

## Unit Introduction

*The American people have a very strong sense of justice.* The media watches the *civilian courts* on a regular basis and report the rulings and decisions to the general public. *The military courts* hold an equal fascination for the public, and may in fact be shrouded in a false sense of mystery, due to the fact it has its own legal system called the Uniform Code of Military Justice (UCMJ). It is this unfamiliarity that will automatically bring scrutiny by the American taxpayer.

The first stop for the media to gain information on the UCMJ, or a particular case, will be the public affairs office. Let's face it -- people and organizations make mistakes. And mistakes are one of the characteristics of news (as learned in the lesson *The Nature of News*). Besides, the military court is a public forum. It is there that such mistakes are dealt with openly, providing an insight to an organization (the military) that, to most people, seems mysterious and aloof.



As a PAO, you must understand basic terminologies of both media and military law. You will be required to work closely with your Judge Advocate General (JAG) office, and familiarity with the UCMJ will enhance that working relationship.

What's more, you will find yourself -- more often than not -- in the role of educator to the *media* as well as the *public*.

## Objectives

Given a public affairs scenario involving military law, develop and recommend public affairs courses of action in accordance with Department of Defense and service public affairs policies and regulations. Upon completion of this unit of instruction, the student will be able to:

- Explain aspects of communication law (e.g. defamation, slander, libel, privacy, copyright)
- Explain public affairs officer responsibilities in regards to communication law.
- Identify basic elements of the military justice system.
- Explain guidelines for the release of information as they apply to the elements of the military justice system.

## Unit Overview

This unit will cover:

1. Definitions
2. Conditions Required for Libel
3. Public Figures/ Officials
4. Defenses Against Libel Allegations
5. Invasion of Privacy
6. Copyright
7. Investigations
8. Command Disciplinary Options
9. Non-Judicial Punishment v. Courts Martial
10. Types of Courts Martial
11. Release of information as applied to the military justice system
12. Status of Forces Agreement (SOFA)
13. Review



**PAO**

### The phone query

**PAO:** This is Fort Happy Public Affairs Office, may I help you?

**Reporter:** Yes, my name is Joann Scoop, from the *Intelligent Reporter Weekly*, I wonder if you could tell me if the **15-6 Investigation** on Private Muddle has been concluded.

**PAO:** Yes it has.

**Reporter:** What exactly is a **15-6 Investigation**?

**PAO:** Uhh..mmm...a **15 -16 investigation** is.. .Uhhmmm



**Report**

## **PA and the Law**

This is an example of the type of phone call that you might get in your office someday.

As public affairs officers, we work in an information and communication environment filled with endless possibilities. We have the unique task of telling our units' stories to the world. With that task comes an ardent responsibility to understand and uphold media laws. As much, we must also have a foundational understanding of the military justice system and the Uniform Code of Military Justice. Having basic knowledge of media and military law will serve you well and allow you to confidently plan and represent your command if posed with formidable situations.

Let's get into some of the basic concepts of communication and military law.

## Defamation

"My initial response was to sue her for defamation of character, but then I realized that I had no chance."

Charles Barkley, on hearing Tonya Harding proclaim herself "the Charles Barkley of figure skating", 1994

Mr. Barkley obviously didn't intend to sue Tonya Harding, and was simply making a joke. The important thing is that people do not resort to the courts when they feel that their names are used unfairly.



Webster's definition of defamation is "To a  
of by false and malicious statements;

Defamation includes statements or communication  
confidence, or esteem; or produces other adverse f

For defamation to take place it must:

- Expose an individual or organization to hatred
- Lower an individual in the esteem of others
- Cause an individual to be shunned or
- Injure an individual in his or her business

## Defamation

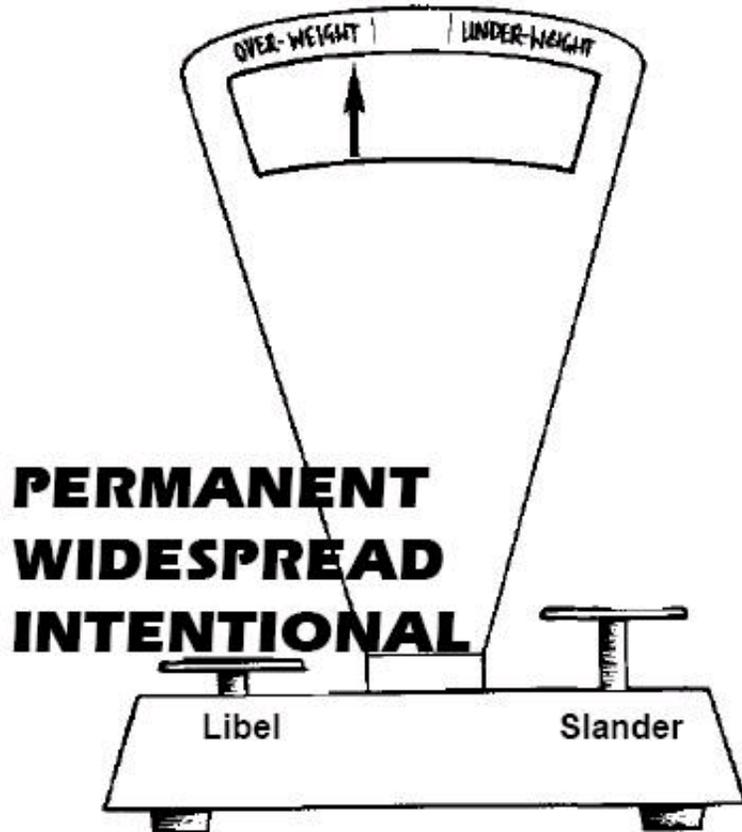
SLANDER is *spoken* defamatory communication in the presence of others.

LIBEL is *published or broadcast* defamatory communication.

Learning Quiz (Click on the correct answer in the sentence below)

Which is considered more serious: to [slander](#) or to [libel](#) someone?

## The seriousness of libel



### *Is Libel more serious than slander weigh the two against each other*

**Permanent** – Libel weighs heavier because published or a broadcast news story is permanently in the public record. Imagine one day trying to locate every paper sold by the New York Times. It is a daunting task. Imagine trying to locate every person who saw a particular broadcast so you can tell them that particular segment was wrong. You won't be able to do that. The story is out there, *permanently*.

**Widespread** – Libel weighs heavier because of publishing or broadcasting a story reaches a larger audience than what is said between two people.

**Intentional** - Libel weighs heavier due to the writing, editing and preparing a broadcast or newspaper story is an intentional act. It takes a lot of forethought and planning. A spoken word may be unintentional, in anger, and without much thought, but hours of preparation are behind the average newspaper or broadcast news story.

## Five conditions for libel

To legally libel someone there are five conditions that have to be met:

1. It was published or broadcast.
2. It identified someone unfavorably.
3. It was created by a person that was negligent or reckless (i.e. at fault)
4. It was stated as a fact even though it was false.
5. It caused injury to the person identified.

