

UNITED STATES ARMY TRIAL DEFENSE SERVICE

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YOUR RIGHTS WHILE UNDER INVESTIGATION

THIS INFORMATION PAPER DOES NOT CONSTITUTE LEGAL ADVICE AND YOU SHOULD NOT TAKE ACTION BASED SOLELY ON THE INFORMATION CONTAINED HEREIN.

This information paper describes your rights if you are suspected of committing a criminal offense. You should become familiar with the guidance below so you know what to expect and how to act if you become a suspect. You should consider yourself a suspect if you are:

a. Apprehended, arrested, or detained by military or civilian law enforcement personnel or anyone authorized to apprehend and or interrogate you, including your chain of command.

b. You are advised of your rights prior to questioning by any military or civilian police (including your chain of command). You may also be questioned by an investigating officer. He/She may be conducting a Commander's Inquiry, a 15-6 investigation, a FLIPL or he/she may be any person gathering facts in an investigative capacity for use later in any adverse action.

c. You believe you are a suspect from rumors you have heard from other soldiers or because you have been involved directly or indirectly in an incident that is being investigated by police or your chain of command.

BASIC RULE: YOU HAVE THE RIGHT TO REMAIN SILENT:

As a suspect, you cannot improve your position by discussing the matter under investigation with anyone prior to talking to a defense attorney. You should NEVER agree to talk with civilian or military police, or your chain of command about the offense you are suspected of until AFTER you talk to a defense attorney. If you want to talk, you can always do it later, AFTER talking with a defense attorney. Regardless of what they may tell you, **remember that police do not want to talk to you just to get your side of things.** They suspect you of a criminal offense and are there to get evidence against you. Military Police Investigators and Criminal Investigation Department Special Agents are trained interrogators. They may use trickery and deception, make promises they won't keep, and ask questions in a way that may fool you into admitting an offense.

The police may want to record your fingerprints and take your picture; you should cooperate with the police for such matters. You do not have the right to refuse, nor do you have the right to have a defense attorney present. You should make careful note of everything the police do and how they do it, because you will be asked about this later by your defense attorney. If the police want you to give writing samples, or ask you to say certain words or phrases so that your voice can be recorded, ask to have a defense attorney present. If your request is denied, comply with any specific orders given to you by the police. Allowing police to make illegal searches does not give up your right to object to what they find later on, and will avoid physical confrontations.

YOU HAVE THE RIGHT TO AN ATTORNEY:

The United States Constitution guarantees you the right not to be questioned by police or your chain of command without the opportunity to consult with a defense attorney. This right ensures that you do not become the Government's key witness at your own court-martial. You are entitled to be assisted by a military defense attorney (from the Trial Defense Service) at no cost to you or you may hire a civilian defense attorney at your own expense. You do not have to wait until charges are read to consult with a defense attorney. If a request for a defense attorney is denied, do not talk about the case with anyone. The military defense attorneys assigned to the Trial Defense Service are qualified defense attorneys who have attended civilian law schools, passed state bar examinations and are licensed to practice law. Trial Defense Service attorneys are not under the command of local commanders and are thus free to represent you as zealously as possible without fear for their own careers. Anything you say to your Trial Defense Service attorney is confidential.

YOU HAVE THE RIGHT TO STOP TALKING AT ANY TIME:

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

BEWARE OF INTERROGATION TACTICS:

Though you have the right to remain silent, the police may still encourage you to talk to them about the case. There are some legal tactics that the police may use to get you to give up both your right to remain silent and your right to consult with a defense attorney. Whether the police use improper tactics, proper tactics, or no tactics at all will depend on the investigator and the pressure he feels to solve the case. Remember whatever you are told by the investigators most likely will not be recorded and you can expect the investigator's version of what was said to you will be very different from your version at trial. Unfortunately, the police version of what was done to get you to talk, and how it was done, may very well be the version that is accepted as true. Police can lie to you about evidence they say they have in order to get you to talk to them and to get you to confess.

