

## MILITARY LAW CLE

### I. Presenters

- A. Robert Ramsey, Esquire
- B. Christopher St. John, Esquire

### II. Christopher St. John - Background

- A. Currently a Partner, Agre & St. John
- B. Currently a Captain, US Army Reserve JAG Corps
- B. Former Assistant Camden County Prosecutor
- C. Former New Jersey Deputy Attorney General

### III. What is the JAG Corps?

- A. The legal offshoot of any military branch.
- B. JAG officers serve the Judge Advocate General.
- C. To become a JAG officer
  - 1. Must be an attorney in good standing.
  - 2. Must be interviewed.
  - 3. Long application process.
  - 4. Six or eight weeks initial training.
  - 5. Must attend JAG School on UVA campus.
  - 6. May express areas of interest, but the military ultimately decides where officers are assigned.

### IV. US Constitution, Article 1, §8

### V. Uniform Code of Military Justice

- A. Main focus is command control.
- B. Command control gives commanders the tools to effectuate good order and discipline.

### VI. Military personnel are afforded the same constitutional rights and protections as civilian defendants.

### VII. Manual for Courts Martial, United States

### VIII. Jury Panels for Courts Martial

- A. May include enlisted personnel and officers, but there will always be more officers.

B. Enlisted personnel generally hold enlisted defendants to a higher standard than do officers.

C. Military personnel are held to much higher standards than their civilian counterparts.

D. Good Soldier Defense used to be an absolute defense even for violent offenses. It has been eliminated for rapes and other specific offenses.

#### IX. How are typical crimes prosecuted?

A. Crimes of violence (murder, kidnapping, sexual assaults, etc.) subject the defendant to a court martial. Alleged sexual victims are provided with their own counsel.

B. Perjury and bribery cases are handled by federal prosecutors.

C. MPs handle misdemeanors.

D. The JAG Criminal Investigation Division handles felonies.

E. Failure to Supervise falls back on the commander.

F. Dereliction of Duty is a type of negligence.

X. An Article 15 is an administrative action that is a great tool for a commander. It will never result in a criminal conviction. A soldier may decline an Article 15 and go to a general court martial, but he/she will risk a criminal conviction.

#### XI. Marijuana Cases

A. Could face separation if he/she tests positive.

B. A first offense may also result in a suspended sentence or a conditional discharge.

C. Punishment is largely based on the politics of whether the army has too many or not enough soldiers at the time.

#### XII. Conduct Unbecoming

A. Catch-all charge.

B. Some call it a throw away charge.

XIII. Failure to Obey a Lawful Order – Soldiers are trained to live the army values and do the right thing when required.

#### XIV. Insubordination

A. Not commonly charged.

B. Handled administratively.

C. Could be an administrative separation.

#### XV. AWOL

- A. Degree increases the longer the absence lasts.
- B. Many times, the soldier will agree to a resignation in lieu of a court martial or some other administrative penalty.

XVI. Desertion

- A. AWOL becomes desertion when other soldiers are put at risk.
- B. AWOL from combat is desertion.

XVII. Summary Court Martial

- A. Typically reserved for enlisted personnel.
- B. For lower level offenses.
- B. Soldier may turn this down.
- C. Defendant has no right to an attorney.
- D. Equivalent of an ordinance violation.
- E. Confinement is not an option.

XVIII. Special Court Martial

- A. Judge alone or judge and three officers.
- B. Used for lower level offenses.
- C. Maximum one-year confinement.
- D. No punitive discharge.
- E. Forfeiture of pay is an option.
- F. Reduction in rank is an option.
- G. Defendant has the right to an attorney.
- H. Rules of evidence apply.
- I. As a practical matter, if the prosecution is going to go through all this trouble, may as well have a general court martial.

XIX. Plea Bargaining Process – There is no charge bargaining because the plea bargaining process begins after charging.

XX. Number on Trial Panel

- A. Capital case – twelve members,  $\frac{3}{4}$  needed to convict.
- B. General Court Martial – eight members,  $\frac{3}{4}$  needed to convict.

C. Special Court Martial – if judge and three officers,  $\frac{3}{4}$  needed to convict.

XXI. Commander of the Post may Convene a Court Martial

A. Defendants may retain private counsel at their own expense.

B. Must demonstrate that private counsel is in good standing.

XXII. Appeals

A. Almost all major appeals are decided in the United States Court of Appeals for the Armed Forces.

B. This court is the last stop before the United States Supreme Court.

XXIII. Discharges

A. Honorable – All benefits retained.

B. General – This an administrative discharge. All but educational benefits are retained.

C. Less-than-honorable – Further limits ability to obtain benefits through the VA. (*E.g.*, a less-than-honorable discharge occurs when a soldier tests positive for a controlled substance.)

D. Dishonorable/Bad Conduct – Will follow soldier for a substantial period of time. This happens when found guilty at a general court martial. More significant than a civilian's felony conviction, because expungements are not available.

XIX. Law of Armed Conflict

A. JAG officer writes a brief that everyone gets.

B. A more detailed brief is provided only to officers.

C. Officers funnel the details to the enlisted personnel.

D. Must comply with the Geneva Convention.

XX. When might a civilian be subject to a court martial?

XXI. Is the JAG Corps a wise career choice? Yes, but do it no later than your twenties.

XXII. Current Civil Unrest

A. Soldiers are briefed on use of force against stateside civilians.

B. Use of force is the absolute last resort.

C. Mission is to protect civilians, not engage them.