requirement to prepare a DA Form 1574, and access to AR 15-6; AR 25-50; and standard office supplies and equipment.
- Standards: Prepare a DA Form 1574 with minimal errors, ensuring to properly:
 - Complete Section I utilizing the investigating officer's appointment memorandum.
 - Complete Sections II and III utilizing the investigating officer's notes, and the enclosures and exhibits to the investigation.
 - Complete Sections IV and V with the investigating officer's findings and recommendations.
 - Complete Sections VI and VII to authenticate the report of investigation.
 - Complete Section VIII with the appointing authority's action.

SECTION I - APPOINTMENT

REPORT OF PROCEEDINGS BY INVESTIGATING OFFICER/BOARD OF OFFICERS

For use of this form, see AR 15-6; the proponent agency is OTJAG.

IF MORE SPACE IS REQUIRED IN FILLING OUT ANY PORTION OF THIS FORM, ATTACH ADDITIONAL SHEETS

SECTION I - APPOINTMENT

Appointed by Commander, 3d Battalion, 3d Armor, 3d Brigade, Kandahar, Afghanistan APO AE 09355

(Appointing authority)

on 12 January 2015 *(Attach inclosure 1: Letter of appointment or summary of oral appointment data.) (See para 3-15, AR 15-6.)*
(Date)

SECTION II - SESSIONS

SECTION II - SESSIONS

The *(investigation) (board)* commenced at FOB Masum Ghar, Afghanistan APO AE 09355 at 0900
(Place) (Time)
on 12 January 2015 *(Date)* *(If a formal board met for more than one session, check here . Indicate in an inclosure the time each session began and ended, the place, persons present and absent, and explanation of absences, if any.)* The following persons *(members, respondents, counsel)* were present: *(After each name, indicate capacity, e.g., President, Recorder, Member, Legal Advisor.)*

The following persons *(members, respondents, counsel)* were absent: *(Include brief explanation of each absence.) (See paras 5-2 and 5-8a, AR 15-6.)*

The *(investigating officer) (board)* finished gathering/hearing evidence at 1900 on 24 January 2015
(Time) (Date)
and completed findings and recommendations at 1100 on 30 January 2015
(Time) (Date)

SECTION II – SESSIONS (Version 2)

SECTION II - SESSIONS

The ~~(investigation)~~ ~~(board)~~ commenced at Building 5217, Room 8, Fort Atterbury, Indiana 46124-9000 at 0730
(Place) (Time)
on 15 January 2011 (If a formal board met for more than one session, check here . Indicate in an inclosure the time each session began and ended, the place, ^(Date) persons present and absent, and explanation of absences, if any.) The following persons (members, respondents, counsel) were present: (After each name, indicate capacity, e.g., President, Recorder, Member, Legal Advisor.)

MAJ Mason H. Jersey, Investigating Officer
CPT Sergei I. Johansen, Legal Advisor
1LT Melissa M. Carlson, Recorder
SGT Jimmy J. Thompson, Reporter
SFC Marcus L. Teddy, Respondent
CPT Carl H. Simpson, Counsel for Respondent

The following persons (members, respondents, counsel) were absent: (Include brief explanation of each absence.) (See paras 5-2 and 5-8a, AR 15-6.)
None

The ~~(investigating officer)~~ ~~(board)~~ finished gathering/hearing evidence at 1615 on 14 January 2011
(Time) (Date)
and completed findings and recommendations at 1640 on 14 January 2011
(Time) (Date)

SECTION III – CHECKLIST FOR PROCEEDINGS

SECTION III - CHECKLIST FOR PROCEEDINGS						
A. COMPLETE IN ALL CASES			YES	NO ^{1/}	NA ^{2/}	
1	Inclosures (para 3-15, AR 15-6) Are the following inclosed and numbered consecutively with Roman numerals: (Attached in order listed)					
	a. The letter of appointment or a summary of oral appointment data?			<input checked="" type="checkbox"/>	<input type="checkbox"/>	
	b. Copy of notice to respondent, if any? (See item 9, below)			<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
	c. Other correspondence with respondent or counsel, if any?			<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
	d. All other written communications to or from the appointing authority?			<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
	e. Privacy Act Statements (Certificate, if statement provided orally)?			<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
	f. Explanation by the investigating officer or board of any unusual delays, difficulties, irregularities, or other problems encountered (e.g., absence of material witnesses)?			<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
	g. Information as to sessions of a formal board not included on page 1 of this report?			<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
	h. Any other significant papers (other than evidence) relating to administrative aspects of the investigation or board?			<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
FOOTNOTES: ^{1/} Explain all negative answers on an attached sheet. ^{2/} Use of the NA column constitutes a positive representation that the circumstances described in the question did not occur in this investigation or board.						

DA FORM 1574, MAR 1983

EDITION OF NOV 77 IS OBSOLETE.

Page 1 of 4 pages

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SECTION III – CHECKLIST FOR PROCEEDINGS (Part B)

B. COMPLETE ONLY FOR FORMAL BOARD PROCEEDINGS (Chapter 5, AR 15-6)

4	At the initial session, did the recorder read, or determine that all participants had read, the letter of appointment (para 5-3b, AR 15-6)?	<input type="checkbox"/>	<input type="checkbox"/>	
5	Was a quorum present at every session of the board (para 5-2b, AR 15-6)?	<input type="checkbox"/>	<input type="checkbox"/>	
6	Was each absence of any member properly excused (para 5-2a, AR 15-6)?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
7	Were members, witnesses, reporter, and interpreter sworn, if required (para 3-1, AR 15-6)?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
8	If any members who voted on findings or recommendations were not present when the board received some evidence, does the inclosure describe how they familiarized themselves with that evidence (para 5-2d, AR 15-6)?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

SECTION III – CHECKLIST FOR PROCEEDINGS (Part C)

C. COMPLETE ONLY IF RESPONDENT WAS DESIGNATED (Section II, Chapter 5, AR 15-6)

9	Notice to respondents (para 5-5, AR 15-6):			
	a. Is the method and date of delivery to the respondent indicated on each letter of notification?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
	b. Was the date of delivery at least five working days prior to the first session of the board?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
	c. Does each letter of notification indicate –			
	(1) the date, hour, and place of the first session of the board concerning that respondent?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
	(2) the matter to be investigated, including specific allegations against the respondent, if any?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
	(3) the respondent's rights with regard to counsel?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
	(4) the name and address of each witness expected to be called by the recorder?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
	(5) the respondent's rights to be present, present evidence, and call witnesses?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
	d. Was the respondent provided a copy of all unclassified documents in the case file?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
	e. If there were relevant classified materials, were the respondent and his counsel given access and an opportunity to examine them?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
10	If any respondent was designated after the proceedings began (or otherwise was absent during part of the proceedings):			
	a. Was he properly notified (para 5-5, AR 15-6)?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
	b. Was record of proceedings and evidence received in his absence made available for examination by him and his counsel (para 5-4c, AR 15-6)?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
11	Counsel (para 5-6, AR 15-6):			
	a. Was each respondent represented by counsel?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
	Name and business address of counsel:			
	(If counsel is a lawyer, check here <input type="checkbox"/>)			
	b. Was respondent's counsel present at all open sessions of the board relating to that respondent?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
	c. If military counsel was requested but not made available, is a copy (or, if oral, a summary) of the request and the action taken on it included in the report (para 5-6b, AR 15-6)?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
12	If the respondent challenged the legal advisor or any voting member for lack of impartiality (para 5-7, AR 15-6):			
	a. Was the challenge properly denied and by the appropriate officer?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
	b. Did each member successfully challenged cease to participate in the proceedings?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
13	Was the respondent given an opportunity to (para 5-8a, AR 15-6):			
	a. Be present with his counsel at all open sessions of the board which deal with any matter which concerns that respondent?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
	b. Examine and object to the introduction of real and documentary evidence, including written statements?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
	c. Object to the testimony of witnesses and cross-examine witnesses other than his own?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
	d. Call witnesses and otherwise introduce evidence?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
	e. Testify as a witness?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
	f. Make or have his counsel make a final statement or argument (para 5-9, AR 15-6)?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
14	If requested, did the recorder assist the respondent in obtaining evidence in possession of the Government and in arranging for the presence of witnesses (para 5-8b, AR 15-6)?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
15	Are all of the respondent's requests and objections which were denied indicated in the report of proceedings or in an inclosure or exhibit to it (para 5-11, AR 15-6)?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

FOOTNOTES: 1. Explain all negative answers on an attached sheet.

2. Use of the NA column constitutes a positive representation that the circumstances described in the question did not occur in this investigation or board.

SECTION IV - FINDINGS

SECTION IV - FINDINGS (para 3-10, AR 15-6)

The *(investigating officer) (board)*, having carefully considered the evidence, finds:

That SGT John A. Doe, while performing duties as a detainee guard at FOB Masum Ghar, Afghanistan, on 10 May 2015, stole the prayer beads, mat, and wallet of Aaqib Malik Halim.

SECTION V - RECOMMENDATIONS

SECTION V - RECOMMENDATIONS (para 3-11, AR 15-6)

In view of the above findings, the *(investigating officer)* (~~board~~) recommends:

The Investigating Officer recommends that charges be brought against SGT Doe, and that he be removed immediately from any and all supervisory positions.

SECTION VI - AUTHENTICATION

SECTION VI - AUTHENTICATION (para 3-17, AR 15-6)

THIS REPORT OF PROCEEDINGS IS COMPLETE AND ACCURATE. (If any voting member or the recorder fails to sign here or in Section VII below, indicate the reason in the space where his signature should appear.)

(Recorder)

CPT Greg C. Myers

(Investigating Officer) (President)

(Member)

(Member)

(Member)

(Member)

SECTION VII – MINORITY REPORT

SECTION VII - MINORITY REPORT (para 3-13, AR 15-6)

To the extent indicated in Inclosure _____, the undersigned do(es) not concur in the findings and recommendations of the board.

(In the inclosure, identify by number each finding and/or recommendation in which the dissenting member(s) do(es) not concur. State the reasons for disagreement. Additional/substitute findings and/or recommendations may be included in the inclosure.)

(Member)

(Member)

SECTION VIII – ACTION BY APPOINTING AUTHORITY

SECTION VIII - ACTION BY APPOINTING AUTHORITY (para 2-3, AR 15-6)

The findings and recommendations of the *(investigating officer) (board)* are *(approved) (disapproved) (approved with following exceptions/ substitutions)*. *(If the appointing authority returns the proceedings to the investigating officer or board for further proceedings or corrective action, attach that correspondence (or a summary, if oral) as a numbered inclosure.)*

The findings and recommendations of the Investigating Officer are approved.

GARY E. PIKE, LTC, AR, Commanding

Enabling Learning Objective C

Analyze the Law of War Reporting Requirement

- Action: Analyze the Law of War Reporting Requirement.
- Conditions: In a classroom environment, given a requirement to identify Law of War reporting requirements.
- Standards: Analyze the Law of War reporting requirements ensuring to properly:
 - Identify the DoD Law of War policy.
 - Define reportable incident.
 - Define the Law of War reporting process.

Define Law of War

That part of international law that regulates the conduct of armed hostilities. It encompasses all international law for the conduct of hostilities binding on the United States or its individual citizens, including treaties and international agreements to which the United States is a party, and applicable customary international law.

DoD Law of War Policy

- Members of the DoD components will comply with the law of war during all armed conflicts, however such conflicts are characterized, and in all other military operations.
- The law of war obligations of the United States are observed and enforced by the DoD components and contractors assigned to or accompanying deployed Armed forces.
- An effective program to prevent violations of the law of war is implemented by the DoD components.
- All reportable incidents committed by or against U.S. personnel, enemy persons, or any other individual are reported promptly, investigated thoroughly, and where appropriate, remedied by corrective action.
- All reportable incidents are reported through command channels for ultimate transmission to appropriate U.S. Agencies, allied governments, or other appropriate authorities.

Check on Learning



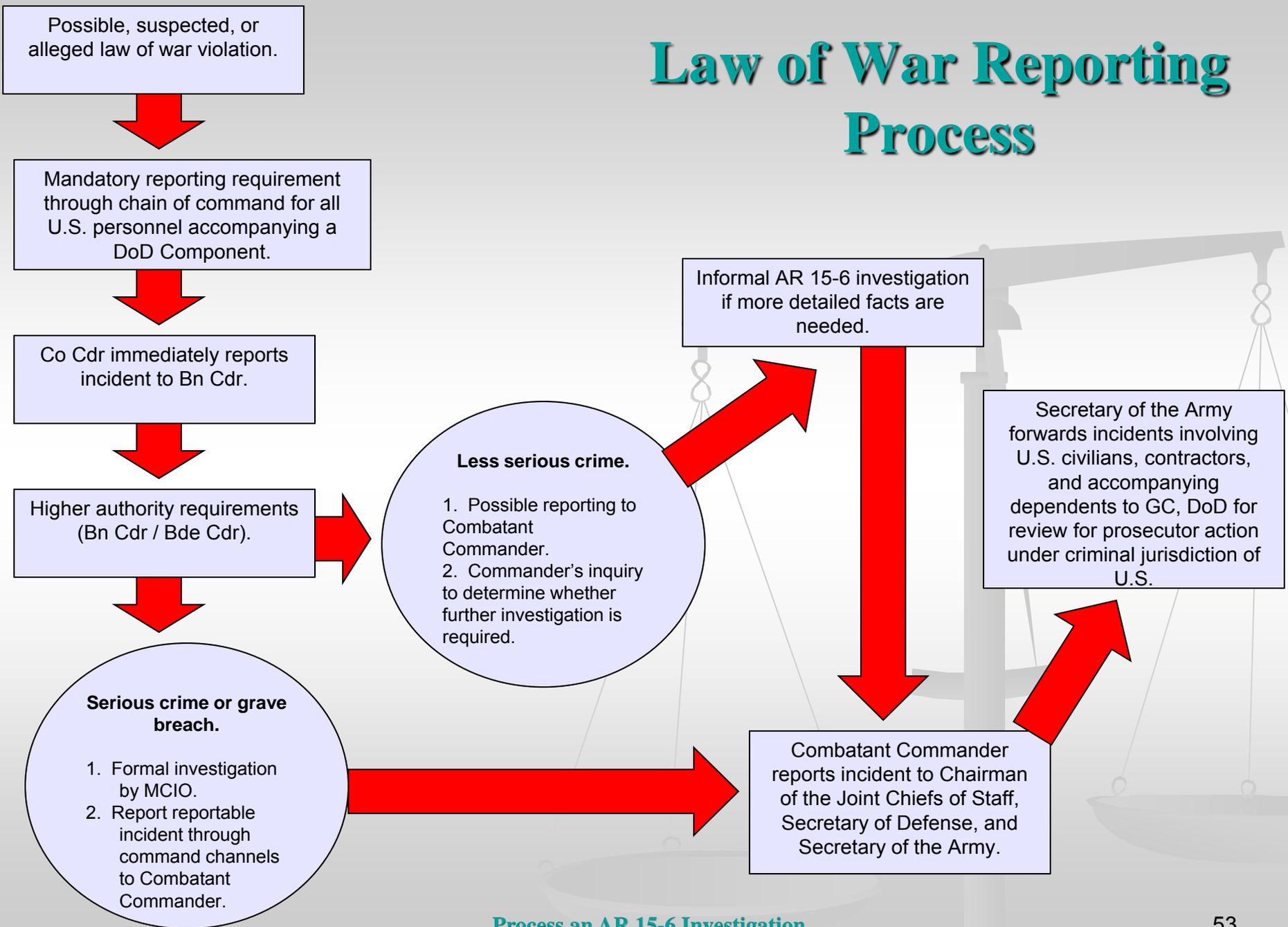
What is a Reportable Incident?

A reportable incident is a possible, suspected, or alleged violation of the law of war, for which there is credible information, or conduct during military operations other than war that would constitute a violation of the law of war if it occurred during armed conflict.

Check on Learning



Law of War Reporting Process



Check on Learning



Enabling Learning Objective D

Complete the Process an AR 15-6 Exam

- Action: Complete the Process an AR 15-6 Investigation Exam.
- Conditions: In a classroom environment, given access to student notes, regulations, and handouts, complete the student exam.
- Standards: Receive a score of 70% or higher on the exam.

Terminal Learning Objective

Action: Analyze the required elements for training Rules of Engagement at the unit level.

Conditions: In a classroom environment, given the Operational Law Handbook, Manual for Courts-Martial, FM 27-10, AR 190-14, and standard office supplies and equipment.

Terminal Learning Objective

Standards: Proficiently analyze the skills required to train ROE with minimal errors, including:

- Knowledge of Rules of Engagement;
- Knowledge of Types/Methods of ROE Training;
- Tactics, Techniques and Procedures for Training;
and
- Mnemonic devices used to assist students' retention of knowledge.

Identify Rules of Engagement (ROE)

- **ROE Defined:** Directives issued by competent military authority that delineate the circumstances and limitations under which United States forces will initiate and/or continue combat engagement with other forces encountered.

Purposes of ROE

General: Regulate the use of force.

Military: Provide parameters within which the commander must operate; provide a ceiling on operations; grant or withhold use of particular weapons or tactics; reemphasize scope of mission (training).

Political: Ensure that national policy and objectives are reflected in the action of commanders.

Legal: Ensure commander's actions are consistent with domestic and international law.

Standing Rules of Engagement (SROE) for the U.S. Forces

- What are the SROE?
- Instruction published by the Chairman of the Joint Chiefs of Staff (CJCSI 3121.01B).
- What does SROE provide?
- Implements the inherent right of self-defense and provides guidance for the application of force for mission accomplishment.

SROE Structure

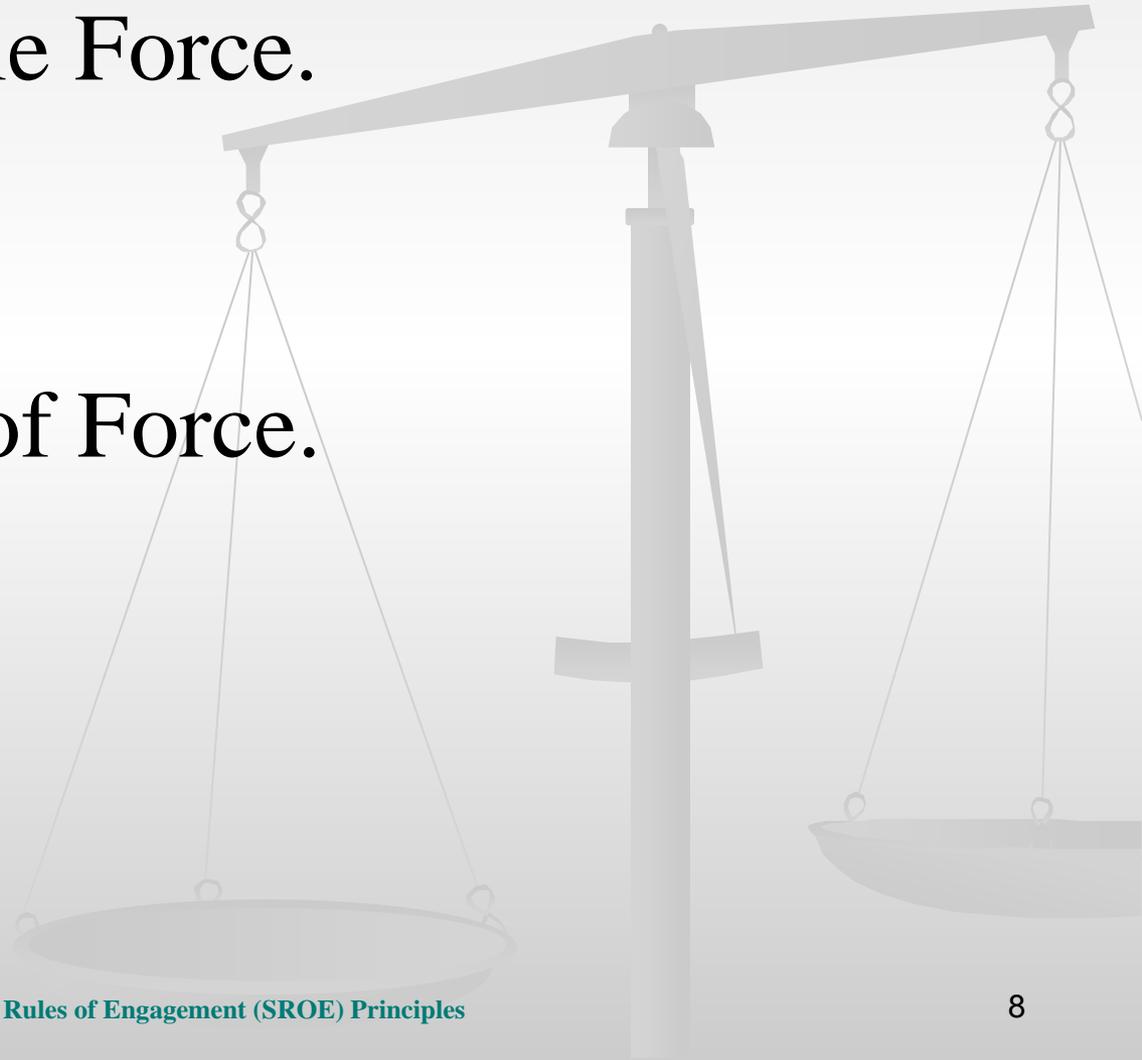
- **Encl A:** Details the general purpose, intent and scope of the SROE, in particular self-defense.
- **Encl B-H:** Enclosures that provide specific guidance on authority to use force, authority to declare forces hostile, special considerations, amplification of rules in given operations, such as land operations.
- **Encl I:** Supplemental Measures.
- **Encl J:** ROE Process.

SROE Principles

- Inherent Right of Self-Defense.
- National Self-Defense.
- Collective Self-Defense.

SROE Principles Continued

- Declared Hostile Force.
- Hostile Act.
- Hostile Intent.
- Imminent Use of Force.



Escalation of Force

- Purpose
- Evaluation and Verbal Warnings
- Visual Signals
- Initiate Direct Action
- Warning Shots
- Lethal Shots

Rules for the Use of Force (RUF) for Federal Forces During Domestic Operations

- Law Enforcement or Security Duty RUF.
- References:
 - Chairman of the Joint Chiefs of Staff Instruction (CJCSI) 3121.01B, Subject: SROE/RUF for US Forces.
 - AR 190 –14 – Carrying of Firearms and Use of Force for Law Enforcement and Security Duties.

AR 190-14 Guidance

- DA personnel performing law enforcement and security duties.
- Will avoid the use of force where they can carry out their duties without resorting to its use.
- In cases where use of force is warranted DA personnel will use the minimum amount of force necessary to reach objective.
- Only as a last resort will deadly force be used.

Role of Brigade Legal Sections BLS in ROE Process

- ROE are Commander's Rules.
- ROE development and training are a G/S-3 responsibility.
- ROE incorporate law, policy and mission considerations and BLSs will be called upon to assist in development and training.
- Participate in ROE Planning Cell.

Tasks for BLS in ROE Process

- Determine current ROE.
- Request Supplemental ROE as necessary (in conjunction with ROE cell).
- Assist in dissemination of ROE.
- Assist ROE Training.

Types/Methods of ROE Training

■ Types of ROE Training

1. General SROE Training
2. Mission-specific ROE Training

■ Methods of ROE Training

1. ROE Briefings with Vignettes
2. Individual Training
3. Collective Training
4. Leader/Commander Training

General ROE Training Principles

- ROE training should be an ongoing program, BLSs should assist with training.
- JAGC STP (App D) are the only approved slides.
- Ability to apply ROE should be considered a battle task.
- ROE training should be incorporated into FTXs, ranges, WTT.
- SROE principles must be trained (Self-defense, Hostile Act, Hostile Intent, etc).

Tactics, Techniques and Procedures (TTPs) for Training

- Goal of training is appropriate reaction without undue hesitation.
- Training oriented toward foot Soldier.
- Mnemonics and training devices are not ROE.

Training Programs

- Programs should include initial training, periodic sustainment training, & tasks, conditions and standards for training proficiency.
- Training should be consistent within unit, mnemonics should not be excessive or confusing.

R-A-M-P

Mnemonic used to train principle of self-defense:

R - Return Fire with Aimed Fire

A - Anticipate Attack

M - Measure the Amount of Force Used if Time and Circumstance Permit

P - Protect with Deadly Force Only Human Life and Property Designated by the Cdr

The S's

Mnemonic used to train escalation of force:

Shout a warning

Show your weapon

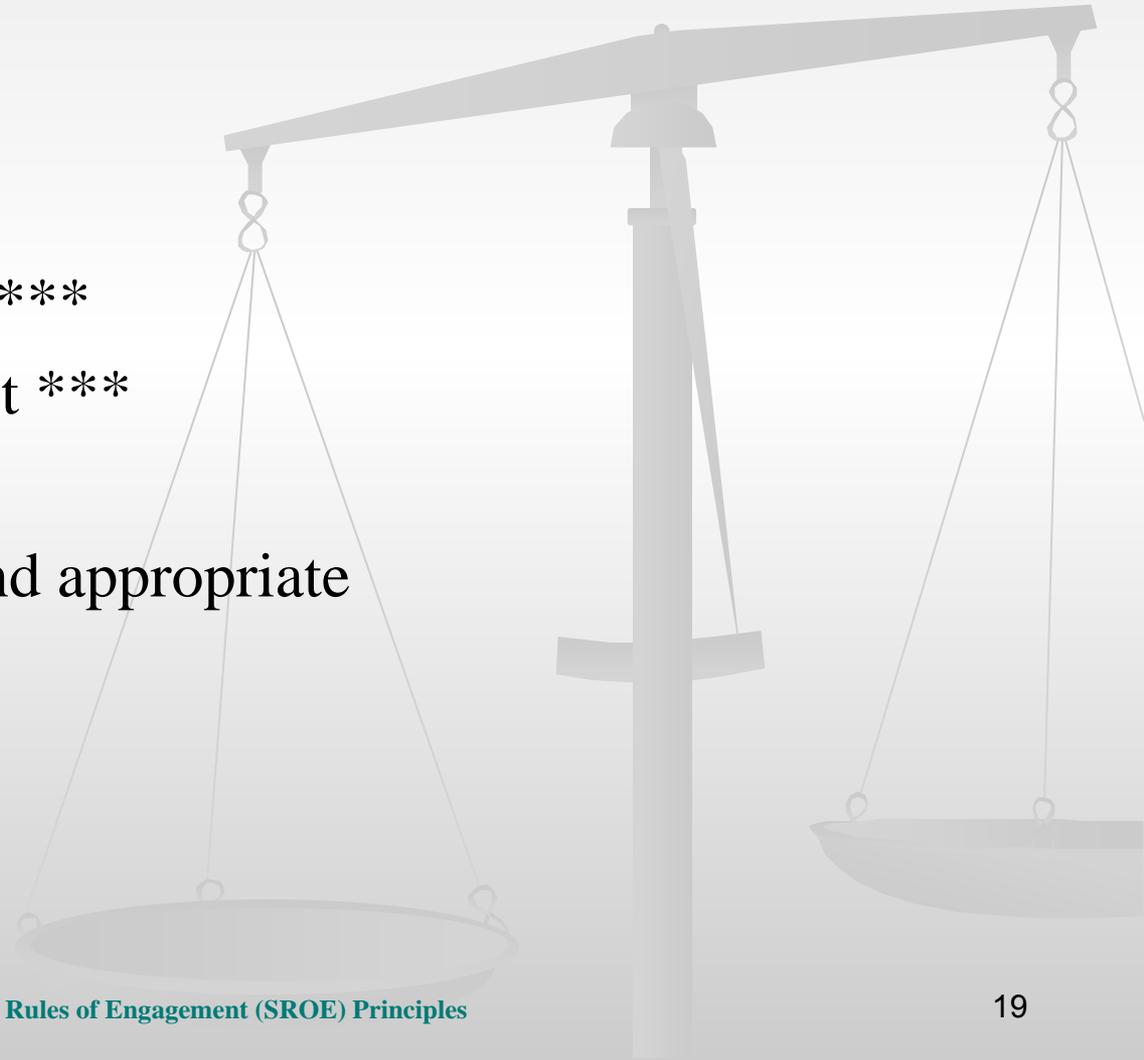
Shove

Shoot a warning shot***

Shoot a disabling shot ***

Shoot to kill

*** Use if authorized and appropriate



Hand Salute Mnemonic

Used to teach indicators of hostile intent:

Hand – What is in their hands?

Size – How Many?

Activity – What are they doing?

Location – Within range?

Uniform – Are they in uniform?

Time - How soon before they are upon you?

Equipment – If armed, with what?

Vignette and WTT

- Vignettes in ROE briefings and in WTT and STX scenarios.
- BLSs should be involved in designing scenarios.
- BLSs should assist Training NCOs with scenarios and solutions.

STX Training

- “Lanes” for squad training.
- Scenarios (operating checkpoint, guarding camp gate).
- Role-players (enemies, civilians, persons of unknown status).
- Soldiers being trained must apply ROE.
- Pre-brief of situation, mission, and Commander’s intent.

Leader/Commander Training

- Higher level of training required.
- Actual ROE contain weapons release authorities and classified sections.
- Leader/Cdr training can include briefings, vignette-driven seminars, command post exercises, fire control exercises incorporating ROE scenarios, coordinated with G/S-3.

Mission-Specific ROE Training

- SROE training programs supplemented with mission-specific ROE training.
- Mission-Specific Training also a battle-task.
- ROE cards used to reinforce, highlight, and clarify.
- Continuous ROE training during deployment.

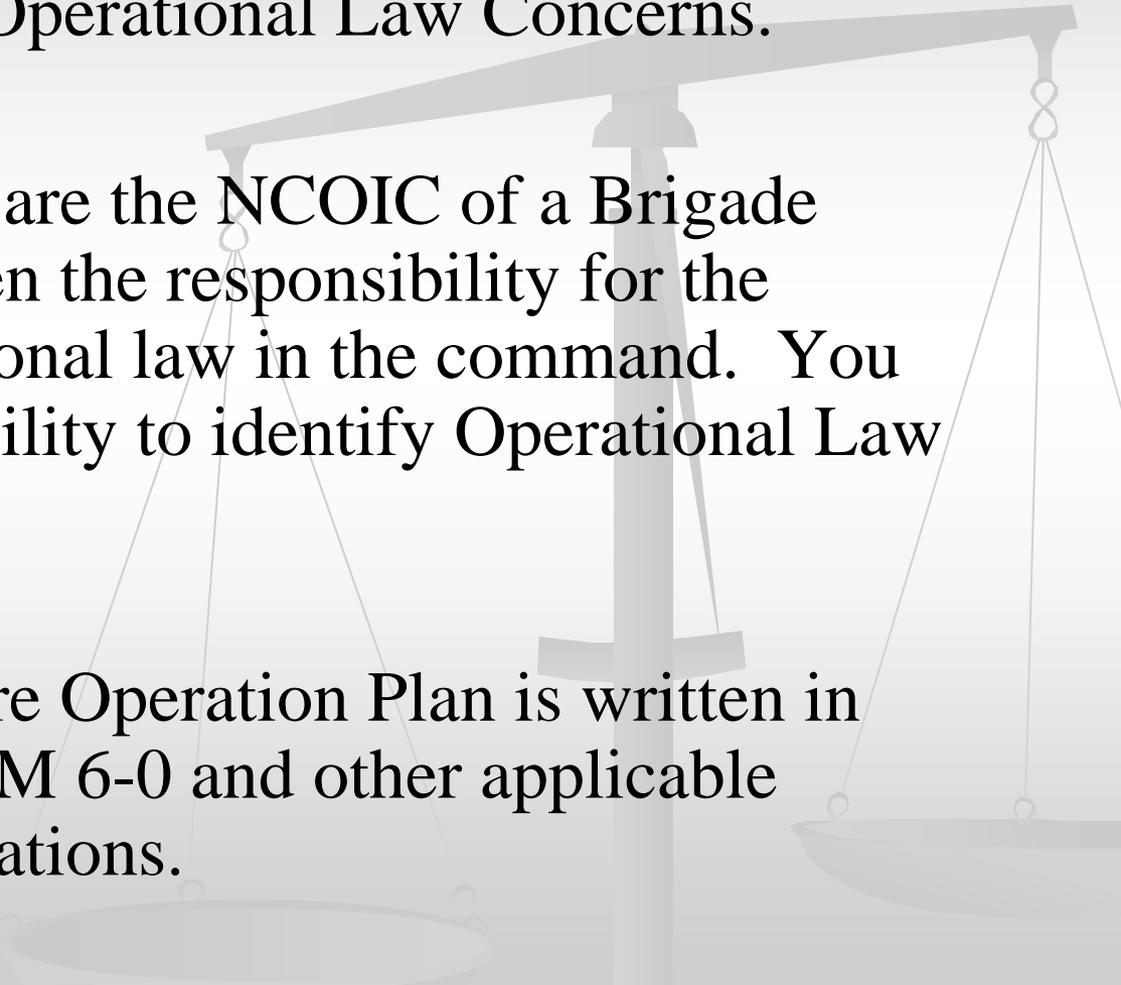
ROE Pocket Cards

- Summary or extract of mission-specific ROE.
- Unclassified training and memory tool.
- Diploma for attending ROE training.
- Parameters – Brevity and clarity, avoid qualified language, tailored to audience, mission-specific, up-to-date.

NATO and MultiNational ROE

- Different meanings to ROE language.
- BLSs must meet with counterparts to discuss ROE programs and interpretations.
- NATO ROE developed thru consensus (minimal time for training on approved ROE).
- Prior training on SROE key.

Terminal Learning Objective



Action: Identify Operational Law Concerns.

Conditions: You are the NCOIC of a Brigade Legal Section given the responsibility for the conduct of operational law in the command. You have the responsibility to identify Operational Law concerns.

Standards: Ensure Operation Plan is written in accordance with FM 6-0 and other applicable manuals and regulations.

4 Basic LOAC Principles

- Military Necessity
- Unnecessary Suffering
- Proportionality
- Distinction (Discrimination)

The Military Decision Making Process (MDMP)

- Analytical process & approach to problem solving.
- Tool that assists Cdr and staff in developing estimates and a plan.
- Ultimate goal of MDMP is to produce a comprehensive, clear, and concise operations order.
- Brigade Legal Section involvement assists in spotting legal issues.

Planning Staff

- Planning Staff size varies based on unit & mission.
- Key players in BDE BMC or FPG are the BDE S3, BDE S2, BDE Fire Support, & BDE S4.
- Other members incl reps from each BOS, ANGLICO, SOF, and Operation Law Judge Advocate.
- BDE BMC or FPG comes together on receipt or warning order from higher headquarters.
- Div BMC or FPG is full time duty.

OPLAW Concerns in Plans and Orders

By participating in the MDMP the Operational Law Judge Advocate will ensure:

- Law of Armed Conflict issues are addressed.
- ROE have been defined.
- Other legal issues have been properly addressed: targeting annex, movement plans, fire support plan, criminal jurisdiction, claims, refugee flow, riot control, Command and control, fiscal law, etc.
- Legal Annex is focal point for policy matters contained in other annexes in the plan.

Receipt of Mission

- Upon receipt of mission - operations section issues warning order.
- Unit SOP identifies planning meeting specifics for mission analysis.
- Tools needed – Higher HQ order, map of area of operations, FMs, existing staff estimates, unit SOPs, current ROE, SOFA, Legal Annex, FM 27-10, DA Pam 27-1.
- Critical decision is the allocation of available time.

