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Administrative Investigations and Nonjudicial Punishment in Joint Environments

BY CAPTAIN BALAJI L. NARAIN & CAPTAIN DUSTIN L. BANKS

Dealing with members of another service can often feel like foreign territory, and getting up to speed with other services' disciplinary rules and regulations can be daunting.

In today's joint environment, each armed service is expected to collaborate with the others to ensure mission success, and this expectation extends to the attorneys. JAGs are trained in the rules and regulations of our respective services and each branch employs its preferred methods and forms for obtaining facts and using those facts to impose discipline. It makes sense that we focus on our service-specific rules at our home stations. Unfortunately, that level of knowledge is insufficient in a joint environment.

As JAGs, we are often tasked to deploy with other services. We cannot always control what rules we have to apply, and we do not always have robust reach-back support to check our work. But what we can count on is that when a service member gets in trouble or when a deployed commander believes that a situation warrants investigation, the JAG is

expected to know exactly how to proceed.^[1] Dealing with members of another service can often feel like foreign territory, and getting up to speed with other services' disciplinary rules and regulations can be daunting.

Although the Uniform Code of Military Justice is intended to apply across all armed services, each has developed its own tools and procedures for investigating offenses and prosecuting them. There are dedicated agencies for conducting criminal investigations, and JAGs may often advise them. However, this article focuses on two areas where we have experienced an even greater volume of work. It serves as a primer to discuss differences in non-criminal, administrative investigations and non-judicial punishments (NJP) between the Departments of the Air Force, Army, and Navy. As the United States Marine Corps falls under the administra-

tion of the Department of the Navy, Navy regulations on administrative investigations and NJPs also apply to the Marine Corps.

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While deployed, we have conducted investigations under the rules of the Air Force, Army, and Navy. We collaborated to conduct these investigations together in austere forward locations. Also, we have advised on NJP under the rules of each of the services. Therefore, we appreciate the value of good initial guidance. Administrative investigations do not necessarily lead to NJPs and may result in lesser forms of corrective action, like administrative paperwork. NJPs may also result from criminal investigations that do not result in courts-martial. Although the armed services vary in how they issue and process administrative paperwork, we focus on NJPs because, as the name indicates, they are punitive in nature and are likely to have a more significant impact on a service member than administrative paperwork.

This primer is intended to be an initial reference when conducting investigations or shepherding NJPs in a joint environment with different services. By flagging the most salient distinctions between the services' rules, including collateral administrative regulations, our goal is to help the JAG practitioner keep an eye out for potential pitfalls that could make or break legal sufficiency. This article is not intended to give advice on managing courts-martial, because each combatant command or service may differ on whether or not it implements courts-martial in theater or outside. Our goal for this article is to provide a sufficient starting point, so a JAG from any servicing branch knows where to begin and how to proceed.

ADMINISTRATIVE INVESTIGATIONS

The power to authorize an investigation is inherent in command. An administrative investigation is a tool for commanders to discover the facts of a particular situation. If a commander or JAG believes at the outset that a member's conduct is criminal, then an administrative investigation is less appropriate than an investigation run by a law enforcement agency. But for lesser forms of misconduct, or when a commander does not know that conduct is criminal, the administrative investigation is a useful tool. There can be multiple sub-types of administrative investigations, depending on the circumstances. In this article, we will explore the primary administrative investigation rules used by each service.

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It is worth noting at the outset that the different service regulations for investigations apply both domestically and downrange. If a JAG understands how to conduct an administrative investigation under the different services' rules at home, the same procedures apply while deployed. The challenge is the interplay of the different rules in a joint environment. Determining which procedures to use is sometimes a matter of judgment, and if a commander has not issued a directive as to which service's procedures will be used, there are some cues which we found useful. If the subjects in an investigation were all from the same service, we advised the appropriate appointing authority to initiate an investigation using rules, procedures, and format of those members' branch of service. But, if there were multiple subjects involved from different branches, we would not conduct multiple investigations under multiple procedures to reflect each subject's branch of service. Instead, we would recommend that one investigation be conducted, using the procedures and format that would apply to the largest number of subjects.

The remainder of this section will identify and review the administrative investigative tools used in each armed service. It will highlight salient distinctions and identify key references for JAGs.

Air Force

Commander Directed Investigations (CDIs) are a common tool for obtaining facts and evidence in advance of discipline. Air Force regulations direct^[2] using specific guidance on how to conduct CDIs.^[3]

CDIs must be initiated by a commander^[4] who appoints an investigating officer (IO) and a legal advisor to aid the IO. The IO must meet the eligibility criteria to serve as an IO under the guidance contained in the CDI Guide.^[5] The attorney advising the IO should start by drafting the appointment letter and allegations to be investigated. The allegations should provide specificity as to what the IO is to investigate. The CDI Guide suggests the allegations be drafted to enable the IO to determine the Who, What, When, Where, and Why (the “5Ws”) of the situation.^[6]

After the IO consults with the legal advisor, develops a plan for investigation, and crafts questions to ask witnesses, the IO should begin conducting interviews and gathering evidence. The CDI Guide provides template scripts that the IO can read to witnesses, thereby facilitating the interview process.^[7] The IO may collect and document interview responses in a summarized statement of testimony, or may collect sworn statements from witnesses on form AF IMT 1168, *Statement of Suspect/Witness/Complainant*.

