

CLIENT INTRODUCTION & INITIAL ADVICE

1. CONFIDENTIALITY.

- a. I am a licensed attorney in the Commonwealth of Virginia. Therefore, anything you tell me is covered by the attorney-client confidential communications privilege. This privilege means that I **cannot** and **will not** disclose anything you tell me to anyone else. I will only do so if you gave me permission to do so; even if you were to confess a crime to me, I could not be required to disclose that information to anyone and would not voluntarily disclose that information to anyone.
- b. Other than a chaplain, or similar type clergy, NO ONE ELSE has any similar confidential communication privilege with you. Therefore, **anything** you say to any of the following individuals could be used against you.
 - i. Parents.
 - ii. Congressional representative! You are protected from retaliation under 10 U. S. Code §1034, from retaliation in contacting your members of Congress. However, any statements you make to them may be used as evidence against you. See United States v. Gogas, 58 M.J. 96 (C.A.A.F. 2003).
 - iii. Spouse under some circumstances.
 - iv. Doctors, nurses, or other health-care workers.
 - v. Psychologists and counselors. SACO, ATF, or anyone in the substance abuse treatment field.
 - vi. Anyone in the Family Advocacy Office.
 - vii. Any other civilians or military personnel. This includes your friends, roommates, co-workers, supervisors, your first sergeant, etc. Anything you say to them can be used against you, and probably will be.

2. RIGHT TO REMAIN SILENT: Your right to remain silent is an ABSOLUTE right. If you choose to exercise your right, no one can in any way hold that against you. It cannot be commented on in a court-martial, nor can you be given any additional punishment because you exercise your rights.
 - a. Remaining silent is NOT an admission of guilt. Even if you are or believe you are not guilty, I still advise you to remain silent.
 - b. You have the right to have an attorney present DURING ANY QUESTIONING.
 - c. Even if you have already made some oral or written statements, you can still claim your right to remain silent from now on. In other words you can revoke any prior waiver for future interrogations or interviews.
 - d. BE AWARE - DANGER! Do not accept or engage in any phone calls or meetings with any alleged victim, co-actor, or others. Investigators frequently try "pretext phone-calls." These are traps.
 - e. You can be required, and ordered, to go to an appointment at mental health, substance abuse counseling, or the Family Advocacy Office. If you are so ordered, then you MUST go to such an appointment, or you can get in trouble for failure to obey a lawful order.
 - i. However, you CANNOT be required, or ordered, by any commander, supervisor, doctor, counselor, etc., to say ANYTHING to ANYONE once you are at any of these appointments. The one exception is for what is called a "706 Board." Such Boards are privileged.
 - ii. Call me or your military counsel immediately if you are told to go to any appointment.

3. OBEY ANY NO CONTACT ORDERS.
 - a. If you accidentally come into contact with someone on an MPO (at the Exchange for example), leave immediately.
 - b. Also, immediately let your senior supervisor know.
4. MAXIMUM SENTENCE POSSIBLE: The possible maximum punishment you could be exposed to depends on whether you are at a Special or General Court-Martial, and the offense(s) of which convicted. The types of punishment are as follows.
 - a. Punitive discharge; either Dishonorable or Bad Conduct. A court-martial cannot adjudge an administrative discharge.
 - b. Confinement.
 - c. Forfeitures of pay and allowances.
 - d. Restriction.
 - e. Hard Labor Without Confinement.
 - f. Fine.
 - g. Letter of Reprimand.
 - h. No punishment.
5. COUNSEL RIGHTS: You have the right to a detailed defense counsel at no expense to you.
 - a. You may ask for another military attorney by name and if that attorney is reasonably available, he/she will be detailed to represent you, at no cost to you. But if you do request specific military attorney and your request is granted, you do not have the right to have the first attorney remain on the case. You must specifically ask this of the administrative command.
 - b. As your civilian attorney I am lead counsel. As lead counsel I make the decisions, except whether you plead guilty or not guilty; what type of trial; and whether or not you testify. This will be explained in more detail as we prepare our case.