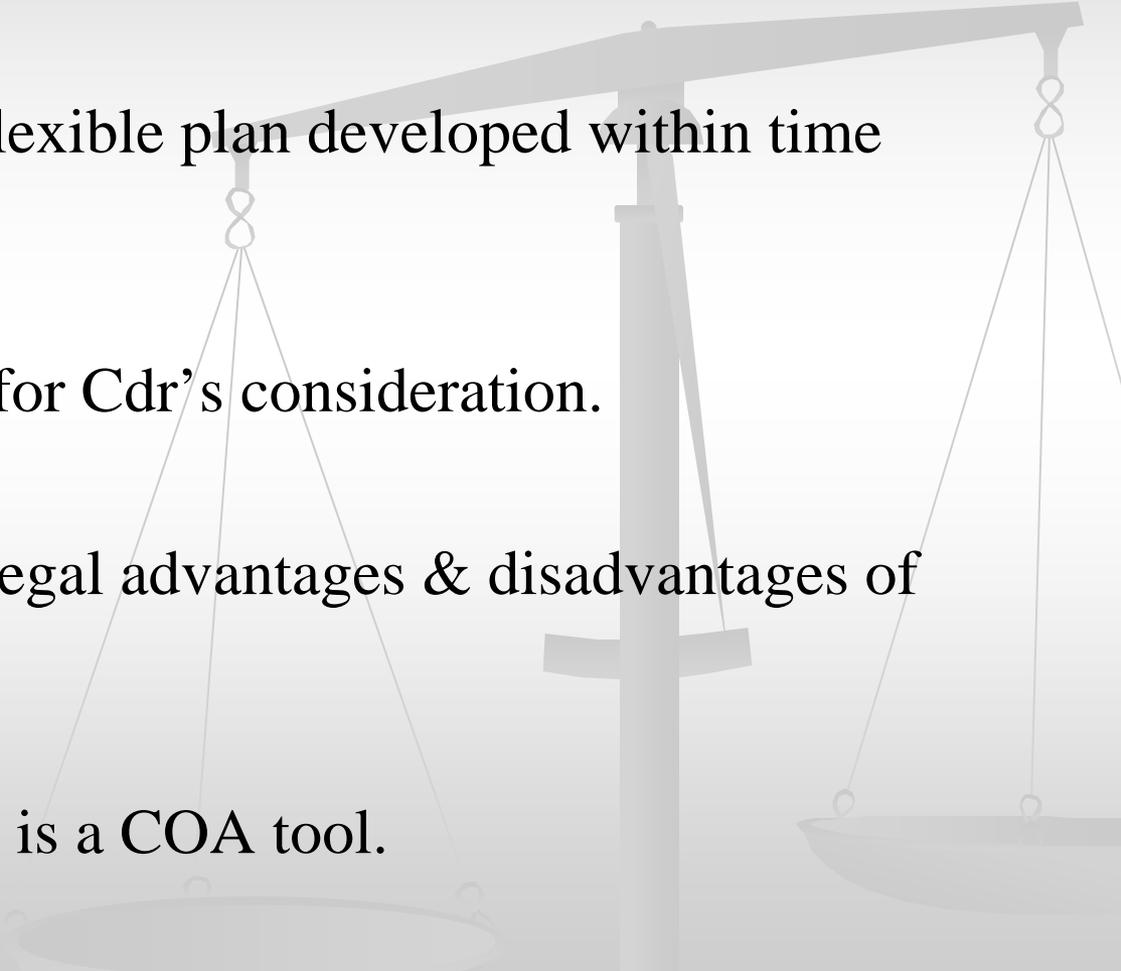
Mission Analysis Steps

1. Analyze higher HQ order.
2. Conduct IPB.
3. Determine specified, implied, essential tasks.
4. Review avail assets.
5. Determine constraints.
6. ID facts and assumptions.
7. Conduct Risk Assessment.
8. Determine CCIR.
9. Determine recon annex.

Mission Analysis Steps (Cont'd)

10. Update the operational timeline.
11. Write restated mission.
12. Conduct mission analysis briefing.
13. Approve restated mission.
14. Develop initial Cdr's intent.
15. Issue Cdr's guidance.
16. Issue warning order.
17. Review facts and assumptions.

Course of Action Development

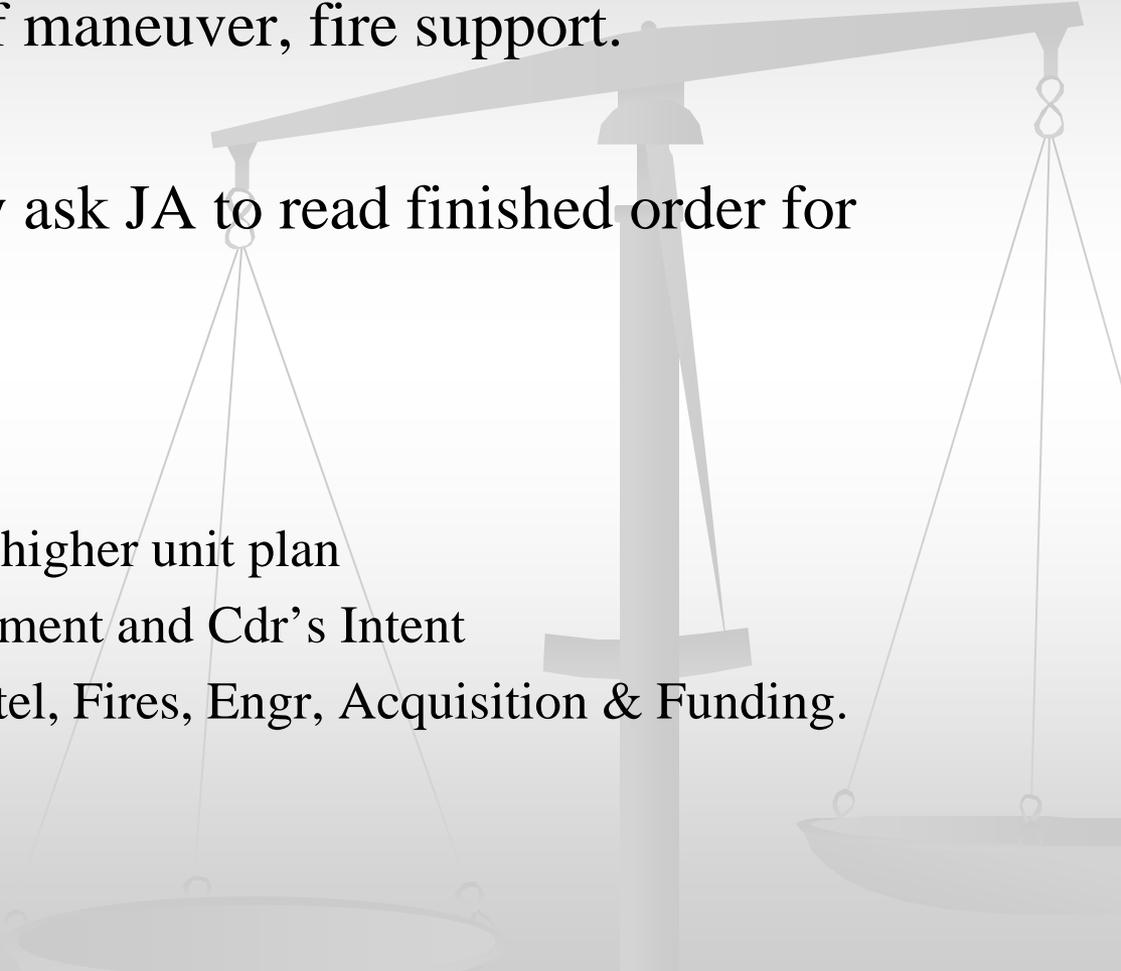


- Entire Staff involved in development.
- Goal: comprehensive, flexible plan developed within time constraints.
- 2 – 5 COAs developed for Cdr's consideration.
- Judge Advocate briefs legal advantages & disadvantages of each COA.
- Synchronization Matrix is a COA tool.

COA Analysis, Comparison, Approval

- COA analysis goal: mission accomplishment w/minimum casualties, best positioning for future.
- War-gaming: process used to test each COA, operational law judge advocate is involved, a staff member acts as opposing force.
- Decision Making Matrix - used by staff members to evaluate each COA, make recommendation to CDR.
- Warning Order issued after CDR's decision.

Orders Review and Production



- Based on Cdr's decision, staff drafts order with concept of operations, scheme of maneuver, fire support.
- G3 Plans Officer may ask JA to read finished order for clarity, consistency.
- Review points:
 - Look at unit plan & higher unit plan
 - Study Mission Statement and Cdr's Intent
 - Review CA, MP, Intel, Fires, Engr, Acquisition & Funding.

Orders Review and Production (Con't)

- Cdr's Authority for missions: Express, Implied, Inherent (avoid mission creep”).
- Example checklist:
 - ❖ Use of doctrinally established terms.
 - ❖ Detailed instructions for subordinate CDRs.
 - ❖ Details of friendly forces' roles.
 - ❖ Focused on essential tasks.
 - ❖ Avoid limiting subordinate CDR initiative.
 - ❖ Avoid qualified directives.
 - ❖ Reader gets “big picture.”

FAST-J OPLAN Review

- **F – Force**

When and what to shoot?

- **A – Authority**

Authority for certain missions (Law enforcement)?

- **S – Status**

Combatant, SOFA

- **T – Things**

Buying, Breaking, Blowing Up

- **J – Justice**

Jurisdiction, Convening Authorities

Types of Plans

- **Campaign Plans-** Joint operation plan.
- **Operation Plans-** is defined by the U.S. Army as any plan for the preparation, execution, and assessment of military operations.
- **Supporting Plans** – OPLAN prepared by subordinate Cdr for requirements of supported OPLAN.

Types of Plans (Cont'd)

- **Concept Plans** – an abbreviated operation plan.
- **Branch** – contingency plan for changing the mission towards anticipated developments.
- **Sequels** – operations that follow the current operation (counteroffensive following a defense).

Orders Defined

- **Order-** communication that is written, oral or by pre-designated signal which conveys instructions from superior to subordinate.
- **Order/Command** – order implies discretion as to details of execution, a command does not.

Types of Orders

- Operation Order (OPORD)
- Warning Order (WARNO)
- Fragmentary Order (FRAGO)

Joint Operations Plans and Orders

- Joint Task Forces (JTF) consist of units from services under 1 CDR.
- JTF OPLAN – supporting plan to OPLAN for Unified Command.
- Unified Command OPLAN – how CDRs will accomplish tasks assigned by Joint Strategic Capabilities Plan (JSCP).

Techniques for Issuing Orders

- Verbal – extremely time-constrained environment.
- Written – normally contain both text and graphics and overlays.
- Electronically disseminated using Battle Command Systems, may include use of matrix method.
- Overlay Orders – normally used for a FRAGO - consists of instructions written on an overlay.

Deliberate vs. Crisis Action

■ Deliberate Planning

1. Strategic Guidance
2. Concept Development
3. Plan Development
4. Plan Refinement

■ Crisis Action Plan

1. Situation Awareness
2. Planning
3. Execution

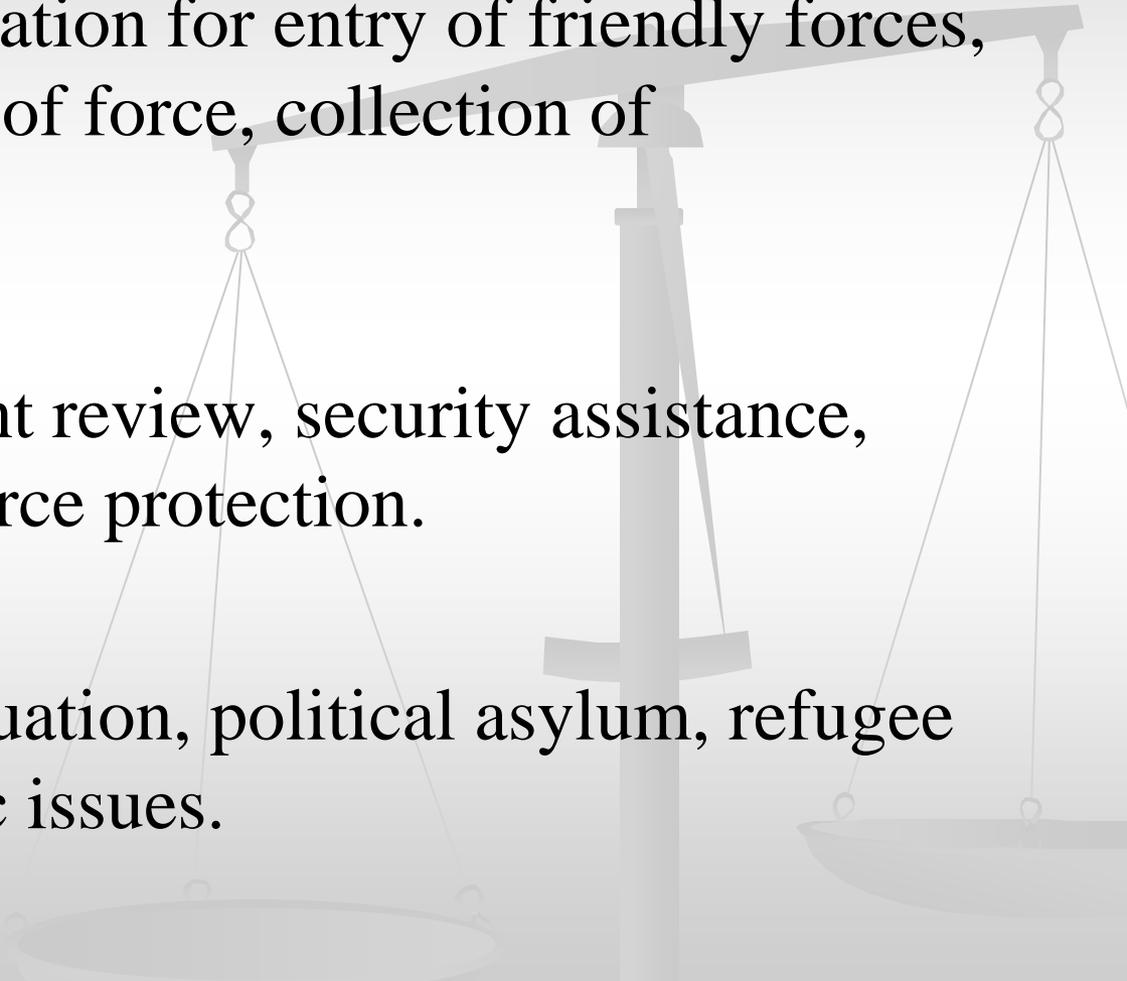
Developing the Legal Annex

- Legal Annex or Appendix must be tailored to each operation.
- Deployment SOP used for general preparation.
- A tailored Legal Annex is used for mission-specific preparation.

Legal Annex Issues

- G.O.1 normally required for each operation.
- Personnel, resources, material, and equipment for legal support of all phases of operation.
- JRTC normal 3 phase operation scenario (insertion/counter-insurgency; defense; offensive).

Legal Annex Considerations



- International justification for entry of friendly forces, use of facilities, use of force, collection of intelligence.
- Rules of Engagement review, security assistance, nation assistance, force protection.
- Noncombatant evacuation, political asylum, refugee handling, diplomatic issues.

Legal Annex Considerations (Cont'd)

- Application of Law of War in diverse situations, maneuver damage claims, weapons and targeting issues, operations in urban terrain, prisoners of war, occupation of territory, NGOs, Govt. Orgs, political parties, news media, police and paramilitary forces, non-uniformed forces, humanitarian assistance, host nation civilians, fratricide, detainee operations, targeting, relief funds, field contracting, civil affairs teams, military information support operations, information operations.

TOC Functions

- The TOC serves as the unit's command and control hub, assisting the commander in synchronizing operations.
- The TOC is the location where the majority of the planning, staff coordination, and monitoring of key events occurs.
- The personnel manning the TOC are responsible for ensuring that all resources are in the right place at the right time.
- Each member of the TOC must understand the overall function of the TOC and how they individually and collectively contribute.

The Staff

- Supports the commander
- Assists subordinate units
- Informs units and organizations outside the headquarters

Key Personnel

- G1
- G2
- G3/ Battle Captain
- G4
- G6
- SJA
- PAO/CA
- Safety
- TOC SGM/ Section NCOICs

Receive information

- Receive messages, reports, and orders from subordinate units and higher headquarters.
- Monitor the tactical situation.
- Maintain a journal of all significant activities and reports.
- Maintain and update unit locations and activities.
- Monitor enemy situation.
- Monitor a status of critical classes of supplies.

Distribute Information

- Submit reports to higher headquarters.
- Serve as a communication relay between units.
- Publish orders and instructions.
- Process and distribute information to appropriate units or staff sections.

Analyze Information

- The key to effective TOC operations is situational awareness; the staff must know themselves, the enemy, and the terrain.
- Anticipate events and activities, taking appropriate action as required.
- Identify information that relates to the commander's critical information requirements (CCIRs).
- Conduct the Military Decision Making Process.
- Identify the need to execute contingency plans based on the current situation.

Submit Recommendations to the Commander

- Submit recommendations to the commander based on information available and analysis conducted.
- The staff uses the Decision Support Template/Matrix (DST/DSM) to focus recommendations to the commander.
 - Integrate resources
 - Coordinate the integration of combat multipliers
 - Synchronize resources
 - Coordinate the synchronization of combat multipliers

LPB, Mission Analysis & METT-TC

- Legal Preparation of the Battlefield (LPB)– a chart analyzing and prioritizing legal requirements for all phases of operation.
- Mission analysis based on MDMP is critical to the legal support plan.
- METT-TC – an analytical tool considering Mission, Enemy, Terrain, Troops, Time and Civil considerations used to develop legal support plan.
- LPB & METT-TC used together to create Legal Annex summarizing legal support to operation.

Terminal Learning Objective

Action: Prepare a Motion.

Conditions: In a classroom environment, given a requirement to prepare a motion, the Manual for Courts-martial, Section II and Appendix C, Rules of Practice Before Army Courts-Martial (1 November 2013); Military Citation Guide, 19th Edition (August 2014); Chapter 25, Practicing Military Justice (2013); February 2001 The Army Lawyer article “The Art of Trial Advocacy”; and standard office supplies and equipment.

Terminal Learning Objective

Standards: Write a proper motion by ensuring the document:

- Requests particular relief from the military judge;
- States the specific legal basis for the relief sought with a minimum of two legal references; and
- Sets forth an offer of proof summarizing the facts that you are relying on in support of your motion.

Enabling Learning Objective A

Identify the Grounds for Motions

- Action: Identify the grounds for motions.
- Conditions: In a classroom environment, given a requirement to identify the grounds for motions, the MCM; Section II and Appendix C, Rules of Practice Before Army Courts-Martial; Military Citation Guide, Chapter 25, Practicing Military Justice; The Army Lawyer article “The Art of Trial Advocacy” and standard office supplies and equipment.
- Standards: Accurately identify the various grounds for motions by type.

What is a Motion?

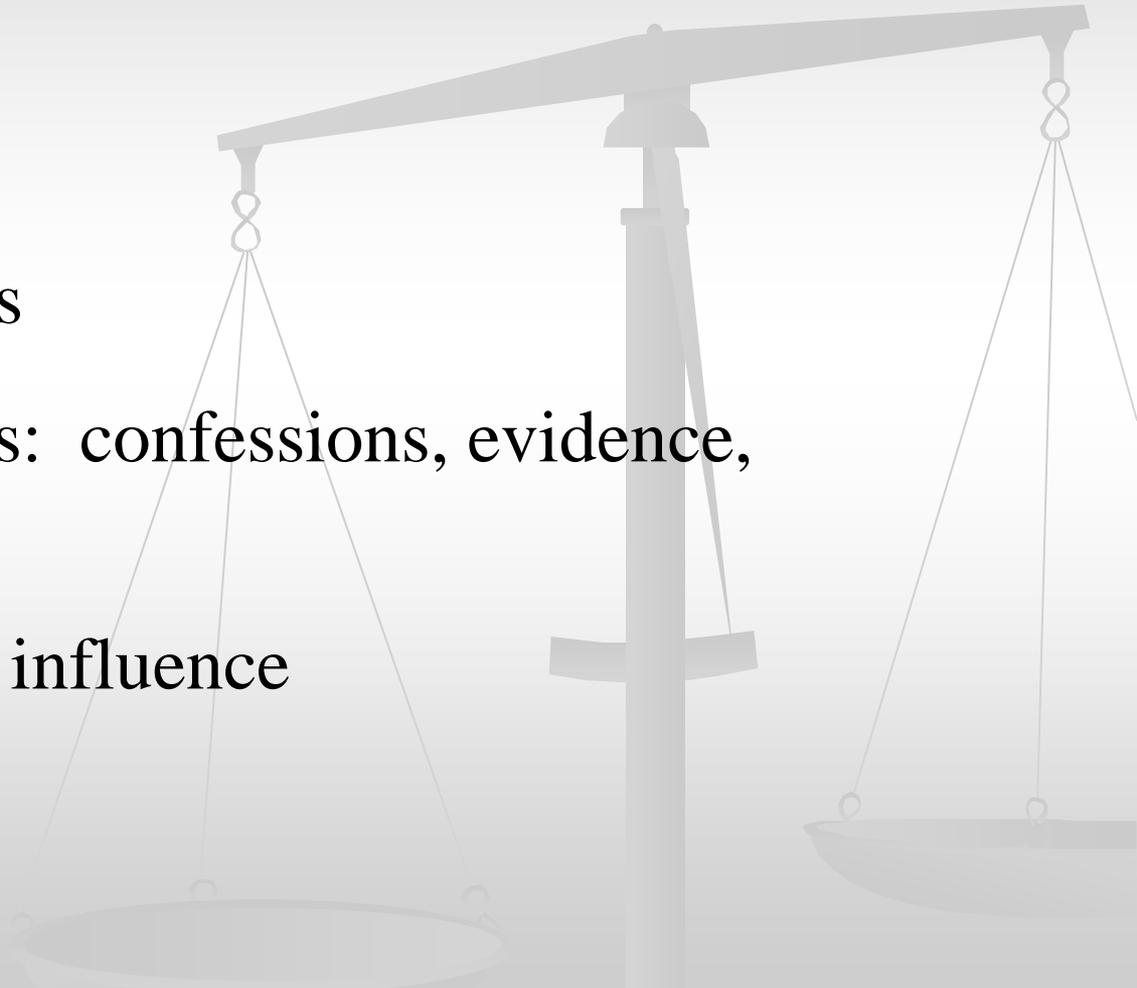
- A request to the judge for **particular relief**.
- Based on **specific grounds**.
- **Notice** should be given to the judge and opposing counsel.
- Litigated at an **Article 39(a) session**.

Burden of Proof

- Standard is by a preponderance of the evidence on any factual issue unless otherwise provided in the MCM.
- Burden of persuasion is assigned to the moving party unless otherwise provided in the MCM.

Motions where the Burden of Proof shifts to the Government

- Jurisdiction
- Speedy trial
- Statute of limitations
- Suppression motions: confessions, evidence, identifications
- Unlawful command influence



Timeliness Requirements for Motions

- **Motions which must be made prior to the plea (or else they are waived).**
 - Defects in preferral, forwarding, and referral.
 - Defects in charges and specifications.
 - Discovery and witness production.
 - Severance of charges, specifications or accused.
 - Individual Military Counsel (IMC) requests.
 - Suppression of evidence.

Timeliness Requirements for Motions

- **Motions which should be made before final adjournment.**
 - Continuances.
 - Speedy trial.
 - Release from pretrial confinement.
 - Statute of limitations.
 - Former jeopardy.
 - Grant of immunity.

Timeliness Requirements for Motions

- **Motions which may be made at any time, including appellate review.**
 - Lack of jurisdiction over accused or offense.
 - Failure to allege an offense.
 - Improperly convened court.
 - Unlawful command influence.

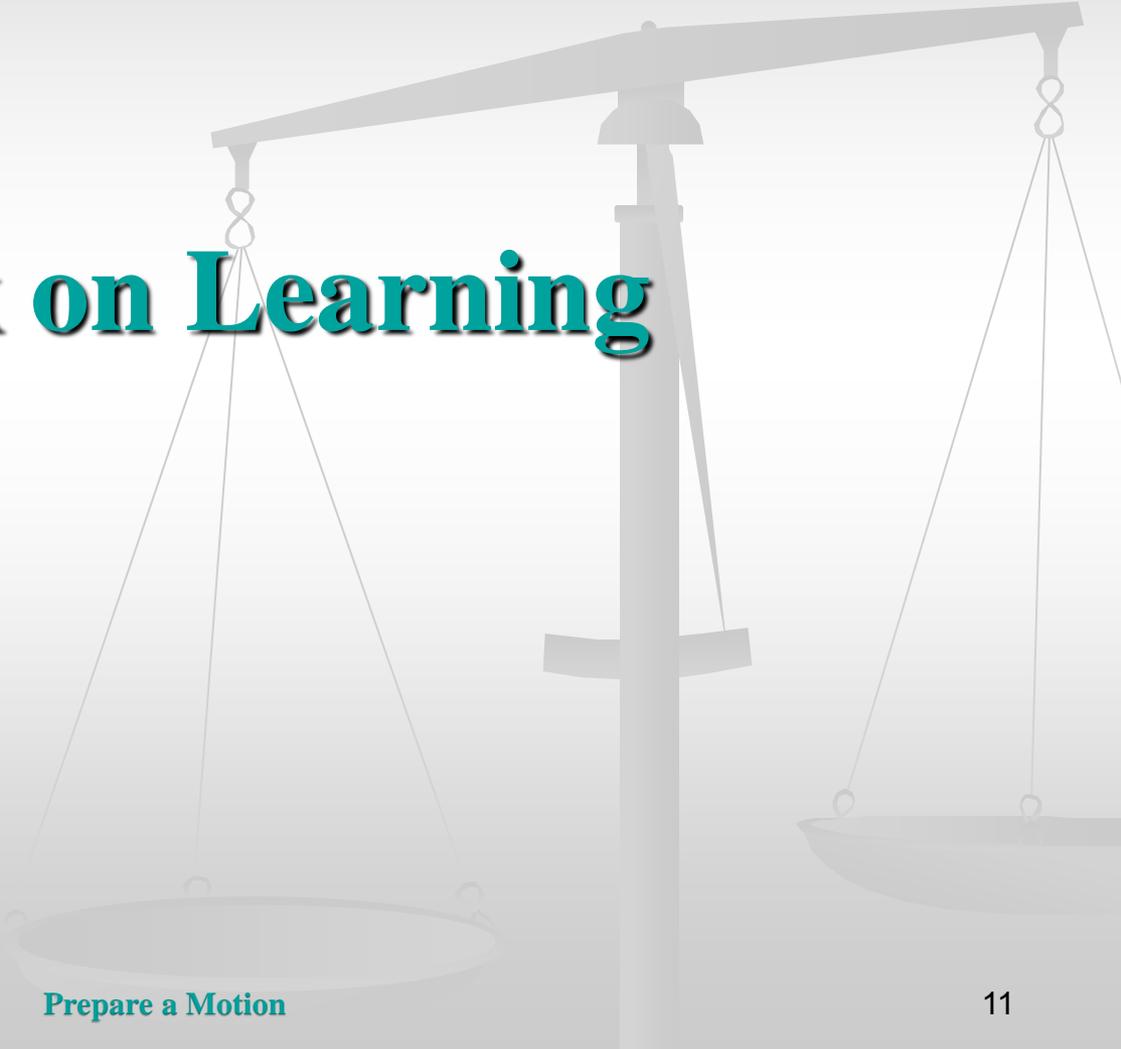
Effect of a Guilty Plea

■ Motions waived by guilty plea

- Suppression of evidence, confessions, and identifications
- Pretrial processing defects

■ Motions not waived by a guilty plea

- Jurisdiction
- Article 10 violations
- Failure to allege an offense
- Unlawful command influence
- Post-trial defects
- Pretrial motions made a part of the conditional guilty plea



Check on Learning

Prepare a Motion

Grounds for Motions to Suppress

- The admissibility of confessions and admissions.
- Evidence obtained from unlawful searches and seizures.
- Eyewitness identification

1. Admissibility of confessions and admissions

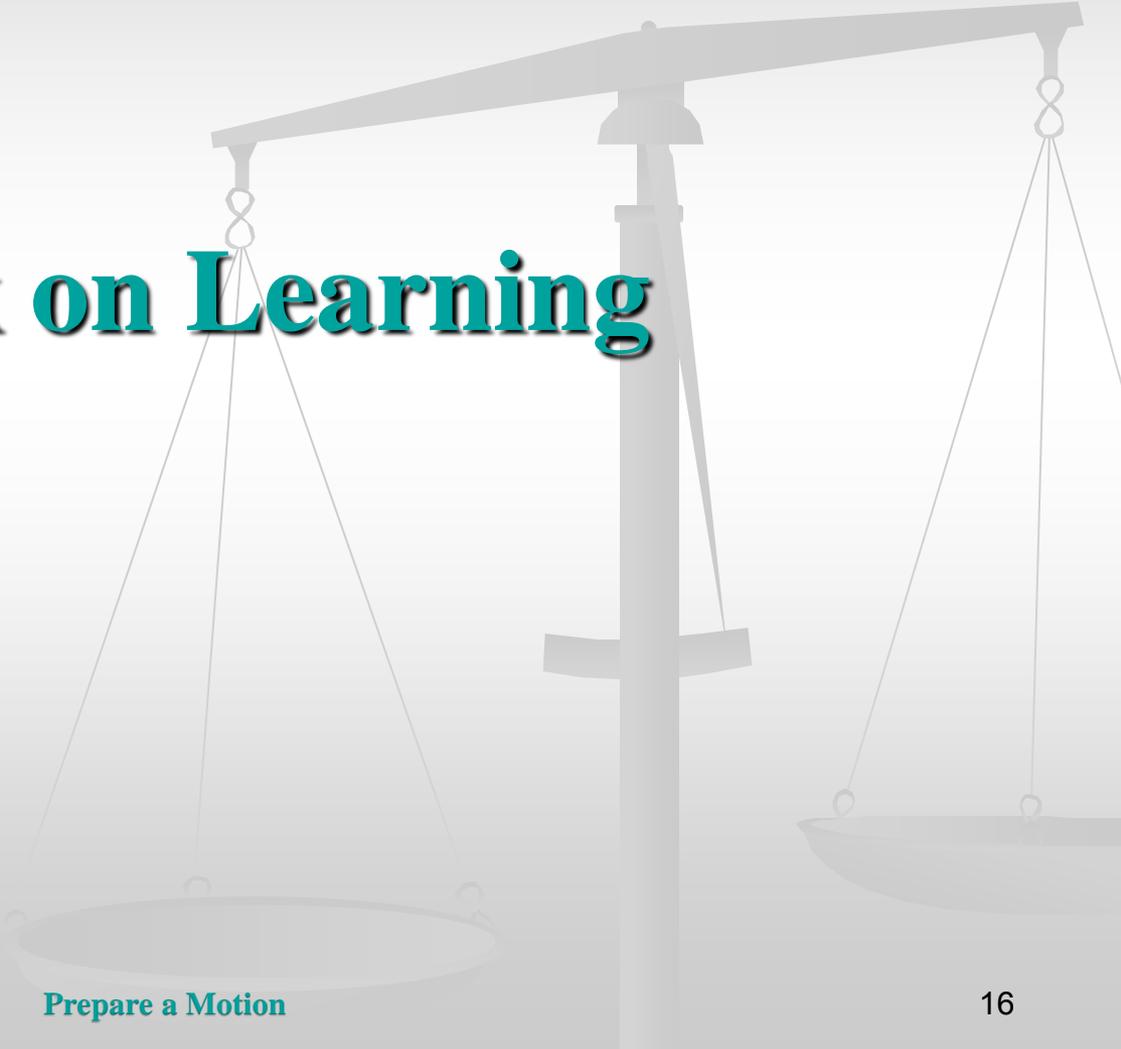
- Covered in M.R.E. 304.
- An involuntary statement or any derivative evidence therefrom may not be received in evidence against the accused who made the statement if the accused makes a timely motion.
- Motions to suppress confessions and admissions shall be made by the defense prior to submission of a plea.

2. Evidence obtained from unlawful searches and seizures

- Covered in M.R.E. 311.
- Evidence obtained from unlawful searches and seizures made by a person acting in a government capacity are inadmissible against the accused if:
 - Accused makes a timely motion to suppress evidence; **and**
 - The accused had a reasonable expectation of privacy in the person, place or property searched
- Motions to suppress evidence from unlawful searches and seizures shall be made by the defense prior to submission of a plea.

3. Eyewitness identification

- Covered in M.R.E. 321.
- Identification of the accused as being a participant in an offense is inadmissible against the accused if:
 - Accused makes timely motion to suppress identification as the result of an unlawful lineup or unlawful identification; **or**
 - Exclusion of evidence is required by due process of the Fifth Amendment as applied to members of the armed forces
- Motions to suppress eyewitness identification shall be made by defense prior to submission of a plea.



Check on Learning

Prepare a Motion

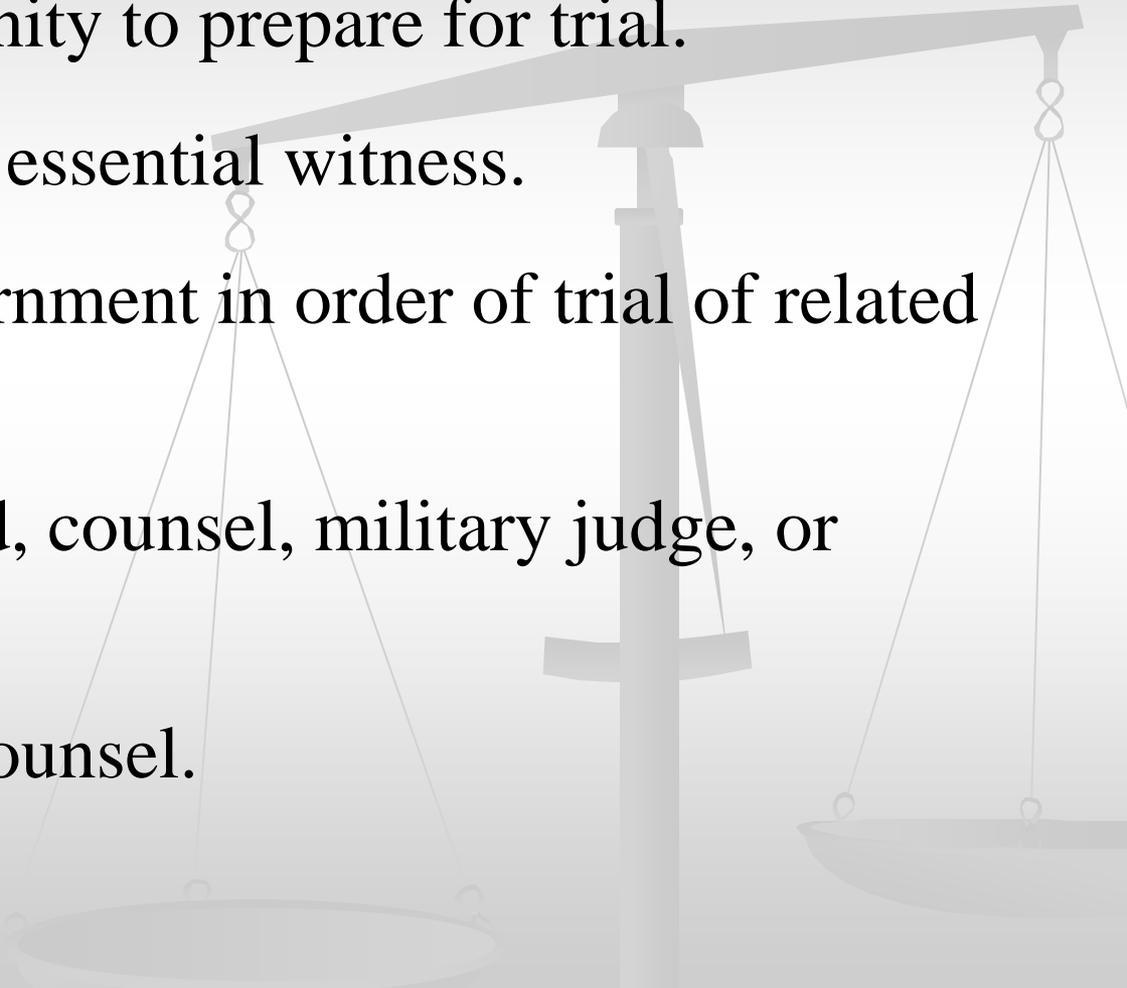
Grounds for Appropriate Relief

- Continuances
- Defective preliminary hearing or pretrial advice
- Amendment of charges or specifications
- Bill of particulars
- Discovery and production of evidence and witnesses
- Relief from illegal pretrial restraint
- Severance of multiple accused
- Severance of duplicitous specifications
- Change location of trial
- Multiplicity issues
- Motion *in limine*
- Mental capacity

1. Continuances

- The postponement of a hearing, trial, or other scheduled court proceeding at the request of either or both parties in a dispute or by the military judge.
- May only be granted by the military judge.

Reasons for a continuance



- Insufficient opportunity to prepare for trial.
- Unavailability of an essential witness.
- Interest of the Government in order of trial of related cases.
- Illness of an accused, counsel, military judge, or member.
- Obtaining civilian counsel.

