**MILITARY JUSTICE 101**

**GLOSSARY OF TERMS**

Note: The “civilian equivalent” or shorthand definitions used below to explain unique military and military-justice terms are not precise, formal definitions … used in the hopes that they will help you navigate through your initial contacts with this foreign system.

UCMJ “Uniform Code of Military Justice.” Military criminal code (and big-picture procedural rules). This is Federal law, passed by Congress and signed (or vetoed) by President ... it is located at 10 U.S.C. §§ 801-946. When we reference a “section” of the UCMJ, we call it an Article, starting with 10 U.S.C. Section 801 which is “Article 1.” So Section 920 would be “Article 120.”

Punitive Article The actual crimes. Within the UCMJ, Articles 77 to 134 are the crimes … from murder (Article 118) to drugs (112a) to sexual assault (120) to dereliction of duty (92) and everything else.

RCM “Rules for Courts-Martial.” Guide to trial procedure. These are the details of how you operate a criminal-justice system, hundreds of pages of how to do all the little things to move a case through the system from start to finish. The President issues them through Executive Order and they change often.

MRE “Military Rules of Evidence.” These are the rules that the judge applies to determine whether a certain piece of evidence/testimony should be admitted at trial. They are very similar to the Federal Rules of Evidence … the rape-shield rules (412), relevance (401), expert witnesses (700 series) are the same.

MCM “Manual for Courts-Martial.” It is our big/self-contained rulebook, which contains the UCMJ, the RCMs, the MREs, and a variety of handy appendixes with scripts and analysis. Currently it is a big brown book, but a new version should be released soon.

Charge This is the punitive Article of the UCMJ that the Accused is alleged to have violated--the named crime. E.g. “Violation of Article 120” would be the Charge for a sexual assault … “Violation of Article 104” would be the Charge for Aiding the Enemy.

Specification This is narrative description of what the Accused is alleged to have done … the military follows notice pleading so the narrative has to have just enough information to put the Accused on notice of the what, when, where, and how he or she allegedly committed the crime.

OSI “Office of Special Investigation.” The Special Agents of OSI are the Air Force’s primary investigator for serious crimes.

NCIS “Naval Criminal Investigative Services.” The Special Agents of NCIS are fictional actors on a TV show … and the Navy’s primary investigators for serious crimes.

CID “Criminal Investigation Command.” The Special Agents of CID are the Army’s primary investigator for serious crimes

Search Authorization Search Warrant. A military magistrate in the military (as opposed to a judge in the civilian arena) issues to investigators permission to search a place/person and seize evidence of a crime on a showing of probable cause. Military magistrates can only issue search authorization for places under military control; if the place to be searched is not under military control (*e.g.* search a member’s home in Anytown USA and seize computers or other digital devices on the basis of probable cause that they contain child porn), then a civilian judge will have to issue a search warrant (OSI, NCIS, or CID, in consultation with the JAG, work this process).

Subject Suspect. During the investigation, the person suspected of committing the crime is referred to as the “Subject” … once that person is charged with a crime (once Charge(s) and Specification(s) have been preferred) they are referred to as the Accused. Strangely, even after that person is convicted we still call them “the Accused.” Law enforcement will use the term “Subject” and JAGs will use the term “Accused.”

Accused The person against whom a charge under the UCMJ is preferred (and then later referred).

SVC Victims' Counsel. These are JAGs whose full-time job is to represent the interest of victims (primarily sexual-assault victims) in the military-justice process. They work for a separate chain of command to ensure independence. They can appear in courts-martial in those situations when the Crimes Victims' Rights Act (Article 6b of the UCMJ) gives the victim a right to be heard, such as rape-shield discussions or discussions about mental-health records.

DCFL "Defense Computer Forensics Laboratory." The lab in Maryland that does most of the extraction and forensic analysis of images in DoD child-pornography investigations.

USACIL "United States Army Criminal Investigations Laboratory." The lab in Georgia that does most of the scientific testing of evidence (*e.g.* DNA)

AFDTL "Air Force Drug Testing Laboratory." The lab in Texas where samples are tested for a panel of common controlled substances.

CDI "Command Directed Investigation." Not to be confused with CID. These are investigations conduct at the unit level, not by law-enforcement investigators, and generally related to misconduct that will be punished administratively at most.

ROI "Report of Investigation." The document that is the result of an OSI, CID, or NCIS investigation.

15-6 The Army uses this term to refer to the process and the document which results from an investigation, typically an investigation at the unit level.