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One salient difference between the Air Force investigation process and the other services’ is the hand-off policy for certain witnesses. This policy originates in AFI 90-301.^[8]

When interviewing a distraught witness or the subject or suspect of an investigation, an IO **must make a person-to-person contact**, ensuring that the interviewee is met either by the commander or the commander’s designated representative.^[9] The intent of this policy is to prevent an emotional or distraught interviewee from subsequently harming himself or herself. To mitigate this risk, the IO arranges for a third party to meet the interviewee after the interview. The other services do not appear to require such a hand-off; however, our experience with the benefits of this policy leads us to suggest that IOs should consider implementing it, even when conducting an investigation under other services’ rules.

Once the IO finishes collecting witness statements and other evidence, the IO then prepares findings and recommendations for the appointing authority to review. The CDI Guide provides templates for how the final report should be compiled and presented to the appointing authority.^[10] After the IO obtains the necessary independent legal and technical reviews, he or she submits the package to the commander. The commander then documents concurrence or non-concurrence with the findings in a separate memorandum.

Army

The Army also empowers and expects commanders to investigate negative situations within their command. Unlike the Air Force, the Army has promulgated a regulation for administrative investigations—Army Regulation (AR) 15-6—which delineates how an investigation will be conducted and documented.^[11] Because the authority for investigation is AR 15-6, the **Army commonly refers to investigations as “15-6s.”** As with CDIs, a 15-6 investigation commences when an appointing authority—usually a commander, but not necessarily—determines there is a situation that warrants further examination beyond initial inquiry into the matter.^[12] The appointing authority then selects an IO to investigate the problem^[13] and appoints the IO and legal advisor through a memorandum.^[14] Once appointed, the IO consults with the legal advisor and proceeds to conduct interviews and collect evidence.

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So far, the investigation process is akin to the Air Force. But there are some distinctions to bear in mind. First is documentation. The Army requires that the investigation be documented on the 1574-series of forms.[15] The investigation approval authority—often, but not always, the appointing authority—documents whether he or she concurs with the IO’s findings and recommendations.[16] When obtaining witness testimony, the IO may summarize witness responses or obtain sworn statements on DA Form 2823, akin to AF 1168.

A second important distinction is that the Army gives field grade officer (FGO) subjects a chance to review and rebut adverse material. If the IO determines there is evidence or findings adverse to an FGO, the FGO must be afforded at least 10 business days to respond before the investigation package is provided to the approval authority for review.[17] This practice does not appear in the Air Force or Navy/Marine Corps which rather allow the subject of an investigation to rebut an investigation’s findings after corrective action is initiated.

Navy/Marine Corps

Much like its sister services, the Navy has formally codified guidance applicable to its JAG Corps. These comprehensive instructions, detailed in the Manual of the Judge Advocate General (**JAGMAN**), **JAG Instruction 5800.7F**,[18] specify how to conduct and advise upon administrative investigations.[19] The JAGMAN distinguishes between preliminary inquiries conducted by a commander or designee, and a formal commander-directed administrative investigation.[20]

An administrative investigation is initiated when the commander issues an appointment memorandum, known as a convening order.[21] Once appointed, the IO interviews witnesses and collects evidence, resembling the Air Force and Army investigative processes. Like the CDI Guide

and AR 15-6, the JAGMAN prescribes a format in which investigation reports should be documented; like the CDI Guide, the JAGMAN contemplates that the report will be submitted as a memorandum.[22]

Despite the similarities in the investigatory processes between the services, there are a few distinctions to bear in mind regarding Navy JAGMAN investigations. First, unlike the CDI Guide or AR 15-6, the JAGMAN does not explicitly require the IO submit a complete report for independent legal review prior to command action.[23] Additionally, the JAGMAN requires that a General Court-Martial Convening Authority (GCMCA) superior to the convening commander review every command investigation unless specified criteria are met.[24] Third, a JAGMAN IO may take sworn statements when interviewing witnesses, but need not use any particular form.[25]

AFTER THE INVESTIGATION

After an administrative investigation closes, the appropriate decision-maker must decide what to do with the facts obtained. If the facts reveal a member committed minor misconduct that does not violate the UCMJ, then administrative paperwork might suffice. In the Air Force and Army such paperwork can include letters of counseling, admonition, or reprimand.[26] In the Navy/Marine Corps, supervisors may issue nonpunitive letters of caution (NPLOCs).[27] However, in cases where a member has violated the UCMJ, but might not warrant a court-martial, the administrative investigation could lead to NJP.