## **Avoiding defamation**

As a PAO the following guidelines will help you lower the possibility of being accused of defamation. Make sure that you, and all journalists or broadcasters working in your office understand these concepts.

- Attribute your sources and establish policy on the use of the word “alleged.”
- Only accuse someone of a crime if there is a confession, accusation or conviction by an official legal body. Remember that accusations of a crime must be supported with criminal reports from official sources.
- Avoid attributing physical or mental disease to an individual. Remember, the Privacy Act protects medical records.
- Do not associate a person with a group or cause that is held in disrepute.
- Do not accuse someone of poor moral character.
- Do not accuse someone of being incompetent or dishonest in his or her profession.
- Do not use words like “Communist,” “Nazi,” “Crook,” “thief,” “sickly,” or “incompetent.”
- Avoid sexist, racial or ethnic slurs.

**DINFOS Advisory Alert\* Check with your JAG Office for additional information or advice.**

Retractions

## CNN retracts Tailwind coverage

July 2, 1998

Web posted at: 4:01 p.m. EDT (2001 GMT)

Also in this story:

(CNN) -- Cable News Network on Thursday retracted its story that the U.S. military used nerve gas in a mission to kill American defectors in Laos during the Vietnam War.

The story was broadcast June 7 on the CNN program NewsStand. CNN Interactive also carried the report.

The Pentagon said it was pleased by the 54-page CNN retraction.

Publishing a retraction is one way to avoid a defamation suit in court. CNN News Group Chairman, President and CEO Tom Johnson issued a retraction. He said that an investigation indicated that there was insufficient evidence to state that sarin or any other deadly gas was used by the U.S. military. Johnson said that the report "cannot be supported" and there was no evidence that American defectors were targeted or at the camp as stated in the original program that was aired.



## Retractions

The Daily Evergreen would like to sincerely apologize for an injustice served to the Filipino-American, Spanish-speaking and Catholic communities on the front page of Thursday's Evergreen.

The story "Filipino-American history recognized" stated that the "Nuestra Senora de Buena Esperanza," the galleon on which the first Filipinos landed at Morro, Bay, Calif., loosely translates to "The Big Ass Spanish Boat." It actually translates to "Our Lady of Good Hope."

Parts of the story, including the translation above, were plagiarized from an inaccurate Web site.

October is Filipino-American History Month. Members of the Filipino-American Student Association of WSU will hold events to celebrate their history and culture all month. They should be able to celebrate without gross inaccuracies and poor coverage by the Evergreen.

We hope these groups accept our deep regret.

The Daily Evergreen, On-line

## Lessons Learned

*Don't believe everything you get off the web.*

*No story is too small to check for accuracy.*

*If you "google" this story, you will get back many hits on this subject. Remember why we said libel is more serious? That libel is permanent, widespread, and intentional.*

**Instructor Notes:** There was no reason this inaccurate information on Nuestra Senora de Buena Esperanza. It was a silly mistake part of The Daily Evergreen, and could have been overcome with a little fact checking, which would have taken 15 minutes of the reporter's time. Let's face it, even a retraction does not repair the loss of credibility that occurred by getting your facts wrong.

Be sure to get legal advice from JAG, because a well-intentioned but poorly worded retraction may prejudice your defense.

Laws dealing with retractions vary from state to state, and in many states retractions are only a partial defense unless the retraction appears with the same prominence as the original.

Some states have time limits for requesting retractions, and when retractions should be issued.

### **Taken off the web:**

UPDATE: "Big Ass Spanish Boat" gaffe  
2/18/2003 3:34:57 PM

Back in October, Romenesko linked to the Washington State University student newspaper's "Big Ass Spanish Boat" retraction and apology. Freshman journalism student Kim Na's Daily Evergreen story on Filipino-American History said "Nuestra Senora de Buena Esperanza" -- the galleon on which the first Filipinos landed at Morro Bay, Calif. -- loosely translates to "The Big Ass Spanish Boat." (It actually translates to "Our Lady of Good Hope.") The young reporter explained she got her information from a Web site that later admitted the passage was a joke.

## Interim Review

1. Slander is published or broadcast defamatory communication.

True

False

2. LIBEL is published or broadcast defamatory communication.

True

False

The public official

So if you are not a private person, are you a public one?

## Public Official

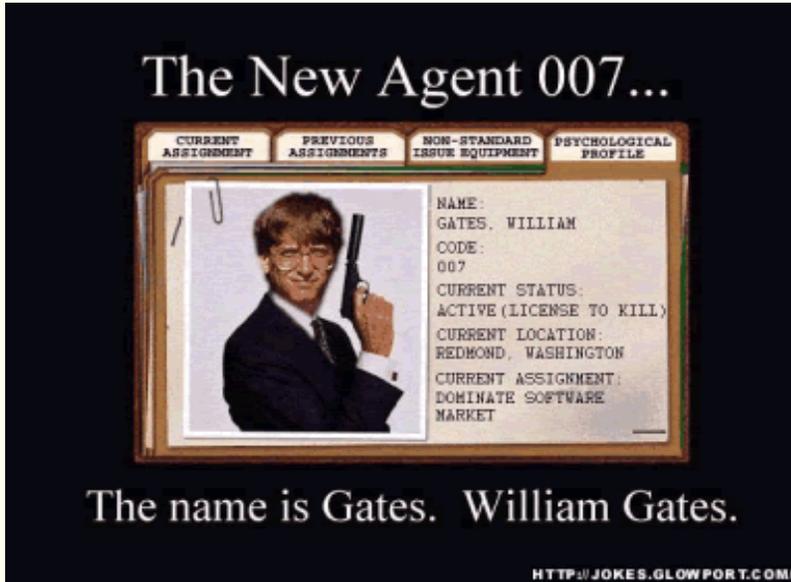


In this photo you have MicroSoft Corporation President Bill Gates (left) and the former mayor of New York Mayor Guilliani (right). Guilliani was a **public official** when he held office. This is defined as **someone who is elected or appointed to office and who appears to have substantial control over public and governmental affairs.** Guilliani, at one time, met the criteria. What this means though, is if Guilliani felt that he was libeled by the media, he must prove “actual malice.” So what type of person would you classify Bill Gates?

## Public Figures

# All-Purpose Public Figure

A **public figure** is someone who injects himself/herself into the vortex of a public issue or controversy or has steps to attract public attention.