2. Defective Preliminary Hearing or Pretrial Advice

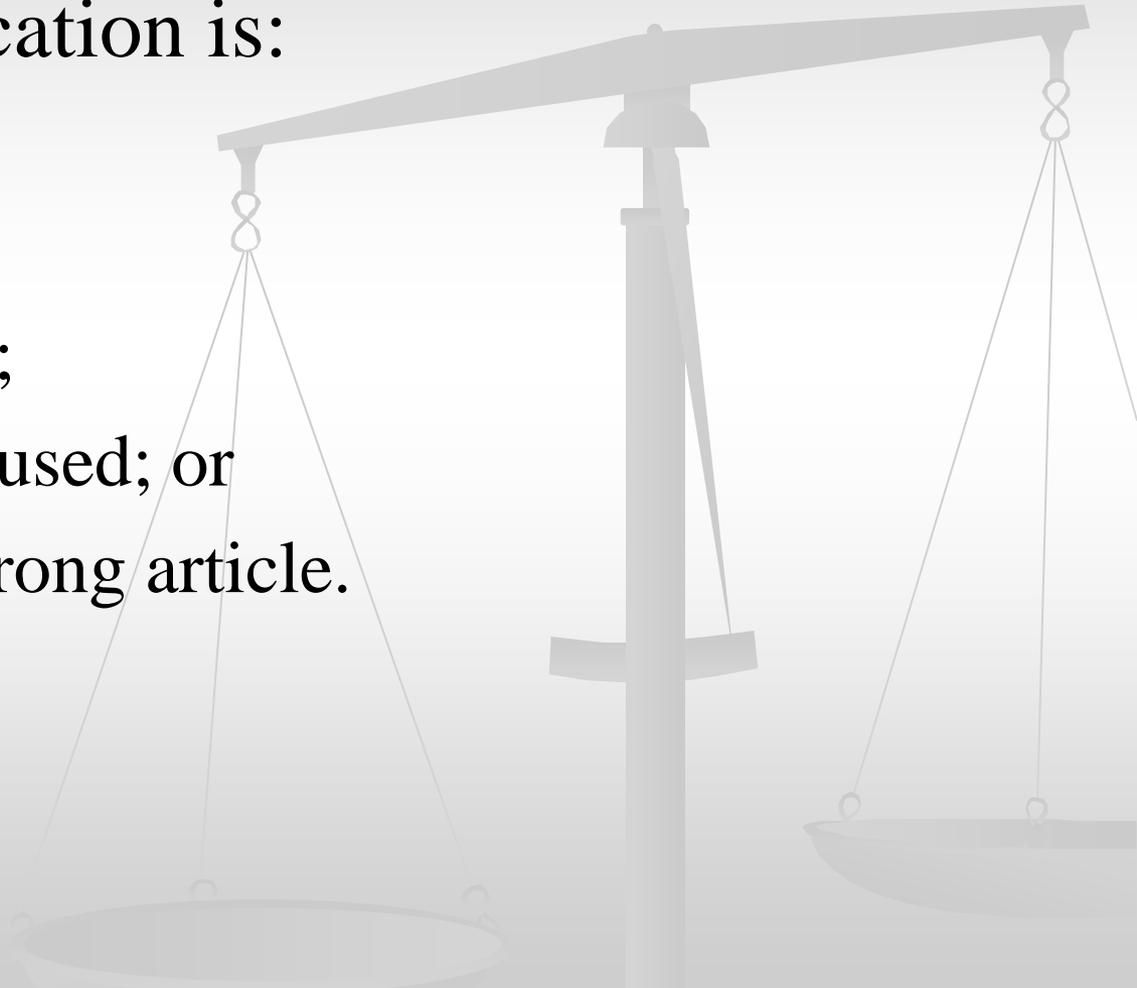
- R.C.M. 405 and 406 establish guidelines for pretrial investigations and advice.
- Incorrect, incomplete, or misleading information in an preliminary hearing or pretrial advice may necessitate appropriate relief.
- When motion is granted under these grounds, the military judge should ordinarily grant a continuance so the defect may be corrected.

3. Amend charges and specifications

- A charge or specification may not be amended over the accused's objection unless the amendment is minor within the meaning of R.C.M. 603(a).
- When a specification is amended after the accused has entered a plea, the accused should be asked to plead anew to the amended specification.
- If a specification, although stating an offense is so defective that the accused appears to have been misled, the accused should be given a continuance upon request, or in appropriate cases, the specification may be dismissed.

When is an amendment to a specification appropriate?

- When the specification is:
 - Unclear;
 - Redundant;
 - Inartfully drafted;
 - Misnames an accused; or
 - Laid under the wrong article.



4. Sever duplicitous specifications

- A duplicitous specification is one that alleges two or more separate offenses.
- Sole remedy is severance of a duplicitous specification into two or more specifications.
- If the duplicitousness is combined with or results in other defects, such as misleading the accused, other remedies may be appropriate.

5. Bill of particulars

- Purpose is to inform the accused of the nature of the charges with sufficient precision to:
 - Enable the accused to prepare for trial;
 - Avoid or minimize the danger of surprise at the time of trial; and
 - Enable the accused to plead the acquittal or conviction.

A bill of particulars should not be used to:

- Conduct discovery of the Government's theory of the case;
- Force detailed disclosure of acts underlying the charge; **or**
- Restrict the Government's proof at trial.

6. Discovery and production of evidence and witnesses

- R.C.M. 703 covers production of witnesses and evidence.
- Under R.C.M. 703, the trial counsel is responsible for the production of defense witnesses, unless he/she contends that the witness' production is not required under this rule.
- R.C.M. 914 covers the production of witness statements.

7. Relief from illegal pretrial confinement

- R.C.M. 305 covers pretrial confinement.
- The military judge shall review the propriety of pretrial confinement upon motion for the referred charges placing the accused in pretrial confinement.

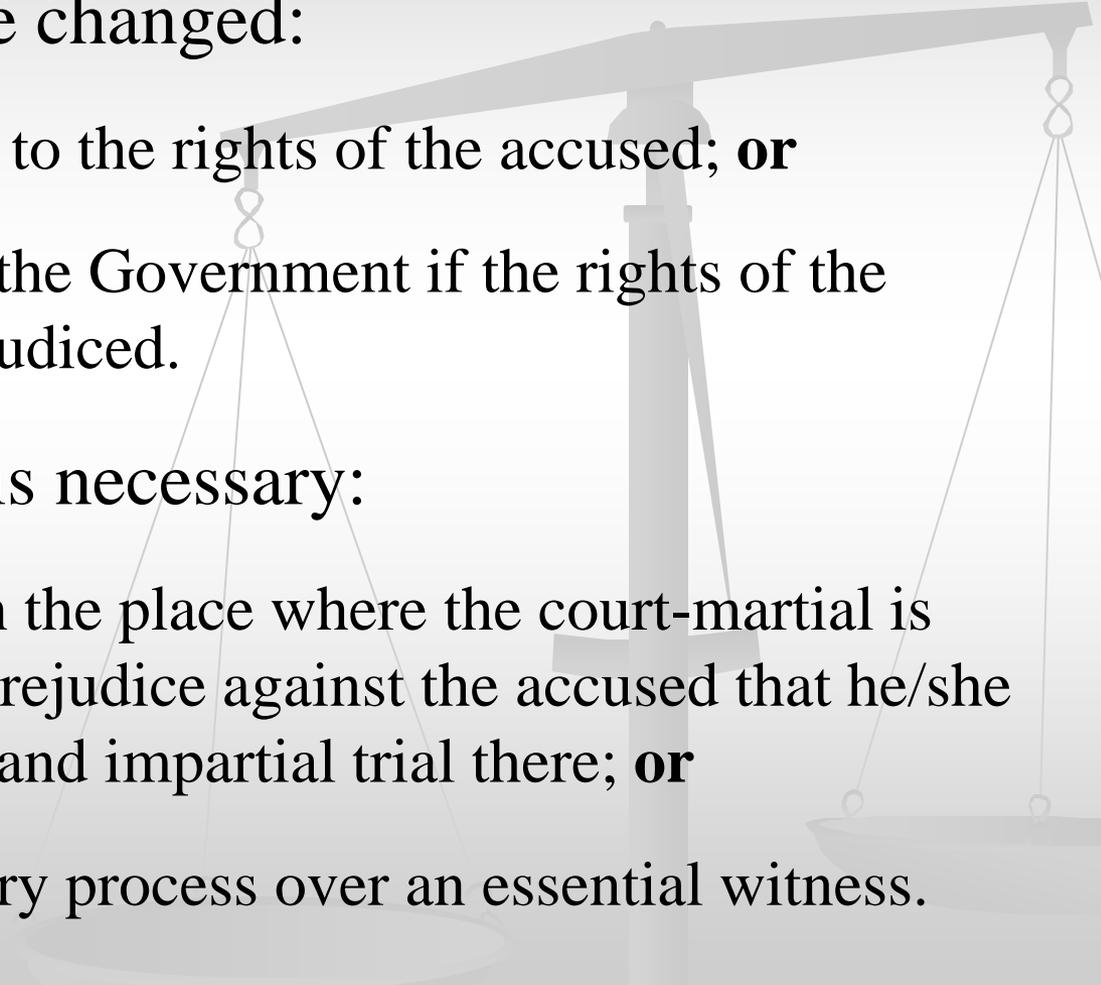
The military judge shall order the release of the accused from pretrial confinement only if:

- 7-day reviewing officer's decision was an abuse of discretion, and no sufficient information is presented to the MJ justifying continuation of pretrial confinement;
- Information not presented to the 7-day reviewing officer establishes that the prisoner should be released under R.C.M. 305(h)(2)(B) ; or
- The provisions of R.C.M. 305(i)(1) or (2) have not been complied with and information presented to the MJ does not establish sufficient grounds for continued confinement.

8. Sever accused

- A motion of severance is a request that one or more accused against whom charges have been referred to a joint trial be tried separately.
- Severance is ordinarily appropriate when:
 - The moving party wishes to use the testimony of one or more of the coaccused or the spouse of a coaccused;
 - A defense of a coaccused is antagonistic to the moving party; or
 - Evidence as to any other accused will improperly prejudice the moving accused.

9. Change location of trial



- Place of trial may be changed:
 - to prevent prejudice to the rights of the accused; **or**
 - For convenience of the Government if the rights of the accused are not prejudiced.
- Change of location is necessary:
 - When there exists in the place where the court-martial is pending so great a prejudice against the accused that he/she cannot obtain a fair and impartial trial there; **or**
 - To obtain compulsory process over an essential witness.

10. Motion *in limine*

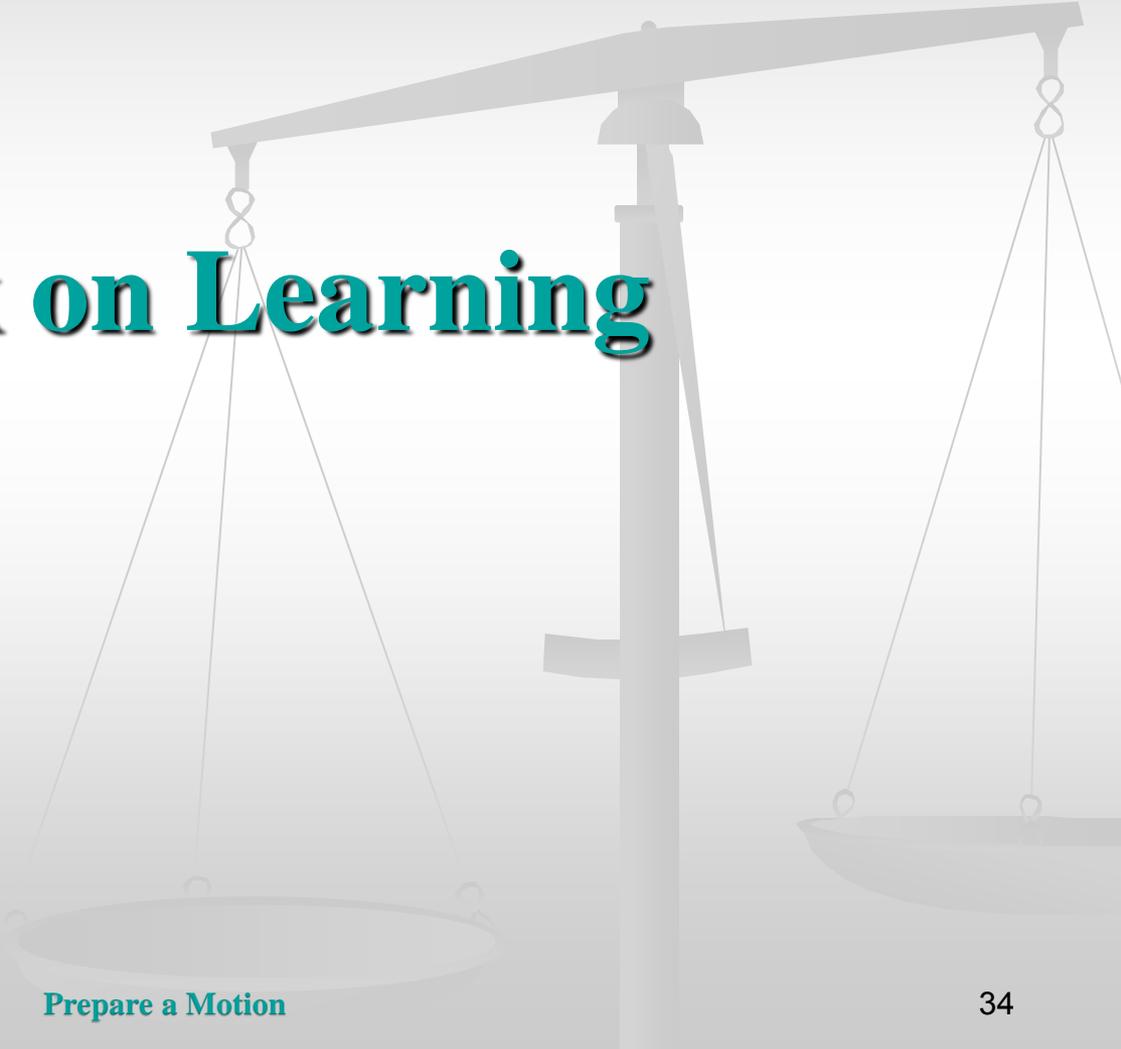
- A request (by the government or defense) for a preliminary ruling on the admissibility of evidence made outside the presence of members.
- Purpose: To avoid the prejudice which may result from bringing inadmissible matters to the attention of court members.

Common uses of a motion *in limine*

- Admissibility of uncharged misconduct
- Motions to keep out M.R.E. 413/414 evidence
- Admissibility of prior conviction for impeachment
- Admissibility of witness's out of court statements
- Admissibility of a victim's sexual behavior or predisposition under M.R.E. 412(b)
- Preemptive strike by the government other than confessions, seizures, or identification
- Preservation for appellate review of issue raised by motion *in limine*

11. Mental capacity/responsibility issues

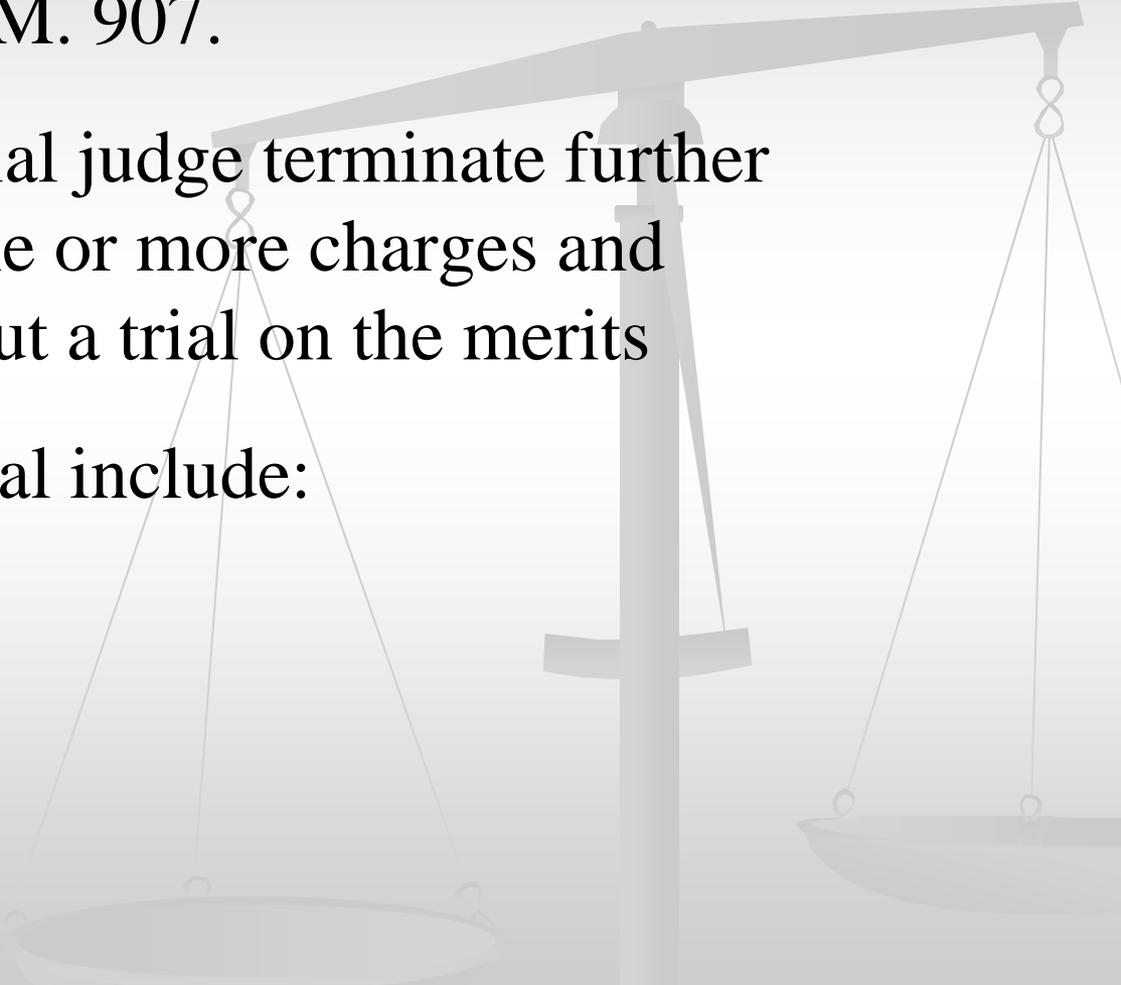
- R.C.M. 706 covers inquiries into mental capacity or mental responsibility of the accused.
- R.C.M. 909 covers an accused's capacity to stand trial at a court-martial.
- R.C.M. 916(k) covers the defense of lack of mental responsibility.



Check on Learning

Prepare a Motion

Motions to Dismiss



- Covered under R.C.M. 907.
- A request that the trial judge terminate further proceedings as to one or more charges and specifications without a trial on the merits
- Grounds for dismissal include:
 - Nonwaivable;
 - Waivable; and
 - Permissible.

1. Nonwaivable Grounds

- Can be raised at anytime, including appellate review.
- A charge or specification shall be dismissed upon motion if:
 - Court-martial lacks jurisdiction to try the accused for the offense;
 - Specification fails to state an offense;
 - Unlawful Command Influence; **or**
 - Court has been improperly convened.

2. Waivable Grounds

- Must be raised before final adjournment of trial.
- A charge or specification shall be dismissed upon motion made by the accused if:
 - Dismissal required under R.C.M. 707 (speedy trial)
 - Statutes of limitations
 - Double jeopardy; **or**
 - Prosecution is barred.

A. Dismissal required under R.C.M. 707

- The accused shall be brought to trial within 120 days after the earlier of:
 - Preferral of charges;
 - Imposition of pretrial restraint under R.C.M. 304(a)(2)-(4);
or
 - Entry on active duty under R.C.M. 204.
- If the accused has not been brought to trial within 120 days of the above, charges must be dismissed with prejudice where the accused has been deprived of constitutional right to speedy trial.

B. Statute of Limitations

- Unlimited – capital offenses and AWOL in time of war.
- Child abuse offenses – life of child, or within five years of date crime committed, whichever is longer.
- Five years – all other offences.
- Two years – Article 15 nonjudicial punishment.

C. Double Jeopardy

- A procedural defense that forbids a defendant from being tried again on the same (or similar) charges following a legitimate acquittal or conviction.

The accused has been previously tried by court-martial for the same offense, provided

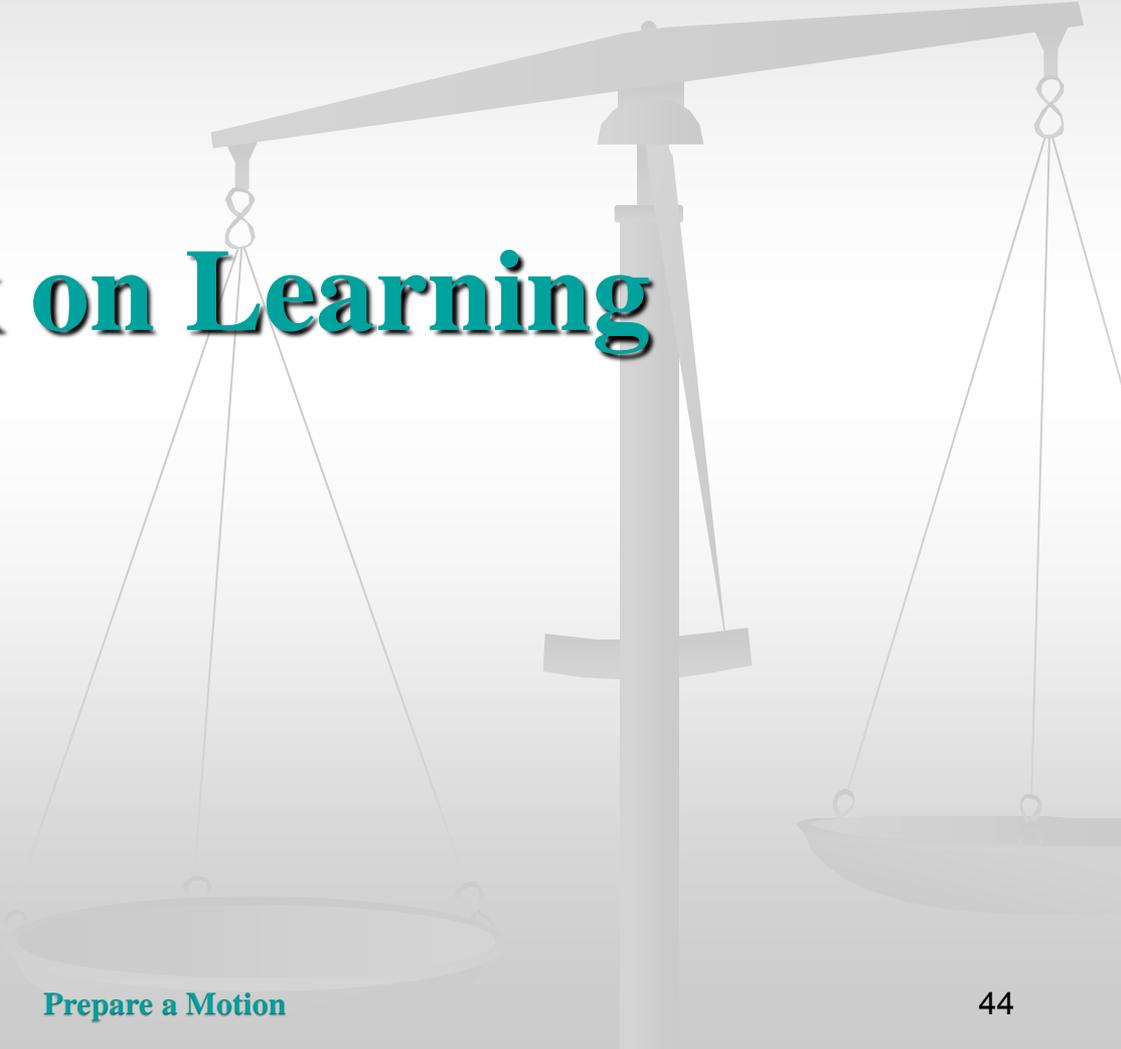
- No court-martial proceeding is a trial in the sense of this rule unless presentation of evidence on the general issue of guilt has begun;
- No court-martial proceeding which has been terminated under R.C.M. 604(b) or R.C.M. 915 shall bar later prosecution for the same offense or offenses, if so provided in those rules;
- No court-martial proceeding in which an accused has been found guilty of any charge or specification is a trial in the sense of this rule until the finding of guilty has become final after review of the case has been fully completed; and
- No court-martial proceeding which lacked jurisdiction to try the accused for the offense is a trial in the sense of this rule.

D. Prosecution is Barred

- Presidential pardon;
- Grant of immunity;
- Constructive condonation of **Desertion**; **or**
- Prior Article 13 or 15 for the same minor offense.

3. Permissible Grounds

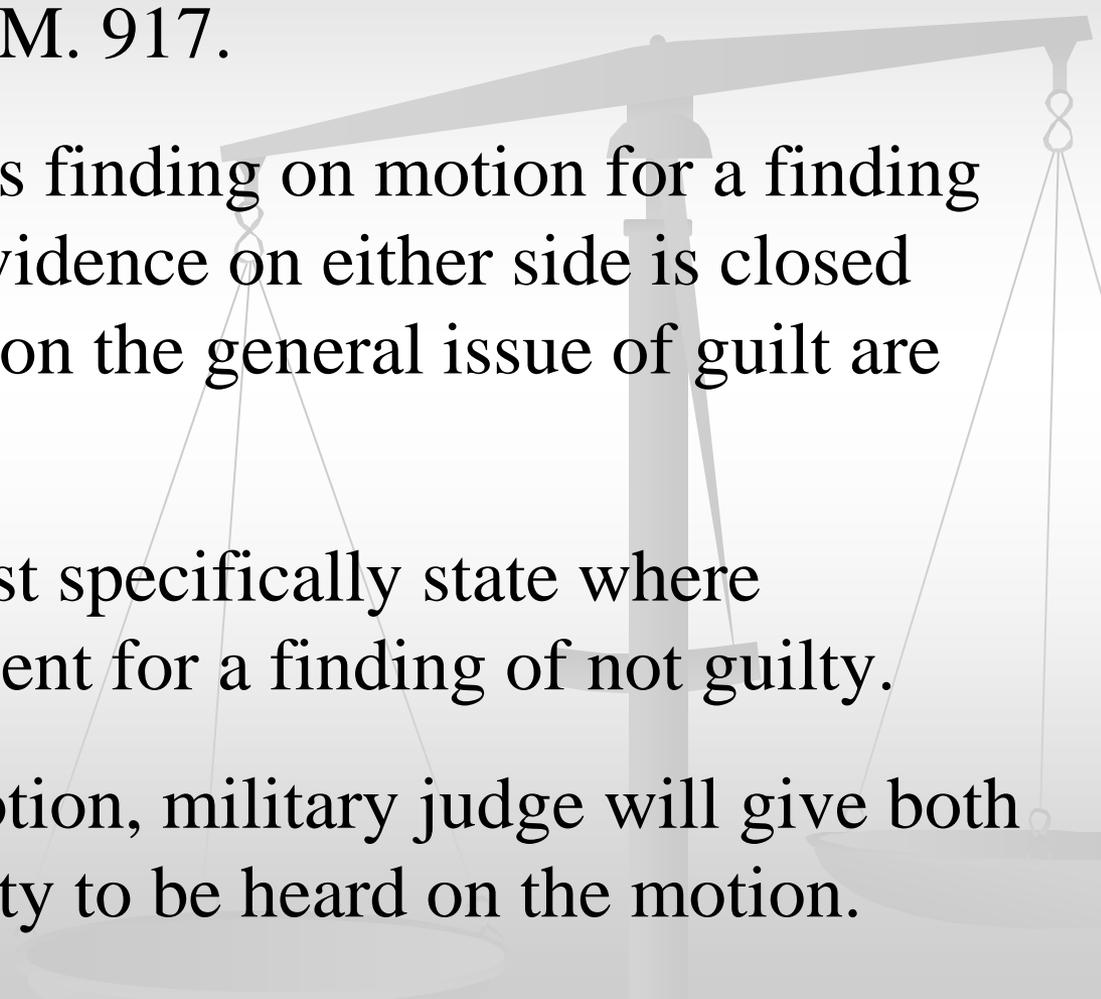
- May be dismissed upon timely motion by the accused.
- Charge or specification shall be dismissed if:
 - The specification is so defective that it substantially misled the accused; or
 - The specification is multiplicitous with another specification.



Check on Learning

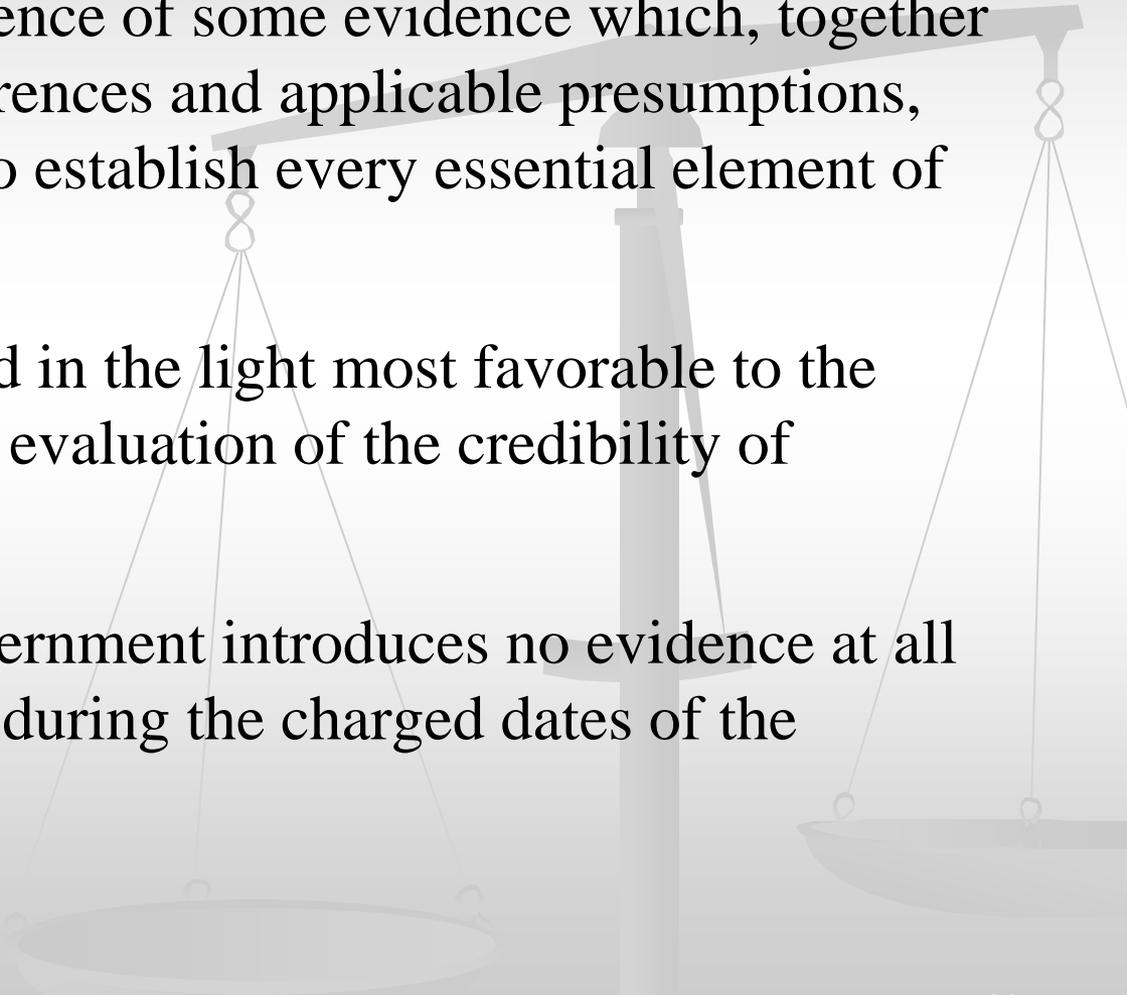
Prepare a Motion

Motions for findings of Not Guilty

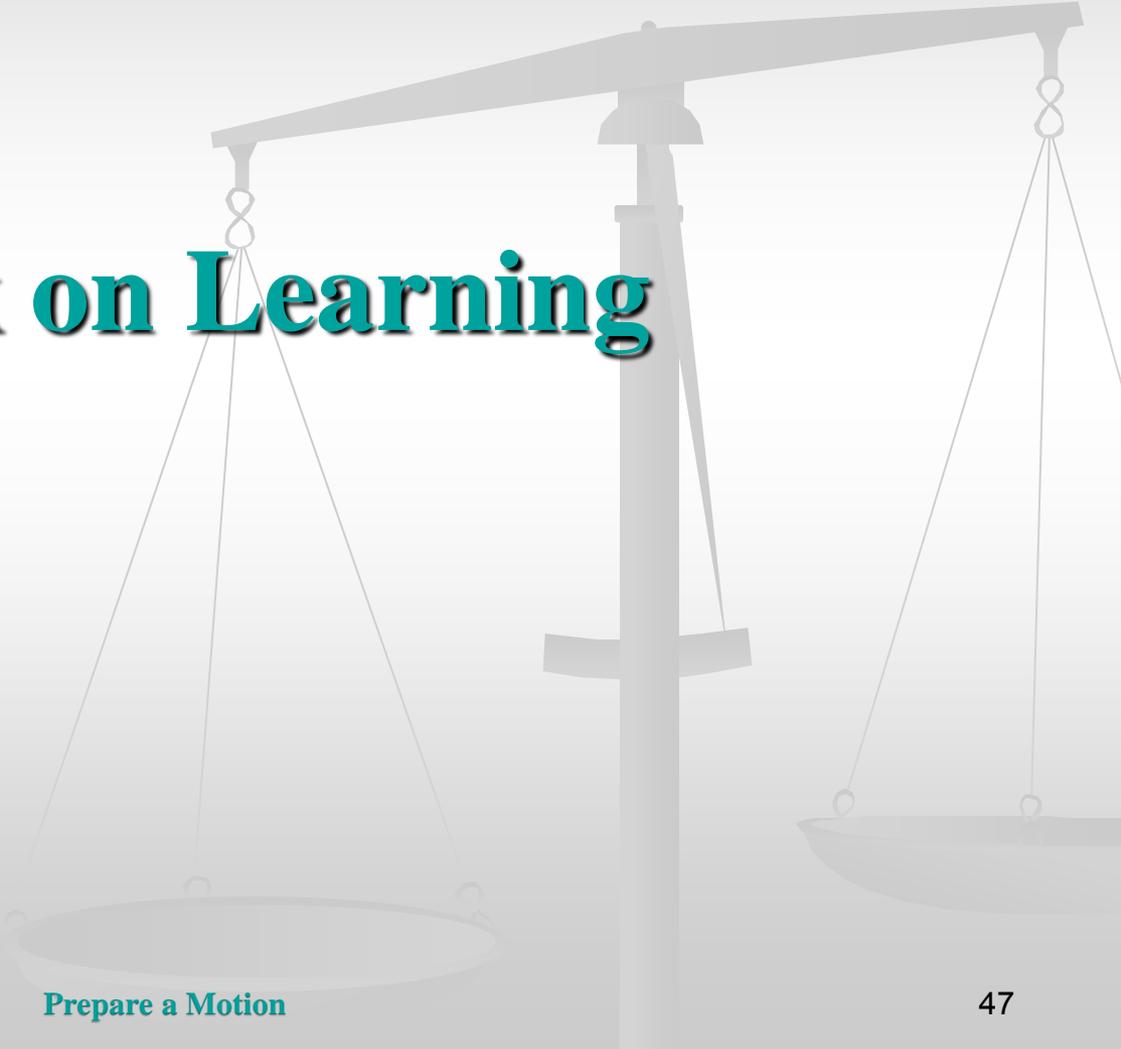


- Covered under R.C.M. 917.
- Military judge enters finding on motion for a finding of not guilty after evidence on either side is closed and before findings on the general issue of guilt are announced.
- Defense motion must specifically state where evidence is insufficient for a finding of not guilty.
- Before ruling on motion, military judge will give both parties an opportunity to be heard on the motion.

Motion standard for a finding of Not Guilty



- Granted only in the absence of some evidence which, together with all reasonable inferences and applicable presumptions, could reasonably tend to establish every essential element of an offense charged.
- Evidence will be viewed in the light most favorable to the prosecution, without an evaluation of the credibility of witnesses.
- Grant motion if the government introduces no evidence at all of an offense occurring during the charged dates of the offense.



