

## YOUR RIGHTS AS A SUSPECT

Know your rights if you are suspected of committing a crime, what to expect, and how to respond effectively! If you are taken in by MPs, CID agents, or called to a police station and advised of your rights, you are a suspect. You may be a suspect through rumors, or if you are implicated in a matter being investigated by the police or your unit. This guide prepares you to talk to a defense attorney. **THIS DOES NOT REPLACE ADVICE FROM AN ATTORNEY!**

1. **BASIC RULE...KEEP YOUR MOUTH SHUT!** As a suspect, it does not help to discuss the matter with anyone other than your defense attorney. Do not talk with civilian or military police or your chain of command about what you are suspected of until you see or talk to an attorney.

2. **YOUR RIGHTS:** Before you can use your rights you have to know what they are and why you have them. The following is a summary of your rights as a suspect:

a. **RIGHT TO REMAIN SILENT AND SEARCHES:** You have the right to remain silent. Provide the police with basic identification information about yourself. Tell them your name, unit, and show your ID card. Cooperate if they want fingerprints, hair samples, photographs, blood, or other things. *You do not have the right to refuse or to have a lawyer present at this point.* Take notice of what the police do and how they do it in order to tell your attorney. The police can search you and your belongings if you were either arrested or if they have obtained a search warrant. If the police request a writing sample or ask you to say certain phrases or words for a recording, ask to see an attorney first. Avoid problems if your request to see an attorney is denied. Comply with specific orders given to you by the police (i.e. unlock car, open wall locker, etc.). You will have to right to object in court to what the police find during an illegal search.

b. **RIGHT TO COUNSEL:** The Constitution gives you the right not to be questioned by the police or your chain of command without first seeing an attorney. It exists so that you do not become the prosecutor's key witness at your own court-martial. You will be appointed a Trial Defense Services (TDS) attorney, or you may hire a civilian attorney at no cost to the government. What you discuss with an attorney is confidential. You do not have to wait until charges are read to consult with an attorney.

c. **LINEUPS:** You have the right to an attorney after charges are read to you, or pretrial restraints were used (confinement, restriction, revoked privileges), or you are requested to be in an identification lineup. A lineup is a big step in an investigation and if a lawyer does not monitor the police, the witness may unduly identify you as the offender. For instance, others in the lineup may be dressed differently, wear glasses, or have a beard. Ask for an attorney if you are called to be in a lineup and ensure that you cooperate if your request for an attorney is denied.

3. **WHAT TO EXPECT:** despite a right to remain silent, the police may sway you to tell them about the case. It is legal for them to get you to waive your rights to remain silent and to see a lawyer. Whether they follow proper steps or not often depends upon how strongly the

investigator wants to solve the case. What the police say is not recorded, and you can expect that their version will not be yours at the trial. All too often the judge will accept the police version of what was done to encourage you to talk.

4. **LEGAL TACTICS:** Police investigators can lie to you about evidence they say they have to get you to talk to them and to get you to confess. Military courts have said the following:

An investigator's use of artifice or some other forms of deception is permissible as long as the artifice is not likely to produce an untrue confession.

Investigators may lie and say to you they found an object at the scene of a crime that has your fingerprints. They can get you to admit involvement in an incident by claiming that witnesses saw you, or that they have you on video tape, or possibly that your license plate number was recorded. They can say people heard you make incriminating statements, even if it is not true. Investigators may appeal to clearing your conscience, religious beliefs, and suggest how a lie detector test can be used if you do not tell the truth. The police may not have enough evidence to charge you with a crime unless you admit it. As long as the police are not too outrageous in their tactics to get you to waive your rights it is permitted. Be sure that if the courts give police permission to lie, it will be used to the extreme. Without help from a lawyer, it is hard to tell what, if anything, the police say is true, and you may not know if what you say is incriminating.

5. **ILLEGAL TACTICS:** Police cannot use force, threats of force, or threats of prosecution to make you talk. Police cannot promise that if you talk you will not be prosecuted or that you will get an Article 15. Even if they say it is urgent for you to cooperate right now, nothing will happen if you ask for an attorney to be present. No promise for special treatment can be kept; police do not have the authority. You may be told that the investigator will recommend leniency if you cooperate, and although this may be true, the offer will still stand and be better enforced with an attorney present. If an offense is investigated at the unit level, the unit commander or first sergeant may promise certain action if you agree or refuse to talk. Although you do not have as much to lose as with talking to the police, you should be cautious. Remember, the police are not only curious about the case; they aim to solve it with minimal effort. If you talk it can save them a lot of time and trouble, and it can also provide the prosecution with valuable evidence. Let your attorney negotiate with the prosecution. If you already confessed you may not have any bargaining chips left. Soldiers who waive their rights and do not have an attorney present usually regret it later. In fact, soldiers have confessed to offenses that the police could have never proven.