Bill Gates is an all-purpose public figure. The appeals court has defined an all-purpose public figure as "a well-known celebrity...a household name" as the CEO of a major corporation has almost synonymous with MicroSoft its

## The Limited public figure



Is former representative Bill Condit a limited public figure? Obviously not, he was a public official. **But what of Mrs. Condit?** She is not a public official, nor is she a celebrity or household word as defined in the term all-purpose public figure. She has filed a \$10 million libel lawsuit against The National Enquirer for a headline that stated she attacked Chandra Levy. **She could be considered a Limited or vortex public figure.** This is someone who injects themselves into a public debate with the purpose of affecting the outcome. The Supreme Court has ruled that a private person can become a vortex public figure if they meet the following criteria:

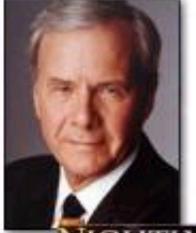
- The alleged defamation must involve a public controversy
- The person suing has voluntarily participated in that controversy
- And that person supposedly libeled must have tried to affect the outcome of the controversy

## Media Law Case Study



Imagine that you got up in the morning and found that you have been accused of something terrible.

Everyone you know believes it. After all, if it's in the newspaper, it has to be true. Right?



"The speculation is that the FBI is close to making a case. They probably have enough to arrest him...prosecute him, but you always want to have enough to convict him as well. There are still some holes in the case.

## Media Law Case Study



This is the man the FBI "was about to arrest."



*Do you know his name?*

## Media Law Case Study



His name is Richard Jewell.



*The odds are that  
most of you know his name.*

## Media Law Case Study



Richard Jewell was a security guard at the 1996 Olympics.



He was trained very well for the job. When he found what he thought was a bomb, he people from the area before it went off. He was cited for his professionalism and his b within a few days, there as a dramatic turn of events. The Atlanta Journal-Constitution unidentified law enforcement officials, published a special edition naming Jewell a sus



## Media Law Case Study



Richard Jewell addressed the media.



I was trained to spot the unattended packages and to report such packages to the next person in the security chain of command. That is what I did on the 27th of July. All I did was my job.

The media started calling me a hero. I did not consider myself a hero. The bomb technician who crawled on his belly and got next to the bomb was a hero.

The media said I fit the profile of a lone bomber. That was a lie. The media said I was a former law enforcement officer, a frustrated police wannabe. That was a lie. I was then and am now a law enforcement officer. The fact that I was between jobs and took a position as a security guard for the Olympics did not change that fact. The media said I was an overzealous officer. That was a lie.

## Media Law Case Study



Others weighed in on the controversy.



**BARBARA JEWELL (Richard's mother):** The media has descended upon us like vultures upon prey. They have taken all privacy from us. They have taken our peace. They have rented an apartment which faces my home in order to keep their cameras trained upon us around the clock.



**DAVID TUBBS, FBI Spokesman:** This search is part of an ongoing investigative process and does not indicate in any way that Mr. Jewell has been charged with a crime under our system of justice. Mr. Jewell has not been placed under arrest and has not been charged with any crime.



**MARVIN MILLER, Criminal Defense Attorney:** I think there's no question about it. You have a situation where the FBI used a tactic that you've seen in countless cases over the years of leaking information that benefits them in a number of ways and really doesn't do anything to their investigation

## Media Law Case Study



What do you think?



**SKIP BRANDON, Former FBI Official:** I don't know whether the FBI leaked the name or not. It probably was leaked, and that's inexcusable. That shouldn't have happened. I think that Mr. Miller probably is getting a little far beyond the facts in this case. It would not make any sense to me as an investigator when you're beginning an investigation to leak the name of a suspect. For example, they later searched Mr. Jewell's apartment, and it doesn't make any sense for a good investigator to tell the person you're going to search that you're going to come after him, that they are a suspect. It gives them time to get rid of evidence. So I just--I don't think it makes any sense in this case at all.



**ELIZABETH FARNSWORTH, CNN Interviewer:** Mr. Kalb, turning to the press aspect of this, do you think that an injustice has been done to Mr. Jewell by the press?

**MARVIN KALB, Harvard University: (Boston)** That's very hard to say, Elizabeth. It seems to me that at the very beginning, the press was doing its job. Three days into the process, the press went into a kind of media frenzy, and at that particular point, the press was not doing Mr. Jewell, the facts, the case, anybody any great service.



**ELIZABETH FARNSWORTH, CNN Interviewer:** Mr. Miller, what happens next? Does Mr. Jewell have a case against the FBI and against the press, do you think?



**MR. MILLER, Criminal Defense Attorney:** I think that he has a difficult case against the federal government because it's been careful to insulate itself from lawsuits, and it's difficult to sue the federal government. Uh, the media may be a different story entirely, and he may be in a position where he can bring a suit against them.

Here's a man who did nothing wrong, the whole case was based on a profile so far as we know today, with no hard evidence whatsoever, and he is in the glare now for the future out in--out onto his ancient years, until he gets white hair, so he needs some way to redress himself, **but I don't know if he can ever overcome this, even with litigation.**

## Media Law Case Study



And Richard Jewell did sue.



### **Richard Jewell v. NBC**

This arose from the comments by Tom Brokaw on NBC. The broadcasting corporation stood by their story, but later agreed to a settlement of \$500,000.

### **Richard Jewell v. Piedmont College**

Jewell received an undisclosed settlement.

### **Richard Jewell v. CNN**

CNN agreed on an undisclosed settlement of a complaint brought by Jewell and his mother. CNN still maintains that its coverage was fair and accurate.

### **Richard Jewell v. Cox Enterprises**

This suit came from the story by the Atlanta Journal-Constitution naming Jewell as the FBI's prime suspect on July 30, 1997. The Georgia Supreme Court refused to hear the case upholding a lower court ruling that Jewell was a **public figure** by the time the Constitution printed the story.

## Media Law Case Study



So is Richard Jewell a public, or a private person?



### ***SOMETHING TO THINK ABOUT.***

Do you consider Richard Jewell a public figure? At what point does a private figure turn into a public one?

Does this mean a private person does not have the right to go to the “court of public opinion” and fight against unfair charges?

How does this lesson on public and private individuals apply to the Richard Jewell case?

### ***DID THIS CASE BELOW CHANGE THINGS? AT WHAT POINT DID JEWELL BECOME A PUBLIC PERSON?***

#### **Richard Jewell v. Cox Enterprises**

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***At what point does a private person become a public figure? Does this mean that private persons can not defend themselves in the public arena and only in the courts?***

## Media Law Case Study



Can you identify this person?

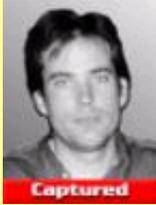


*Take a few moments and search your memory.*

## Media Law Case Study



His name is **Eric Rudolph**.



This is the actual person who set the bomb at the Atlanta Olympics. If you knew Richard Jewell's name rather than Eric Rudolph's, then you retained the name of the accused as opposed to the one who ***actually committed the crime***.

He was captured behind a restaurant searching for food. It is presumed that he evaded police capture by hiding in the hills that surrounded his hometown.