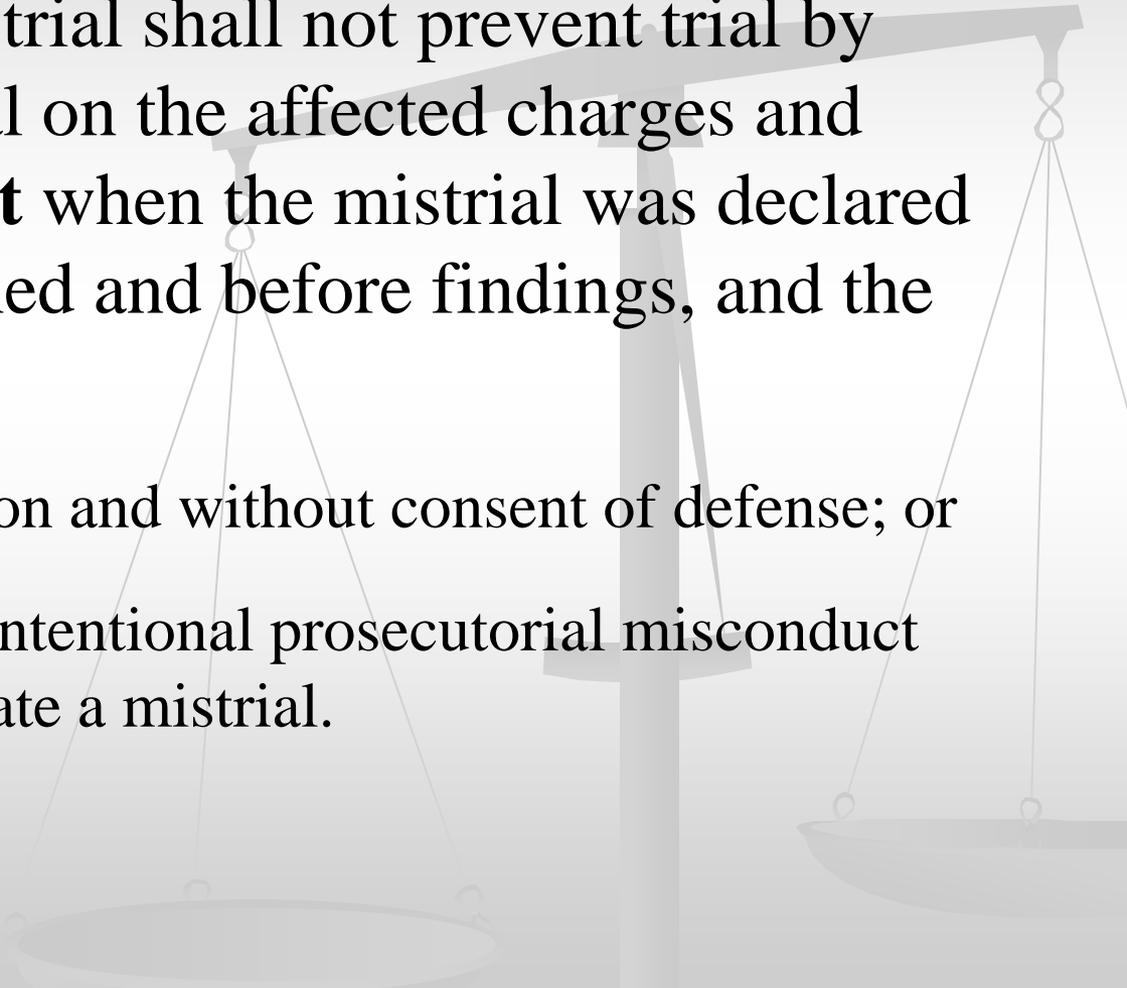
Check on Learning

Prepare a Motion

Mistrial

- Covered under R.C.M. 915.
- A drastic remedy, which should be used with great caution.
- Only declared when such action is *manifestly necessary* in the interest of justice due to circumstances which cast substantial doubt upon the fairness or impartiality of trial.

Mistrial Continued



- A declaration of mistrial shall not prevent trial by another court-martial on the affected charges and specifications **except** when the mistrial was declared after jeopardy attached and before findings, and the declaration was:
 - An abuse of discretion and without consent of defense; or
 - The direct result of intentional prosecutorial misconduct designed to necessitate a mistrial.

Examples of Grounds for Mistrial

- Improper relationship between government witness and members.
- Inattentive or sleeping court member during trial.
- Member initiated communication with third party intended to gain improper and extrajudicial information relevant to key issues in case.



Check on Learning

Prepare a Motion

Enabling Learning Objective B

Complete the Prepare a Motion Multiple Choice and matching exam

- Action: Complete the Prepare a Motion multiple choice and matching exam.
- Conditions: In a classroom environment, given access to student notes, regulations, and handouts, complete the student exam.
- Standards: Receive a score of 70% or higher on the exam.

Enabling Learning Objective C

Draft a Proper Motion

- Action: Draft a Proper Motion.
- Conditions: In a classroom environment, given a requirement to draft a proper motion and access to the MCM; Section II and Appendix C, Rules of Practice Before Army Courts-Martial; Military Citation Guide; Chapter 25, Practicing Military Justice; The Army Lawyer article “The Art of Trial Advocacy”; and standard office supplies and equipment.
- Standards: Write a proper motion by ensuring the document:
 - Requests particular relief from the military judge;
 - States the specific legal basis for the relief sought with a minimum of two legal references; and
 - Sets forth an offer of proof summarizing the facts that you are relying on in support of the motion.

Components of a Proper Motion

- 1. Request for relief.
- 2. Legal authority.
- 3. Offer of proof.



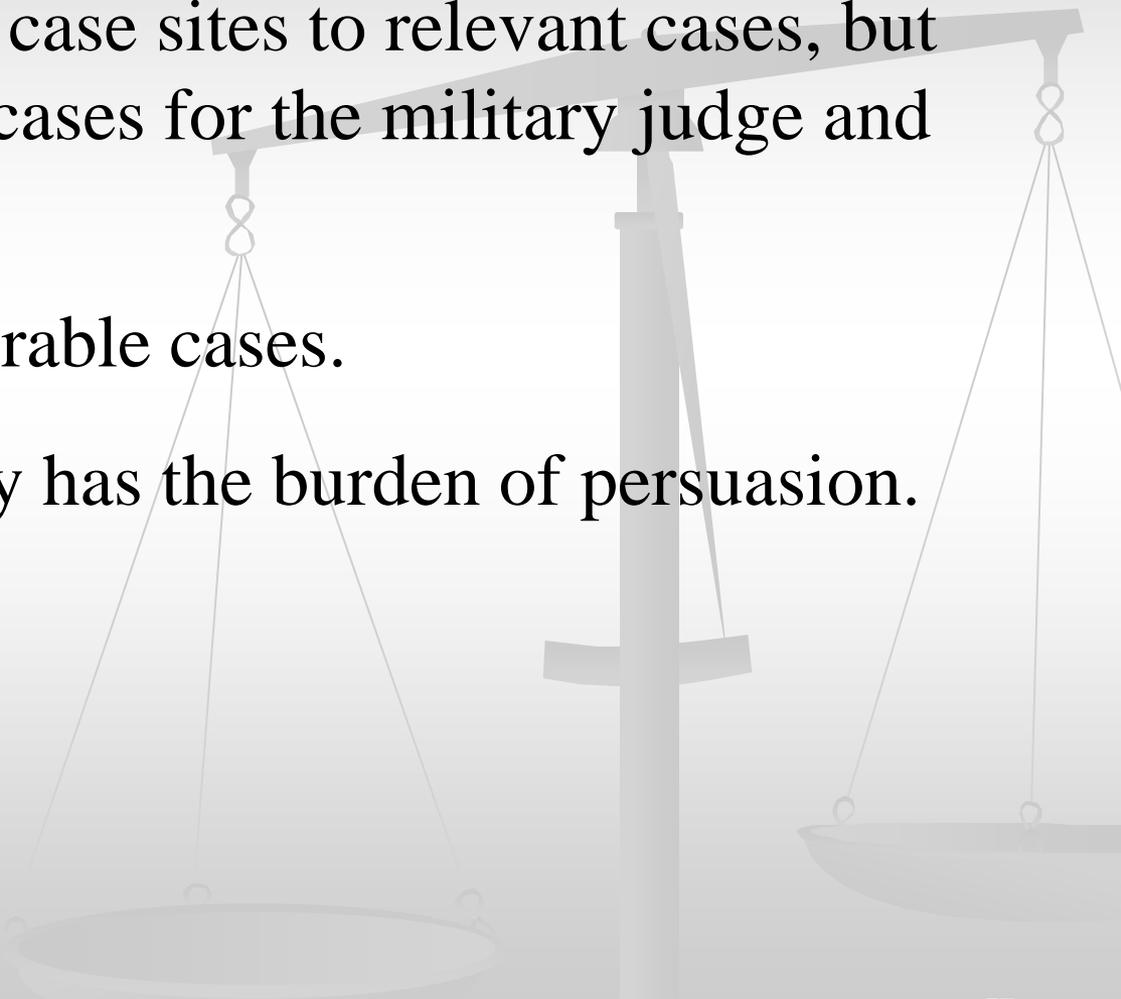
1. Request for Relief

- Put the bottom line up front.
- Include only the information that is really relevant to the issue your attorney is litigating.

2. Legal Authority

- Tells the judge the legal authority supporting the requested motion.
- Research the rules, statutory authority, and relevant case law on the issue your attorney is litigating.
- Explain how the law supports your party's position on the motion.

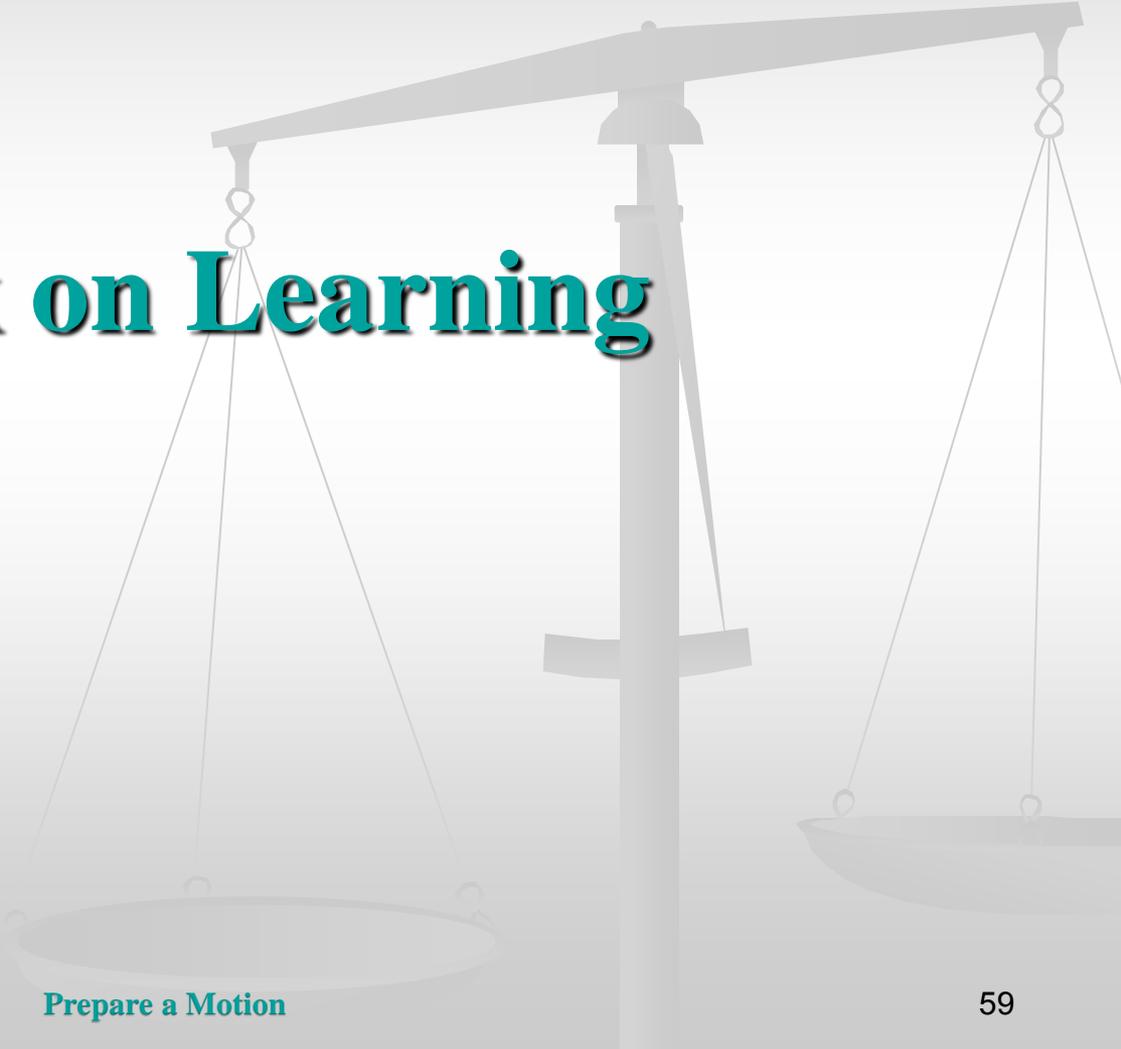
Additional Pointers



- Include not only the case sites to relevant cases, but copies of the actual cases for the military judge and opposing counsel.
- Don't ignore unfavorable cases.
- Set forth which party has the burden of persuasion.

3. Offer of Proof

- Summarizes pertinent facts that you are relying on in support of your motion.
- Organize facts relevant to show how the law and facts merge to support the relief your attorney is seeking.
- It is critical that you understand and set forth what the standard of proof is for your motion.
- An offer of proof is not evidence, and is not sufficient standing alone to meet the factual standard of proof.



Check on Learning

Sections of a Motion

- Caption
- Relief sought
- Burden of proof and standard of proof
- Facts
- Witnesses/evidence
- Legal authority and argument
- Conclusion

1. Caption

UNITED STATES OF AMERICA)

v.)

Daniels, John A.)
Staff Sergeant, U.S. Army,)
Company A, Brigade Support Battalion,)
3d Brigade, 54th Infantry Division)
Fort Atterbury, Indiana 46124-9000)

Defense Motion
in Limine
MRE 412 Evidence

7 January 2015

2. Relief Sought

RELIEF SOUGHT

The defense in the above case herewith files, IAW MRE 412, a motion and notice of intent to admit the following information about the alleged victim, Private (E2) Melissa Doe:

- 1) That the alleged victim and SPC Smith have engaged in a consensual sexual relationship for about the past eight (8) months before the time of the alleged offense.
- 2) That the alleged victim and PFC Reynolds engaged in consensual sexual activity approximately two and a half months prior to the alleged misconduct.
- 3) That at the time of the alleged misconduct, the alleged victim had a reputation within the Brigade Support Battalion as being available for casual sexual activity in exchange for affection and dates.
- 4) That at the party immediately preceding the sexual intercourse at issue, the alleged victim sat on the accused's lap and was "grinding" on him while the two were dancing.

Both the prosecution and defense request oral argument.

3. Burden of proof and standard of proof



BURDEN OF PROOF AND STANDARD OF PROOF

The Defense has the burden of demonstrating why the general prohibition in MRE 412 should be lifted to admit evidence of the past sexual behavior of the victim. In accordance with Rule for Courts-Martial (RCM) 905(c)(1), the standard of proof is by a preponderance of the evidence. As the moving party, the Defense bears the burden of persuasion in accordance with RCM 905(c)(2)(A).

4. Facts

FACTS

Private (E2) Melissa Doe arrived at Fort Atterbury on 1 September 2012. Since about 12 May 2014, PV2 Doe has maintained a monogamous relationship with Specialist Aaron Smith. SPC Smith deployed to Afghanistan on or about 1 August 2014. In early September 2014, despite her romantic commitment to SPC Smith, PV2 Doe had sex with Private First Class (PFC) Thomas Reynolds. Following her admission to SPC Smith that she had been unfaithful, SPC Smith terminated their relationship. The end of PV2 Doe's relationship with SPC Smith was known to SPC Susan Parker and other Soldiers of Company A, Brigade Support Battalion. After being separated for about a month, PV2 Doe and SPC Smith reconciled in the beginning of October 2014. Part of their reconciliation was a commitment to be exclusive and "100% honest with each other."

On 19 November 2014, Staff Sergeant (SSG) John Daniels and PV2 Doe had sexual intercourse in her barracks room on Fort Atterbury, Indiana. In the weeks leading up to that sexual encounter, SSG Daniels became aware of some of PV2 Doe's sexual history, including her relationship with SPC Smith and her prior sexual relationship with PFC Reynolds. The morning after having sex with SSG Daniels, PV2 Doe was questioned by SPC Parker, who suspected PV2 Doe was upset. PV2 Doe reported that she had had sex with SSG Daniels the night before. PV2 Doe subsequently reported her sexual encounter with SSG Daniels as a forcible rape.

5. Witnesses / Evidence

WITNESSES/EVIDENCE

The Defense intends to call the following witnesses for the purpose of this motion:

PV2 Melissa Doe,
PFC Thomas Reynolds,
SPC Aaron Smith,
SPC Susan Parker, and
SSG Daniels, for the limited purpose of the motion.

6. Legal Authority and Argument

LEGAL AUTHORITY AND ARGUMENT

While MRE 412 generally prohibits evidence of other sexual behavior by the victim, such evidence cannot be excluded if doing so would violate the accused's constitutional rights. MRE 412(b)(1)(C). In particular, the Fifth and Sixth Amendments guarantee the defendant the right to present relevant, probative evidence and to cross-examine witnesses fully. See *United States v. Lauture*, 46 M.J. 794, 798 (A.C.C.A. 1997) (citing *Rock v. Arkansas*, 483 U.S. 44 (1987) and *Davis v. Alaska*, 415 U.S. 308 (1974)). The constitutional right to present such evidence is paramount to any concern with sheltering an alleged victim. *United States v. Gaddis*, 70 M.J. 248 (C.A.A.F. 2011) (noting that "[a] limitation on an accused's presentation of evidence related witnesses;" *United States v. Harris* 41 M.J. 890, 892 (A.C.C.A. 1995); *United States v. Dorsey*, 16 M.J. 1, 8 (C.M.A. 1983)). To determine whether MRE 412 evidence qualifies under the constitutionally required exception, the evidence must be (1) relevant, (2) material, (3) favorable to the Defense's theory of the case, and (4) the probative value of the evidence must outweigh the danger of unfair prejudice. See *United States v. Banker*, 60 M.J. 216, 222 (C.A.A.F. 2004).

1) PV2 Doe had a motive to fabricate the allegations against SSG Daniels because of her sexual relationship with SPC Smith.

PV2 Doe's relationship with SPC Smith provides her reason to fabricate allegations of rape. Evidence that demonstrates a motive to fabricate is generally constitutionally required to be admitted. *United States v. Banker*, 60 M.J. 216 (C.A.A.F. 2004); see also *Olden v. Kentucky*, 488 U.S. 277 (1988) (holding that appellant should have been allowed to present evidence of his accuser's extramarital relationship to show her motive to lie). SSG Daniels's right to confront his accusers includes the right to examine PV2 Doe's motives to fabricate an allegation of forcible rape. See *United States v. Ellerbrock*, 70 M.J. 314 (C.A.A.F. 2011).

7. Conclusion

CONCLUSION

Based upon the above, the Defense requests that the Court admit the following evidence: that the alleged victim and SPC Smith have engaged in a consensual sexual relationship for about eight (8) months before the time of the alleged offense; that the alleged victim and PFC Reynolds engaged in consensual sexual activity approximately two and a half months prior to the alleged misconduct; that at the time of the alleged misconduct, the alleged victim had a reputation with the Brigade Support Battalion as being available for casual sexual activity in exchange for affection or dates; that at the party immediately preceding the sexual intercourse at issue, the alleged victim sat on the accused's lap and was "grinding" on him while the two were dancing. Prohibiting the admission of such evidence would deny the accused his constitutional rights to confrontation and a fair trial.

LORA S. FRANKLIN
CPT, JA
Defense Counsel

[A CERTIFICATE OF SERVICE IS NOT REQUIRED.]

I certify that I have served or caused to be served a true copy of the above on the Trial Counsel on 7 January 2015.

LORA S. FRANKLIN
CPT, JA
Defense Counsel

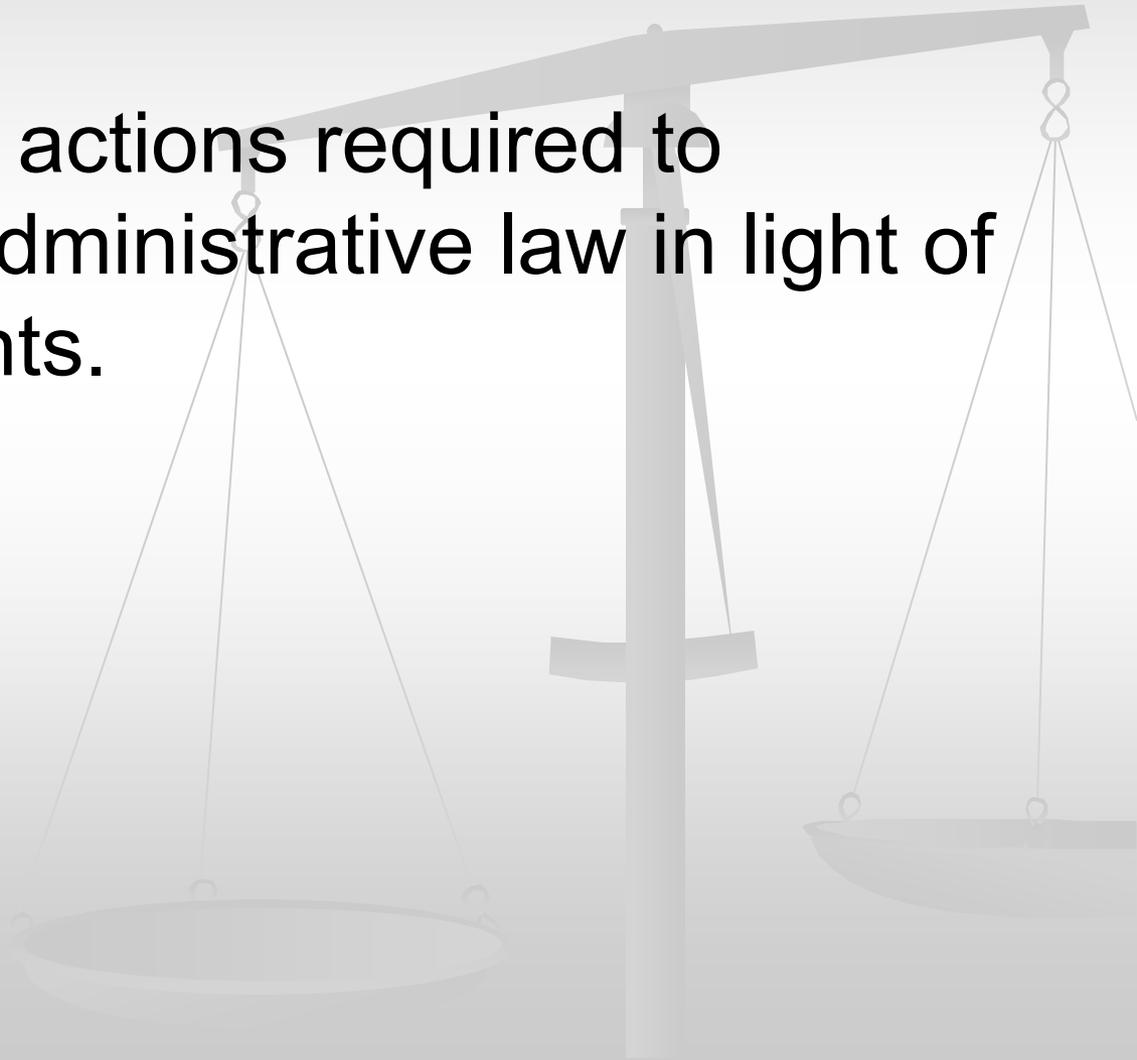
Enabling Learning Objective D

Complete the Prepare a Motion written exam

- Action: Complete the Prepare a Motion written exam.
- Conditions: In a classroom environment, given access to MCM, Military Citation Guide, Lexus Nexus, student notes, and handouts, complete the written student exam.
- Standards: Receive minimum of 98 points or higher on the written exam.

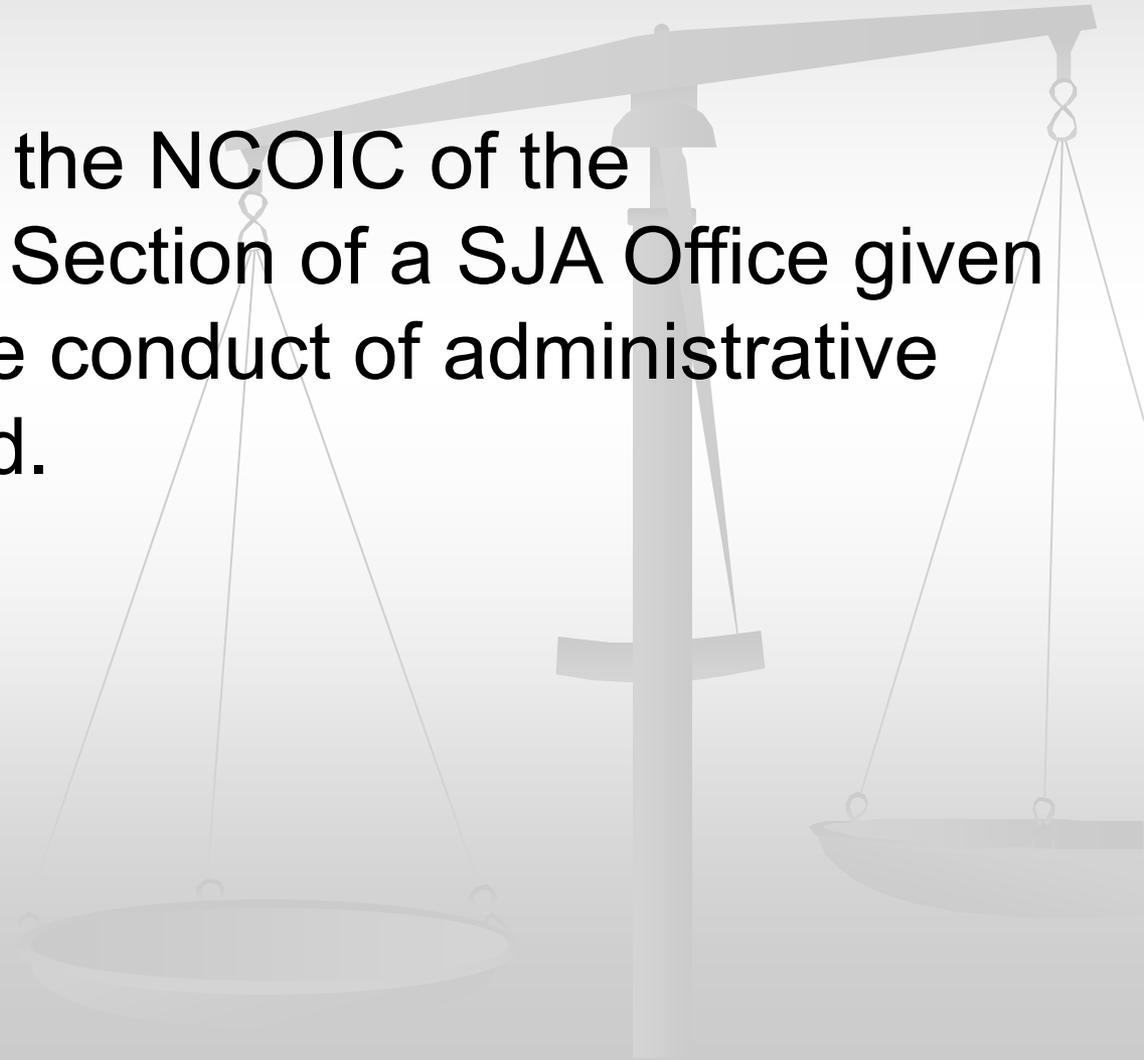
Terminal Learning Objective

Action: Identify the actions required to properly conduct administrative law in light of recent developments.



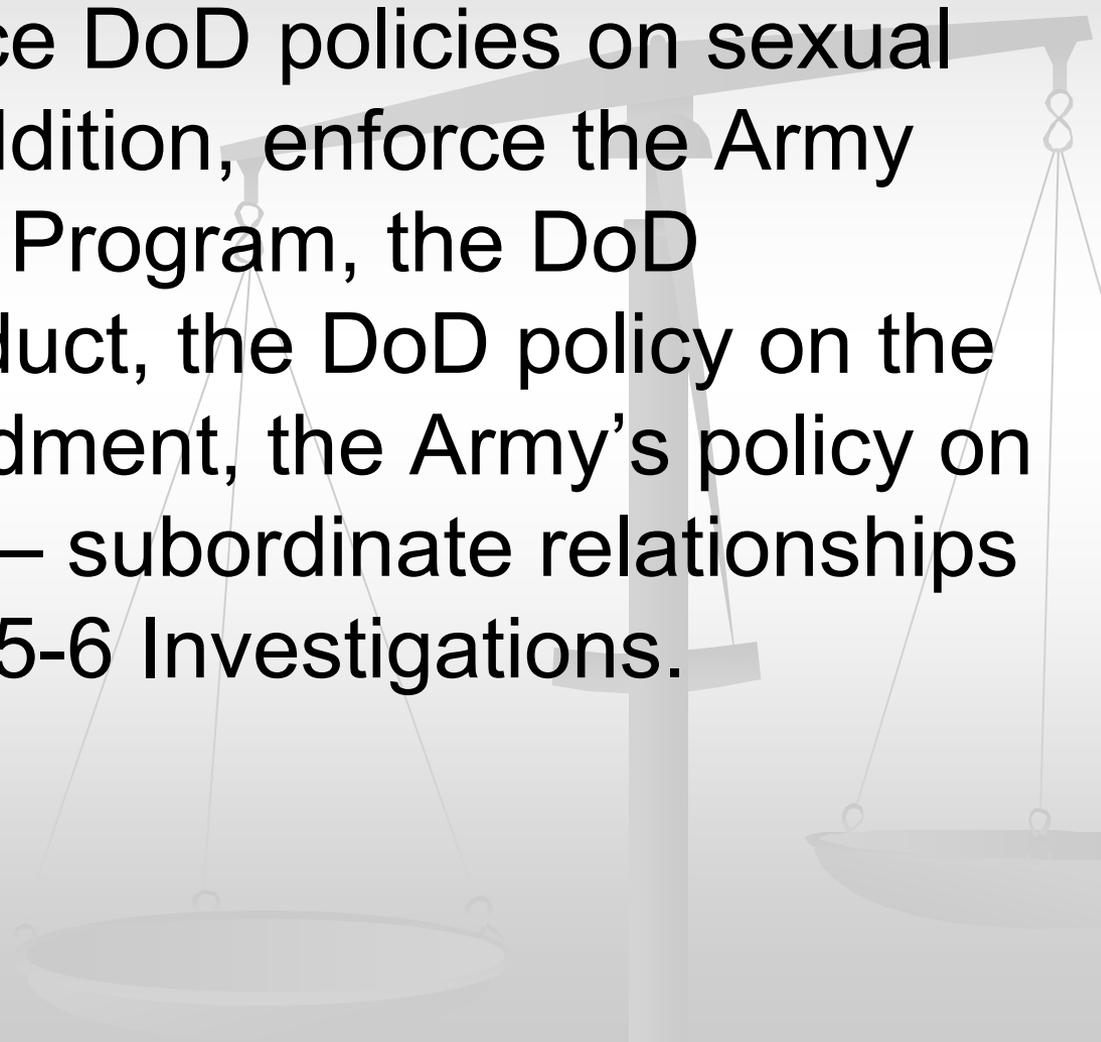
Terminal Learning Objective

Condition: You are the NCOIC of the Administrative Law Section of a SJA Office given responsibility for the conduct of administrative law in the command.



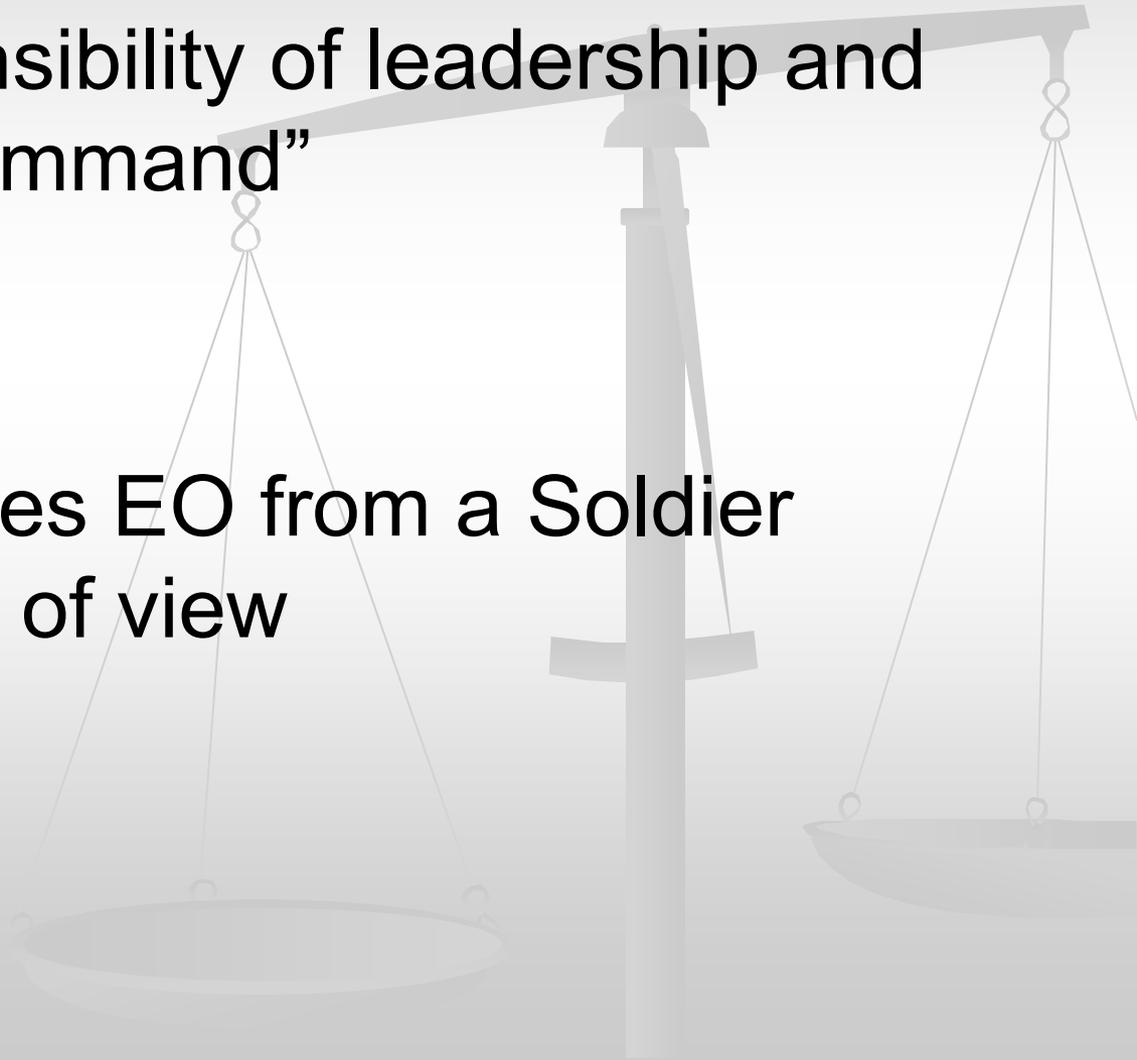
Terminal Learning Objective

Standards: Enforce DoD policies on sexual harassment. In addition, enforce the Army Equal Opportunity Program, the DoD Standards of Conduct, the DoD policy on the Lautenberg Amendment, the Army's policy on improper superior – subordinate relationships and manage AR 15-6 Investigations.



What is the EO Policy?