6. **OTHER CONSIDERATIONS:**

a. If you talk without an attorney present, the information you provide may not be accurately recorded. Everything you say and everything the police think you said will be recorded. But you will not be told what goes into the report. You will be asked to make a written sworn statement. The investigator types these statements as he talks to you. You must realize that the investigator wants to solve the case, and what goes in the report could be more damaging to you than you can imagine. The police know the facts and what they must prove to

nail you. Unless a lawyer is present, you may be unaware that you are signing a statement under oath that contains inaccurate details. It is hard to challenge statements later in court. If you want to change the statement, you may be accused of false swearing or lying.

b. A lawyer is appointed to defend you for the sole reason that the Constitution protects you from self-incrimination. The police enforce criminal statutes to deter citizens from disobeying the law. There are laws and procedures that permit, direct, and limit an investigator's action concerning solving a case. If you decide to retain the services of Mr. Coombs, you can be assured that he will guard your rights during an investigation and to keep the police within their legal limits.

## **7. WHEN YOU EXERCISE YOUR RIGHTS:**

a. If you tell the police you want to talk to an attorney, all the questions directed to you should cease. If the questioning does not cease you will know that the police are out of line and you should continue to firmly ask to see a lawyer. If a TDS attorney or a civilian attorney cannot be reached, continue to ask that someone from your unit be contacted. Be persistent and never be belligerent or combative. Make an appointment to see an attorney at your first opportunity.

b. If a TDS defense attorney is available you will go to that attorney's office or that attorney will go to the police station. The TDS attorney will talk to you in private and you can tell them everything that you know concerning the incident under investigation. Be sure to give the TDS attorney the names of witnesses who may be helpful. The TDS attorney or your civilian attorney will then talk to the police and obtain accurate information about what they know and what they do not know.

c. If you and your attorney decide that it may be to your advantage to talk to the police they your attorney can be with you during the interview. Your attorney will ensure you are questioned fairly and without coercion. Your attorney will review any written statement you make for the sake of accuracy and to be sure it contains no incriminating statements.

d. After you have been given accurate information about the case you, along with the help of your attorney, may wish to cooperate with the police. Without the assistance of your attorney, you are not in the position to decide whether you are innocent or guilty. Many soldiers make the mistake of thinking they are guilty and the only way to help themselves is to talk. Your attorney knows the law and what the police must prove in order for you to be found guilty. If you decide that you want to tell the police everything you do have the right to do so, even if your attorney advises against it. If you decide to confess your attorney should be present to make sure the statement you give is accurate. This will avoid your confessing to a crime that is more serious than the offense you may have committed, and it will prevent you from confessing to crimes that the police cannot prove.

e. Although the advice above is primarily intended to apply to police investigations, it also applied to unit investigations as well. Do not make a distinction between the two. Police usually do not get involved with a case unless it involves serious misconduct. Unit investigations usually deal with minor breaches of discipline. Consequently, it may not be

important to always invoke your rights when questioned by your commander or first sergeant. For example, you may be late to formation and your first sergeant reads you your rights and wants to know why you were late. If you were late because you had a flat tire, then it is probably best to admit you were late so you can give him your reason for being late. Responding to this type of questioning so you can defend yourself may put an end to the matter on the spot. Be sure to use your judgment in cases involving minor disciplinary infractions, but for more serious incidents you should discuss the matter with an attorney.

## **8. AFTER THE INVESTIGATION:**

a. Once an investigation is completed a copy of the final police report is sent to your unit commander and the prosecutor. The commander will discuss the case with the prosecutor to select what level of action is appropriate. The selection depends on the seriousness of the offense, the facts and circumstances of the case, and the type of job you have done as a soldier. Your commander may decide to do nothing about the matter, or your commander may decide to give you a reprimand or take other administrative action against you. The commander may offer you an Article 15 or refer the matter to a superior officer for a Field Grade Article 15. If you are found guilty of an offense with the Article 15 process, the punishment is limited and it is not a federal conviction.