## Media Law Case Study



### Staff Room: Instructor's Comments



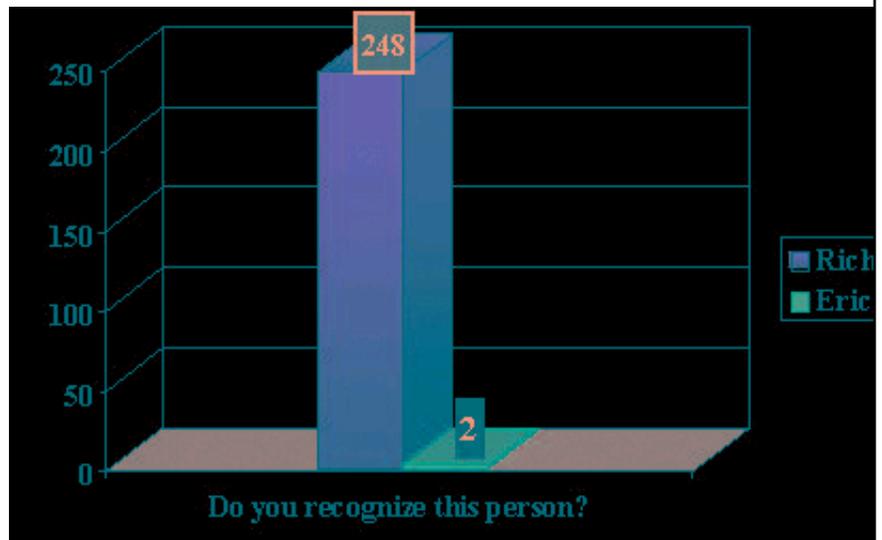
This case study has been presented at least 15 times here at DINFOS Jewell's picture was shown in 15 classes and all 15 classes knew his what he was accused of. In fact, one student said, "Yeah, he was the set that bomb at the Atlanta Olympics."

Eric Rudolph's picture was presented the same amount of times, and approximately 250 students only one knew his name, and only one of them knew he was associated in *some way* with the bombings.

The point is this. You libel someone, whether on purpose, or by accident with them for life. Think about it. **Most people knew who was ACCUSED the crime, but most people didn't know the person who COMMITTED**

#### A very unscientific survey:

Classes of in-residence students were repeatedly asked to identify Richard Jewell and Eric Rudolph. The graph to the right represents the results. It is understood that overtime, as the case recedes out of public memory, the results will become more and more unreliable.



**This is what we mean when a libel is permanent.** It is stored, recorded, and kept for a very long time by businesses that do this sort of thing for money. The mistake, lie, or libel can be around for a very, very, long time.



## Media Law Case Study



### Staff Room: Instructor's Comments

What this means is if a person was found innocent, or a retraction is printed. The person is tagged with that label...

# Forever.

If you want to know more about the Richard Jewell case, click on the Pdf accompanying this lesson.

[Richard Jewell Study](#)

### ***One final point:***

After Richard Jewell was cleared by the FBI, it was a federal judge who ordered the release of all sealed documents related to the investigation.

**The documents indicated that the FBI had no evidence linking Richard Jewell to the case.**

So, was the media at fault or the FBI?

Was Jewell a private person or was he a public figure?

***Go into your discussion room and talk it over. I'll see you there.***

## **Defenses Against Libel Allegations**

There are three defenses available media organizations facing law suits concerning alleged libelous statements:

1. Not capable of defamatory meaning. To determine whether a statement is susceptible to defamatory meaning, reference must be made to the definition of libel adopted in the relevant state.
2. Truth. In most states, truth is a complete and unconditional defense to a civil action for libel.
3. Fault. Public officials and public figures must prove actual malice or reckless disregard for the truth. Private individuals generally need only prove negligence in exercising reasonable care to determine legitimacy of the statement.

Your reading (AP Stylebook, pp. 346-347) has several examples of such defenses.

Now let's turn our attention to the matters of privacy and copyright.

## Privacy



Being that you are in the public information business you have to make some of what is a private or public person. In this lesson we will review what constitutes a "private person" or a "public official." We will also touch on the conceptions of what is a "private person" and will present a case study that highlights the issues.

In the lesson Guidelines for Release you learned that, in most cases, the Privacy Act protects most information.

A private person has a reasonable expectation of privacy from the media. The following are the categories of invasion of privacy:

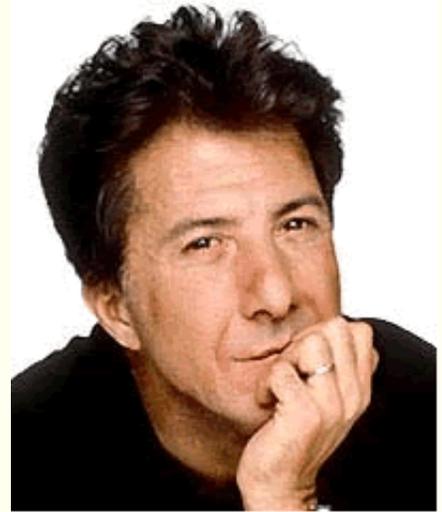
- **Misappropriation of Name or Likeness.** Using someone's name, picture or voice without their consent for purposes of trade or advertising.
- **Public Disclosure of Private Facts.** Publicity which the reasonable person would find highly offensive concerning private information about an individual (i.e. medical information, identity of sex partners, names of juvenile offenders, etc.).
- **Intrusion Upon Seclusion.** Unreasonable and highly offensive intrusion upon another's interest in privacy or seclusion, either as to the physical person or the person's private affairs or concerns. This tort pertains to three contexts: surreptitious surveillance; trespass of property; or when consent to a private setting for one purpose has been exceeded (access under false pretenses).
- **False Light.** Publicity that makes a person appear other than he or she is (i.e. false statements, caricature portrayals and misleading citations that result in personal humiliation or mental anguish).

According to "Free Speech and the social construction of privacy" by Schauer, Frederick and Social Research, most invasion of privacy claims are not based on the idea of misappropriation of a name or likeness but rather on the idea that people have the right "to control the facts about their own lives."

***So, you can understand why people are sensitive about this issue. Let's take a look at a few examples.***

## Misappropriation of a person's name or likeness

How would you like to wake up and find yourself in a magazine ad wearing a dress and advertising a new spring line for a fashion house in New York? Well this happened to Dustin Hoffman. In the 80's he made a movie called "Tootsie" where he played an out of work actor who donned a dress in order to get a part on a soap opera. Well, trying to capitalize on the fame of the movie, an advertising company with the aid of a little computer enhancement placed Hoffman in the latest designer dresses. **The problem was Hoffman did not give permission and a court awarded him more than \$2 million in compensatory and punitive damages.**



## Public Disclosure of Private Facts

Military Journalist: You mentioned that you suffer from Muscular Dystrophy. May I talk about that in the article?

Interviewee: I'd rather you didn't. I'm afraid what might happen if my boss ever saw that.

*Do not disclose private facts about an individual without permission.*

A libel and defamation lawsuit was filed against a California school district when a high school newspaper ran a story disclosing a father's alleged alcohol abuse.