For example, police can lie to you about finding your fingerprints on some object at the scene of the crime. They can try to trick you into admitting involvement in an incident by telling you that several eyewitnesses saw you, that they have you on video tape, or that your license plate number was recorded. They can tell you that several people overheard you make incriminating statements already, when it is not true. Often, the evidence against you is weak, and there may not be enough evidence to charge you unless you admit to doing something. As long as the law enforcement tactics are not so outrageous that they overbear your ability to voluntarily give up your rights, they may be used. Because these tactics are effective on even the smartest people, you should not give a statement to police until after you have talked to a defense attorney. You may be told that the Investigator will recommend leniency if you cooperate, and this may be true, but the offer will be better enforced if you involve your defense attorney in the agreement. The MP's and CID agents belong to organizations independent of the most other units on a military installation. This allows them to perform their law enforcement and investigation duties free from command influence. Because of their independent and separate command structure, your commander has no influence on the MP's and the MP's have no influence on your commander.

TACTICS:

Police cannot use force or threats of force to get you to talk to them. Police might promise that if you talk you will not be prosecuted, or that you will only get an Article 15, but that is also improper; they simply do not have that authority. Although you may be told that it is urgent to cooperate right now, don't be hesitant to talk to a defense attorney if you feel the need. Nothing is that urgent that you can't take the time to get advice from a defense attorney. If an offense is being investigated at the unit level, the unit Commander or First Sergeant may promise not to take certain action if you talk. Although the Commander or First Sergeant do not have the legal authority to grant immunity from prosecution, any such promises should be witnessed or in writing, as they may be enforced against the command. Remember, police are not just curious about your case. They want to solve it and they want to solve it with minimum effort. They want you to confess, because that saves them a lot of time and effort and provides the prosecution with the best evidence possible. Often, negotiating occurs between prosecutors and defense attorneys about cases. If you have already confessed, you may not have any bargaining chips left to offer.

WHEN YOU EXERCISE YOUR RIGHTS:

When you tell the police that you do not want to talk to them without a defense attorney, all questioning must stop. If questioning does not stop, you should continue to firmly ask to see a defense attorney. Be persistent, but never become belligerent or combative. Be sure and make an appointment to see a defense attorney as soon as possible. If a military defense attorney is available, you will be sent to his office. Your defense attorney will be permitted to talk to you in confidence and you should tell him what you know about the incident under investigation. Be sure to give your defense attorney the names of witnesses who may be helpful. Your defense attorney will talk to

the police and obtain accurate information about what they know and what they do not know.

If you and your defense attorney decide that it might be to your advantage to speak to or cooperate with the police, then you and your defense attorney can decide the best way to do that. This may include your defense attorney going with you while you make your statement to the police or having your defense attorney draft a written statement that you submit to the police. Although the advice above is primarily intended to apply to police investigations, it also applies to unit investigations as well. Do not make a distinction between the two. Police usually do not get involved with a case unless it involves serious misconduct. Unit investigations usually deal with minor breaches of discipline. Consequently, it may not be important to always invoke your rights when questioned by your Commander or First Sergeant. For example, you may be late to formation and your First Sergeant reads you your rights and wants to know why you were late. If you were late because you had a flat tire, then it is probably best to admit you were late so you can give him your reason for being late. Responding to this type of questioning so you can defend yourself may put an end to the matter on the spot. Be sure to use your judgment; for more serious incidents you should discuss the matter with a defense attorney first.

OTHER CONSIDERATIONS:

Be truthful. 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 making a false official statement. You don't need to make matters worse by lying.

Do not get into trouble while you are under investigation. Don't add fuel to the fire, and give your Commander a reason to place you on restriction or into pre-trial confinement pending trial. If you are on restriction, comply strictly with the terms of your restriction. Engaging in misconduct while you are suspected or charged with offenses is devastating to your case. You must not do anything illegal or anything that even "appears" illegal.

Choose your friends carefully. Example: If you are suspected of, or charged with buying cocaine downtown in a bar, *do not* continue to frequent that establishment, hang around with others that continue to frequent that establishment, or hang around with others suspected of using or buying cocaine.