Article 15/Captains Mast This is "non-judicial punishment" or "NJP." The Navy calls it "Captain's Mast." It is a process by which minor offenses can be punished administratively rather than by court-martial. The commander offers to handle the misconduct in this process, the member accepts or rejects (if the member desires he or she can "turn it down" and put to the commander the decision whether to prefer court-martial charges), and if the member accepts the NJP forum, then the commander decides guilt or innocence (based on review of evidence, written response from the member, and a personal appearance from the member, if requested), and if guilty decides the punishment. Punishment limits depend on the rank of the commander, but generally include reduction in rank, forfeitures of pay, and extra duties.

Pretrial Confinement PTC. There is no "bail" in the military-justice system--this is the closest equivalent. If there is probable cause to believe that a member has committed an offense under the UCMJ, and on a finding that that member is a risk of engaging in additional substantial misconduct or is a flight risk, and there are no lesser restrains that will limit such risk, then the member can be placed into PTC until resolution of the eventual court-martial.

Prefer Bring or Accuse. Any person subject to the UCMJ can prefer a charge against another member. Almost always, the member's commander prefers the Charge. Essentially, the JAG drafts the Charge and then in the commander's office the commander tells the member what they are being accused of. It starts the formal court-martial process.

Refer Send. When the Convening Authority decides that preferred charge(s) and specification(s) warrant trial, he or she sends them to one of three types of courts-martial for resolution. At that point, the case is in the hands of the members (jury) or a military judge if the Accused elects to be tried by judge alone.

SPCMCA "Special Court-Martial Convening Authority." Usually the O-6 Wing commander, the SPCMCA is the person with the power to refer charge(s) and specification(s), which were preferred by the unit commander, to a Summary or Special Court Martial. The Summary Court is the lowest court-martial, the Special Court Martial is the next highest (at which the maximum punishment can be 12-months confinement and a Bad Conduct Discharge ... somewhat equivalent to a civilian misdemeanor court). The SPCMCA can also send the case to an Article 32 hearing to determine whether it should be elevated to the GCMCA to decide whether it should be referred to a General Court-Martial.

Article 32 Preliminary hearing. This is a process where an independent JAG (the PHO) evaluates the particular charge(s) and specification(s) and determines whether the evidence meets the probable cause standard. It is a formal hearing, but does not follow court-martial/trial rules. The Accused is entitled to attend, but the evidence does not have to be from live witnesses--it often is a paper process with perhaps a law-enforcement investigator testifying to give a broad overview of the investigation and the evidence. The PHO submits a report about the case and his or her probable-cause determination for consideration by the GCMCA. The Accused receives a copy of this report.

PHO "Preliminary Hearing Officer." This is the independent JAG who presides over the Article 32 preliminary hearing. This JAG is independent in that he or she generally does not work at the legal office from which the charge(s) and specification(s) are going to be prosecuted.

GCMCA "General Court Martial Convening Authority." Usually a 2- or 3-star General, the GCMCA is the person with the power to refer charge(s) and specification(s), which were preferred by the unit commander and investigated at an Article 32 hearing, to a General Court Martial. The General Court Martial is the highest-level court-martial (our felony-level court).

SCM "Summary Court Martial." Petty-crimes court. There is no punitive discharge (Bad Conduct or Dishonorable Discharge) available at this "court." There is also no jury for this level of court, it does not require a legally-trained judge, and it does not court as a "criminal conviction" in the civilian world. The Accused can refuse to be prosecuted at a SCM and demand trial by SPCM. Thus, the SCM is usually reserved for plea bargains where the Accused agrees to plead guilty in return for his or her case being resolved in this minor forum (30-days confinement maximum).

SPCM "Special Court Martial." Misdemeanor court. This is a full trial -- judge, jury, prosecutor, defense counsel, bailiff, court reporter. If the Accused elects to be tried by members (if enlisted , the Accused can request one-third of those members also be enlisted members), then there must be at least three members on the panel (*i.e.* jurors). The maximum punishment in a SPCM is capped at 12-months confinement and a Bad-Conduct Discharge.

GCM "General Court Martial." Felony court. The maximum punishment allowed for the particular crime is the maximum available in this court, all the way up to the death penalty for murder cases. For this court, there must be at least five members (and one-third enlisted if an enlisted Accused requests). These are the courts where most serious offenses are tried -- child pornography, sexual assault, murder.

Members Jurors. The officers and, if requested by an enlisted Accused, enlisted members who serve as a military jury.