## Intrusion Upon Seclusion (Wrongful Intrusion)

In Arkansas a federal trial court upheld a subpoena seeking a television station's out-takes in a privacy suit. It was considered "wrongful intrusion" for the television corporation to film a surgery without the patient's consent.

In the District of Columbia, a reporter was ruled to have not "intruded" on the privacy of a school when he entered the school to conduct the initial interview and came back to retrieve his notebook. The court determined that there was no expectation of privacy in an area that was open to the public.

**The act of intrusion is punishable, even if the information is not published, broadcast or communicated.** So, tell your journalists or broadcasters to keep everything above board.



Do not record an interview without getting permission. Once you do, it's acceptable to use a recording device in public.

## False light

A photograph of a married couple in an affectionate pose, taken without their knowledge or permission, that was used to illustrate an article that said love at first sight was founded upon sexual attraction alone and would be followed by divorce was sufficient to establish a false light claim. [Gill v. Curtis Publishing Co., 239 P.2d 630 (Cal. 1952)]

Photographer's Guide to Privacy, Fall 99

Do not **reuse stock photos for different purposes**, because the same photograph used in a different context may convey a different meaning. This is frequently a problem with photos because there is no way to explain the full context of the situation represented in the photograph. In general, **get written permission** before publishing photographs. Release forms are something your photograph staff can carry along with their extra rolls of film.

Click [here](#) to view the Photographer's Guide to Privacy.

## Test Your Knowledge

A reporter uses a high-powered directional microphone to record a conversation through an open window on a private residence. He then transcribes it for publication in a newspaper. On what grounds could the concerned individuals sue for invasion of privacy?

Appropriate

False light

Wrongful intrusion

Publication of private matters

## Test Your Knowledge

With regards to the scenario on the previous page, if the reporter had not published the recorded conversation, would he be free from prosecution for invasion of privacy?

Yes

No

## Copyright

As stated previously you are in the information business. It is likely that you will have to use copyrighted resources to do your job.



## Copyright

### Definition

Copyright is the right of a writer, composer, artist or photographer to own, control and profit from the production of his or her work.

*Copyrighted material may not be republished without the copyright owner's permission. Use caution when using copy righted work because often you have to pay for the right to use it.*



## Copyright

### Laws

1. Copyright exists automatically the moment a work is created.
2. Neither registration nor publication is required for a copyright to be valid
3. You cannot copyright facts, events, ideas, plans, methods, systems, blank forms or titles.
4. Copyright for an individual lasts for the life of the author plus 50 years. For a work made for hire, copyright lasts for 75 years from the date of publication or 100 years from the date of creation, whichever is shorter.
  
5. Fair Use Doctrine. Allows fair use of a copyrighted work for purposes of criticism, comment, news reporting, teaching, scholarship or research. You can use quotations, even several quotations, from somebody else's work, as long as you don't infringe on the author's ability to profit from her own work.

## Copyright

So, if The Fair Use Doctrine allows copyrighted work to be used for purposes of criticism, comment, news reporting, and teaching, and you can use quotes from other people's work as long as you:

Do not infringe on the author's ability to profit from the sale or use of the work

Do not attempt to pass the work off as you own

And give credit to the author

The question is:

***How much of the copyrighted work can I use without getting into trouble?***

**AP Styleguide:** "The greater the amount of the copyrighted work used, the less likely that a court will characterize the use as fair..."

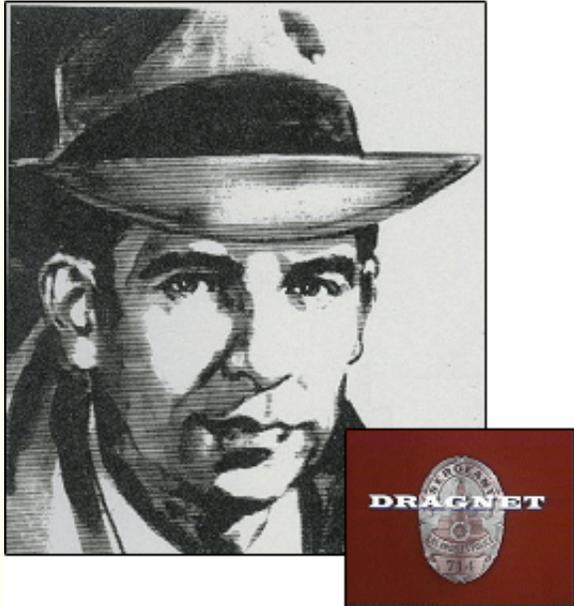
***Check with your JAG office for guidance.***

## **PA & the Law**

So far, you have learned the basics of media law and how they apply to your job as a Public Affairs Officer. Another key area of the law, one which is largely unknown or misunderstood outside the Department of Defense, is military law.

Let's take a look at the key elements of military law.

## 15-6 Investigation

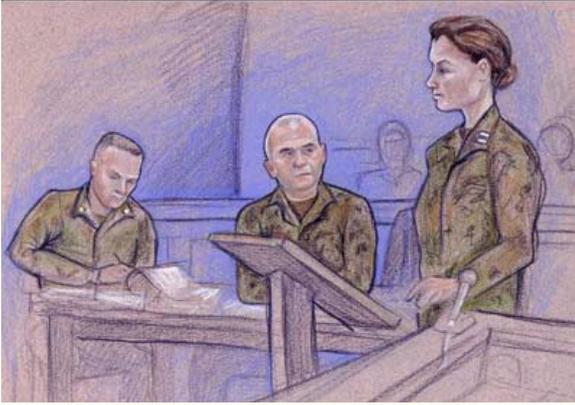


In the tradition of Joe Friday, the 15-6 Investigation is where a commander appoints an investigative officer to gather evidence. His or her duties are to gather the facts, and provide appropriate recommendations to the commanding officer. The investigative officer keeps a chronology showing the dates, time, and everything connected with the investigation. Fact-finding investigations are designed to provide information to determine if further action is required.

*Hey, why proceed further if nothing really happened, right?*

*\*1950s-60s TV show starring Jack Webb as an LA police detective. This show made famous the line, "Just the facts ma'am, just the facts."*

## Article 32 Investigations



An Article 32, RCM Rule 405 pretrial investigation is roughly the equivalent of a civilian grand jury investigation or a probable cause hearing. It determines whether enough evidence exists to have a court-martial proceeding.

*U.S. Marine Corps Gunnery Sgt. Gus Covarrubias, center, and Maj. Darren Erickson listen to Capt. Angela Wissman question a witness during Monday's Article 32 hearing in Twenty Nine Palms, Calif.*

*Illustration by DAVID STROUD/REVIEW-JOURNAL*

**TWENTYNINE PALMS, Calif.** -- During his 19 years in the U.S. Marine Corps, Gunnery Sgt. Gus Covarrubias gained a reputation among his colleagues for exaggerating wartime stories, military officials said Monday.