- EO is a “responsibility of leadership and a function of command”
- Policy
- Army approaches EO from a Soldier readiness point of view



DA Pam 600-26

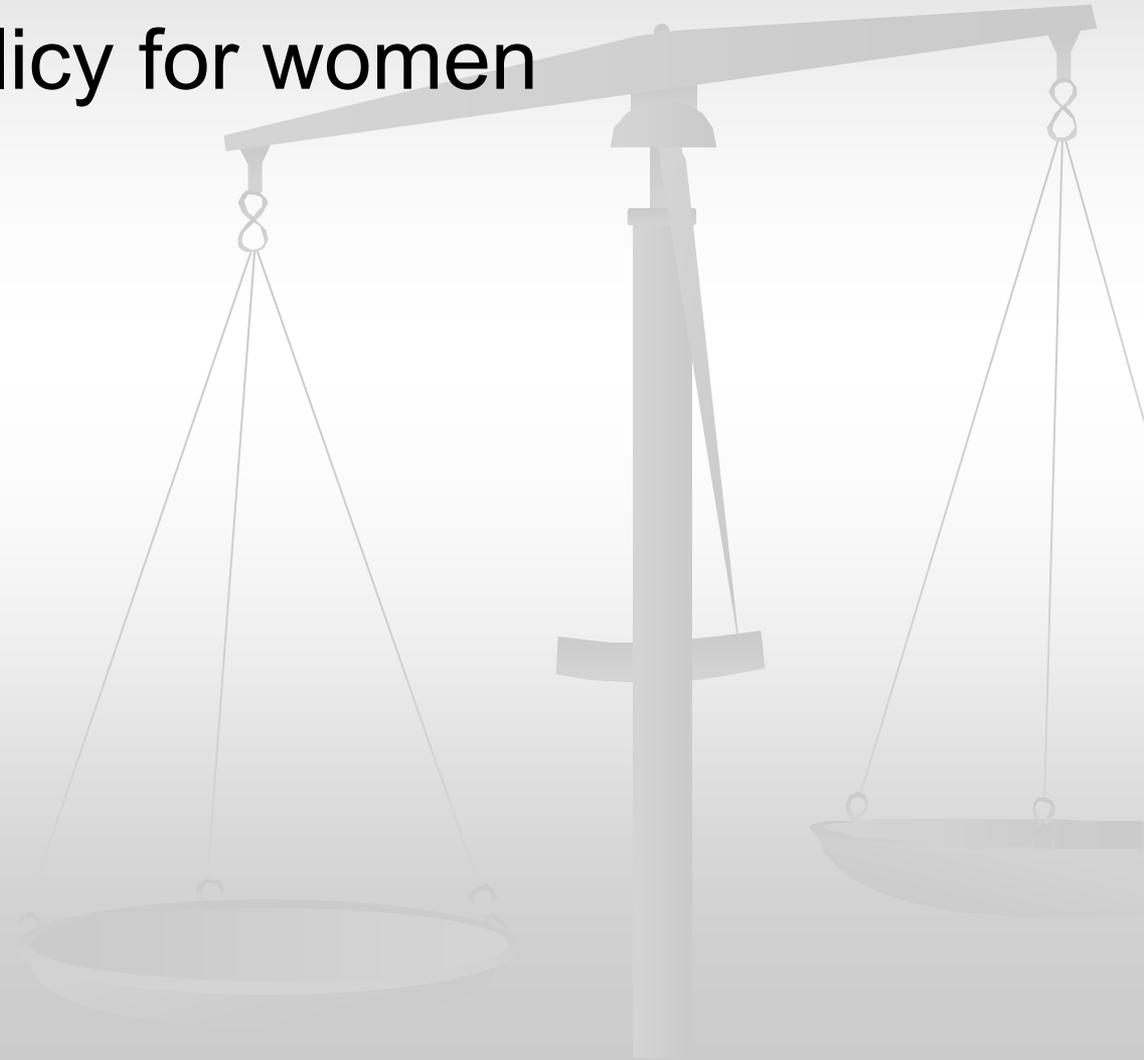
Affirmative Action Plan

- Who?
- What?
- When?
- Where?
- How?
- Why?



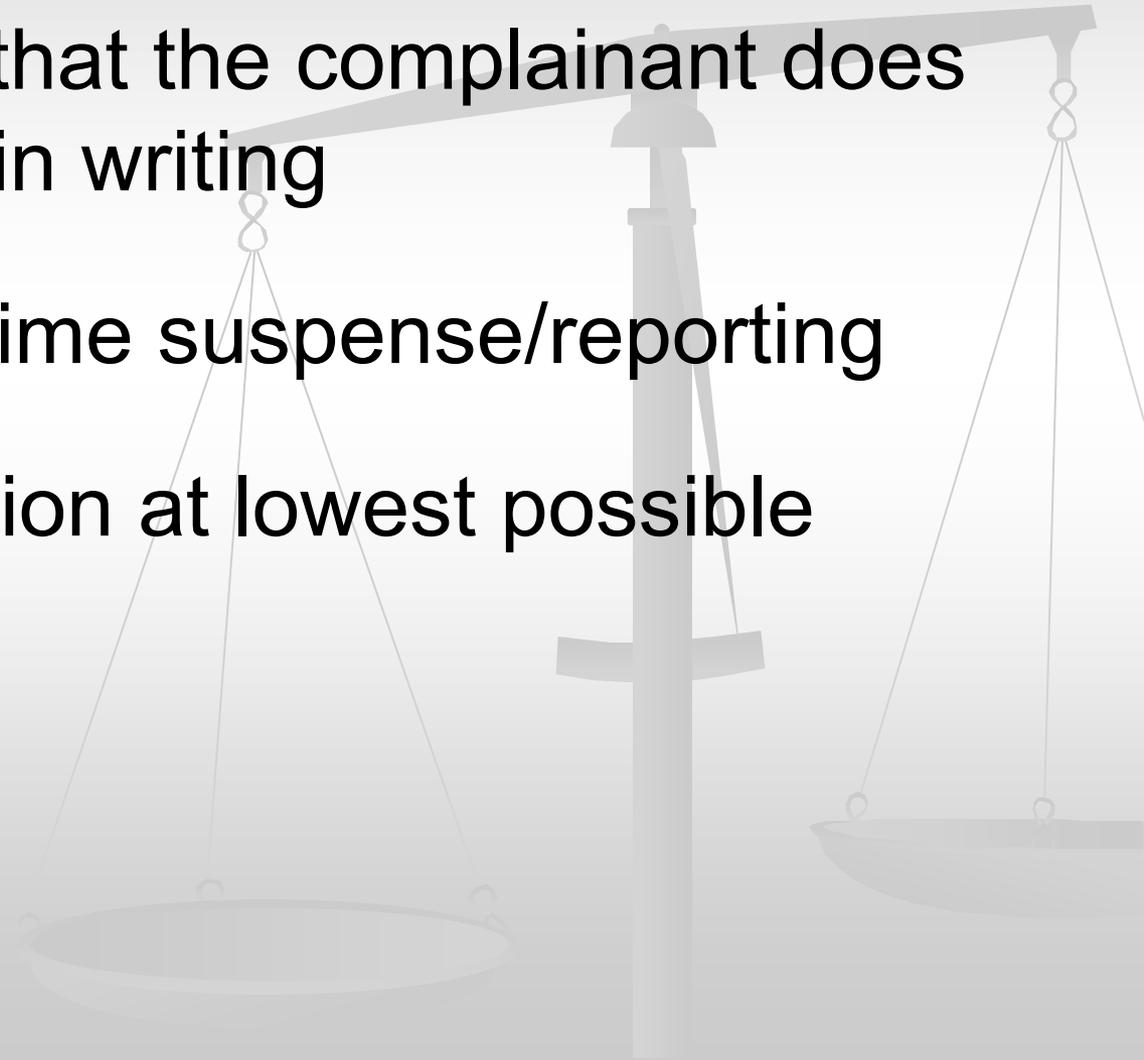
How the EO Policy Relates to Other Policies/Programs

- Assignment policy for women

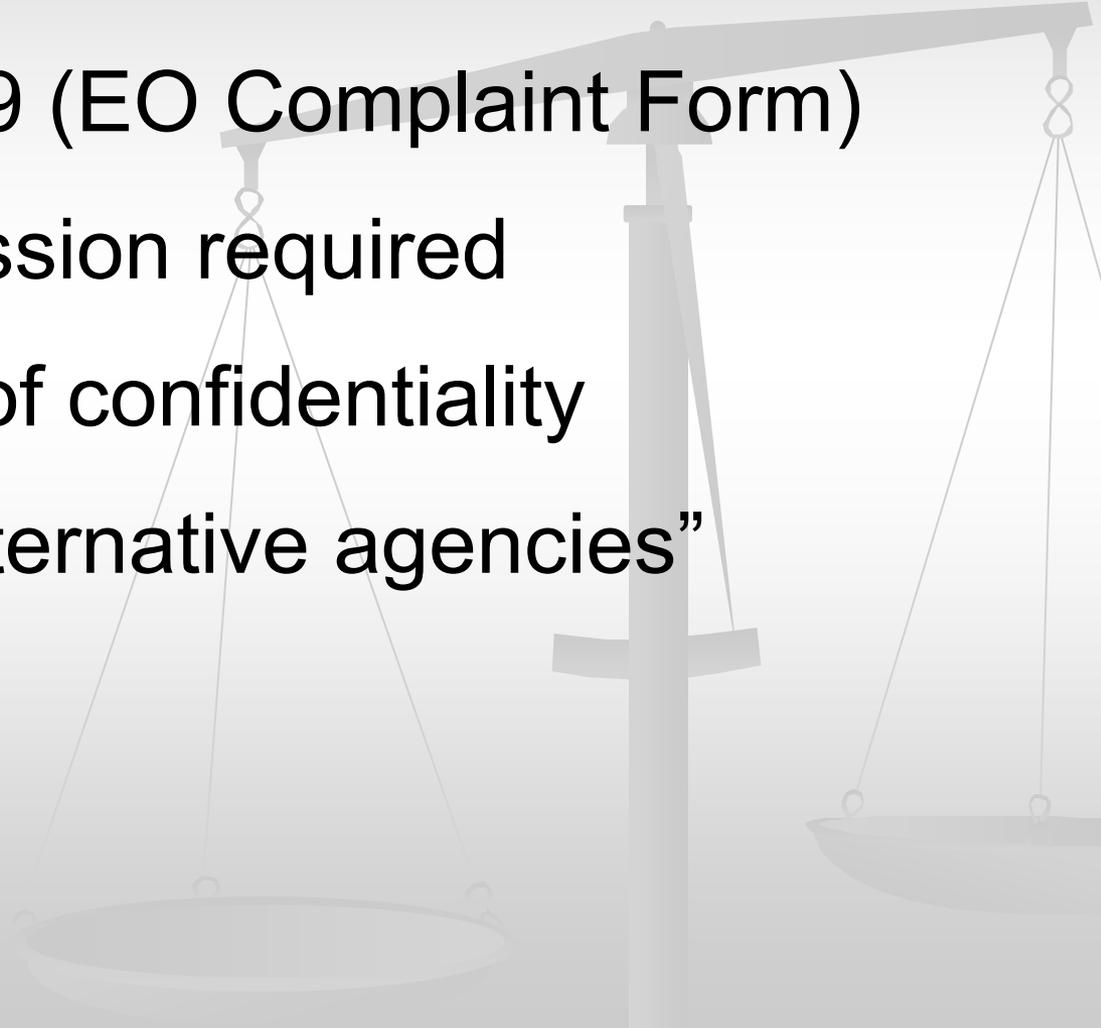


Informal Complaint Process

- Any allegation that the complainant does not wish to file in writing
- Not subject to time suspense/reporting
- Attempt resolution at lowest possible level

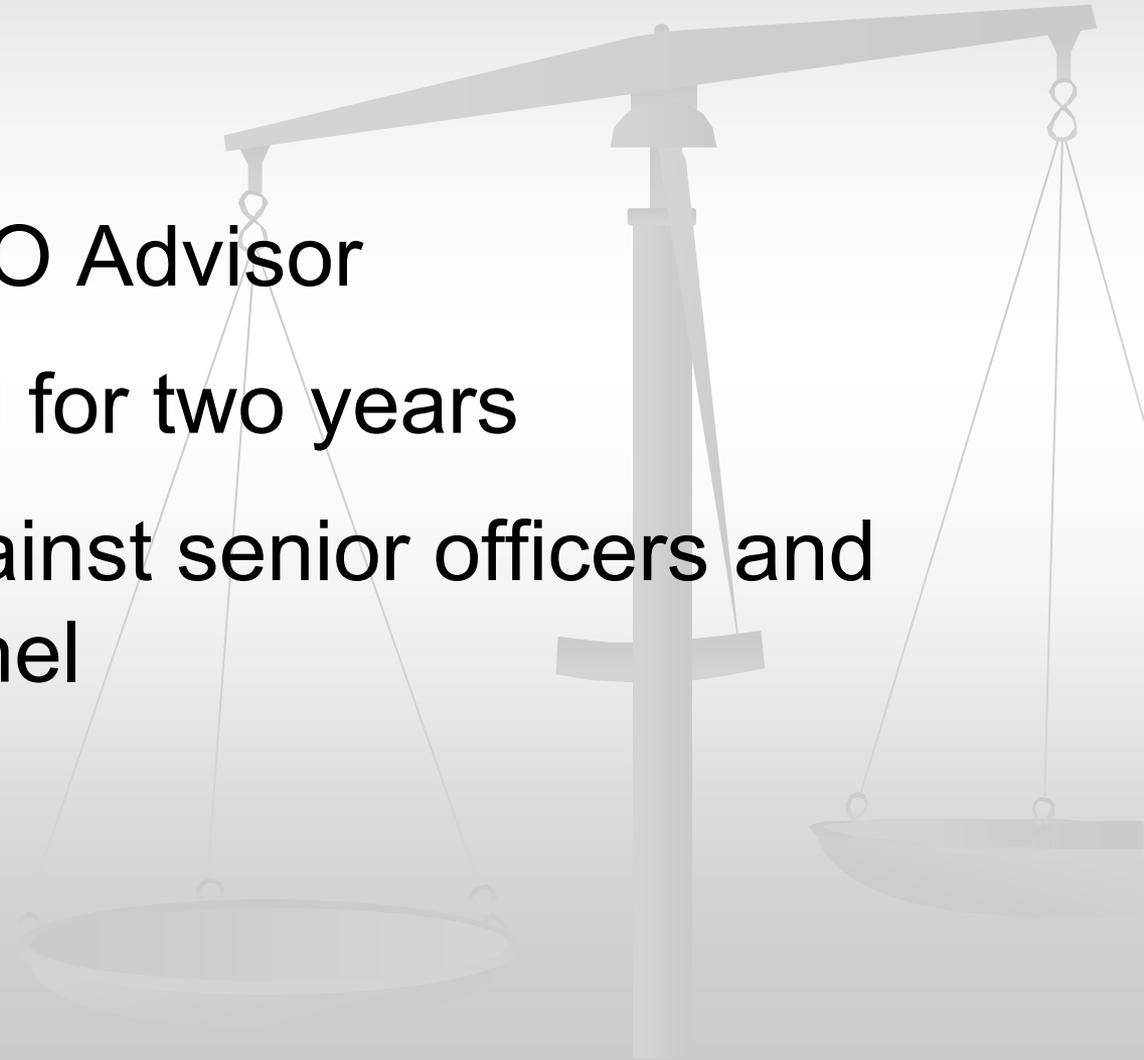


Formal Complaint Process

- DA Form 7279 (EO Complaint Form)
 - Timely submission required
 - No promises of confidentiality
 - Actions by “alternative agencies”
 - Investigation
 - Feedback
- 

Formal Complaint Process (con't)

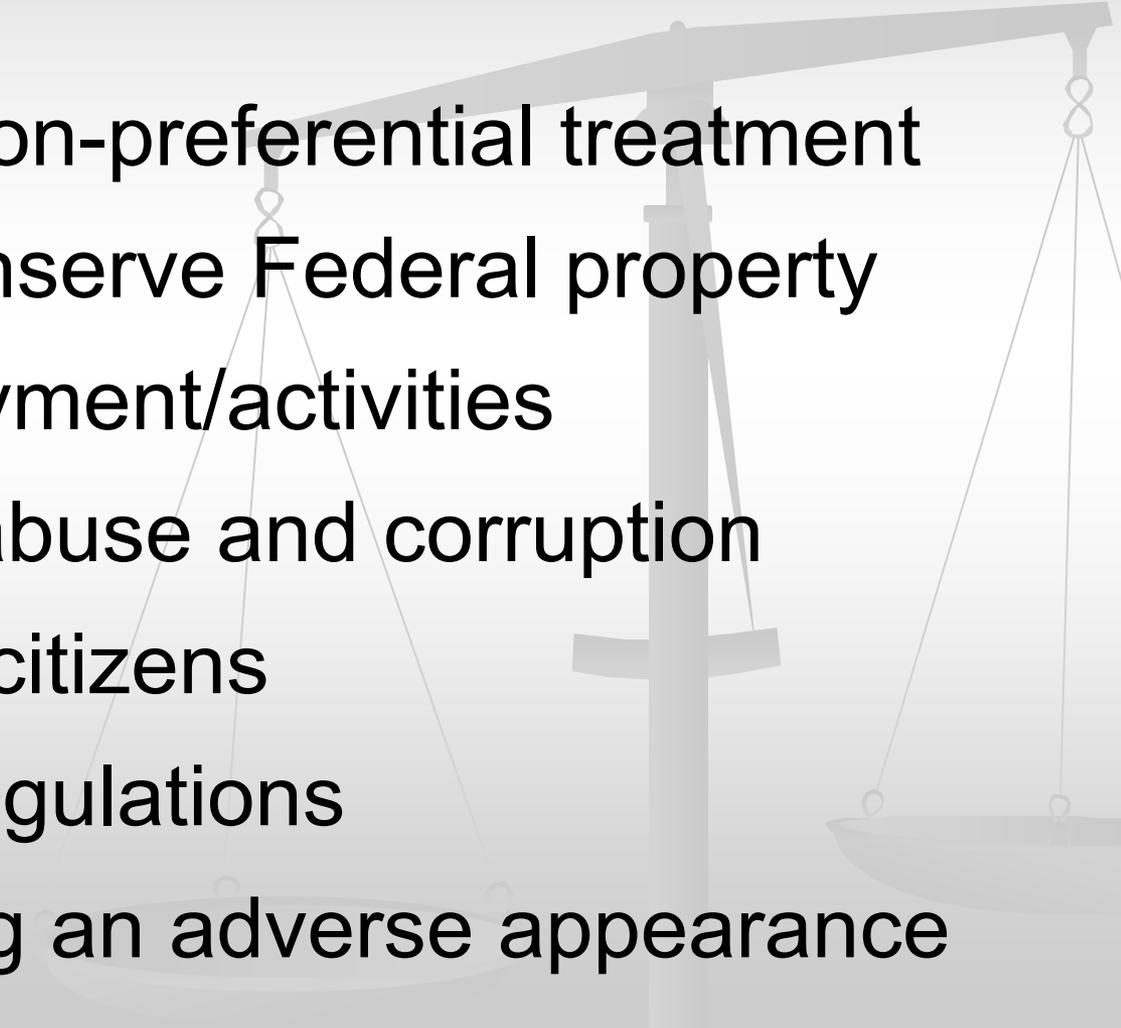
- Appeal
- Follow up by EO Advisor
- File maintained for two years
- Complaints against senior officers and civilian personnel



DoD Standards of Conduct - Executive Order 12674

- Public service is a public trust
 - Conflicting financial interests
 - Use of nonpublic government information
 - Gifts
 - Honest effort
 - Unauthorized commitments
 - Public office for public gain
- 

DoD Standards of Conduct (con't)

- Impartial and non-preferential treatment
 - Protect and conserve Federal property
 - Outside employment/activities
 - Fraud, waste, abuse and corruption
 - Obligations as citizens
 - EO laws and regulations
 - Actions creating an adverse appearance
- 

Joint Ethics Regulation



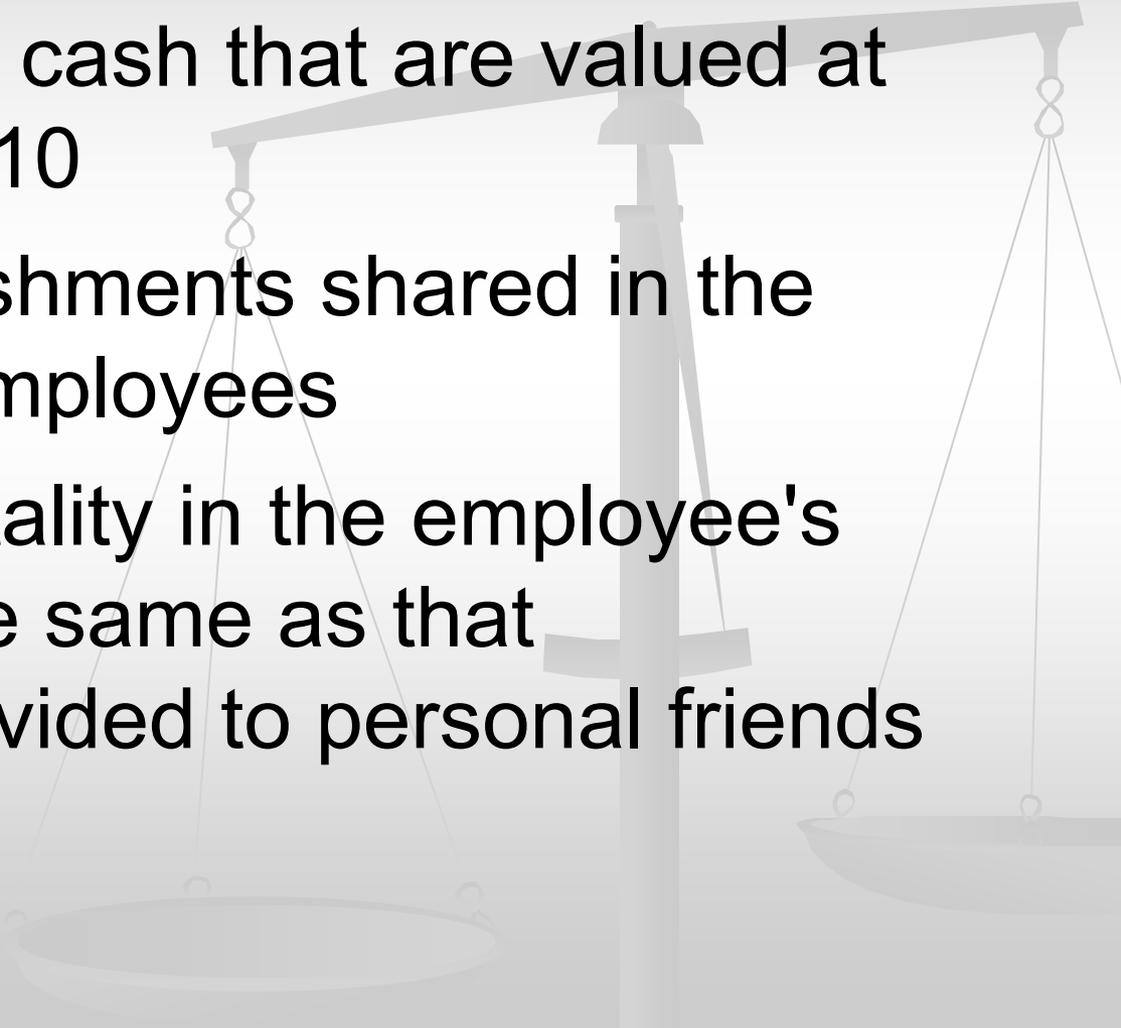
- The Joint Ethics Regulation (JER) implements the Standards of Conduct for the Department of Defense
- It is a single comprehensive regulation covering more than traditional standards of conduct
- All services use the same rules

Key Definitions in the JER

- DoD Employee
- Ethics Counselor
- Agency Designee

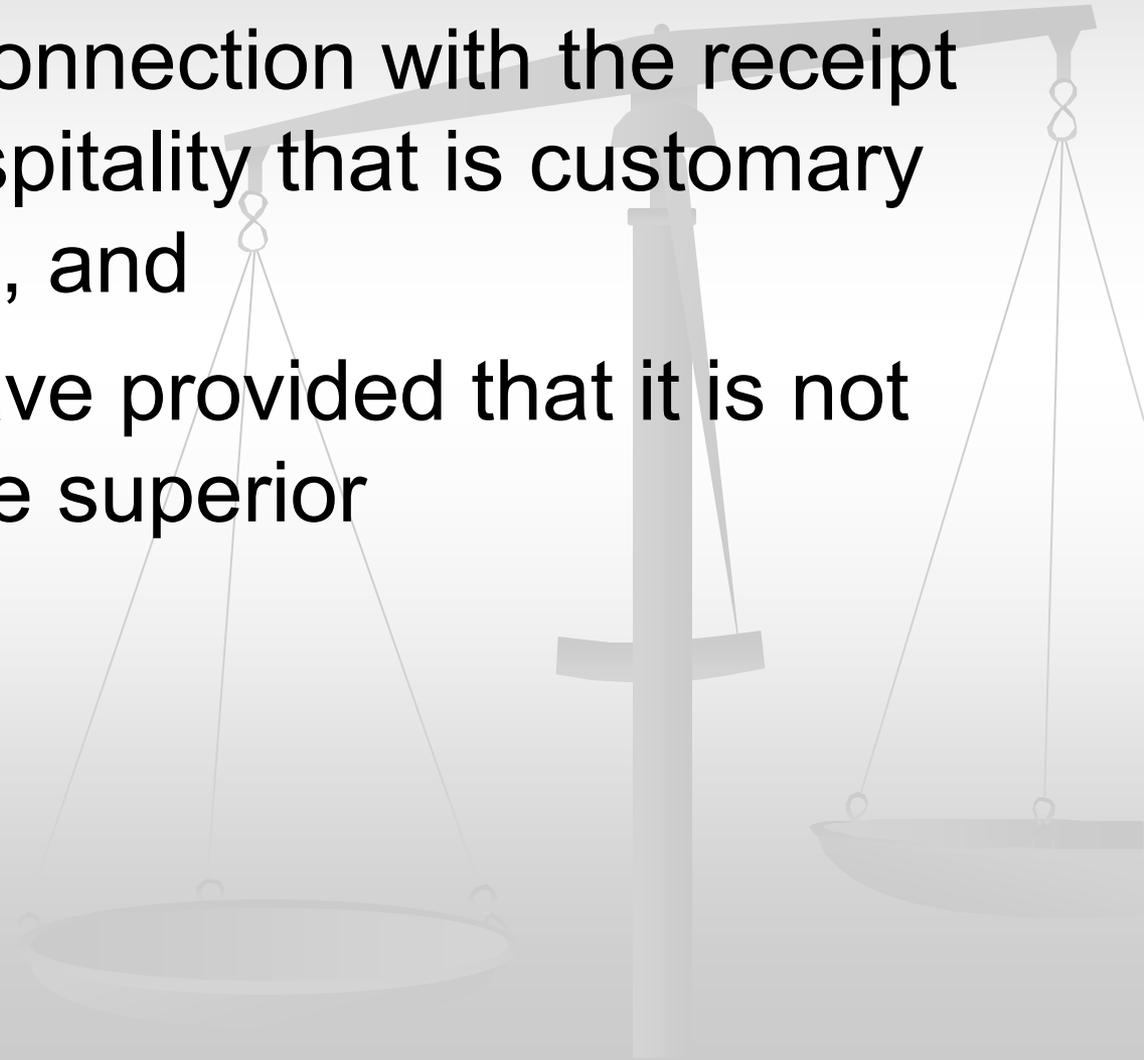


Permitted Gifts to Superiors

- Gifts other than cash that are valued at no more than \$10
 - Food and refreshments shared in the office among employees
 - Personal hospitality in the employee's home that is the same as that customarily provided to personal friends
- 

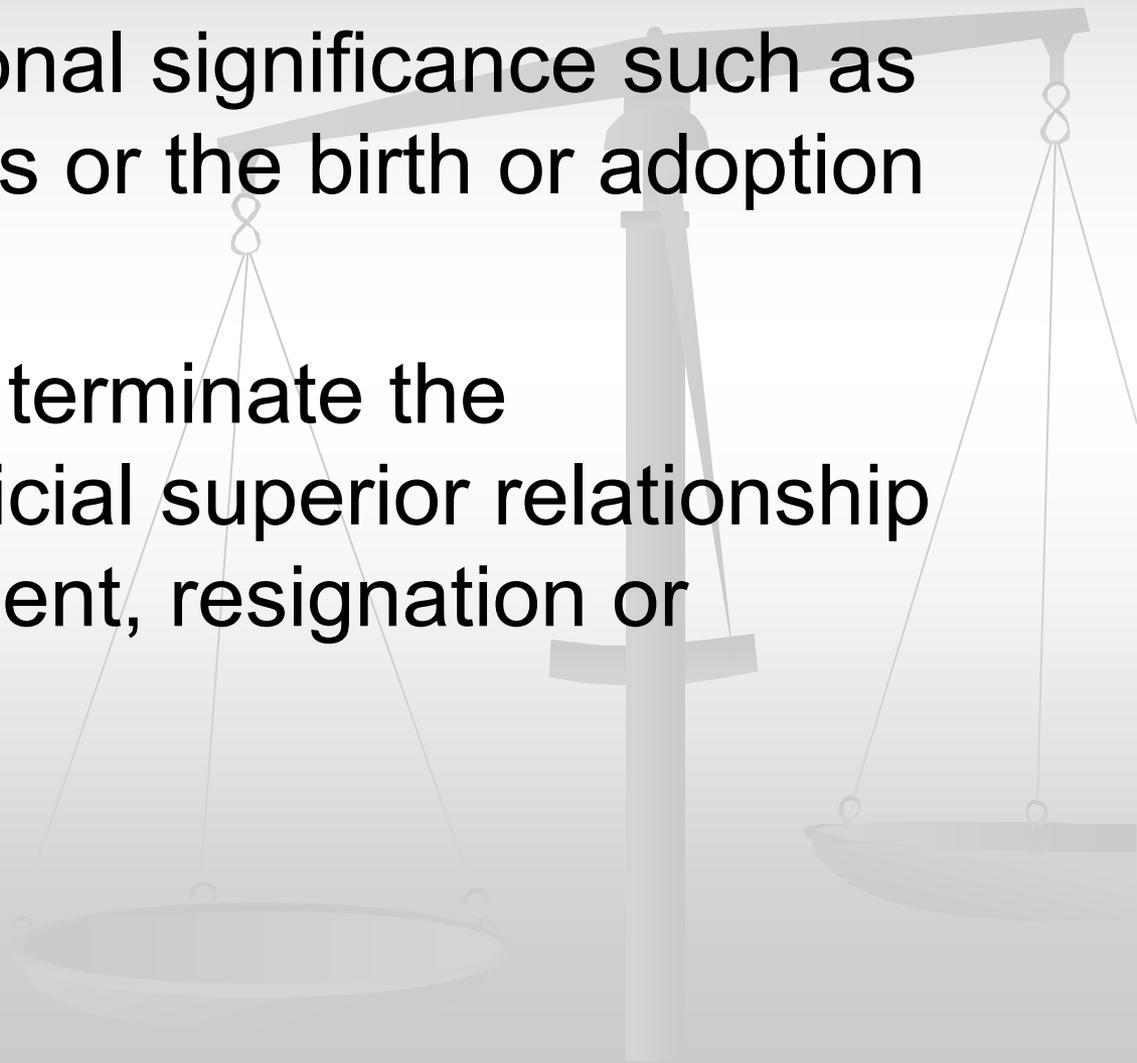
Permitted Gifts to Superiors (Con't)

- Gifts given in connection with the receipt of personal hospitality that is customary to the occasion, and
- Transferred leave provided that it is not to an immediate superior



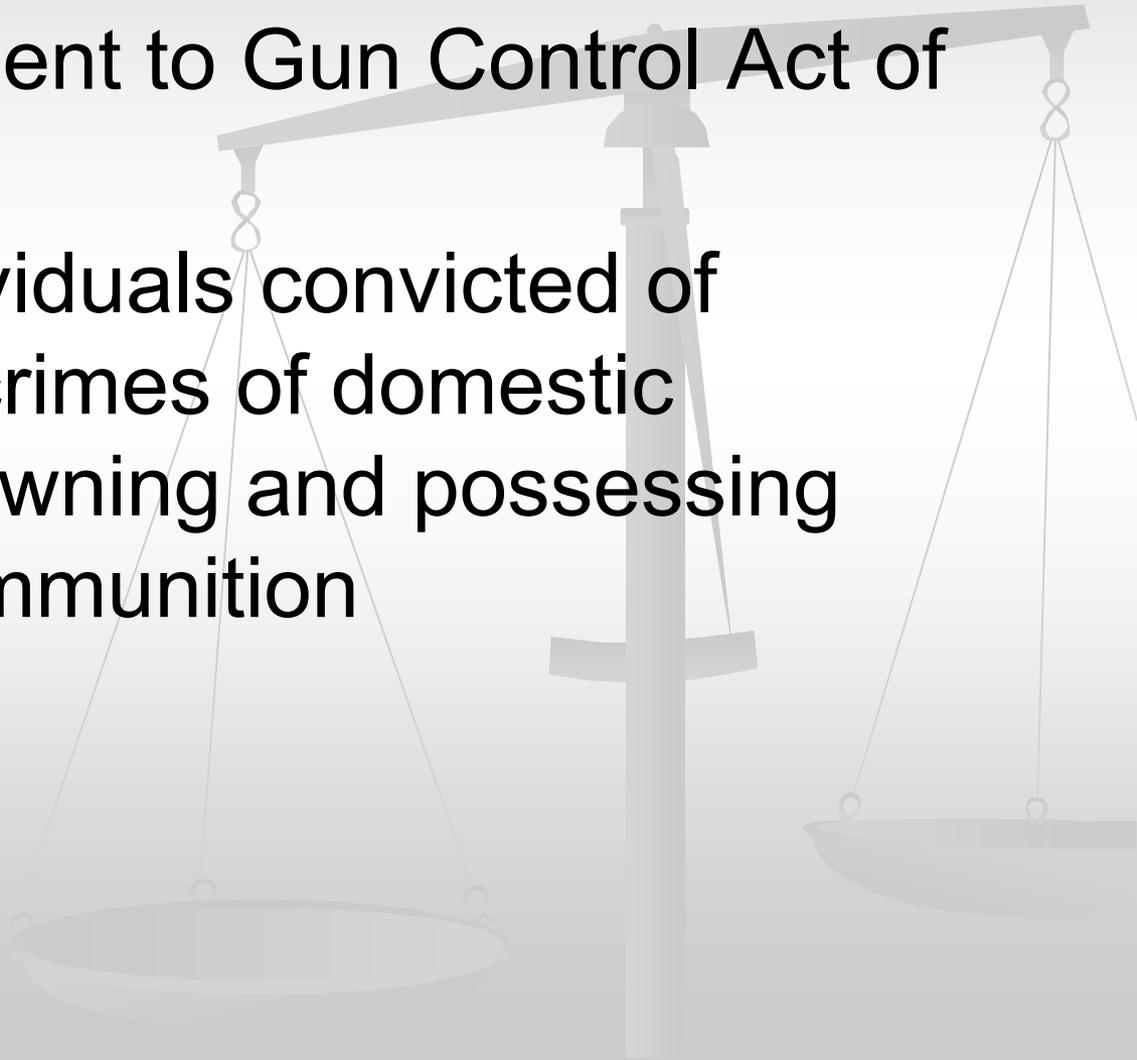
Special Occasion Gifts

- Events of personal significance such as marriage, illness or the birth or adoption of a child, or
- Occasions that terminate the subordinate-official superior relationship such as retirement, resignation or transfer

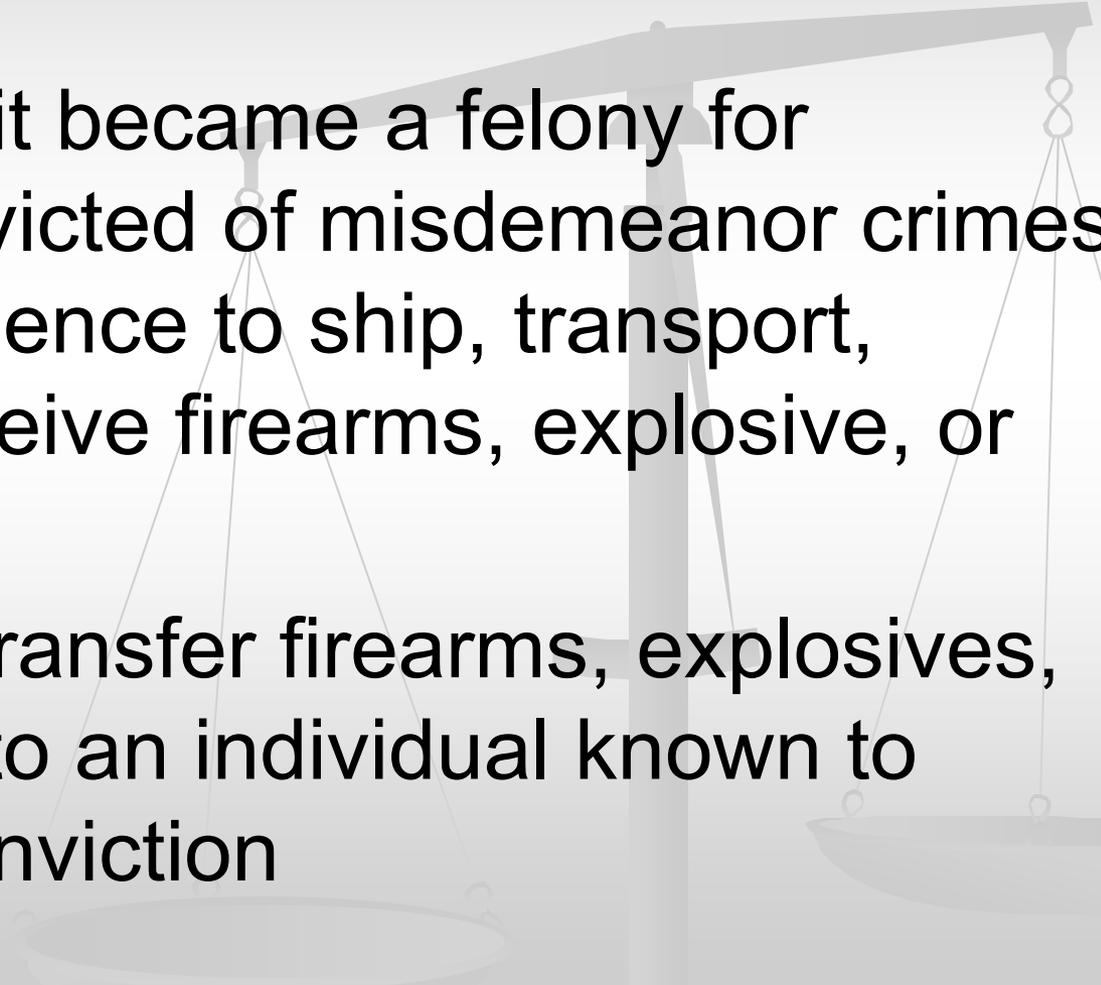


What is the Lautenberg Amendment?