Expert Consultants/Witnesses Both the Government and Defense are entitled to assistance of those with specialized knowledge to help develop and explain typically scientific evidence. This includes psychologists, toxicologist, computer forensic examiners, medical examiners. An expert remains a "consultant" until they are identified as a potential witness--at that point, the opposing side has the right to interview the expert witness to learn what his or her testimony will be. Typically, one party's expert consultant is involved in the interview of the opposing party's expert witness.

TC & STC "Trial Counsel" and "Senior Trial Counsel." Prosecutors. These are the JAGs who present the Government's case. TC are usually the junior JAGs from the particular base; the STC is a senior prosecutor who travels from base to base to assist on serious, complicated courts (typically GCM's).

DC & SDC "Defense Counsel" and "Senior Defense Counsel." These are the JAGs (but also hired civilians) who represent military members against whom charge(s) and specification(s) have been referred. They work for a separate chain of command to ensure independence and zealous representation of Accuseds. The DC at the base is called the Area Defense Counsel and the SDC is the senior defense counsel who travels from base to base to assist on serious, complicated courts (typically GCM's).

PTA "Pre-Trial Agreement." Plea bargain. An Accused can offer to the Convening Authority to plead guilty for some benefit, usually a limitation of punishment and agreement to have the military judge decide what the sentence should be (*i.e.* waive trial by members). Interestingly, the military judge does not know what the "deal" is, only that the Accused has agreed to plead guilty. The military judge considers all the evidence on sentencing and decides what he or she believes an appropriate sentence should be. If that is less than the "deal," the Accused gets what the judge decides; if it is more, the Accused gets the "deal." PTA's are usually negotiated at the last minute.

Chapter 4 This is like a PTA, but instead of a trial, the Accused agrees to be administratively discharged (with a negative characterization) in lieu of trial by court-martial.

Article 39a There are no sidebars in the military system. When the parties have something they want to talk to the judge about outside the presence of the members, rather than approach the bench and whisper, the court goes into an Article 39a session where the members leave and the parties hash things out. For example, if during the testimony of an expert there is an objection to some testimony that is going to take some back-and-forth to resolve, the court will go into an Article 39a session and the members will be sent out while the parties resolve the issue.

Preemptory The military does have a voir dire process where prospective court members are questioned about their fitness to serve (as jurors). At the end of this process, each party can challenge as many as necessary "for cause," but after that process each party gets one preemptory challenge. Essentially, each party can remove one member for any reason or no reason (except no racially motivated preemptory challenges allowed). TC must be careful in this process to ensure that the number of members remaining after all challenges are exercised does not fall below the quorum (3 for a SPCM; 5 for a GCM)--if that happens, the trial is put on hold while the Convening Authority details additional members and the process begins anew.

Findings Verdict. This is what the members decided in their closed-session (secret) deliberations. As they vote on specification(s) and then the charge(s) this can be a cumbersome process to announce so the court provides the members a findings worksheet and that worksheet is read in open court.

NDAA "National Defense Authorization Act." This is the legislative bill that passes Congress (and signed by President) every year--it is also the vehicle by which changes to the UCMJ are made.

CVRA "Crimes Victims’ Rights Act." This is federal law (and most states have a version) which gives victims of crime various rights in the criminal-justice process--such as the right to information, consultation, notice, to be heard at various stages. In 2014, Congress through a NDAA extended the CVRA to the UCMJ and is became Article 6b. The implementation of Article 6b is proceeding slowly as it amounts to a fundamental change in the way courts-martial have been handled over the past century. The SVC's are at the forefront of bringing full implementation of Article 6b to the military-justice system.

Clemency After the court-martial, the findings and sentence are in way just recommendations to the Convening Authority. In the past, the Convening Authority had great power to reduce the sentence (and even set aside verdicts) on request of the Accused. In recent years Congress has substantially reduced the power of Convening Authorities to set aside findings and reduce sentences.

AFCCA "Air Force Court of Criminal Appeals." Pronounced "af-ka." Each Service has a similar court. It is the first appellate court--the judges are senior JAGs and they have the power to review court-martial results for factual and legal sufficiency. They would be the equivalent of a federal court of appeals.

CAAF "Court of Appeals for the Armed Forces." Some think of this as the military-justice Supreme Court (which is not completely accurate as an Accused can ask the actual US Supreme Court to review their case after an adverse CAAF decision). CAAF is a 5-member (all civilian) court, the judges of which are appointed by the President with the advice and consent of the Senate, for 15-year terms. Accused's who lose at the Service court of criminal appeals (AFCCA) can appeal to CAAF.