DEPARTMENT OF THE ARMY
HEADQUARTERS, FORT HOOD
FORT HOOD, TEXAS 76544-5000

COMMAND POLICY

NUMBER

SJA-01

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26 January 2004

MEMORANDUM FOR SEE DISTRIBUTION

SUBJECT: Administration of Military Justice

1. REFERENCES.

a. Uniform Code of Military Justice (UCMJ) – Title 10, United States Code, section 801.

b. Manual for Courts-Martial, United States.

c. Army Regulation 27-10, Military Justice.

2. APPLICABILITY. This policy applies to all Fort Hood units and tenant activities.

3. POLICY. A commander has a unique and powerful role in the military justice system. In that role, a commander has the authority to affect individual lives and the morale and readiness of his command. A commander has a duty to ensure that in disposing of alleged misconduct committed by Soldiers within his command, he does so carefully, deliberately, and in strict compliance with applicable law and regulation. Soldiers will rally behind and remain loyal to a thoughtful and fair commander. An unfair or unlawful approach to military justice adversely impacts the morale of a unit and compromises its warfighting effectiveness. I expect each commander to understand and comply with the following requirements when deciding how to dispose of allegations of misconduct.

a. Individualized Treatment of Each Case. The disposition decision is one of the most important and difficult decisions facing a commander. Each Soldier deserves to have his case adjudicated based on the specific facts of his individual case. I expect each commander to make fair and individualized determinations for each case of misconduct.

Commanders should carefully consider the following factors:

(1) the crime (the specific facts – who did what to whom, where, and when);

(2) the accused (service record and personal circumstances);

(3) the victim (cooperation, impact, and expected testimony); and

(4) the unit (effect of the crime on the unit's good order, morale, and discipline).

Commanders should also review the factors set forth in Rule for Courts-Martial 306. I will not tolerate an inflexible policy, either in disposition or punishment, towards the administration of justice based upon the type of offense committed or the grade of the offender.

b. Unlawful Command Influence. Commanders will not order a subordinate to dispose of a case in a particular way. Equally important, commanders shall not influence, either directly or indirectly, the decision of subordinate commanders when disposing of misconduct under the UCMJ. I expect each commander to exercise his independent discretion when determining an appropriate disposition, or recommending disposition, for a Soldier's alleged misconduct.

c. Timely Disposition of Misconduct. I expect each commander to dispose of allegations of misconduct in a timely manner at the lowest appropriate level of disposition. Act as soon as you have all the relevant facts. Do not wait for final police reports. Ours is a transient profession, and needless delays detract from the fair administration of justice.

d. Fairness of Proceedings. I expect each commander to ensure that in disposing of misconduct, the proceedings consider all known and relevant information. A commander should ensure that neither he nor a subordinate intimidate or discourage witnesses, either directly or indirectly, from providing information on behalf of a Soldier appearing at a court-martial, administrative board, or nonjudicial punishment (Article 15) proceeding. To the contrary, commanders should encourage those who possess information, either favorable or unfavorable, to provide that information to ensure full and fair adjudication of the misconduct.

e. Pretrial Confinement. Rule for Courts-Martial 304 delineates the various types of pretrial restraint (conditions on liberty, restriction in lieu of arrest, arrest, and confinement) that a commander may employ in appropriate circumstances.

(1) Commanders may impose pretrial restraint only if probable cause exists to believe that an offense triable by court-martial has been committed, the person to be restrained committed it, and the restraint ordered is required by the circumstances.

(2) If a commander is contemplating placing a Soldier in pretrial confinement, he must consult with a servicing judge advocate and consider the facts and standards set forth in Rule for Court-Martial 305. If any form of restraint is imposed, a commander must notify his trial counsel to ensure the prompt disposition of the case and avoid speedy trial issues.

f. Treatment of a Soldier Pending UCMJ Proceedings. A commander may not punish a Soldier accused of misconduct prior to the completion of administrative or UCMJ proceedings. Any treatment that humiliates, ridicules, or is otherwise contrary to the inherent dignity and respect of an accused Soldier is unlawful and will not be tolerated.

4. EXPIRATION. This policy memorandum remains in effect until superseded or rescinded.

JAMES E. SIMMONS
Brigadier General, USA
Commanding

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