- It's an amendment to Gun Control Act of 1968
- It prohibits individuals convicted of misdemeanor crimes of domestic violence from owning and possessing firearms and ammunition

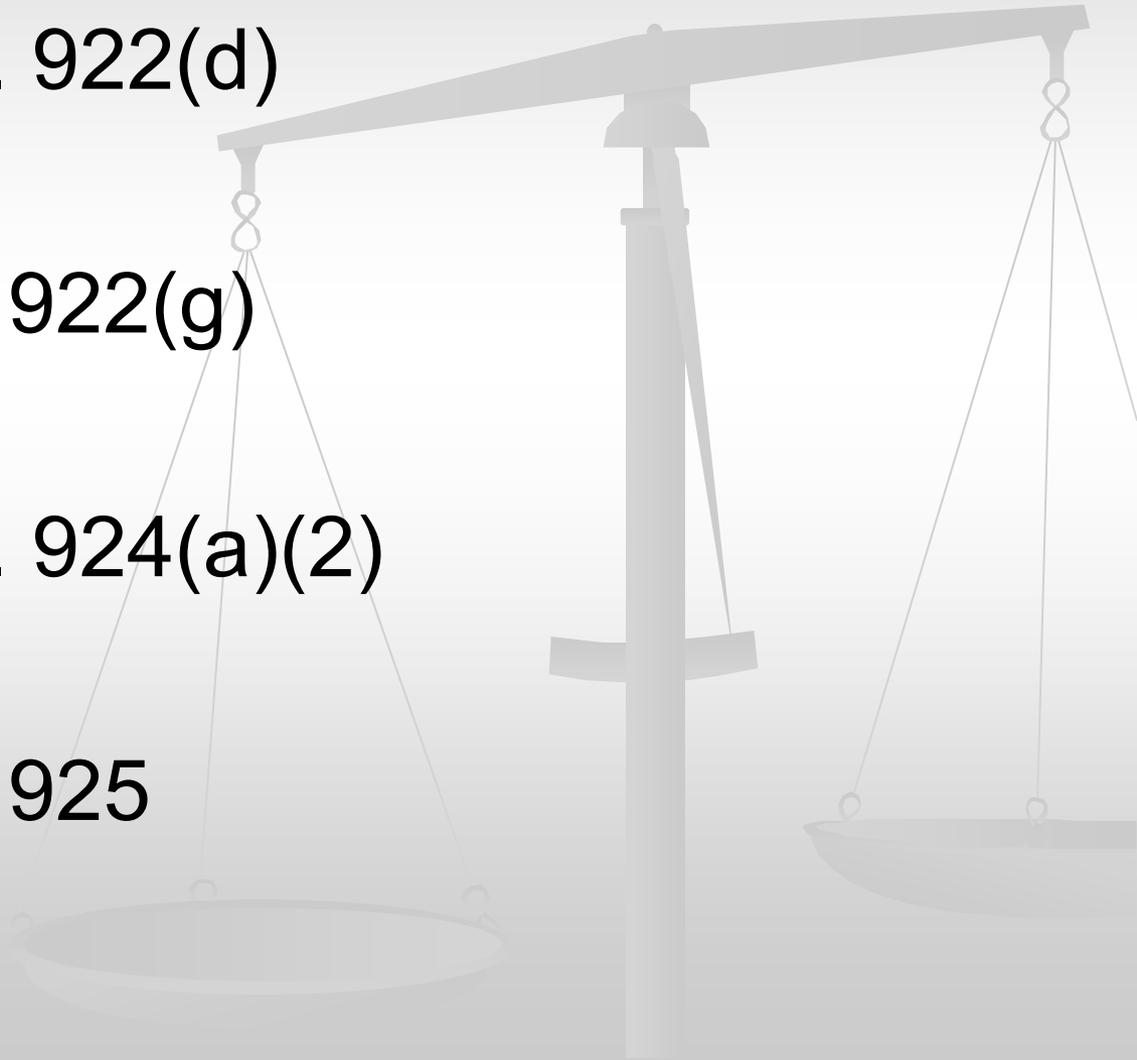


What is the Lautenberg Amendment? (Con't)

- On 30 Sep 96, it became a felony for individuals convicted of misdemeanor crimes of domestic violence to ship, transport, possess, or receive firearms, explosive, or ammunition
 - It's a felony to transfer firearms, explosives, or ammunition to an individual known to have such a conviction
- 

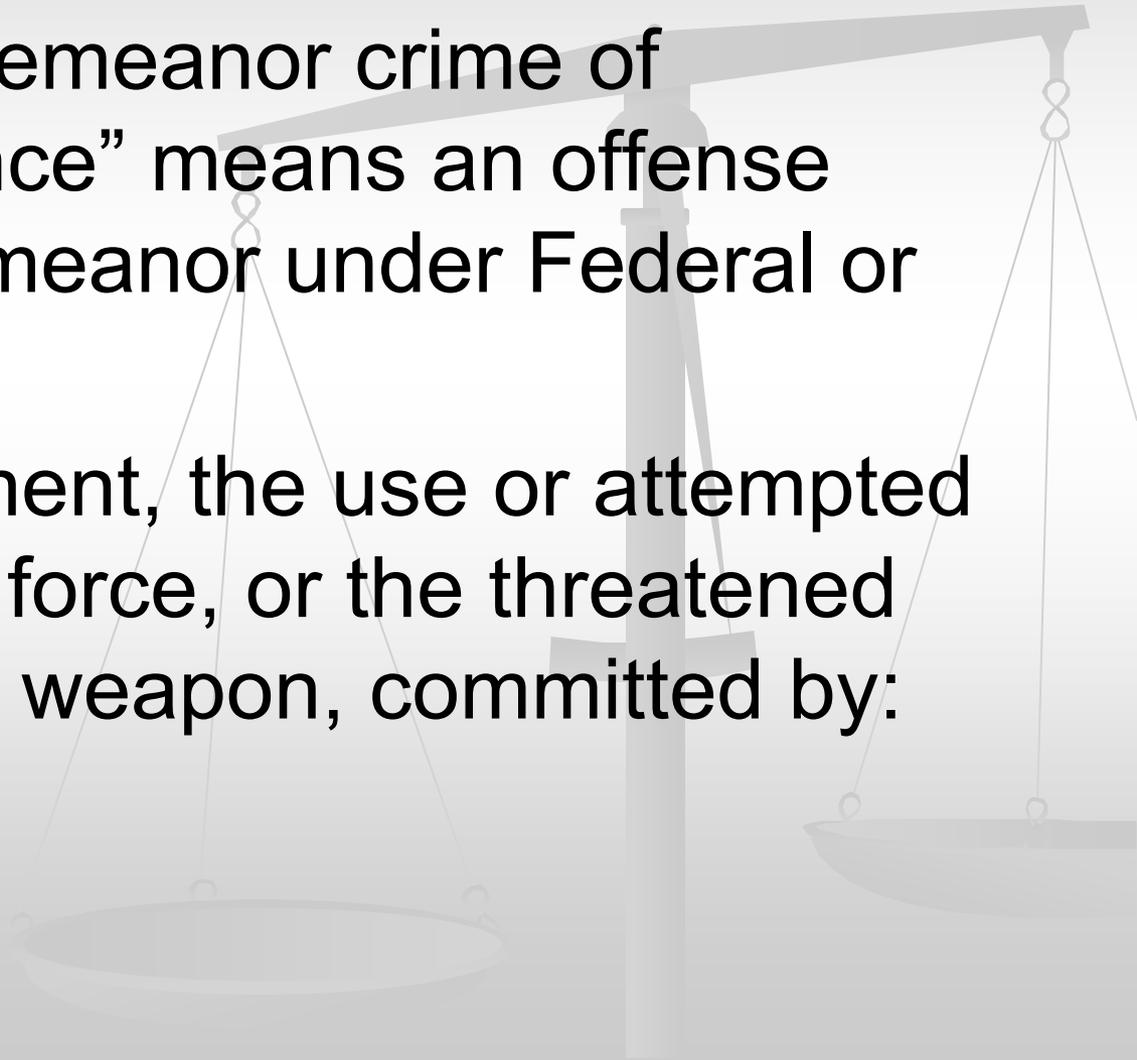
What are the basic provisions?

- 18 U.S.C., Sec. 922(d)
- 18 U.S.C., Sec 922(g)
- 18 U.S.C., Sec. 924(a)(2)
- 18 U.S.C., Sec 925

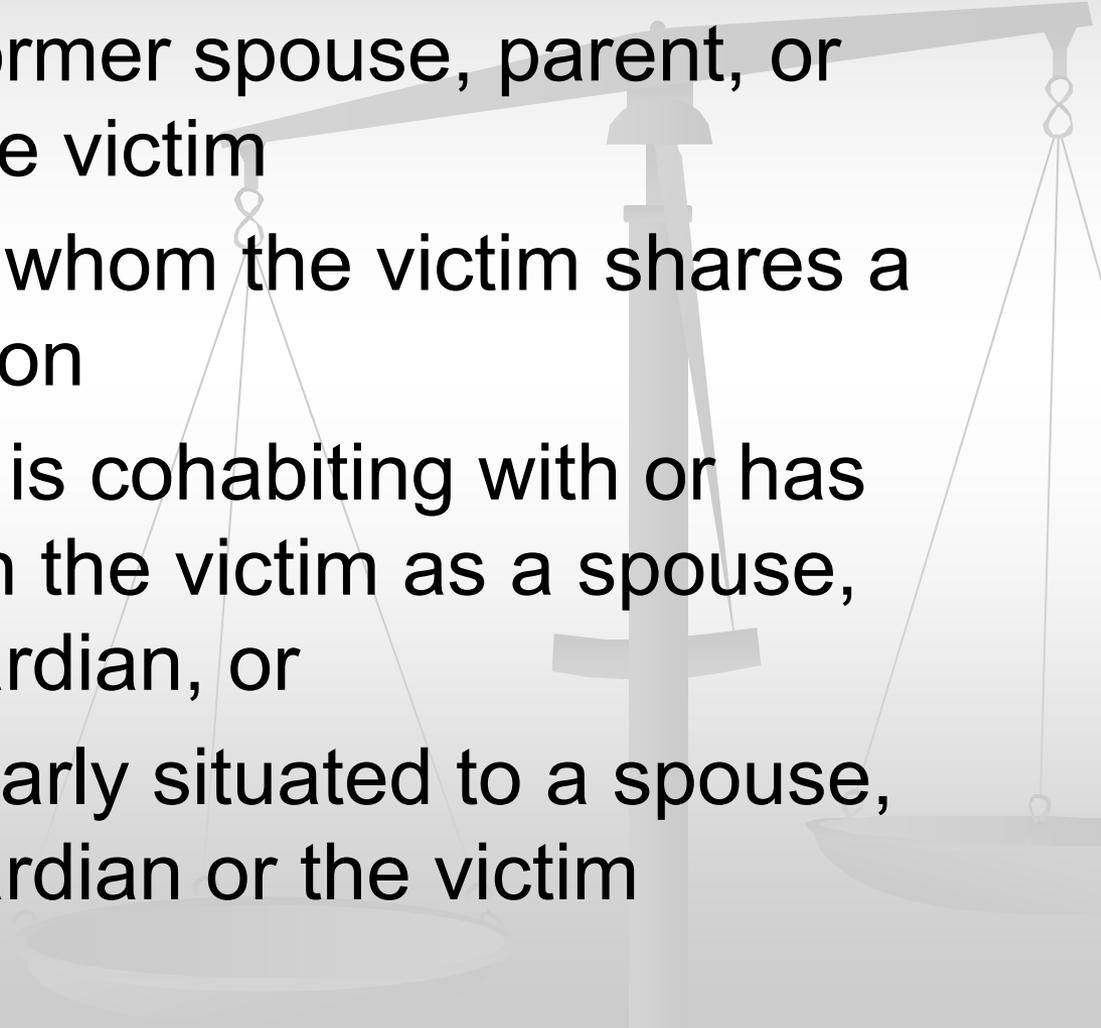


Definitions

- The term “misdemeanor crime of domestic violence” means an offense that is a misdemeanor under Federal or State law; and
- has, as an element, the use or attempted use of physical force, or the threatened use of a deadly weapon, committed by:

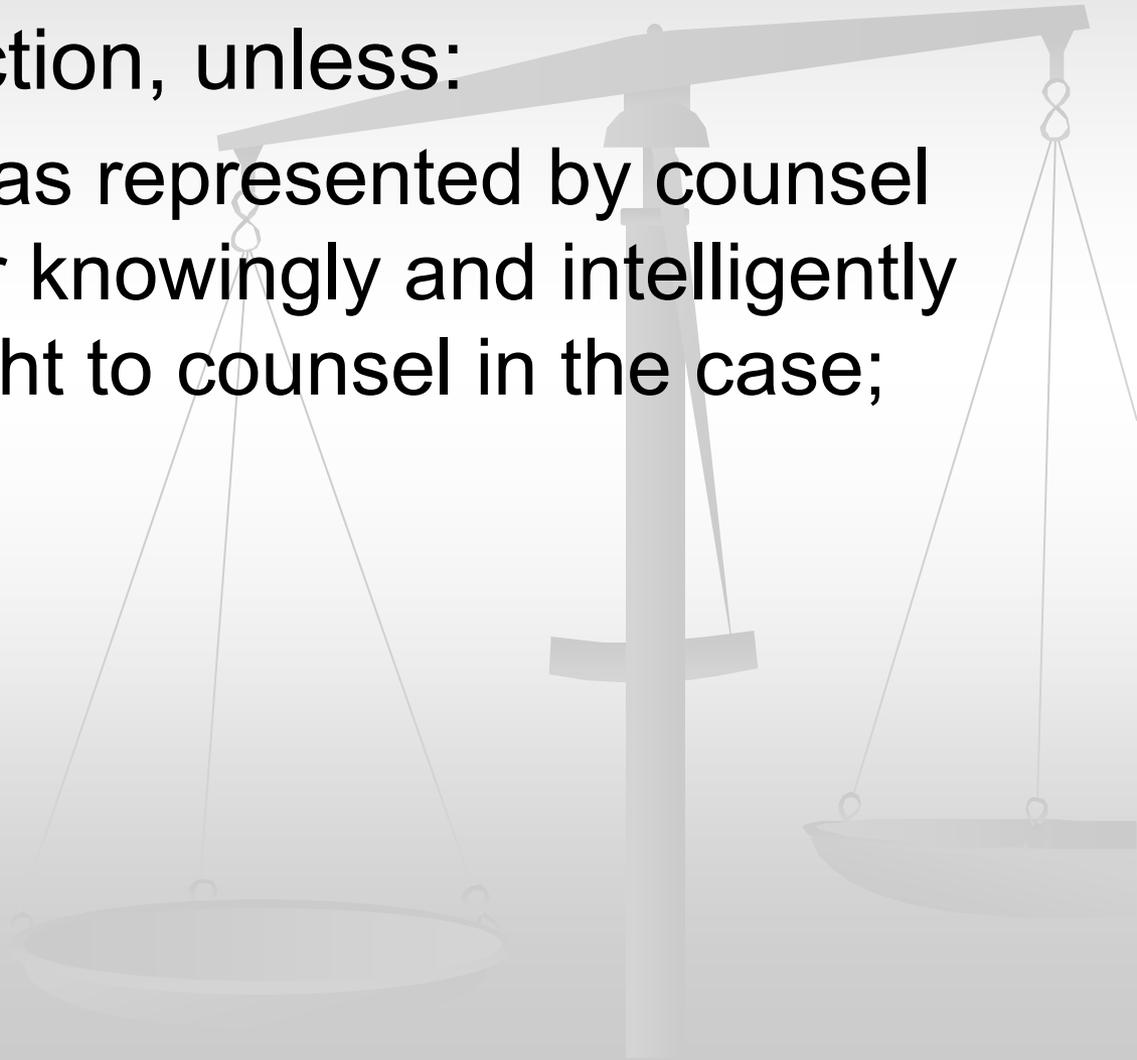


Definitions (Con't)

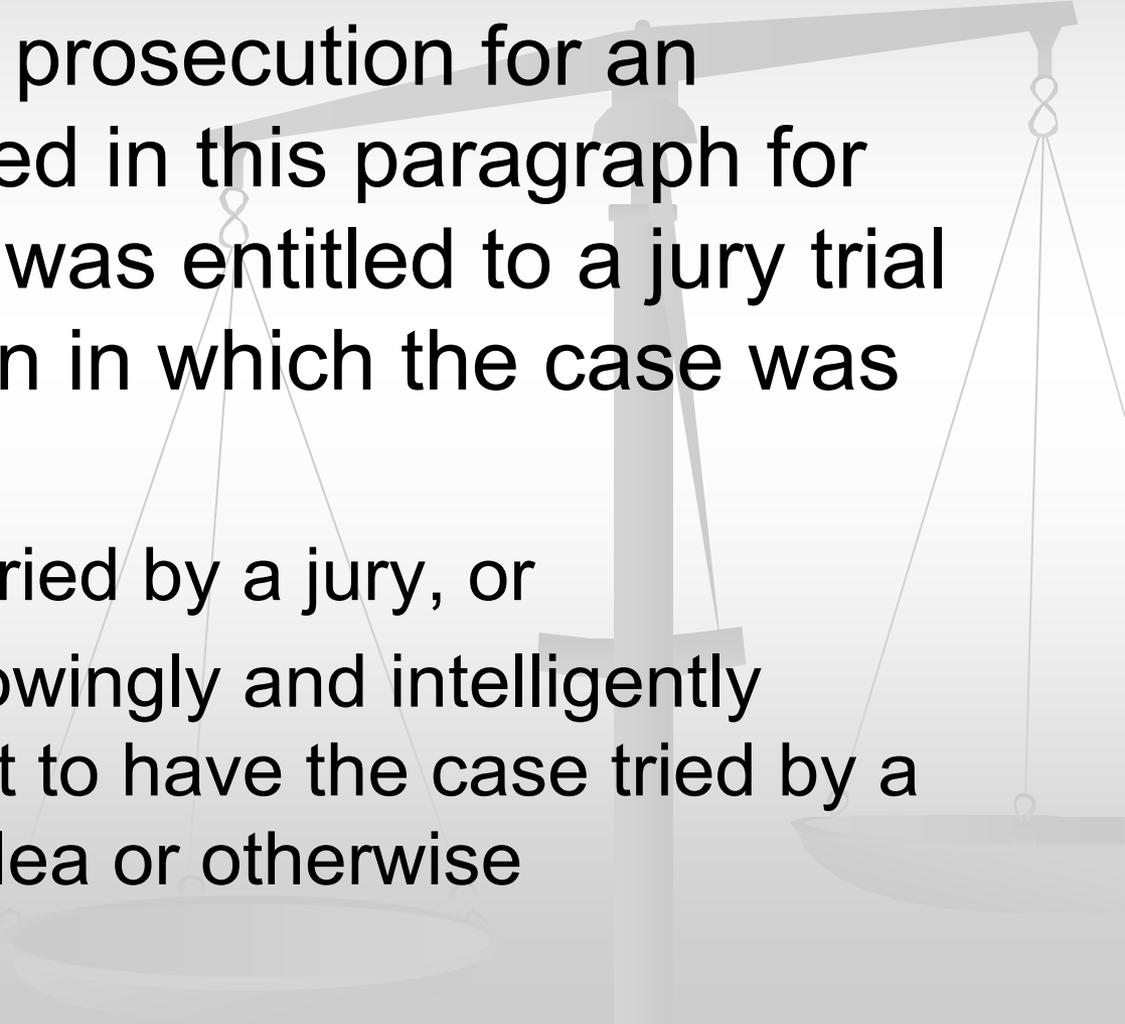
- a current or former spouse, parent, or guardian of the victim
 - a person with whom the victim shares a child in common
 - a person who is cohabiting with or has cohabited with the victim as a spouse, parent, or guardian, or
 - a person similarly situated to a spouse, parent, or guardian of the victim
- 

Definitions (Con't)

- It's not a conviction, unless:
 - The person was represented by counsel in the case, or knowingly and intelligently waived the right to counsel in the case;
and



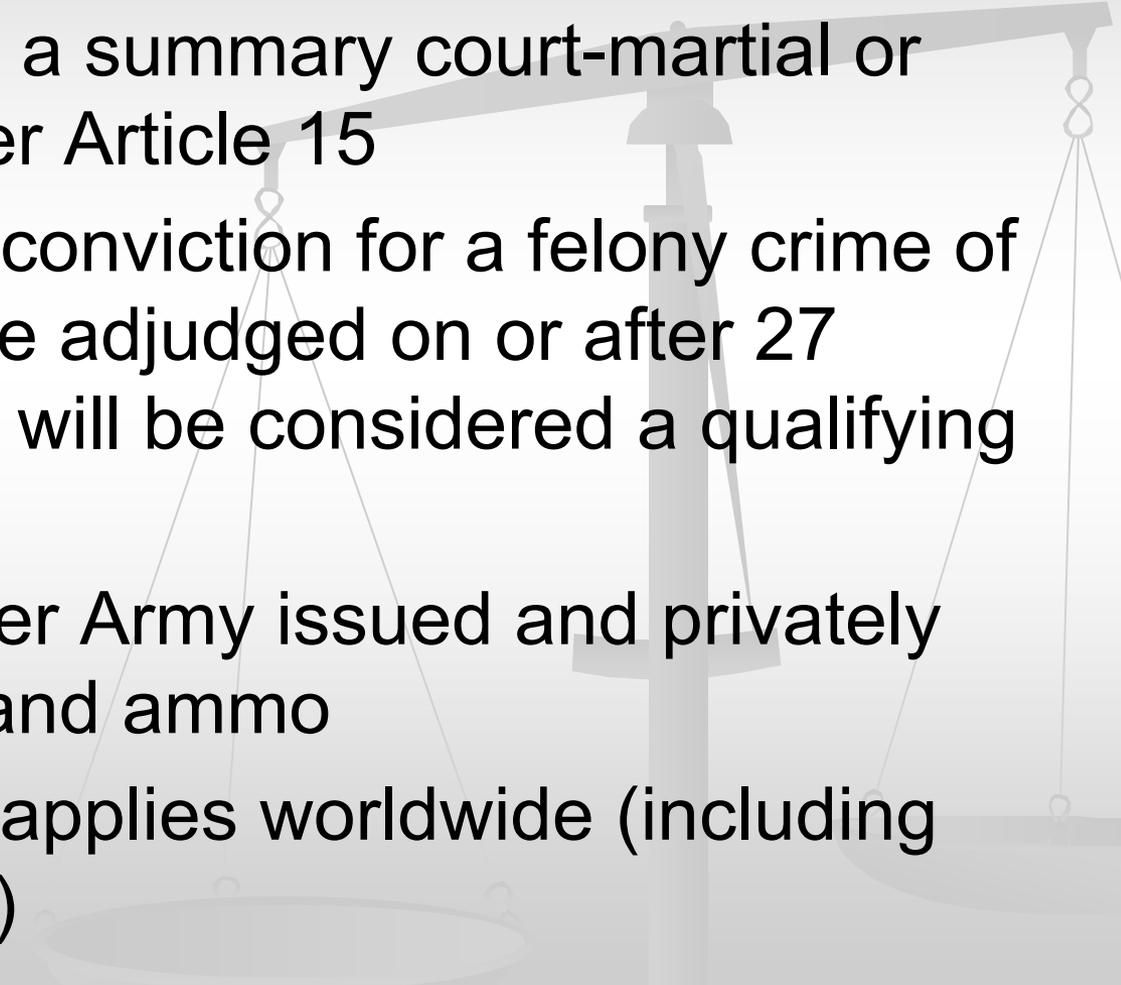
Definitions (Con't)

- In the case of a prosecution for an offense described in this paragraph for which a person was entitled to a jury trial in the jurisdiction in which the case was tried, either
 - The case was tried by a jury, or
 - The person knowingly and intelligently waived the right to have the case tried by a jury, by guilty plea or otherwise
- 

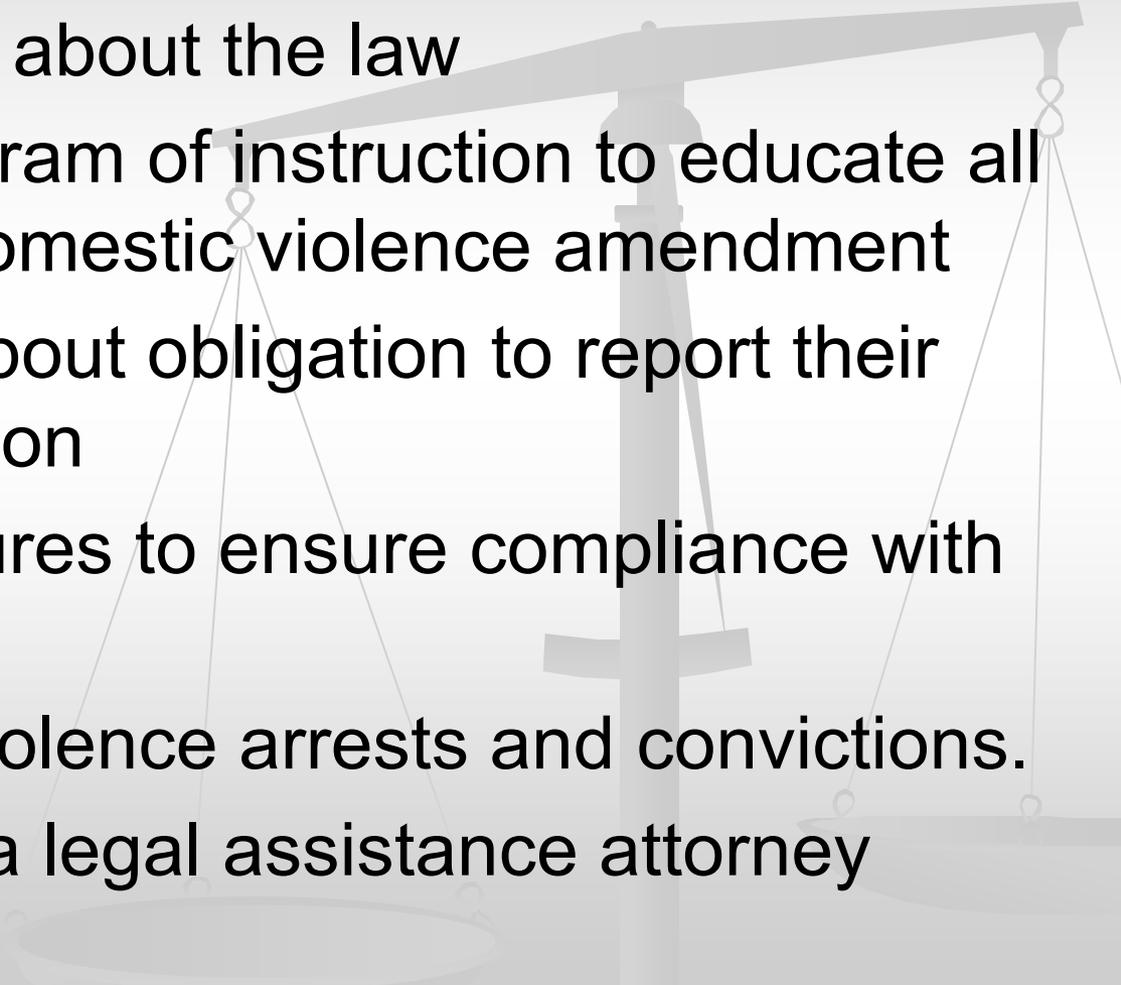
Definitions (Con't)

- It's not a conviction if the conviction has been expunged or set aside, or is an offense for which the person has been pardoned or has had civil rights restored unless the pardon, expungement, or restoration of civil rights expressly provides that the person may not ship, transport, possess, or receive firearms

DoD and DA's interpretation of the law

- Does not include a summary court-martial or punishment under Article 15
 - State or Federal conviction for a felony crime of domestic violence adjudged on or after 27 November 2002, will be considered a qualifying conviction
 - Applies to all other Army issued and privately owned firearms and ammo
 - The Army policy applies worldwide (including hostile fire areas)
- 

Commander's Responsibility



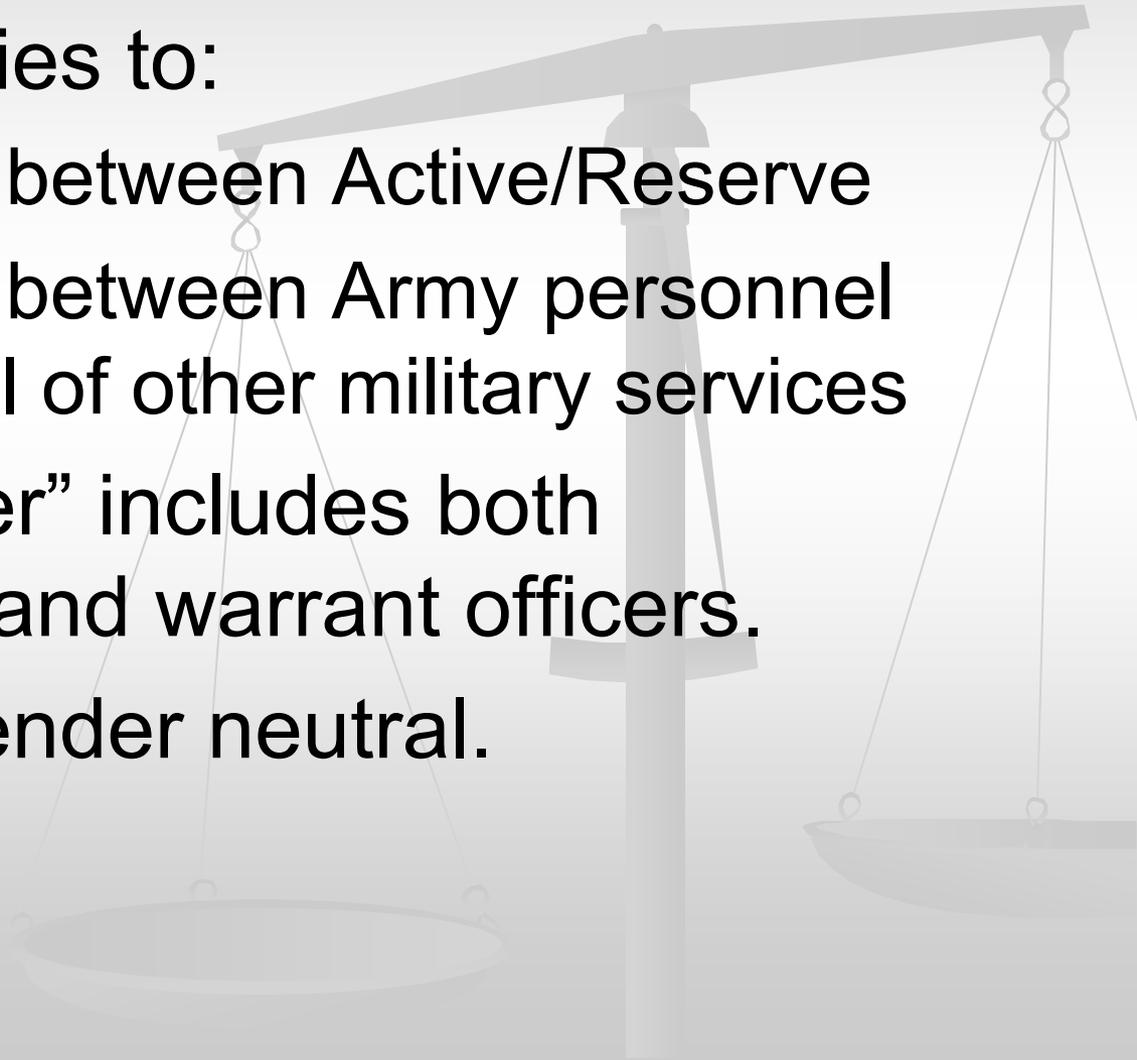
- Notify all Soldiers about the law
- Implement a program of instruction to educate all Soldiers on the domestic violence amendment
- Inform Soldiers about obligation to report their qualifying conviction
- Establish procedures to ensure compliance with the law
- Track domestic violence arrests and convictions.
- Refer soldiers to a legal assistance attorney



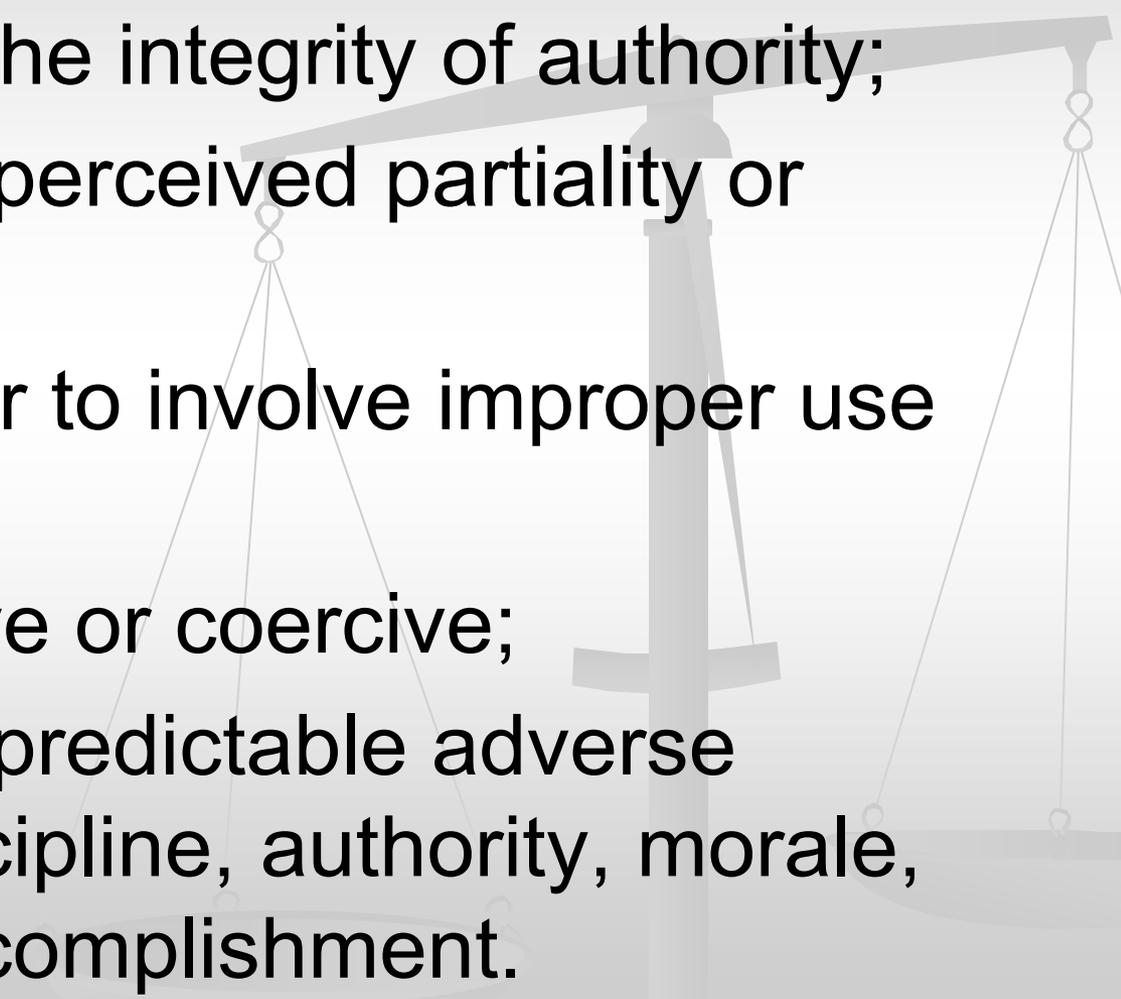
Army Policy on Superior/ Subordinate Relationships

Applicability

- The policy applies to:
 - Relationships between Active/Reserve
 - Relationships between Army personnel and Personnel of other military services
- The term “officer” includes both commissioned and warrant officers.
- The policy is gender neutral.

