



United States Army Trial Defense Service
Fort Huachuca Field Office
(520) 533-5370

1. Overview

This information paper describes your rights if you are suspected of committing a criminal or military offense. READ this entire document and do not attempt to deviate from its guidance. You may think that you are smart enough to figure out what you should do on your own, but you are wrong. You are not in a position to make decisions about your case because you are too emotionally involved. Read these instructions and listen to your attorney in order to ensure the best outcome in your case. Although the advice below is primarily intended to apply to police investigations, it also applies to unit investigations as well. Do not make a distinction between the two.

2. BASIC RULE: KEEP YOUR MOUTH SHUT: As a suspect you cannot in any way improve your position by discussing the matter under investigation with anyone other than your defense attorney. **Never agree to talk with civilian or military police, or your chain of command about the offense you are suspected of until you talk to a lawyer.** DO NOT talk to your friends or co-workers either. They can become witnesses against you.

How to Invoke Your Rights – Say, **“I want to speak to an attorney.”**

3. WHY YOU SHOULD INVOKE YOUR RIGHTS (even if you’re innocent) – As children, we heard the saying, honesty is the best policy. When it comes to being a suspect under investigation (among other things), being forthcoming will always hurt you. There are a number of reasons why you should say nothing to investigators, but here are the main ones:

- a. It will be used against you – If you committed a crime and you admit it, then the government will use your statement to punish you. Confessions are the best possible evidence the prosecution can get. Confessions are rarely thrown out and almost always guarantee that you will be punished.
- b. Telling the Truth will not result in a more lenient punishment – Investigators, commanders, and others often try to get suspects to talk by telling them that things will go better for them if they just tell the truth or admit the offense. This is a lie. As a suspect, you will always be worse off by admitting to wrongdoing. By admitting to an offense, you are essentially relieving the government of their burden to prove your guilt, and putting yourself in a horrible bargaining position since the government now has a case that they can’t lose. How many times has an accused been given a lighter punishment because he confessed?? Never.

- c. Even if you are not admitting guilt, you may be corroborating some part of the government's accusations against you - For instance, if you are being investigated for assaulting John Doe at the bar, you may be tempted to state that you were at the bar and that you saw John Doe, but that you did not assault him. The problem here is that even though you technically denied the offense, you corroborated several parts of the offense: (1) You were at the time and place, (2) you saw John Doe. The government has already won half the battle at this point. Do not help the government prosecute you. Keep your mouth shut and talk to an attorney.
- d. You do not know what evidence the government has against you – No matter the case and no matter the level of disposition, you will always be given the chance to present your side of the story before a final decision is reached. In a court-martial, this is your opportunity to testify during trial. At an Article 15, it is your ability to speak to your Commander during the Second Reading. For a GOMOR, it is your opportunity to submit rebuttal matters before the CG makes a filing determination. It is important to wait to make a statement until AFTER the government pursues a course of action because at this point, you will be entitled to a copy of the government's evidence. During an investigation, law enforcement and military authorities will never provide you with the evidence they have against you, and they don't have to because they don't want you to know what they do and do not have. They will want you to believe they have stronger evidence than they really do in order to get you to talk. By waiting until after you have received all the evidence before you speak, you will be able to make a much more persuasive and pointed defense that will be more likely to prevail, and less likely to cause you to admit to offenses that the government has no evidence of; Conclusion – **keep your mouth shut until your attorney advises you otherwise.**
- e. Nobody Cares – Let's be honest. If you are under investigation, you denying the offense is not going to help you. The investigators will assume you are lying. If avoiding legal trouble was as simple as saying, "I didn't do it," our jails would be empty.
- f. Without the assistance of your attorney, you are not in a position to decide what the best course of action is; you are not an attorney. You also are unable to examine your case objectively and rationally because of its personal nature.