But his embellishment of an April battle in Baghdad, Iraq, landed the Las Vegas Marine reservist in an investigative hearing that could lead to a court-martial.

"This time it caught up with him," Capt. Angela Wissman, prosecutor for the federal government, said Monday at the Marine Corps Air/Ground Combat Center. "He told it to the press, and people took it seriously."

The government has charged Covarrubias with making false statements to the military, alleging an overstatement damaged the reputation of the Marine Corps.

His case stems from an April 25 Review-Journal report in which he claimed to have hunted down a member of the Iraqi Republican Guard and shot him in the back of the head after a fierce battle in a Baghdad courtyard. He said he then tracked down the soldier's comrade and killed him.

Covarrubias' defense claims he suffered from a month-long bout of amnesia after he was knocked unconscious by a rocket-propelled grenade during the April 8 courtyard battle.

Because of his poor health, Covarrubias shouldn't be held responsible for the story he told the Review-Journal, or variations of the double-execution he repeated to military personnel in the days after the article was published, said Maj. Darren Erickson, Covarrubias' defense attorney.

Erickson's argument that Covarrubias was not thinking clearly at the time of his statements was backed by military neurosurgeon Capt. Jeffrey Brookman, who ultimately ordered Covarrubias be sent home.

Investigative Officer Lt. Col. Paul Pugliese presided over Monday's hearing under Article 32 of the Uniform Code of Military Justice. He is not expected to submit a recommendation for at least a week.

During nine hours of testimony before Pugliese, nobody argued that the April 8 firefight was anything short of a brutal, two-hour battle. Eight other Marines from the Fox Company, 2nd Battalion, 23rd Marines, drawn from reservists in Utah and Las Vegas, were injured in the engagement. And they agreed Covarrubias was in the courtyard when the grenade struck.

But what occurred in the subsequent hours was debated heavily.

Covarrubias told the Review-Journal, a Navy Criminal Investigation Service agent and Capt. William Ghilarducci that he sneaked outside the Marine camp that night and tracked down the two Iraqi soldiers. After he killed them he said he collected a handful of souvenirs: a black beret, two Iraqi military cards and a bayonet.

But the government spoke with other soldiers who took part in the battle, and Covarrubias' story didn't add up, Wissman said.

Troops were so intense after the battle, it would have been extremely difficult for anybody to slip past their line unnoticed, Staff Sgt. John Liles said.

"Anything is possible, but I don't believe that that happened," Liles said. "Any noise that was made, everyone would jump because we thought we were under attack."

Covarrubias acted strangely after the battle, Liles said. He recalled walking into a room two days after the battle. Covarrubias abruptly held up an AK-47 assault rifle and said, "This is it. This is the gun I got from the guy who was shooting at us."

Liles said Covarrubias pointed in the opposite direction from where the grenade was launched.

"I thought it was weird. I didn't understand, and I was confused," Liles said. "It was just an odd conversation and I didn't want to continue it."

Covarrubias told the Review-Journal that Iraqi soldiers used cars as weapons, and one Iraqi driver hung a baby outside the driver's side window to discourage U.S. troops from firing. Liles said that never happened, and suggested that in the wake of the grenade attack, Covarrubias was confused about events that actually occurred.

After the fight, during which Iraqis drove vehicles directly into U.S. troops, Covarrubias and Liles walked into the triage area. They saw an Iraqi woman whose right arm was blown off. She cradled her blood-

soaked baby in her left arm, Liles said.

"It wasn't very pleasant," Liles said. "He heard the baby crying and said he couldn't listen anymore. In my opinion, he mistook that situation for what he told the newspaper."

As for the souvenirs collected by Covarrubias, Liles said Marines would find piles upon piles of identification cards, berets and weapons left behind by fleeing Iraqi soldiers. According to military criminal investigators, there is no way to determine whether those pictured on the identification cards are dead.

Wissman said the story of the executions was not the first Covarrubias had fabricated. For example, fellow soldiers testified he boasted of being a sniper during the Persian Gulf War and was responsible for 30 kills. Wissman said Covarrubias was not an active sniper.

Ghilarducci said he received 30 phone calls the day the Review-Journal story was published. He e-mailed officials in higher posts and said the response was: "This is not good."

Members of the criminal investigation team traveled to Las Vegas the same day the story was published and obtained a search warrant to look for more evidence in Covarrubias' home.

It wasn't long before investigators called Covarrubias' comrades, who were still on the front line in Iraq. Liles, who filled out his statement hunched over the hood of a Humvee outside Baghdad, agreed that Covarrubias' story discredited the Marines.

"It shocked me, and I was very disappointed," Liles said. "Until then, we were known as the company basically kicking butt. From that moment on, we were known as the company that had the gunny that made the story up."

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## Commander's Disciplinary Options List



What kind of disciplinary options does a commander have to ensure discipline?  
Plenty!

Go to the next page.

## Commander's Disciplinary Options List



### **He can take no action at all.**

In other words, it's a situation that does not need his or her attention. That NCO supervision, or group dynamics will take care it.

1. He can take no action at all.

## Commander's Disciplinary Options List



**He can verbally counsel those involved.**

It can be formal or informal. It can be as simple as telling someone "to get their act together", or it can be as formal as an appointment in the commander's office to discuss performance.

1. He can take no action at all.
2. He can verbally counsel those

## Commander's Disciplinary Options List



1. He can take no action at all.
2. He can verbally counsel those involved.
3. **He can issue a Counseling Statement.**

## Commander's Disciplinary Options List



### **He can issue a letter of reprimand / Admonishment.**

Unlike counseling, a reprimand or admonition is considered a censor. A reprimand is more serious than an admonition. Both can be done verbally or in writing.

1. He can take no action at all.
2. He can verbally counsel those in
3. He can issue a Counseling State
4. **He can issue a Letter of Reprimand**

## Commander's Disciplinary Options List



**He can enter a note into the soldier's Personnel Record.**

Reprimands and admonishments can be filed in two places - locally or in the official personnel record. Local files go away once you leave the command, while items placed in the personnel record remain throughout one's career.