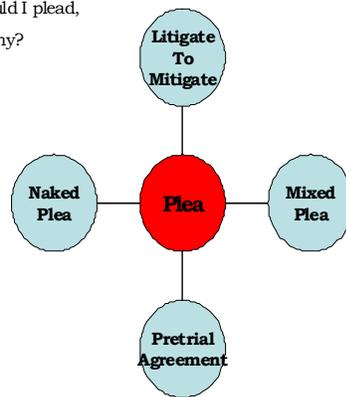
6. QUESTIONS. You will have questions or concerns. Do not wait to ask or voice your concern. It is far better to ask a question now than after trial. I make every effort to keep you informed and consult with you on the decisions we have to make. But don't assume that either I or your military counsel have thought of everything. I have always found that military counsel and clients can help by asking questions, offering ideas, and making suggestions. It is your case - take an interest in the case; stay in touch; do your homework; be attentive. As a general rule I ask you to use email to avoid playing phone-tag, and it helps us both keep notes. We can set times to talk in person.
7. RULES OF ENGAGEMENT. I will give you my Rules of Engagement; study them and follow them.
8. COURSE OF TRIAL. I will give you an outline of how your trial will proceed. I will also give you a script that is used for what is called the arraignment. Study both.
9. SERVICE OF CHARGES: After your commander refers your charges to a court-martial, you will get a copy of your charge sheet. You have the right to three (3) (SPCM) or five (5) (GCM) full days between the day you get your copy of the charge sheet and the day you first appear in court.
 - a. You are not required, and should not, make any statement at the time of service.
 - b. Signing for the charges is NOT an admission of guilt or waiver of any right.
10. PLEAS: As to some or all of the offenses charged, you can plead not guilty, you can plead guilty, or you can enter mixed pleas.
 - a. You can enter a plea of not guilty to an offense even if you actually committed the act or acts in question. A plea of not guilty requires the government to prove

you committed the offense. The government must do this by introducing evidence at a trial, and must prove your guilt beyond a reasonable doubt. Obviously, there are some kinds of offenses that are easy for the government to prove and some that are not. We will discuss whether the government is likely or unlikely to prove its case against you.

b. You also have the right to enter a plea of **guilty**. You can only plead guilty if you really are, in fact, guilty. Your guilty plea must be voluntary; that is, no one can force or threaten you to plead guilty. **In order to plead guilty, you must be able to completely admit what you did.** The government then does not have to introduce any evidence at all to prove your guilt. By pleading guilty, you give up certain important rights:

- i. Your right against self-incrimination (right to remain silent);
- ii. Your right to a trial of the facts;
- iii. Your right to confront witness against you.

What should I plead,
---and why?



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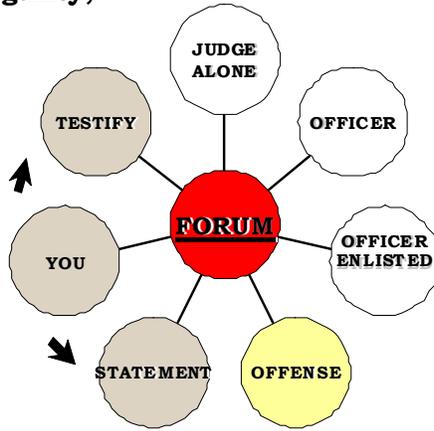
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11. COURT COMPOSITION: You have the right to your choice of three possible methods of courts-martial.

Special Court-Martial	General Court-Martial
Military Judge Alone.	Military Judge Alone.
A jury of at least three members, all officers.	A jury of at least five members, all officers.
A jury of at least three members, at least 1/3 of whom are enlisted members.	A jury of at least five members, at least 1/3 of whom are enlisted members.
At least two-thirds must agree to find you guilty.	At least two-thirds must agree to find you guilty.
	At least two-thirds must agree on your sentence; unless the sentence will exceed ten years confinement, in which case three-quarters must agree on the sentence.

Who will decide my fate? Who decides if I'm not guilty or guilty, and who gives a sentence if I'm convicted?

You have the right to choose.

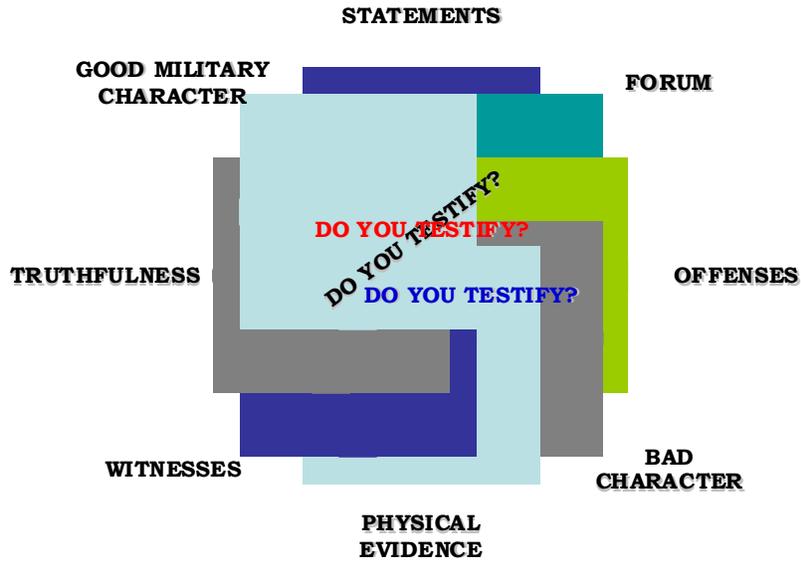


There are a number of factors that go into forum selection – these are some of the main factors. Other factors will be discussed that affect your specific case, at the proper time.