b. If your commander feels that the case is too serious for Article 15 punishment they may recommend trial by court-martial. The case will then be referred to your battalion or higher-level commander for action. Your case may be referred to one of four levels of court-martial.

c. A summary court-martial (SCM) is the lowest level of court-martial. A line or staff officer is selected by your battalion commander to investigate the charges and to decide upon your guilt. If you are found guilty, the summary court-martial officer recommends a punishment to your battalion commander, who in turn may approve all or part of the recommended punishment but may not increase it. You do not have the right to a military attorney at a summary court-martial, but you may hire a civilian lawyer to represent you. A finding of guilty at a SCM is not a federal conviction. The maximum time of confinement from a SCM is thirty (30) days.

d. You have the right to be represented by a military attorney at no cost to you at a special or general court-martial OR you may hire a civilian lawyer at no expense to the government to represent you. Conviction by either of these types of court-martial is a federal conviction. If your command sends your case to a special court-martial (SPCM), the maximum punishment you could receive is twelve months of confinement, reduction to E1, and forfeiture of two-thirds pay per month for twelve months. Your case may instead be sent to a bad-conduct discharge special court-martial (BCD-SPCM) or a general court-martial (GCM). A BCD-SPCM may adjudge the same sentence as a SPCM, but can also discharge you from service under a bad-conduct discharge. A GCM may adjudge any sentence up to the maximum authorized by law for each offense with which you were charged. This may include a dishonorable discharge or a bad-conduct discharge, confinement, forfeiture of all pay and allowances, and reduction to E1. Before a case is sent to a GCM an investigating officer will be appointed to examine all the

charges and evidence to determine whether the evidence supports each charge. You have the opportunity to be present during this Article 32 Investigation and have your attorney question witnesses against you.

9. **DO'S AND DON'TS:** Below is an outline of guidelines that you must keep in mind if you are a suspect:

a. If, for some reason, you decide to waive your rights and talk to the police, never lie to them. If you talk and do not tell the truth, then you can expect to be charged with false swearing or false official statement. You don't need this.

b. Do not get into trouble while you are under investigation. Do not give your commander a reason to limit your privileges or to put you into pre-trial confinement before the trial even commences. Engaging in misconduct while you are suspected or charged with offenses is devastating to your case. You must not do anything illegal or anything that even "looks" illegal. Pick your friends carefully. For example, if you are suspected of or charged with buying or using ecstasy in a club downtown, do not continue going to the same club or hanging out with people that go to that club or are expected of buying or using the same drug.

c. Do not make statements to anyone about the case under investigation. "Anybody" include "everybody": CID agents, MPI, MPs, social workers, psychiatrists, your commander, your first sergeant, platoon leader, platoon sergeant, squad leader, section chief, coworkers, friends, roommates, drinking buddies, girlfriends or boyfriends, and even family. All of these people can be potential witnesses against you, and the prosecutors will not hesitate to question those close to you.

(1) Statements are characterized in many ways; sworn or unsworn, written, oral, signed or unsigned, verbal and or physical (a nod of your head to answer a question is a physical statement).

(2) Statements related to the offenses can be the following: Admissions of guilt; partial admissions of guilt; denials of guilt; comments about the circumstances of the offense. It can include statements that might establish a motive or intent for the offense. For example, a soldier is charged with stealing money. This same soldier then complains constantly about money problems and debts. These statements may later be admitted into evidence against that soldier at their court-martial to establish his motive for stealing.

(3) Do not put your roommate, girlfriend or boyfriend, or friends in the position of having to lie in court to protect you. If you talk to these people, do not tell them anything incriminating and do not lie. If they ask you about the case, tell them your attorney advised you not to discuss the case. Following this advice is the best way to hold your bargaining position in the case.

d. Your duty performance from now on should be outstanding!

(1) Allegations or charges against you, in effect, puts you under a microscope. Your chain of command will watch you closely. If you get a bad attitude, show disrespect, display poor duty performance, neglect your appearance and bearing, you may lose support from your chain of command. You may also risk pre-trial confinement, restriction, and additional charges.

(2) Draw up a list of people who know a little about the incident under investigation . Think of the people who can testify about your character and duty performance. Give this to your attorney and provide your attorney with specific and accurate details of what you know. Do any tasks your attorney gives you to assist in your defense.

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

f. Do not lie to your attorney or anyone else about your case. If you do, it will haunt you later. Keep your attorney informed of any developments in your case.

g. If anyone questions you about these offenses, tell them you wish to remain silent and to consult with an attorney.