1. He can take no action at all.
2. He can verbally counsel those in
3. He can issue a Counseling State
4. He can issue a Letter of Reprim
5. **He can enter a note into the s**

## Commander's Disciplinary Options List

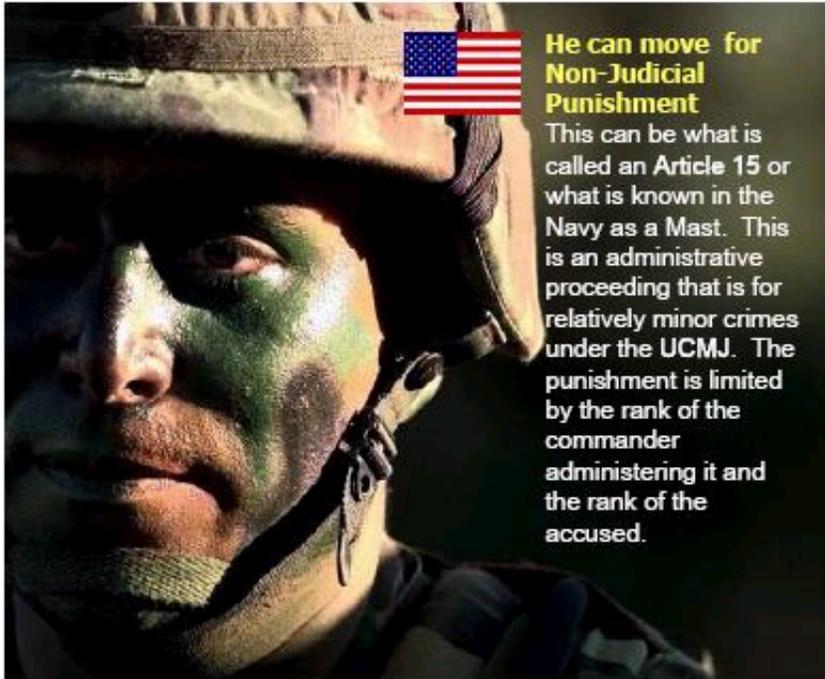


**He can move to separate the soldier from the service.**

It can be **Honorable, General (Under Honorable Conditions), and Other Than Honorable.**

1. He can take no action at all.
2. He can verbally counsel those involved.
3. He can issue a Counseling Statement.
4. He can issue a Letter of Reprimand.
5. He can enter a note into the Soldier's Record.
- 6. He can move to separate the soldier from the service.**

## Commander's Disciplinary Options List



### He can move for Non-Judicial Punishment

This can be what is called an Article 15 or what is known in the Navy as a Mast. This is an administrative proceeding that is for relatively minor crimes under the UCMJ. The punishment is limited by the rank of the commander administering it and the rank of the accused.

1. He can take no action at all.
2. He can verbally counsel those involved.
3. He can issue a Counseling Statement.
4. He can issue a Letter of Reprimand.
5. He can enter a note into the Soldier's Record.
6. He can move to separate the soldier.
7. He can move for Non-Judicial Punishment.

## Commander's Disciplinary Options List



1. He can take no action at all.
2. He can verbally counsel those in
3. He can issue a Counseling State
4. He can issue a Letter of Reprimand
5. He can enter a note into the Soldier's
6. He can move to separate the soldier
7. He can move for Non-Judicial Punishment
8. **He can recommend a Court-Martial**

## **NJP versus Court Martial**

Let's look more closely at the last two disciplinary options afforded commanders, and the Public Affairs implications associated with them.

**Non-Judicial Punishment.** An Article 15 is the commander's way of maintaining good order and discipline (i.e. late for work, disrespect for senior rank, or disobeying an order). They are usually used for lesser offenses (misdemeanors) in the UCMJ. NJP is ***generally not releasable***, ***unless*** the case has received significant media/ public attention. Think about inappropriate relationships between senior ranking officers and staff members. Unfortunately, we see these types of cases more than we ought.

**Court Martial.** Service members can refuse the Article 15 and request a trial by jury in the form of a court martial. Convictions by court martial are felonies. Court martial proceedings are usually open to the public and outcomes are generally releasable.

*There are three types of courts martial, let's take a look...*

## The court martial in popular culture



"The Court Martial," Star Trek Episode 15, Season 1, 1967



The 1954 movie "The Caine Mutiny" is based on the Herman Wouk novel. Humphrey Bogart portrayed the ship's captain "Queeg."

To the civilian world the court martial is high drama. Captain Kirk (far left) is accused of causing the death of a rival. Captain Queeg (left) testifies at the trial of mutineers that took over his ship and in the end his own sanity is questioned. Kirk plays the officer facing unfair charges and Queeg, though not charged, must defend himself against the opinions of others. Both stories ask the question, "Can justice be served in a strict military system?"

## The court martial in history



Eddie Slovik, a private in the United States Army was the last U.S. soldier to be executed for desertion. He was court-martialed for *desertion under fire* and sentenced to death by firing squad.



The above photo was taken at the court martial of Lieutenant Colonel Billy Mitchell. Mitchell's bravery was unquestioned. In World War I he led 1,500 airmen in the air phase of the Saint Mihiel offensive. He was awarded the Distinguished Service Medal, including several allied medals noting his bravery. Mitchell was the first prominent American to publicly advocate strategic air power as a force that would dominate the future. He even predicted the air attack on Pearl Harbor. Unfortunately, his strong opinions made many enemies and on October 28, 1925 his court martial trial began. It ended seven weeks later with a verdict of insubordination. Though convicted, he kept on urging the public to support air power. President Truman signed legislation in 1946 bestowing a special medal on Mitchell, "*in recognition of his outstanding pioneer service and foresight in the field of American military aviation.*" Mitchell did not live long enough to be vindicated in his beliefs. He died in 1936.

## The court martial in recent news



Sgt. Asam Albar was accused of a rifle and grenade attack on his superior officers in Kuwait. A general court martial was recommended.

For more see:

[Akbar article](#)



A court martial proceeding was delayed against Lynndie England, charged in the Abu Ghraib prisoner-abuse scandal.

For more see:

[England article](#)



F-16 Pilot Major Harry Schmidt and his air partner Major William Umbach were officially charged with 4 counts of negligent manslaughter, 8 counts of aggravated assault and 1 count of dereliction of duty after firing on a Canadian position in Afghanistan. On June 19, 2003 all charges were dropped. Schmidt was given a letter of reprimand and allowed to retire. Umbach was to be issued an Article 15.

For more see:

[Umbach article](#)

## Types of Court martial



In this section we will discuss three types: Summary Court Martial, Special Court Martial, and General Court Martial. This is a serious step, for a conviction by a court martial is equal to a [felony](#) conviction.

Photo of courtroom in Baghdad before Abu Ghraib court martial proceedings

## **SUMMARY COURT MARTIAL**

The lowest level

### **Purpose:**

Used to promptly adjudicate minor offenses under a simple procedure.

### **Maximum penalty:**

- 30 days confinement
- Forfeiture of 2/3 pay per month for one month
- Reduction to the lowest pay grade.

### **Jury:**

One officer acts as judge and jury.

## **SPECIAL COURT MARTIAL**

Most like a regular trial and may or may not require an Article 32 investigation, depending on the charges.

### **Purpose:**

Court members must determine guilt and the proper sentence based on evidence and in accordance with the military judges' instructions.

### **Jury:**

- Military judge and no less than three jury members
- Each court member has an equal voice/vote
- Majority vote determines guilt

## **GENERAL COURT MARTIAL**

The highest level of military court.