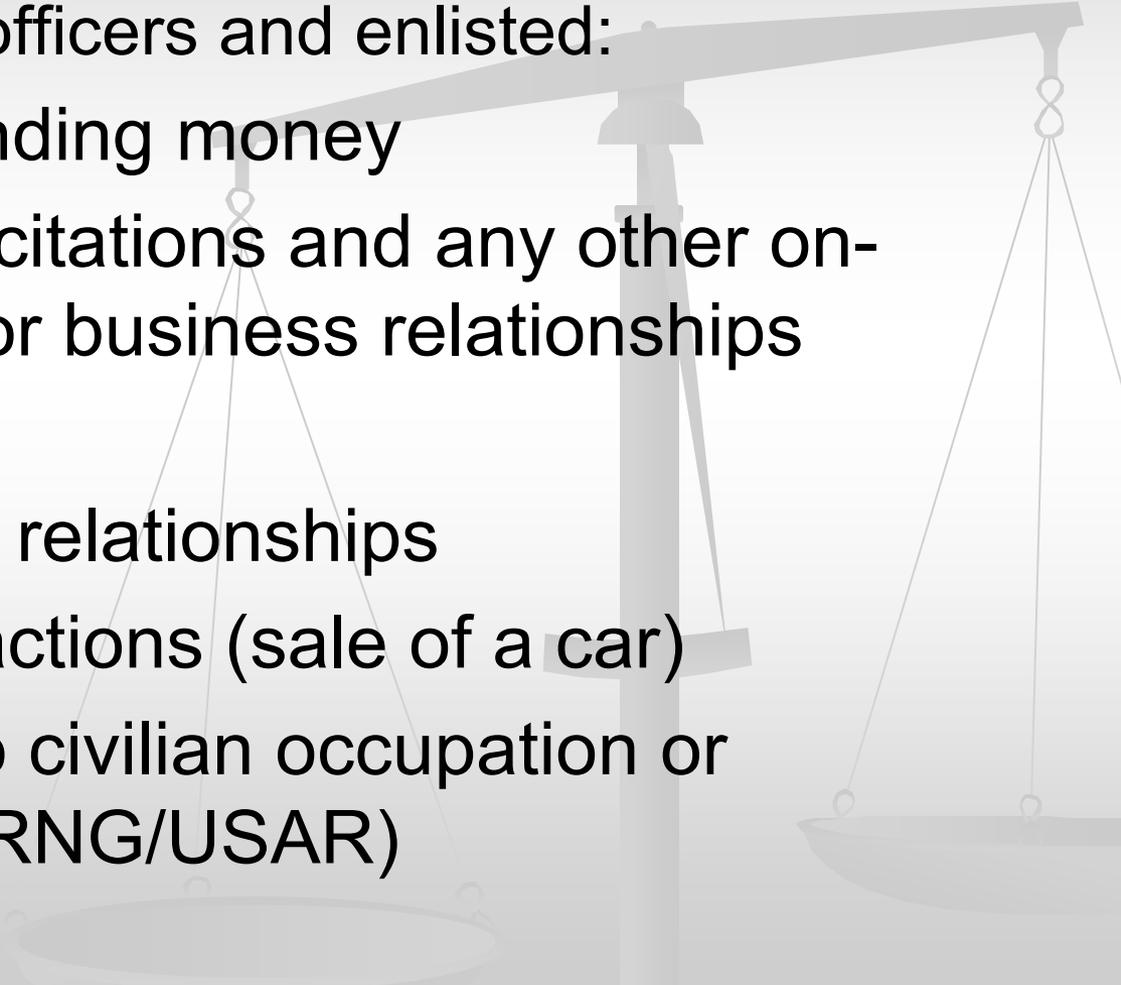


Prohibited Relationships

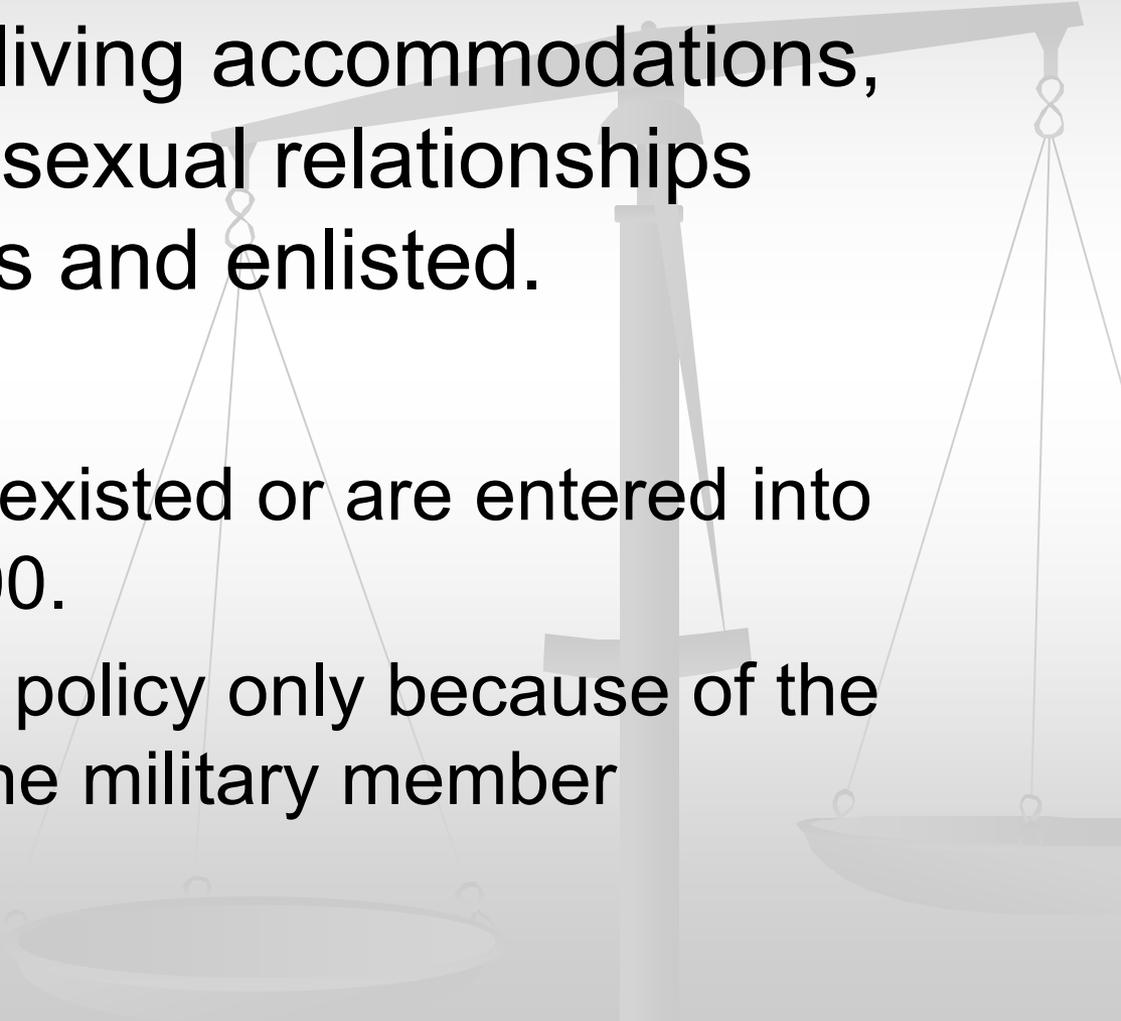


- Compromise the integrity of authority;
- Cause actual/perceived partiality or unfairness;
- Involve/appear to involve improper use of rank;
- Are exploitative or coercive;
- Cause actual/predictable adverse impact on discipline, authority, morale, or mission accomplishment.

Prohibited Relationships (Con't)

- Business between officers and enlisted:
 - borrowing or lending money
 - commercial solicitations and any other on-going financial or business relationships
 - Exceptions:
 - Landlord/tenant relationships
 - One time transactions (sale of a car)
 - Business due to civilian occupation or employment (ARNG/USAR)
- 

Prohibited Relationships & Exceptions

- Dating, shared living accommodations, and intimate or sexual relationships between officers and enlisted.
 - Exceptions:
 - Marriages that existed or are entered into prior to 1 Mar 00.
 - Violation of the policy only because of the promotion of one military member
- 

Exceptions Continued

- ARNG/USAR only: personal relationships that exist primarily due to civilian acquaintanceship (unless individuals are on active duty)
- Active duty: personal relationships with a member of the ARNG/USAR that exist primarily due to civilian (off duty) association (IF, the ARNG/USAR soldier is not on full time status).

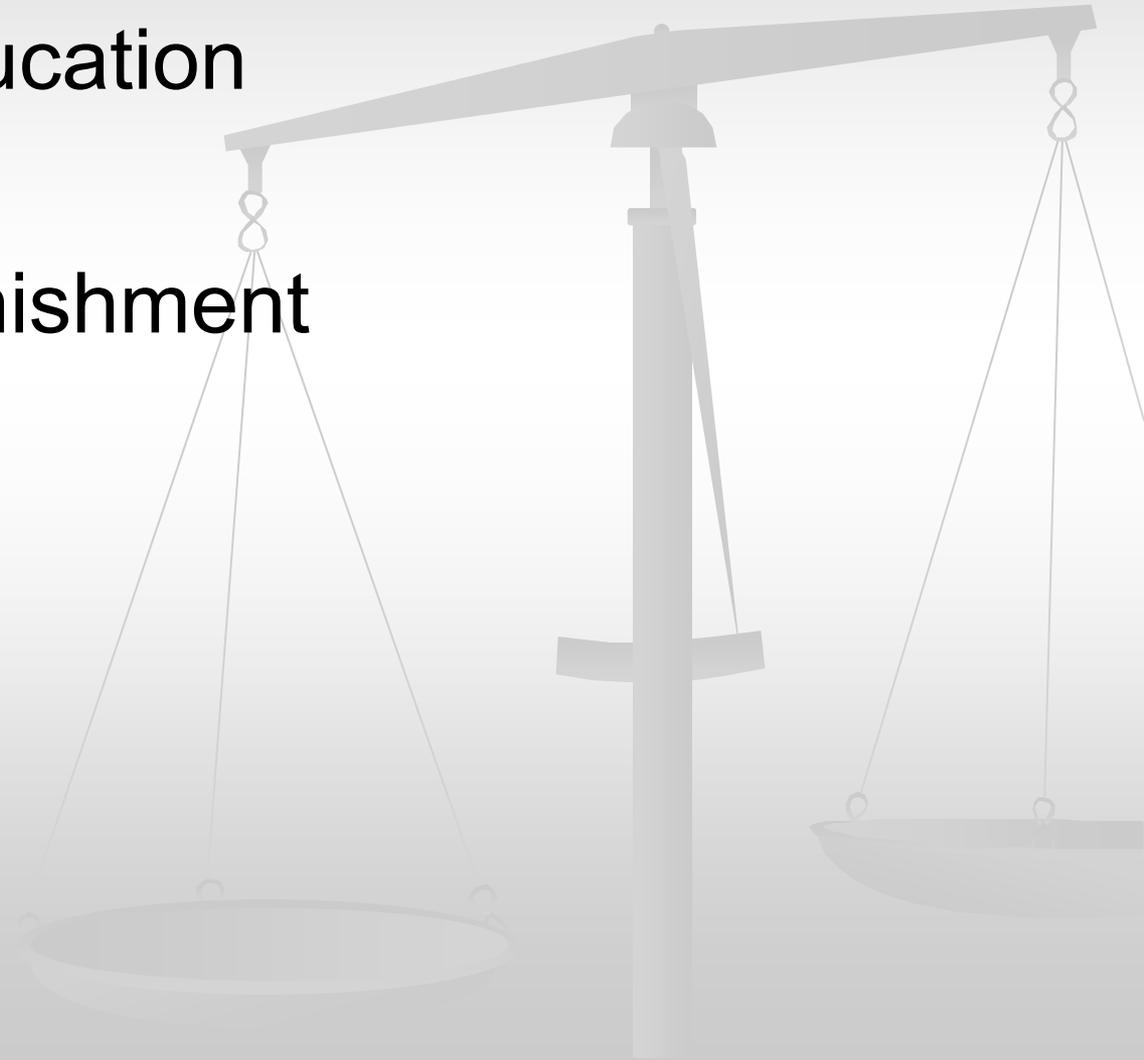
Gambling

- Gambling between officers and enlisted personnel is prohibited.
- There are **NO REGULATORY EXCEPTIONS.**

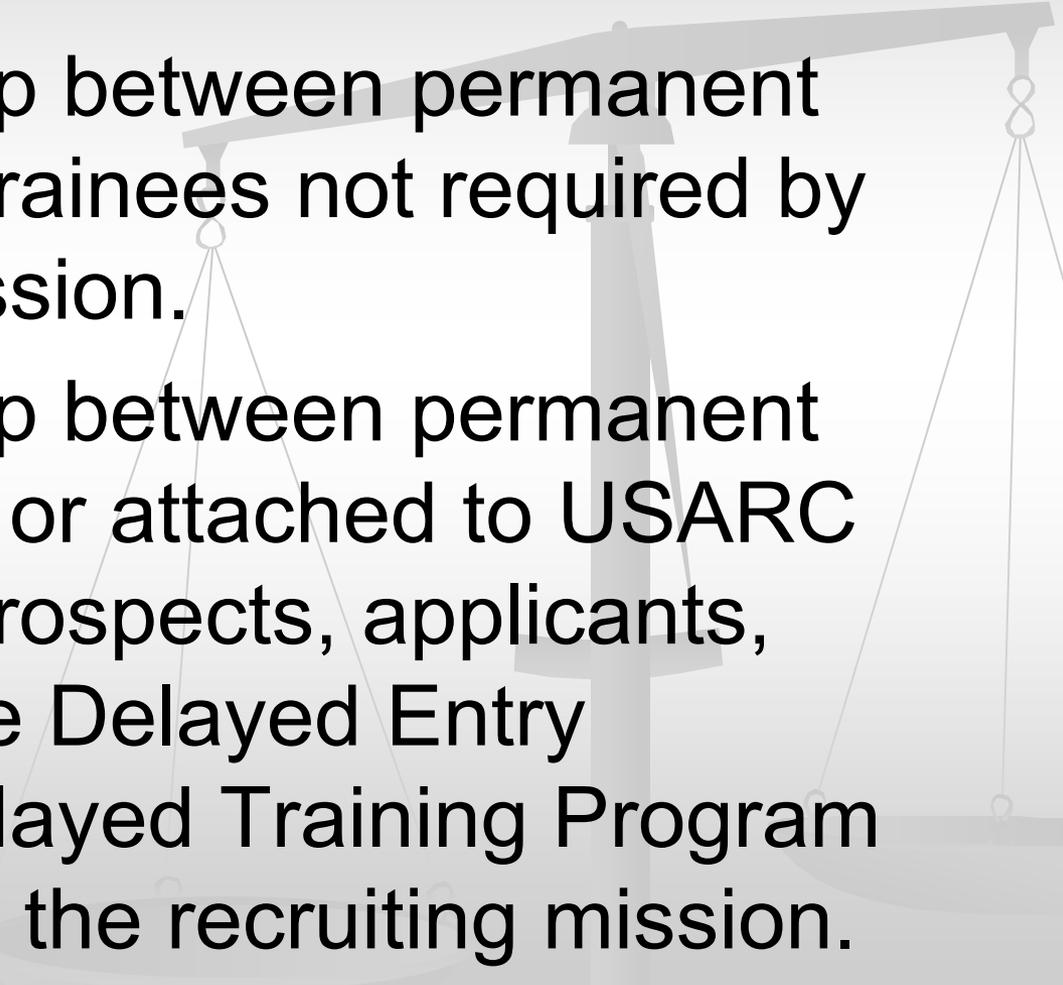


Commander's Options

- Counseling/education
- Administrative
- Nonjudicial punishment
- Court-Martial

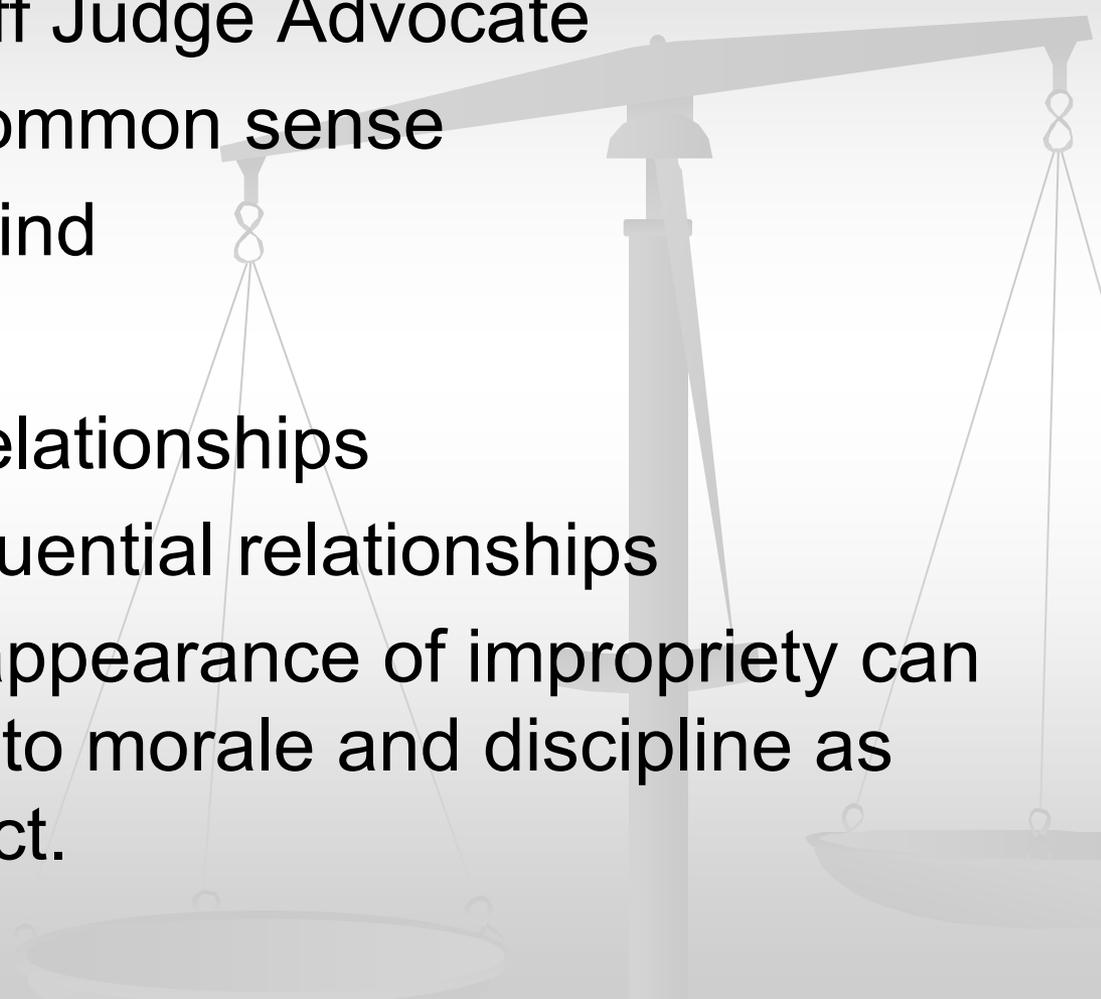


Other Prohibited Relationships



- Any relationship between permanent party and IET trainees not required by the training mission.
- Any relationship between permanent party assigned or attached to USARC and potential prospects, applicants, members of the Delayed Entry Program or Delayed Training Program not required by the recruiting mission.

Commander's Analysis



- Consult with Staff Judge Advocate
- Commander's common sense
- Keep an open mind
- Be wary of:
 - Supervisory relationships
 - Potentially influential relationships
- Remember the appearance of impropriety can be as damaging to morale and discipline as actual misconduct.

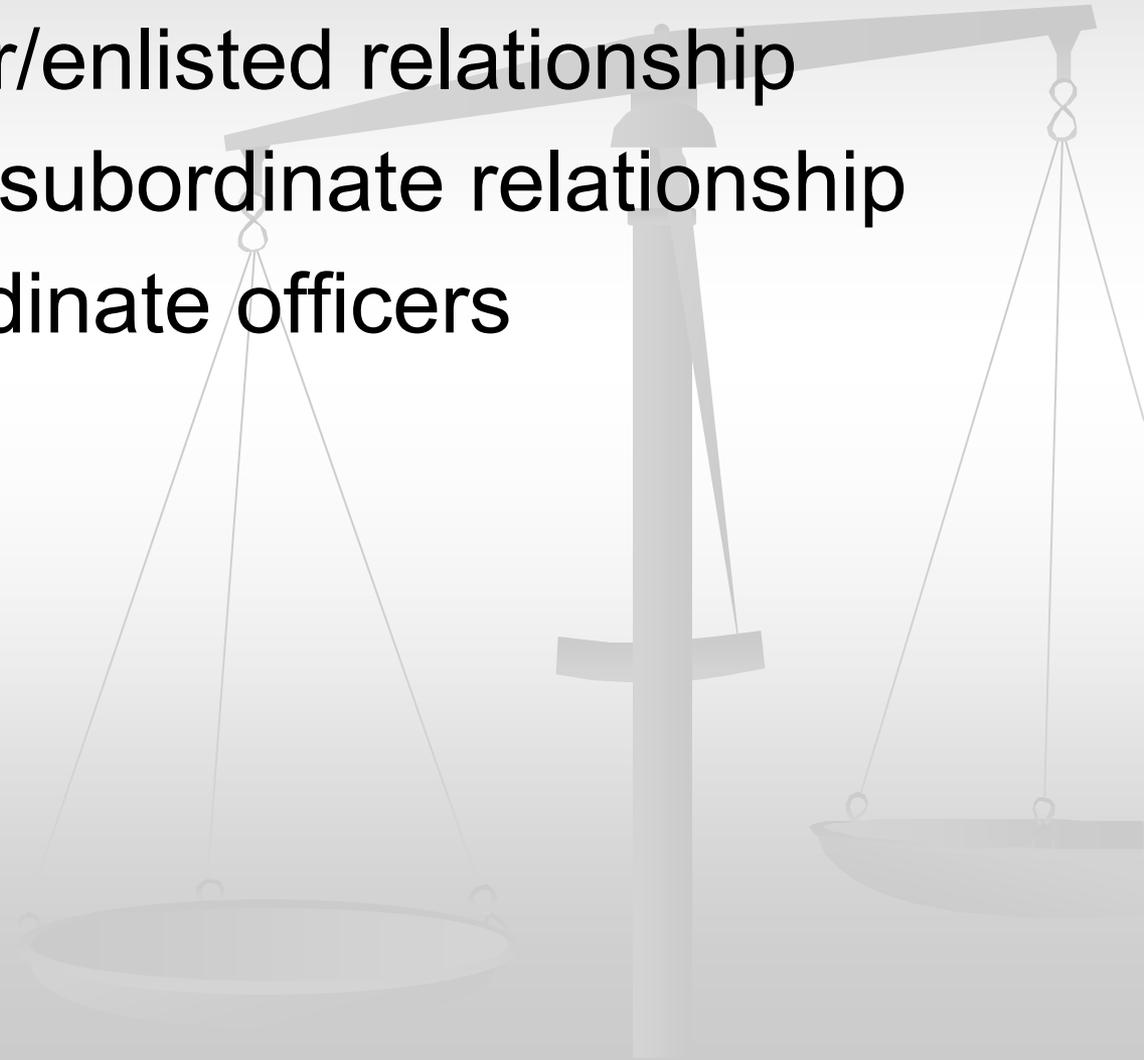
Commander's Role



- Set tone of command
 - proper training (mentor, coach and teach)
 - policy memos, sensing sessions, and OPDs
- Commitment to EO Policy
- Investigate and act promptly
- Administrative and criminal sanctions

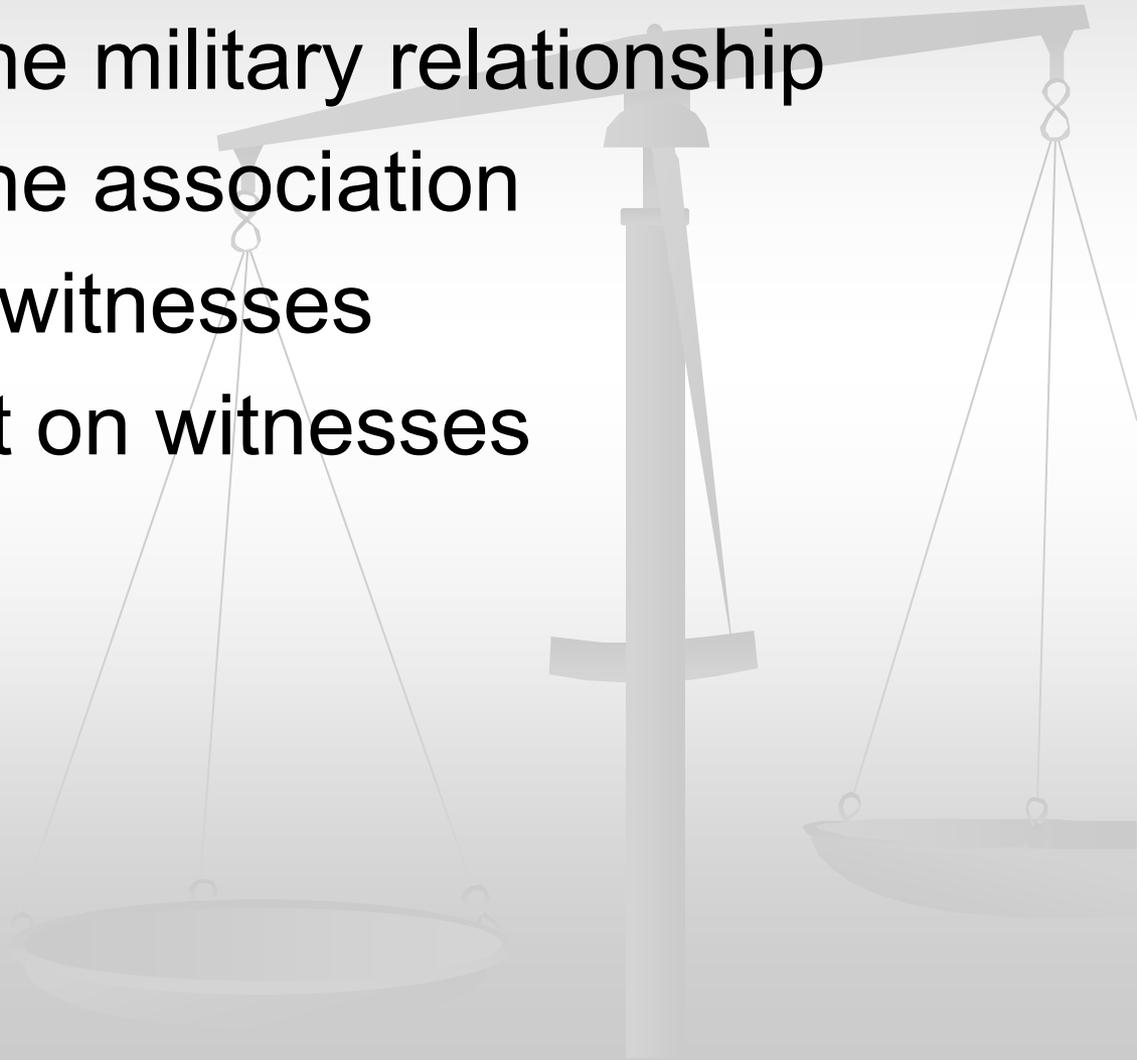
Scope of Fraternization

- Improper officer/enlisted relationship
- Improper NCO/subordinate relationship
- Superior/subordinate officers

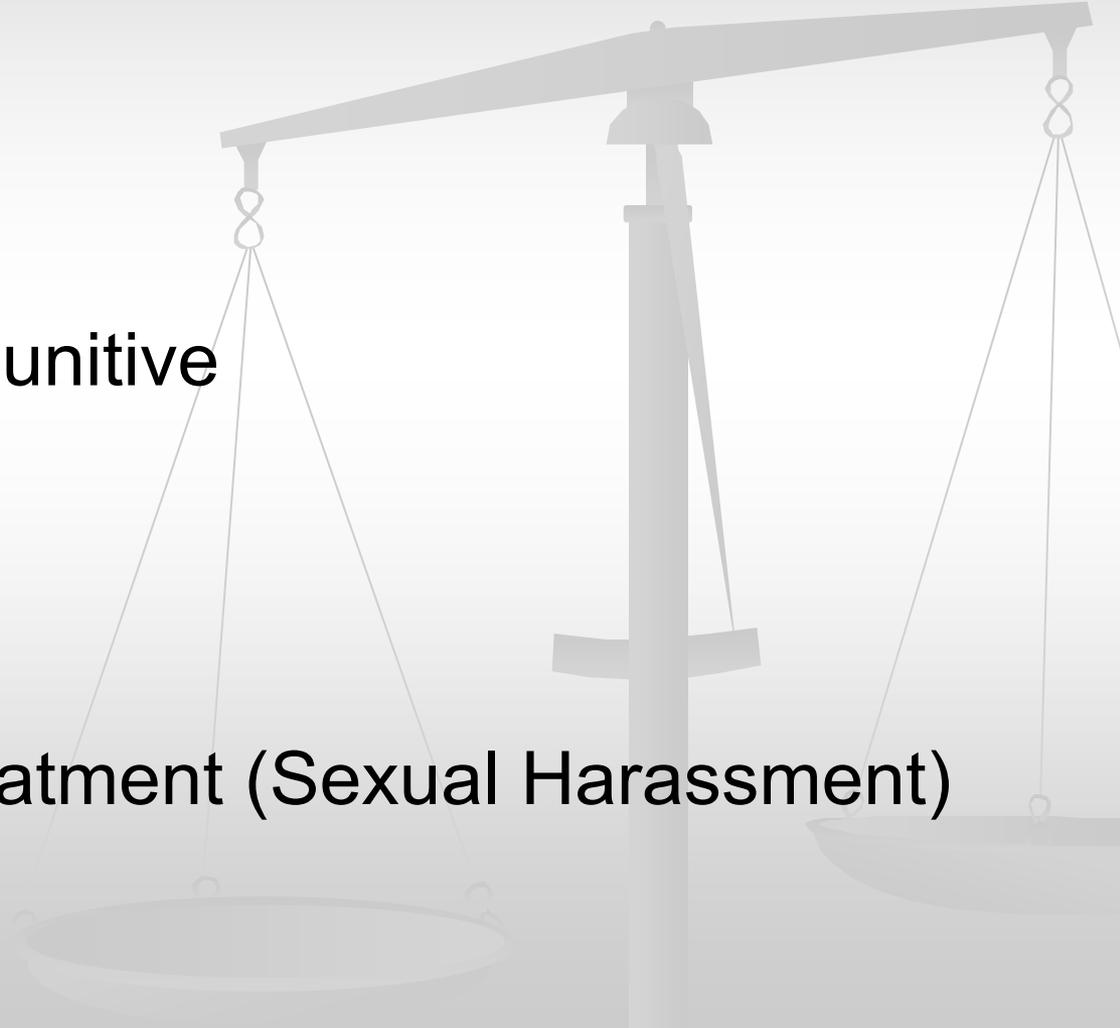


Factors to Consider

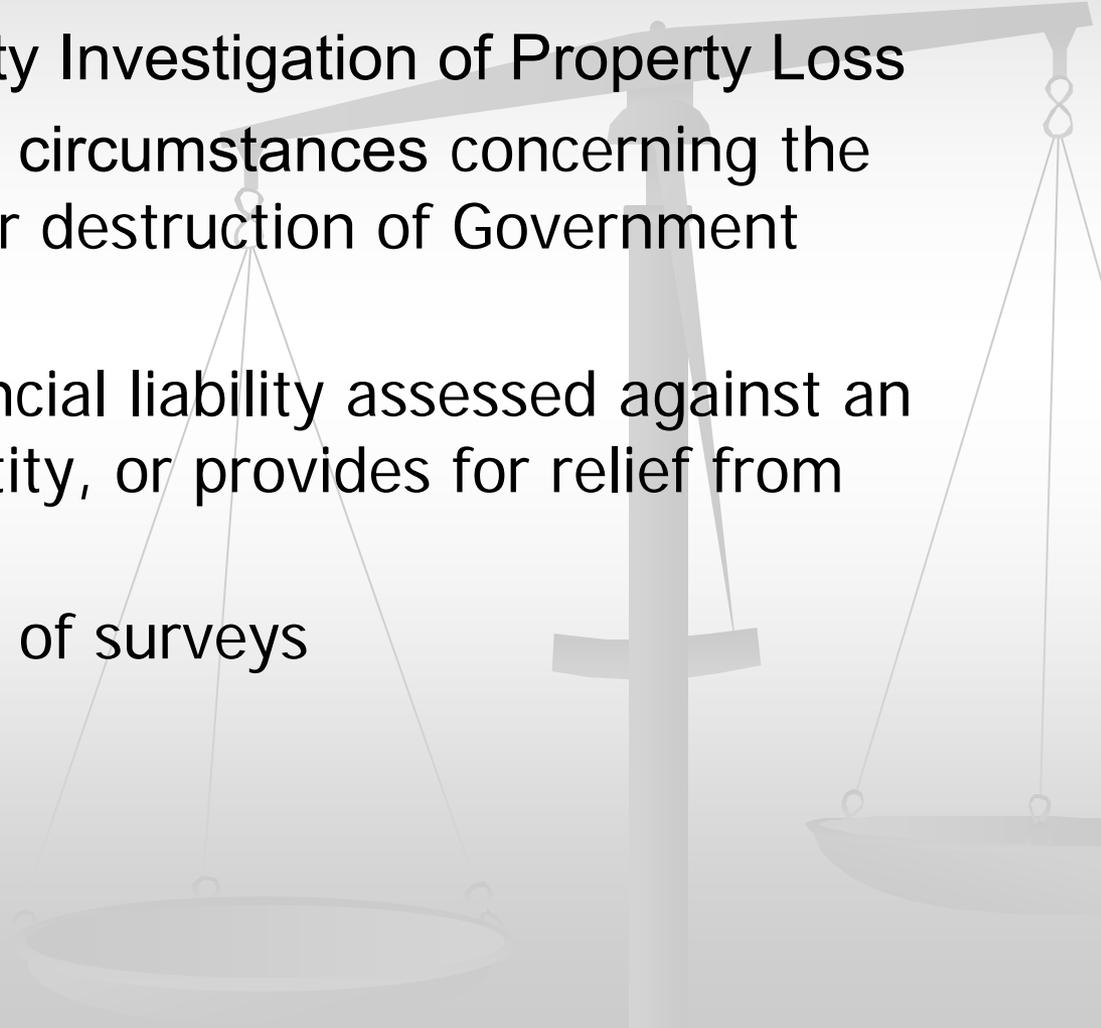
- The nature of the military relationship
- The nature of the association
- The number of witnesses
- The likely effect on witnesses



Alternative Charges for Fraternization

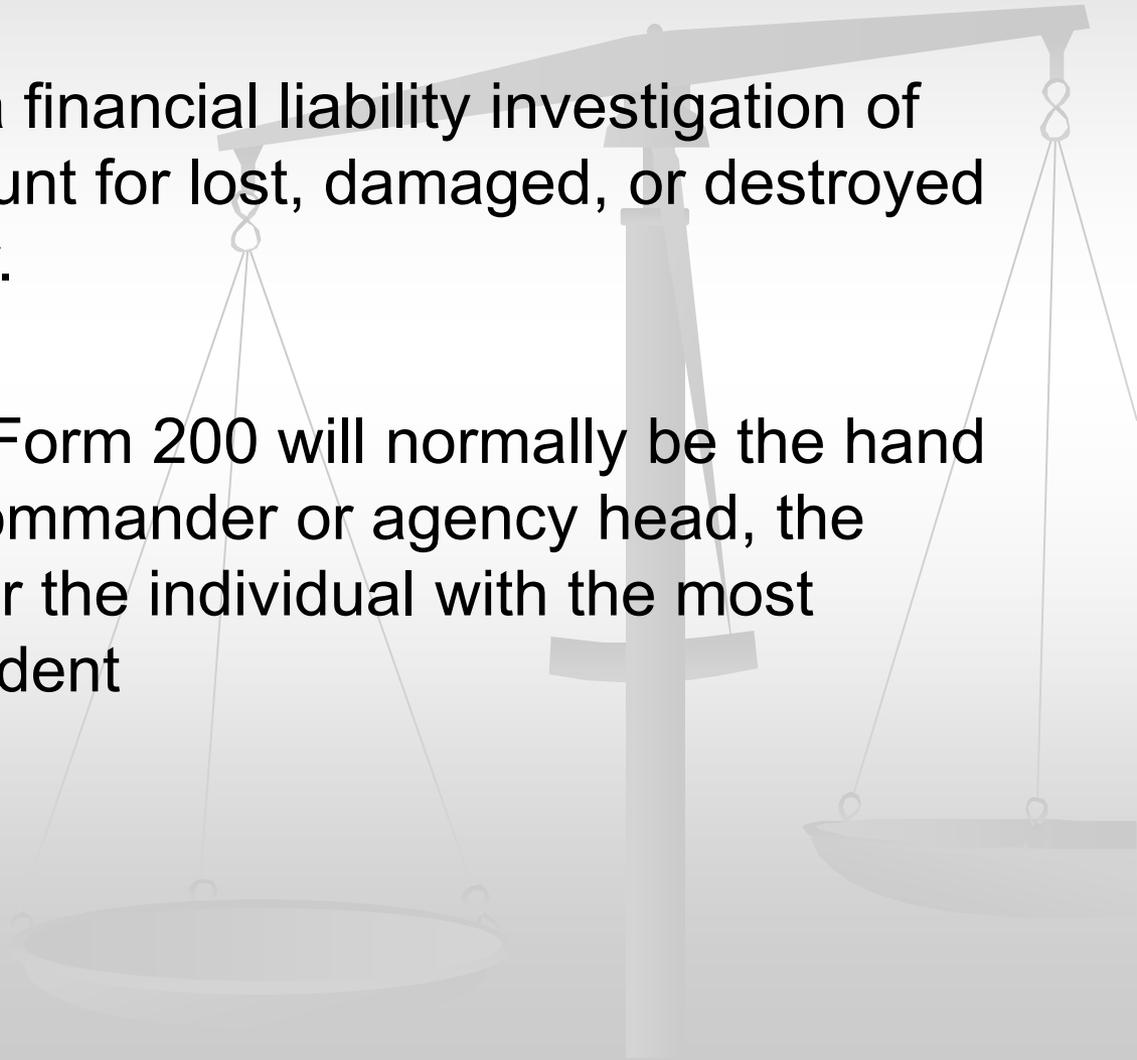
- Article 90
 - Article 92
 - Local policies
 - AR 600-20 is punitive
 - Article 133
 - Officers only
 - Article 93
 - Cruelty/ Maltreatment (Sexual Harassment)
- 

What is a FLIPL?