Do not talk to or make statements to anyone about the case under investigation. Anybody includes everybody: CID agents, MPI, MP's, social workers, psychiatrists, your Commander, your First Sergeant, Platoon Leader, Platoon Sergeant, Squad Leader, Section Chief, co-workers, friends, roommates, drinking buddies, girl or boyfriends, even spouses and ministers. All these people are potential witnesses against you. If they ask you what is going on, just tell them your defense attorney advised you not to discuss the case with anyone. Your rights as a suspect do not extend to witnesses if they are not also suspected of anything.

1) Statements include all written, oral, signed, unsigned, sworn, unsworn, verbal and physical. (Nodding your head in response to a question is a physical statement).

2) Statements about the offenses include: admissions of guilt, partial admissions of guilt, denials of guilt, and comments about circumstances surrounding the offense. It also includes statements that could be used to establish a motive or intent for the offense. Example: Soldier X is charged with stealing money. Soldier X then goes around making statements complaining about his debt problems. These statements could be admitted into evidence later against Soldier X at his court-martial to establish his motive for stealing money.

Your duty performance from now on should be outstanding. Because of the allegations or charges against you, your conduct is "under a microscope." If you develop a bad attitude, become disrespectful, display poor duty performance, and/or neglect your military appearance and bearing, you risk losing the support of your chain of command. In addition, you may also risk pre-trial confinement, restriction, and additional charges. Prepare a list of names of people who know something about the incident under investigation. Also make a list of people who can testify as to your character and good duty performance. Give this to your defense attorney, and provide your defense attorney with specific and accurate details of what you know.

Do any tasks your defense attorney gives you to assist in defending your case.

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

Don't ever lie to your defense attorney or anyone else about your case. If you do, it effect the quality of your defense. Keep your defense attorney informed of any developments in your case. Your conversations with your attorney and all of the TDS staff are protected by law and regulation. Don't just tell half the story. The more you tell us, the better we can defend you.

If anyone tries to question you about these offenses, tell them you wish to remain silent, you have a defense attorney or that you want to talk to a defense attorney. If you wish to shift the burden from you to the TDS office, then you may tell your interrogator, that you have been advised by TDS not to make a statement.

DURING THE INVESTIGATION:

The investigator, whether it is a law enforcement agency or a military member detailed to conduct an investigation, cannot tell you the status. Any information that leaks out may affect the outcome. You should not discuss your part in the investigation because it may compromise your rights and/or the rights of anyone else involved. The investigation will have three possible outcomes:

1) There *is* enough evidence to go forward with charges. If this is the case, then the investigation will be forwarded to your chain of command and they will decide what to do.

2) There *is not* enough evidence to go forward with charges. If this is the case, they will simply close the investigation and go to the next one. There is no requirement for them to let you know that you are off the hook.

3) The evidence is inconclusive. If this is the case, then they will forward the investigation to another organization until they reach a conclusion.

In any event, if you inquire about the status of the investigation, they are only inclined to tell you that the investigation is underway and provide no further information.

AFTER THE INVESTIGATION:

After the investigation involving you has been completed, a copy of the final report will be given to your unit commander and his prosecutor. Your commander will discuss the case with the prosecutor to decide what level of action is appropriate. This will depend 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 has a variety of available options:

- 1) Do nothing
- 2) Verbal reprimand
- 3) Written reprimand. This may be a negative counseling, a letter of concern or a memorandum of reprimand filed in your local unit file.
- 4) General Officer Memorandum of Reprimand. This is a memorandum of reprimand that may be filed in your OMPF.
- 5) Article 15, either summarized, company grade, or field grade
- 6) Court-martial, either summary, special, or general
- 7) Release jurisdiction to civilian prosecutors

CONCLUSION:

The only person who can determine whether what you say may implicate you is you. It's never a bad idea to invoke your right to remain silent. But it can definitely be a bad idea to waive that right and make a statement. By remaining silent you're not acting guilty, being evasive, obstructing justice or doing anything wrong. You are simply exercising a right guaranteed by Constitution that we all swore to support and defend.

If you have any questions or would like to speak with a Trial Defense Attorney, please call the Trial Defense Service Office at 569-0561 or email us at: usarmy.bavaria.7atc.mbx.trial-defense-services@army.mil