### **Jury:**

- Requires the civilian equivalent of a regular trial with a defense attorney (may be civilian) and a jury of the accused's peers.
- Military judge and no less than five jury members.
- Jury determines guilt/sentence by majority vote.
- Defendant can determine what kind of jury they want:

Officers – can be tried only by officers.

Enlisted – can be tried by a jury of officers and enlisted (no less than 1/3 enlisted, no members from the individual's squadron, and no members of lower rank than the individual being tried) or just officers.

***Most often enlisted members will opt for a jury of officers because enlisted juries tend to deliver tougher sentences.***

## **Release of military justice information**

Now that we've looked at the basics of the military justice system, let's look at how they may apply to the public affairs realm in terms of the release of information.

Release of information concerning legal proceedings against a service member should **always** be coordinated with the command's staff judge advocate.

In some cases, a military judge may ask the public affairs officer to limit media coverage of a case to avoid prejudicing potential court martial members. Such a request should not limit a PAO from releasing information according to established guidelines for release.

***In any case, coordination is the key.***

## **Suspects**

In general, PAOs should not provide any information on a criminal suspect until that person has been formally charged with violations of the Uniform Code of Military Justice.

Once the suspect has been formally charged with a crime, the case becomes a matter of public record, and the normal guidelines for release and Privacy Act restrictions apply.

Prior to the individual being formally charged, no information should be released other than perhaps that you have a suspect in custody.

## **Article 32**

Media coverage is allowed of both Article 32 hearings and court martial proceedings, although a military judge may impose restrictions within the courtroom.

*There must be a valid reason to (temporarily) close such proceedings. Examples of situations that may render an Article 32 hearing closed: cases when classified evidence is being presented, or when there is a child (minor) victim or witness.*

Aside from such specific instances, the proceedings should be made open.

A military judge may also allow cameras in the courtroom, but such practice is rare.

## **Courts martial**

As a general rule, courts martial proceedings are open to the public and media. The First Amendment affords news media the same right of access to military proceedings as they do civilian criminal court proceedings. As in Article 32 hearings, a very limited circumstances render courts-martials, or just portions of those proceedings, closed.

## **NJP**

Nonjudicial (Article 15, UCMJ) proceedings are administrative.

Therefore, information about the specific punishment or disciplinary measures taken against a specifically named service member is not releasable. However, release of information about a case that is handled administratively is releasable, provided the names of service members are not released.

*X-RAY AIR FORCE BASE, Anytown, USA -- Four airmen assigned to the XYZ maintenance squadron here received nonjudicial punishment here today for their roles in spray painting racially charged graffiti on the base water tower.*

The release also gives the opportunity to get the messages of our fair and just system of justice in the military.

## **Administrative Punishments/Letters of Reprimand**

Same as NJP.

## **For more information...(optional)**

See, ["A Reporter's Guide to Military Justice."](#)

## Status of Forces Agreement



The United States has forces all over the world. Each nation has its own system of laws and customs. Legally, how does the U.S. military deal with this?

The Status of Forces Agreement (SOFA) was established in 1953. It set forth the rights, privileges and responsibilities of visiting forces and its individual members while serving in the military.

## Status of Forces Agreement

For instance, let's look at a SOFA agreement between the United States and the Philippines.

*Preamble: The Government of the United States of America and the Government of the Republic of the Philippines,*

*Reaffirming their faith in the purposes and principles of the Charter of the United Nations and their desire to strengthen international and regional security in the Pacific area;*

*Reaffirming their obligations under the Mutual Defense Treaty of August 30, 1951;*

*Noting that from time to time elements of the United States armed forces may visit the Republic of the Philippines;*

*Considering that cooperation between the United States and the Republic of the Philippines promotes their common security interests;*

*Recognizing the desirability of defining the treatment of United States personnel visiting the Republic of the Philippines;*

*Have agreed as follows:*

## Status of Forces Agreement

### *Article II Respect for Law*

*It is the duty of United States personnel to respect the laws of the Republic of the Philippines and to abstain from any activity inconsistent with the spirit of this agreement, and, in particular, from any political activity in the Philippines. The Government of the United States shall take all measures within its authority to ensure that this is done.*

## Status of Forces Agreement

### *Article V Criminal Jurisdiction*

1. *Subject to the provisions of this article:  
(a) Philippine authorities shall have jurisdiction over United States personnel with respect to offenses committed within the Philippines and punishable under the law of the Philippines. (b) United States military authorities shall have the right to exercise within the Philippines all criminal and disciplinary jurisdiction conferred on them by the military law of the United States over United States personnel in the Philippines.*
2. *(a) Philippine authorities exercise exclusive jurisdiction over United States personnel with respect to offenses, including offenses relating to the security of the Philippines, punishable under the laws of the Philippines, but not under the laws of the United States. (b) United States authorities exercise exclusive jurisdiction over United States personnel with respect to offenses, including offenses relating to the security of the United States, punishable under the laws of the United States, but not under the laws of the Philippines.*

There are two types of jurisdiction under the S outline. *Which one below covers the agreement with the Philippines?*

Exclusive jurisdiction - This is limited to offenses against only one nation. It can either be the host nation or the visiting nation. The nation whose law is violated has exclusive jurisdiction.

Concurrent jurisdiction - This deals with situations in which the laws of both countries are broken. The U.S. Military will have jurisdiction if the offense was solely against the property or security of the United States, the offense was solely against the property or person of another member of the U.S. military, or the offense arose out of an act resulting from official duty.

The host country has primary right of jurisdiction in all other instances but may choose to waive it.

## Status of Forces Agreement

The SOFA Agreement covers additional subjects like: the allowance of rights for U.S. citizens being tried under Filipino law (speedy trial), how claims against the United States will be dealt with, the entry and departure procedures of U.S. citizens, and requirements for vessels and aircraft entering and leaving the Philippines.



## Status of Forces Agreement

Something very important to remember is that military family members and civilian employees are subject to the laws of the host country.



***They are not covered under the SOFA agreement!***

How is our PAO doing with the reporter?



**PAO**

### The phone query

**PAO:** Was I helpful in explaining some of the law terminologies for you?

**Reporter:** Yes, you were very helpful.

**PAO:** In the mean time, I will coordinate with our legal department - *we call it our JAG Office* - and try to find you a subject matter expert. If they can't talk to you, I'll get the information for you as it becomes available.

**Reporter:** That would be great!



**Report**

## Unit Summary



In this lesson we covered the fundamentals of media law and military law.

This does not make you a legal expert, but you now have a basic working knowledge of important aspects of the law.

To your benefit, there is a subject matter expert that is available to answer your questions on the law. The **Judge Advocate General Office** is your source on how each case is proceeding and what information is releasable to the public. As a PAO, you should work closely with your JAG office. To develop a strong working relationship with that office, it is important to have the same vocabulary as the JAG officers. **This will give you credibility with JAG, with your command and with the media.**