4. A SUMMARY OF YOUR RIGHTS: Before you can use your rights, you have to know what they are and why you have them. 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 attorney.

a. THE RIGHT TO REMAIN SILENT: You have the absolute right to remain silent. **The minute any law enforcement agent or investigator or member of your command begins to read your rights on a DA Form 3881, or talk about the offense in any way, say, "I want to speak to an attorney."** Then stop talking. When you tell the police or your Army leadership, "**I want to speak with an attorney,**" all questioning **MUST** stop. If questioning does not stop, you will know that the police are out of line and you should continue to firmly ask to see a

lawyer. Be persistent but never become belligerent or combative. Be sure and make an appointment to see to see an attorney as soon as possible.

b. RIGHTS AGAINST UNREASONABLE SEARCHES & SEIZURES – As an American citizen, you have the Constitutional right to not be subject to Unreasonable Searches and Seizures. If any person asks to search your phone, house, or car, say, “No.” If they have a warrant they will do it anyway, but never consent to a search of anything. **Simply say, “I do not give you permission to search (or take) my _____.”**

The police may only search you (this includes taking a blood sample) and your belongings if they have probable cause, or if they have received a search authorization or warrant. If the police want you to give them a writing sample, or ask you to say certain words or phrases so that your voice can be recorded, ask to have an attorney present. If your request is denied, comply with any specific orders given to you by the police; directions to unlock a car, locker, etc. 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.

As a caveat, you should cooperate with police by giving them the basic identification information about yourself only. You should tell them your name, unit, and show your ID card. The police may record your fingerprints, take your picture, etc. You should cooperate with police for these minor matters. However, always clarify that you do not consent to these activities.

c. RIGHT TO COUNSEL: The Constitution guarantees you the right not to be questioned by the police or your chain of command without an attorney. You are entitled to free representation by a military defense counsel or you can hire a civilian attorney. Your military attorney is not assigned to any local command and is not subject to command influence. Anything you say to your attorney is confidential and privileged.

d. LINEUPS: You have the right to have an attorney present if you are to be placed in an identification lineup. This right to an attorney develops if you participate in a lineup after charges have been read to you, or after you have been placed under pretrial restraint of any sort (for example, confinement, restriction, orders not to go to certain places, or talk to certain people). A lineup is a critical stage in an investigation, and you should request an attorney if you are a suspect and are told there will be a lineup.

5. POLICE TACTICS: Police and military investigators 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. Military courts have said the following:

“Police investigators 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, even when it is not true. You can also expect police agents to remind you of

your conscience and religious beliefs and tell you that, if you don't tell the truth, they will put you on a lie detector and use the results against you." This is false, but it is legal. Usually, the evidence the police have is weak and there may not be enough evidence to charge you unless you admit to doing something. Without assistance from counsel, you will not know how much of what the police tell you is true or false, and you will not know if what you may say is incriminating. **Invoke your rights by saying, "I want to speak to my attorney."**

6. WHAT CAN YOU DO right now

- a. Save text messages, Facebook chats, and call your phone company if you have deleted messages. When you go through your phone company, don't tell them that you are under investigation as it will likely scare them into saying you need a subpoena. This is wrong. They are your records. Just say you need the records and don't tell them why.
- b. 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, honesty, law-abidingness, and good 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 defending your case.
- c. Do not talk to any person about the offense except your attorney. Under no circumstances should you speak to other persons involved in the incident. It is a separate and serious offense to threaten, or make promises or bribes to witnesses. Let your attorney do the talking to all government witnesses.
- d. Your duty performance from now on should be outstanding. Because of the allegations or charges against you, you are now in effect under a microscope, attention has been drawn to you, and your chain of command will be paying closer attention to you. If you develop a bad attitude, become disrespectful, display poor duty performance, 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.
- e. Don't ever lie to your attorney or anyone else about your case. If you do, it will come back to haunt you later. Keep your attorney informed of any developments in your case.

7. AFTER THE INVESTIGATION:

a. After the investigation involving you has been completed, a copy of the final police 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 may decide to do nothing about the matter, or he may give you a reprimand, or take other administrative action against you. Generally, you face the possibility of either a GOMOR, Article 15, Summary Court-Martial, or regular Court-Martial.

8. **DO NOTs**

a. **Do NOT** make a statement to the police, your CoC, or your friends. 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. 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 marijuana 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 marijuana.

c. **Do NOT** talk 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. All these people are potential witnesses against you.

d. **Do NOT** put your roommate, girlfriend, or friends in the position of having to lie in court to protect you. If you do talk to these people, don't tell them anything incriminating and don't lie to them. If they ask you what is going on, just tell them your attorney advised you not to discuss the case with anyone. Following this advice is the best way to improve your bargaining position with your case.

Remember, if anyone tries to question you about these offenses, tell them, "**I want to speak to an attorney.**"