- Financial Liability Investigation of Property Loss
 - Investigates the circumstances concerning the loss, damage, or destruction of Government property
 - Charges of financial liability assessed against an individual or entity, or provides for relief from financial liability
 - Replaced report of surveys
- 

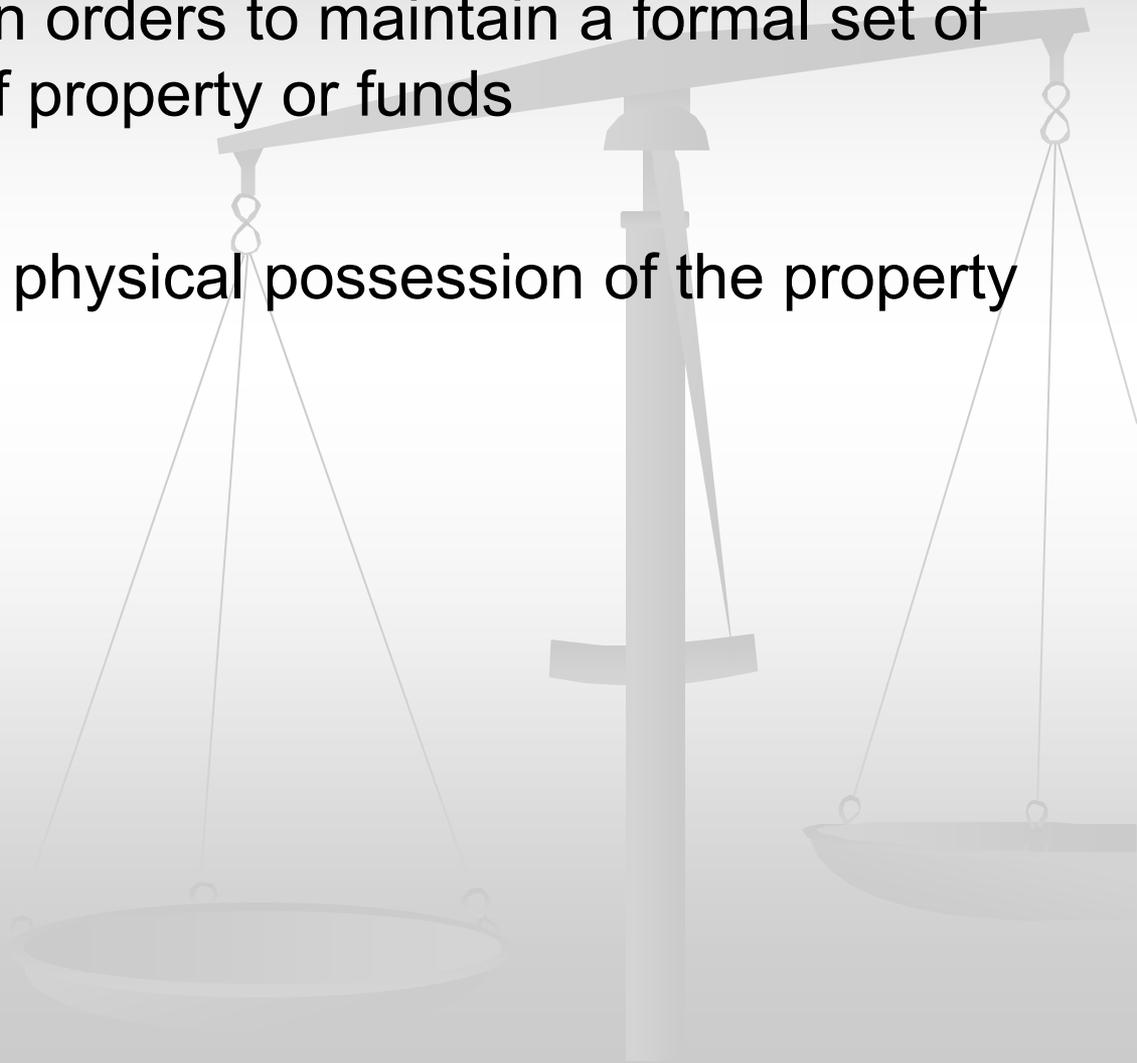
FLIPLs are Initiated When?

- Initiate and process a financial liability investigation of property loss to account for lost, damaged, or destroyed Government property.
- The initiator of a DD Form 200 will normally be the hand receipt holder, unit commander or agency head, the accountable officer, or the individual with the most knowledge of the incident

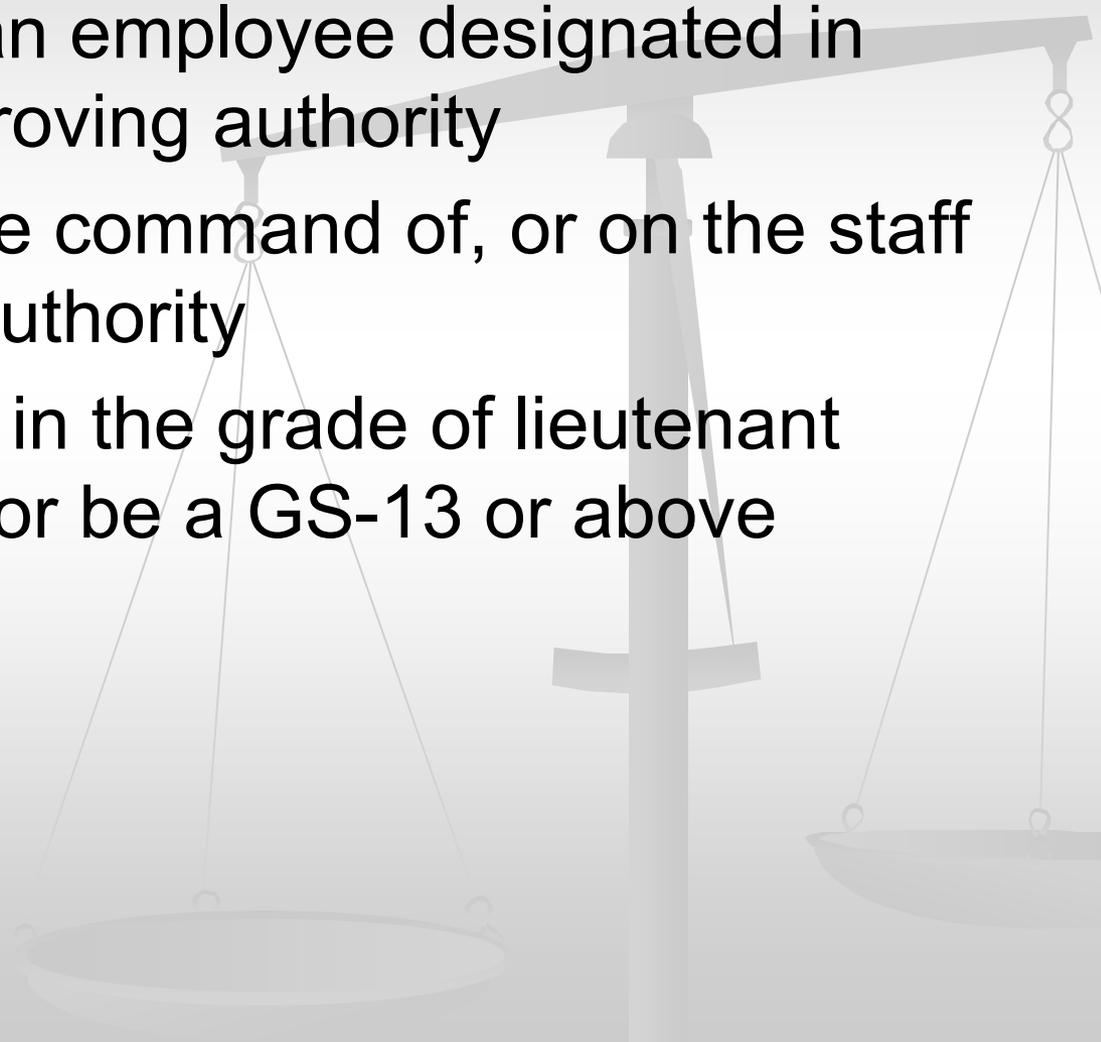


Accountable Officers

- Officially appointed on orders to maintain a formal set of accounting records of property or funds
- May or may not have physical possession of the property or funds
- Three types:
 - Transportation
 - Stock Record
 - Property Book



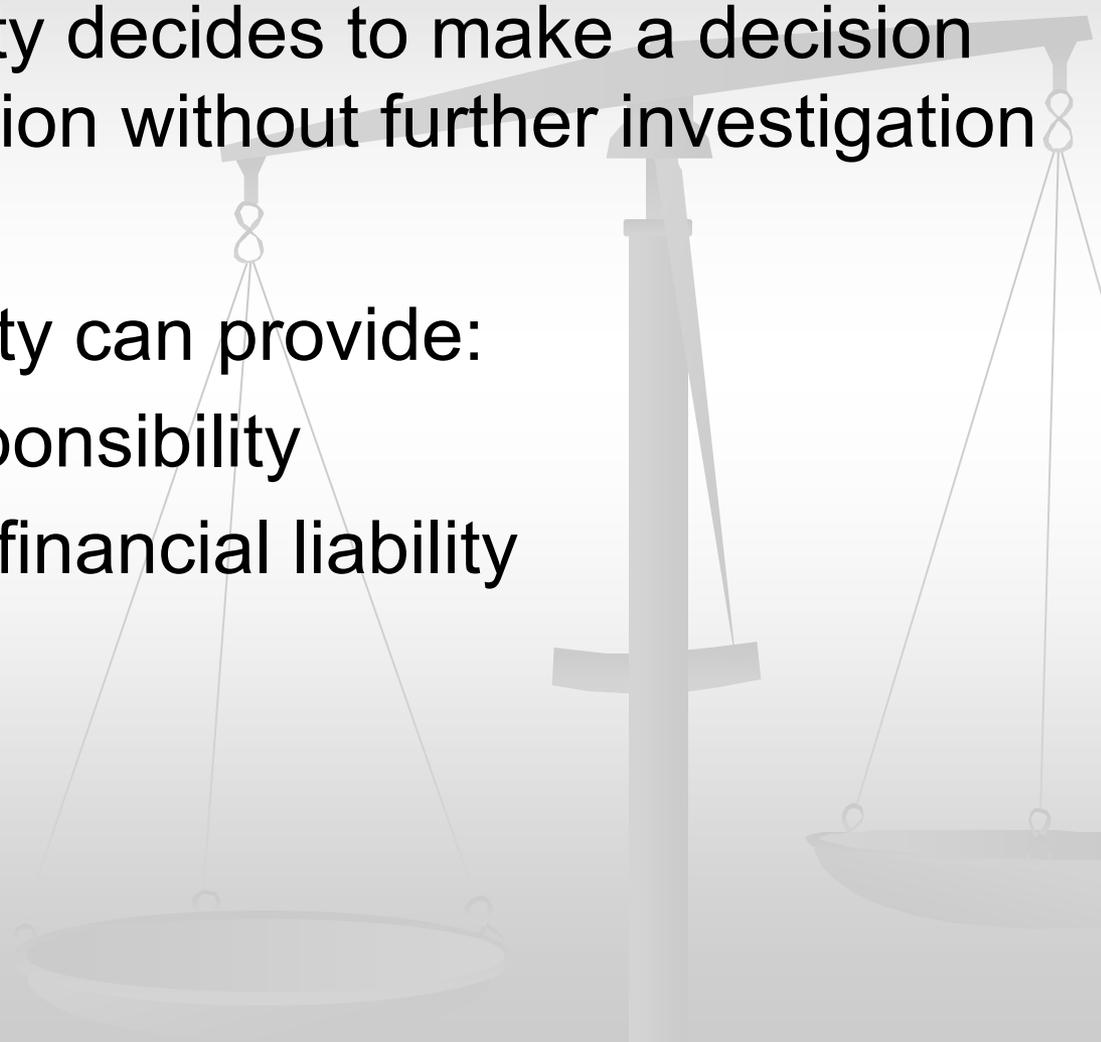
FLIPL Appointing Authority

- An officer or civilian employee designated in writing by the approving authority
 - Normally under the command of, or on the staff of the approving authority
 - Must normally be in the grade of lieutenant colonel or above, or be a GS-13 or above
- 

FLIPL Approving Authority

- An Army officer or Department of the Army civilian employee authorized to appoint financial liability officers and to approve financial liability investigations "by authority of the Secretary of the Army."
- O5 if delegated by an O6 in writing, for losses less than \$5000, does not include COMSEC, sensitive items or PII.
- O6 or above, or be a GS-15 or above, in a supervisory position for losses less than \$100,000
- O7 or above, or be an SES civilian employee, in a supervisory position for losses greater than \$100,000

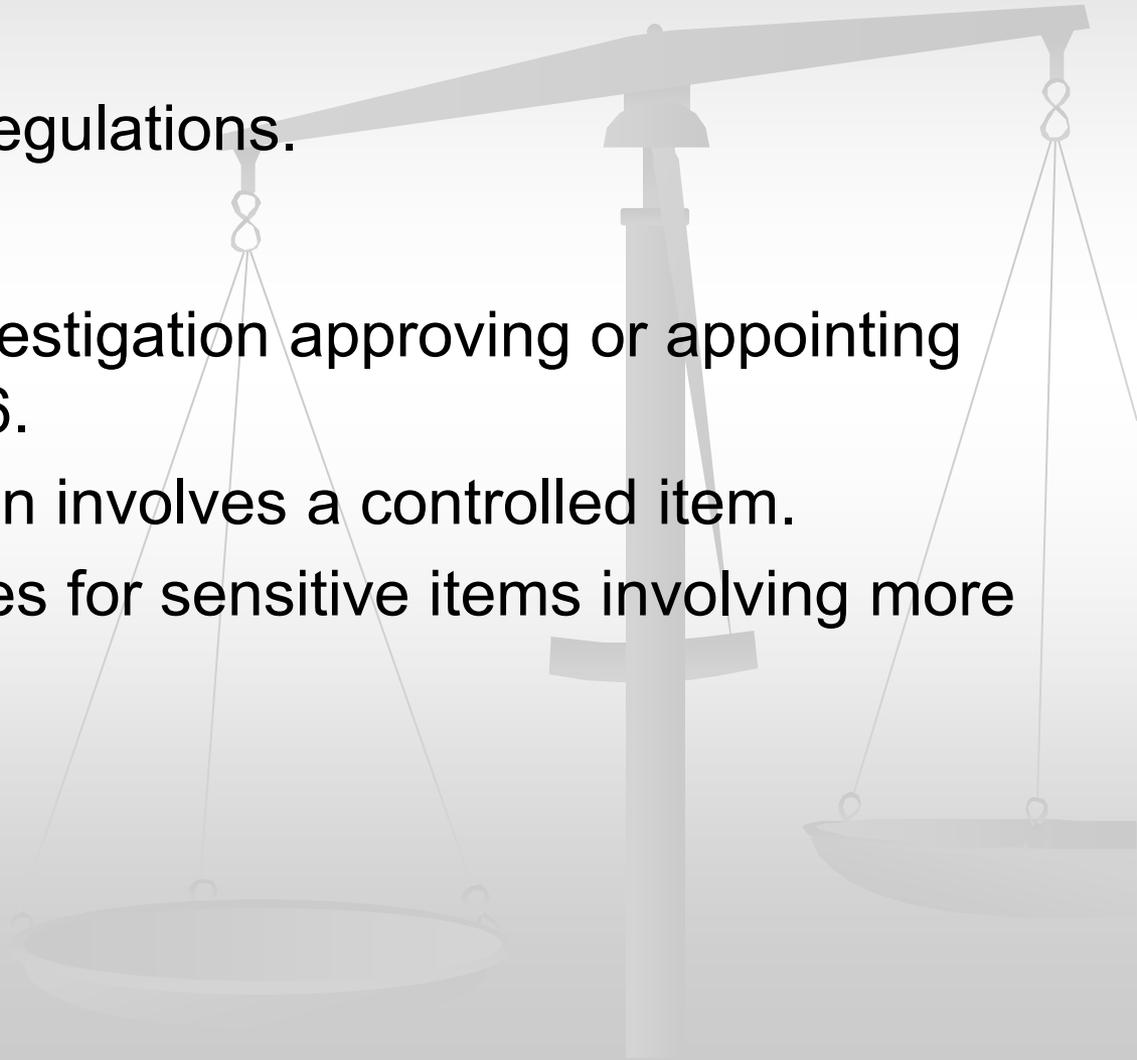
Short FLIPL

- Approving authority decides to make a decision based on information without further investigation
 - Approving Authority can provide:
 - Relief from responsibility
 - Assessment of financial liability
- 

FLIPL warranting AR 15-6 Investigation

When directed by:

- Other specific Army regulations.
- A commander.
- A financial liability investigation approving or appointing authority per AR 15–6.
- The loss or destruction involves a controlled item.
- Serial number changes for sensitive items involving more than two characters.



Terminal Learning Objective

Action: Obtain, examine, calculate, and maintain legal assets on a Modification Table of Organization and Equipment (MTOE) and a Table of Distribution and Allowances (TDA).

Terminal Learning Objective

Conditions: Given a responsibility to maintain the number of required positions assigned to a SJA organization and access to AR 71-32, AR 570-4, AR DA Pam 611-21, AR 570-5, the JAGC Manpower Requirements Criteria, and standard office supplies and equipment.

Standards: IAW AR 71-32, AR 570-4, AR 570-5, DA Pam 611-21, and the JAGC Manpower Requirements Criteria.

Manpower Documents

- Modification Table of Organization and Equipment (MTOE)
- Table of Distribution and Allowances (TDA)
- Table of Organization and Equipment (TOE)
- Augmentation Table of Distribution and Allowance (AUGTDA)
- Mobilization Table of Distribution and Allowances (MOBTDA)

Objectives

- What role does the JAGC Manpower Requirements Criteria (MARC) play in TOE and MTOE development?
- What forces generate the TDA manning document and how do these forces affect the manpower strengths in your office?
- How do the Standards of Grade (SG) tables affect MTOE and TDA manning documents?
- What is the process to make an adjustment to the MTOE and TDA manning document?
- What other manpower documents affect the legal structure of my office?

TOE

- The Tables of Organization and Equipment (TOE) is a “**requirements**” document which prescribes the wartime:
 - mission
 - capabilities
 - organizational structure
- Contains the Minimum Essential Wartime Requirement (MEWR) for:
 - Personnel
 - Equipment

MTOE

- The MTOE is an “**authorizations**” document that prescribes the modification of a basic TOE for specific units based on geography or mission
- MTOE units form the Army’s Operating Force
- MTOEs are managed by HQDA
- DO NOT contain civilian positions
- MTOE units are identified by a letter as the 2d digit in their UIC (i.e. WABTAA, WAU3AA, WHU9TO)

TDA

- The TDA is an “**authorizations**” document that prescribes the organizational structure, personnel and equipment
 - TDA units are the “Generating Force” units supporting the Operational Force.
 - TDAs are built, managed, and controlled by MACOMs/Installations
 - TDA units are identified by a number as the 2d digit in their UIC (i.e. W1ETAA, W1D21A)
- AUGTDA: Provides additional assets in support of a specific MTOE unit
- MOBTDA: Defines the required legal structure for the office in the event of a mobilization.

MARC

- MARC are HQDA-approved standards for determining mission-essential wartime personnel **requirements** (MEWR) for Force Sustainment, Operations Support, and Special Branches in TOE/MTOE units.
- MARC Rules apply to TOE/MTOE documents only. DO NOT apply to TDA manning documents.
- JAGC MARC establishes:
 - Key JAGC leadership positions (SJA, DSJA, CLNCO)
 - Additional assets based on supported troop population
- JAGC MARC on the internet at:
<https://fmsweb.army.mil> (Requires password)

Manpower Staffing Standards

- Criteria used to establish personnel requirements in TDA organizations
- Most common manpower staffing standard is the Manpower Survey; each MACOM or installation may have their own procedures.
- TDA organizations can expect Manpower Survey validation every three to five years
- DO NOT apply to TOE/MTOE units.

Standards of Grade Tables

- Maintained in DA Pam 611-21, <https://smartbook.armyg1.pentagon.mil/DA%20PAM%20061121/Forms/AllItems.aspx>
- Provides grading guidance for enlisted positions
- Separate tables for TOE/MTOE and TDA documents
- COMPO Blind (unless otherwise indicated, grading guidance applies equally to legal assets in Active, National Guard and Reserve forces).
- Does not authorize positions on manning documents; merely provides grading guidance for required legal positions, regardless of whether the position is authorized or not.

Requirement

- Reflects the number of personnel or pieces of equipment needed to accomplish the unit's mission
- TOE/MTOE: Requirements are generated from either Doctrine (Maneuver, Fires & Effects) or from the MARC (Force Sustainment, Operations Support and Special Branches personnel).

Requirement (Cont'd)

- Required positions in TDA units are based on the unit's mission, functions, and workload
- For example, requirements identify the number of legal personnel and equipment needed to run a Claims Section or Legal Assistance Office.

Authorization

- Reflects the funding of the required position.
- Authorized positions, especially TDA positions, are frequently targeted for loss due to changing priorities, budgetary constraints, and other factors.
- Authorized positions will not normally exceed the required positions; exceptions always exist.
- For example, requirements tell you how many legal assets are needed to run the claims office - authorizations tell you how many legal assets have been paid for and can actually be filled.

Force Management System (FMS) Web

- Supports the development and documentation of organizational structures for requirements and authorizations of personnel and equipment.
- Provides each unit with a HQDA- approved organizational structure.
- Is maintained and controlled by the United States Force Management Support Agency (USAFMSA).

FMS Web (Cont'd)

- It contains the official authorization database for the Total Army (AC, ARNG, USAR)
- MTOE and TDA manning documents (including AUGTDA and MOBTDA) are all products of FMS Web
- New documents are generated by HQDA approximately every Jan/Feb and Jul/Aug or every six months
- Review MTOE/TDA manning documents immediately after new release; your authorizations are subject to change without your knowledge

Proponent

- Is an entity which is assigned primary responsibility for a specific organization or functional area
- TJAG is the personnel proponent for the JAGC
- The Regimental CSM and Warrant Officer of the Corps are TJAG's primary advisors
- Can also represent major war-fighting system

Functional Areas of the Army

- Maneuvers, Fires & Effects :
 - Infantry
 - Armor
 - Field Artillery
 - Air Defense Artillery
 - Special Forces
 - Public Affairs
 - Chemical
 - Engineer
 - Information Operations
 - Military Police
 - PSYOP (Military Information Support Operations) (MISO)
 - Civil Affairs
 - Aviation

Functional Areas of the Army (Cont'd)

- Force Sustainment:
 - Acquisition
 - Adjutant General
 - Human Resources
 - Logistician
 - Ordnance
 - Quartermaster
 - Transportation

Functional Areas of the Army (Cont'd)

- Operations Support:
 - Academy Professor
 - FAO
 - Force Management
 - Info Systems Management
 - Key Leader
 - Military Intelligence
 - Nuclear & Counter Proliferation
 - OPS Research & System Analysis
 - Signal
 - Space Ops
 - Telecomm System Engineer
 - Strategic Intel
 - Strategic Plans & Policy
 - Simulations Ops

Functional Areas of the Army (Cont'd)

- Special Branches:
 - Judge Advocate General's Corps
 - Chaplain
 - Medical Corps
 - Medical Services
 - Medical Specialists
 - Nurse Corps
 - Dental Corps
 - Veterinary Corps

Table of Organization and Equipment (TOE)

- A Requirements Document
- “Blue Print” for the Army War-fighting units
- Records unit mission, structure, capabilities
- Records requirements for Personnel and Equipment
- No civilians

TOE (Cont'd)

- TOE structure built from:
 - Doctrine (MFE)
 - Manpower Requirements Criteria (MARC)
(OS, FS, SB)
- TOE evolution
 - External Influences
 - Cyclic Review
- Combat Developments Department, TJAGLCS
 - Correct # of Requirements
 - Right mix of requirements: Off/WO/Enl
 - Correct grading of requirements
 - Effect on AC, ARNG, USAR forces

Review the Office Manning Document

- Before review, several questions have to be answered for your office:
 - Is the SJA office on a MTOE or a TDA manning document?
 - Where do I get a copy of my manning document?
 - Where do I find my legal assets?

Common JAGC ASIs (Enlisted)

- C5 Court Reporter
- 2S Battle Staff Operations
- 2B Air Assault
- 5W Jump Master

Common JAGC ASIs (Officers)

- 3G Claims/Litigation Specialist
- 3D Government Contract Law
- 3N International Law Specialist
- 5P Parachutist
- 3I Basic Military Justice Practitioner (MJP)
- 3M Senior MJP
- 3P Expert MJP
- 3T Master MJP

Common JAGC SQLs

- P Parachutists
- M First Sergeant
- H Instructor
- G Ranger
- X Drill Sergeant
- S Special Operations Support Personnel

MARC Rules

- Establishes personnel “requirements” on TOE/MTOE documents; NOT TDA; only establishes FS, OS, SB personnel on TOEs, MFE established by doctrine
- Rules validated and published after comprehensive JAGC MARC Study
- Very complicated document subject to frequent misinterpretation – Don’t guess, contact CDD, TJAGLCS

MARC Rules (Cont'd)

- Used to establish number of legal assets; do not provide grading
- Applies to ARNG, USAR, and AC units
- Do not apply to TDA organizations
- Establishes key leadership positions like SJA, DSJA, Warrant Officer, CPNCO
- May establish additional positions based on supported troop population

Common JAGC MARC Rules

- 10-19.5: One Paralegal enlisted asset per Bn
- 10-19.5: One Paralegal enlisted asset per Bde
- 10-19.5: One Command/Chief Paralegal NCO per MTOE unit exercising GCMCA (SJA section)
- 10-19.5: SJA (GCMCA) section gets one legal enlisted asset per every 1250 required Soldiers
- 10-19.6: SJA (GCMCA) section get one Court Reporter position per every 5,000 required Soldiers
- 10-19.6: Every SJA (GCMCA) section gets at least one court reporter

Introduction to the Tables of Distribution and Allowances (TDA) Manning Document

1. TDA is an “Authorizations Document” depicting personnel and equipment for the Army’s “institutional force”
2. May contain civilian employees unlike MTOE manning documents
3. Identified by UIC. If the 2d digit in the UIC is a number, the unit is a TDA unit (W1ETAA, W2D21A); does not have a SRC.
4. Source for establishing Personnel Requirements:
 1. TDA manning document: Manpower Staffing Standards (AKA manpower survey)
 2. MTOE manning document: JAGC MARC
5. Source for providing manpower authorizations
 1. TDA manning documents: MACOM via local installation
 2. MTOE manning documents: HQDA

Major Components of the TDA

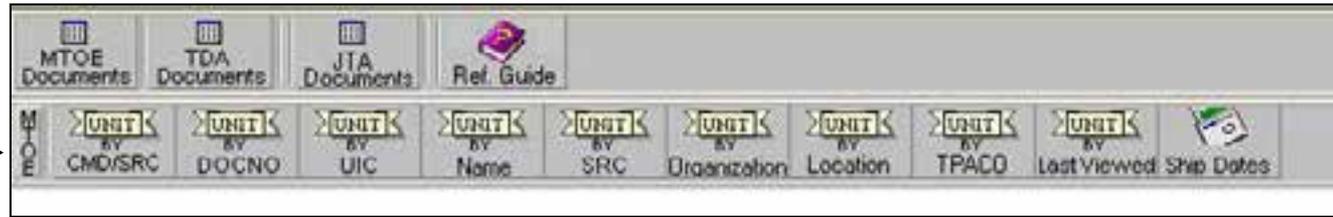
Section I: Administrative Data – includes narrative guidance regarding any turbulence to manpower strength

Section II: Lists personnel requirements and authorizations by section or function, divided into individual paragraphs – also includes definition page regarding any ASI, SQI, other remarks on positions

Section III: Lists equipment

FMS Web - Search Options

You can search for MTOE documents in a variety of methods



The best search method is using the UIC.



A dialog box titled 'UIC Search Tool'. It has a 'List By: UIC' label and a 'Reset' button. Under 'Document Status', there are radio buttons for 'Latest Approved', 'All Approved', 'Approved/History', and 'Staffing'. Under 'Date(s)', there is a text input field containing '00NUM' and a checkbox for 'OFMD Only'. Under 'UIC(s)', there is a text input field containing 'WAMHAA' and a link for '(UIC Search Tool)'. A green 'Continue' button is at the bottom.

A screenshot of the FMS Web search results page. The page title is 'UIC Listing by Full/Partial UIC (WAMHAA)'. Below the title is a table with the following columns: UIC, EDATE, UNIT NAME, CM, DOCNO, CN, U, W, FY, ST, AT, U, S, REQ OFF, REQ WD, REQ ENL, AUTH OFF, and AUTH WD. The table contains one row of data for UIC WAMHAA.

UIC	EDATE	UNIT NAME	CM	DOCNO	CN	U	W	FY	ST	AT	U	S	REQ OFF	REQ WD	REQ ENL	AUTH OFF	AUTH WD
WAMHAA	1/16/11	HMBL 1ST INF DEV	FC	87008FC09	0111	11	A	188	45	499	188	45					

Record Count: 1

FMS Web cont.

UIC, Unit & EDATE

POSCO

Paragraph #

Line #

SQI

ASI

Definitions

Remarks

Authorizations

UIC	UNIT	EDATE	Req.	Auth.	Req.	Auth.	Req.	Auth.	ICMD	FC	STATUS	APPROVED																																																																																																																																																																																				
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FMS Web front page

Reports
are found
in here

MTOE and TDA
documents are
found in here

TOE
documents
are found
here

The MARC
can be
found here

Please Note!
The Army requires that access to all web sites containing SBU information be controlled by CAC login. We are scheduled to implement CAC login for FMSWeb on or about **October 21st, 2008**.
The username/password login system will be disabled at that time.
Information about installing CAC readers can be found on the [AKO Web Site](#).

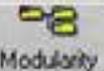
Documentation Tools

 Reports	REPORTS Total Army Strengths, Equipment, POSCO, PPP, BOIP, and other reports.	 Lookup Tools	Lookup Tools Search for LINS, Titles, POSCOs, ERC/LIN Exemption Tables (B,C,F), IGCA and other codes.
 AUTH Documents	AUTHORIZED Doc. Review View the details of documents. (TDA, JTA and MTOE)	 WebCTA	WebCTA View CTA LINS, NSNs, nomenclatures and BOIs.
 REQ Documents	REQUIREMENT Doc. Review View the details of requirement documents. (TOEs/BOIPs)		

Special Function Tools

 Force Mod	Force Mod Review View the APPLIED status of FY09 BOIPs and possible FY10 BOIP Application.	 4610-R	4610-R TDA Equipment Request Tool
 OOC	Out Of Cycle UIC Process Tool Allows DIs to coordinate TAADS and SAMAS information.	 Dart Issues	DART Tool This tool is used to present current DART document issues.
 FMBB	Force Mgmt. Bulletin Board FMBB Toolset Includes ABOI, and MARC		

Support Tools

 Modularity	 FMS Files	 WinTAOS	 ORDAB	 Contacts	 Public Files	 EDP
Information related to Modularity.	FMS Application and related files.	MTOE and TDA Builder program and data files.	Org. Req. Doc. Approval Brief.	Force Management Community	Contains TAADS support files.	Common Operating Picture

FMS Web “AUTH Documents” Page

MTOE and
TDA
documents

Document Type	Document	JTA	Ref. Guide
Grid	Edit	Print	Help
fmsweb.army.mil		Search	Doc Review Improvements
2008 October			
10/16/2008	*** A new UIC Edit File Update, dated 16 Oct 08, from the DRRS-A (ASORTS) system was loaded to FMSWeb this afternoon. Document UIC Long Name and TPACO changes have been applied. Updated DRRS-A information will be uploaded to FMS this evening. ***		
10/9/2008	*** A new UIC Edit File Update, dated 09 Oct 08, from the DRRS-A (ASORTS) system was loaded to FMSWeb this afternoon. Document UIC Long Name and TPACO changes have been applied. Updated DRRS-A information will be uploaded to FMS this evening. ***		
10/2/2008	*** A new UIC Edit File Update, dated 02 Oct 08, from the DRRS-A (ASORTS) system was loaded to FMSWeb this afternoon. Document UIC Long Name and TPACO changes have been applied. Updated DRRS-A information will be uploaded to FMS this evening. ***		

QUESTIONS?