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- 12. TESTIMONIAL RIGHTS: You have the right to cross-examine all witnesses called against you. I will actually physically do this on your behalf. We can also call our own witnesses. You can always elect to remain silent, or you can choose to testify under oath and be subject to cross-examination, just like any other witness. If you are accused of more than one offense, you may limit your testimony to one or more of the offense charged.



- 13. MOTIONS. Prior to trial we can make motions. We can try to suppress evidence or statements, request discovery, request expert assistance, raise issues of illegal pretrial confinement. While your counsel decide what motions and when to file them, you should speak up if you think something needs to be raised as an issue.
- 14. DEFENSE/OBJECTIONS: We can assert any proper legal defense to a charge. We can also object to any of the government's evidence against you.

15. PRESENTENCING RIGHTS: If you plead guilty, or if you plead not guilty but are found guilty, then you will face sentencing. You can be sentenced anywhere from no punishment to the maximum punishment. We can present evidence in **extenuation** and **mitigation**, that is, matters about the offense or about you which you want the sentencing authority to consider before adjudging a sentence.
- a. Extenuating circumstances are those which tend to lessen the seriousness of the offense. For example, a person may be guilty of larceny for stealing bread from a grocery store. Suppose he stole the bread because he has five starving children at home who would otherwise go hungry. He can let the sentencing authority know about his five starving children, so that they may be considered in arriving at an appropriate sentence.
 - b. Mitigating circumstances are those which tend to reduce a person's punishment. For example, a person may be guilty of using marijuana. Suppose his mother is in the last stages of cancer, and is not likely to live more than a couple of months. If he gets a lengthy confinement term, he will probably not get to be with his mother in her last days. He can let the sentencing authority know about his sick mother's situation, so that it may be considered in arriving at an appropriate sentence.
 - c. Just like in the trial itself, you can elect to testify under oath, or to remain silent. However, during pre-sentencing, you have a third option: the right to make an **unsworn statement** to the court. You may make this statement orally or in writing, personally or through me, or you may use a combination of these ways. If you make an unsworn statement, then you cannot be cross-examined by the prosecution, or questioned by the court. The prosecution, however, has the right to present evidence to rebut any statement of fact that you may make in your unsworn statement. We will

discuss whether it is in your best interest to testify, and if so, what manner.

16. SEPARATION IN LIEU OF TRIAL: You can request in writing, an "other than honorable" discharge and may be deprived of virtually all veteran's rights and benefits which would be based on your current period of active duty service. You can expect to encounter substantial prejudice in the civilian community if you receive such a discharge. You must consult with me prior to making that request. Once such a request is submitted, it can only be withdrawn with the consent of the officer with general court-martial jurisdiction over you. Normally this is your Commanding General.
17. PRETRIAL AGREEMENTS. You can negotiate for a pretrial agreement (a "plea bargain") (PTA). Generally, a PTA can place sentence limits on your punishment, cause some charges to be dismissed or not prosecuted, change the forum to a lower forum.
 - a. Some of the more common items are:
 - i. An agreement to limit confinement time, for example, to suspend confinement in excess of a number of specified months or years.
 - ii. An agreement for redistribution of your pay to your family.
 - iii. An agreement that certain charges will be dismissed.
 - iv. An agreement to plead guilty at a special court-martial.
 - v. An agreement to plead guilty at Article 15, and waive an administrative discharge board.

Appeals

- May ask for clemency immediately after trial.
- Within 10-30 days of receipt of record of trial --- may apply for clemency, raise legal errors to CA.
- If BCD/in excess one year confinement – automatic appeal to the (service’s) Court of Criminal Appeals.
- Ct. Crim. App. may set aside the findings.
 - Art. 66(c), UCMJ, says in effect that all judges of the appellate panel must be personally satisfied that they themselves believe the person guilty beyond reasonable doubt.
 - Take other actions normally done by an appellate court.
- Court may set aside or modify sentence.
- If findings and sentence approved, may petition for appeal to the Court of Appeals for the Armed Forces. This Court’s standard of review is the normal appellate standard.
- If petition is granted, and Court affirms, may petition for a Writ of Certiorari, to the U.S. Supreme Court.
- Clemency & Parole Board, and similar.

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Collateral Issues

This is *not* an exhaustive list, but the following additional consequences can flow from a court-martial conviction.

- Administrative discharge if no punitive discharge.
 - Mandatory processing?
- Retirement: “In-grade” determination.
- Security clearance.
- Sex offender registration.
- Citizenship or U.S. residency.
- Voting.
- Firearms.
- Education money, education loans, Bonuses, educational payback.
- Employment application: Federal/ State/Civilian.
- DNA sample required.

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