NONJUDICIAL PUNISHMENT

Whether at home or deployed, a military justice attorney needs to work hand-in-hand with commanders to stay ahead of potential disciplinary problems. After consulting on whether NJP is appropriate in a particular situation, the attorney must advise the commander on the correct process. But the correct process will depend on the branch of service of a military member. Individuals are entitled to a baseline of procedural rights codified in statute[28] and the Manual for Courts-Martial (MCM).[29] Furthermore, per the MCM, NJP proceedings are administered in accordance with the rules and regulations of the accused’s service.[30]

This is particularly important in a deployed, joint environment where the accused and commander might belong to different services. As such, the attorney needs to plan for the challenges of offering and imposing NJPs under different services' rules to achieve a smooth process.

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This fluency includes knowing who can even offer NJP and who is subject to NJP. NJP authority is limited to commanders or, if service regulations permit, officers in charge.^[31] By statute, NJP authorities can only offer NJP to members of their command.^[32] In many joint environments, there will be a commanding officer with a staff of joint directorates. Unless authorized by regulation, joint directors in charge of sections cannot offer NJP to subordinates. Because the NJP authority will most often be someone in a position of command, for brevity, we refer to commanders when discussing who will offer and impose NJP. But a deployed JAG will have to determine who else, if anyone, can exercise NJP authority within the joint command.

Before advising on NJP or forwarding an appeal, a JAG should consult military justice instructions issued by the joint command and by superior commands.

In all cases, in addition to the regulations discussed below, before advising on NJP or forwarding an appeal, a JAG should consult military justice instructions issued by the joint command and by superior commands (such as a

Combatant Command).^[33] Such instructions can provide guidance on whether NJP authority is withheld (such as to impose NJP on personnel above a certain grade) or on who would be the NJP appeal authority.

Air Force

The Air Force instruction governing NJP is **AFI 51-202**.^[34] The charges, offer, acceptance, and punishments pertaining to NJP are documented on AF Form 3070, which is further subdivided into forms A, B, or C, depending on the grade of the active duty accused. After a commander offers NJP to a service member, the subject has three duty days to make key decisions on whether to: accept NJP proceedings, consult with counsel, submit matters to the commander, or request a personal appearance. After the subject makes his or her elections—if he or she chooses to accept NJP proceedings—and if the commander imposes punishment, the subject has five calendar days to decide whether or not to appeal.

Unlike the Army and Navy standards of proof, there is no specific standard of proof for Air Force NJPs, although there is an implicit standard.

There are important differences between Air Force and sister services' NJP proceedings. For example, Air Force personnel in the grades of E-7 to E-9 could be reduced in grade, depending on the grade of the imposing commander.^[35] Additionally, unlike the Army and Navy standards of proof, there is no specific standard of proof for Air Force NJPs, although there is an implicit standard. That is, an Airman subject could reject the offer of NJP and demand trial by court-martial, creating an implicit requirement that the evidence provides proof beyond a reasonable doubt before proceeding.^[36]

In a joint environment, the accused's commander might not be an Air Force officer. Regardless, joint forces commanders may impose NJP on Airmen.^[37] But, the imposing commander's branch of service can affect special rules governing collateral administrative actions after NJP. For example, if

a joint forces commander belongs to a sister service and imposes NJP on Airmen, that commander would forward the NJP paperwork to a superior Air Force commander to file in a UIF.[38] If there is no superior Air Force commander in the joint command, the NJP must be forwarded to the next superior Air Force GCMCA to decide whether to open a UIF and file the NJP paperwork.[39]

Army

Army military justice regulation, **AR 27-10**, provides guidance and instruction on the NJP process. This regulation prescribes two different formats for NJP proceedings: summarized and formal.[40] The primary differences between the two formats relate to documentation, punishment limitations, notification and decision-making, and access to an attorney. In summarized proceedings, the charges and specifications, along with all parties' decisions, are captured on DA Form 2627-1. The commander imposing NJP first notifies the accused soldier of the charged offenses and the soldier's rights.[41] The commander then grants the soldier a reasonable time—usually 24 hours—in which to decide whether to accept NJP or demand trial by court-martial.[42] In summarized proceedings, the accused soldier is not guaranteed the right to consult with legally qualified counsel during the decision period.[43]

Formal proceedings are documented on a **DA Form 2627**. As with summarized proceedings, formal proceedings entail notifying the accused of the charges against him or her as well as his or her rights under AR 27-10.[44] After notification, the accused is entitled to a reasonable amount of time in which to make relevant decisions—such as whether to accept NJP proceedings or to demand trial by court-martial. For formal proceedings, 48 hours are customarily allowed.[45] Importantly, during formal proceedings, because the potential punishments are more severe than in summarized proceedings,[46] the accused must be informed of the right to consult with counsel and counsel's location.[47] To facilitate proceedings, the Army provides a script for commanders to use throughout the NJP process.[48]

Attorneys must pay close attention to the idiosyncrasies of Army NJPs

In both formats of proceedings, the imposing commander must employ a beyond a reasonable doubt standard.[49] Additionally, both formats allow the accused to appeal imposed punishments within a reasonable time.[50] If the accused chooses to appeal, then he or she must provide any additional materials for the appeal within five calendar days after the imposition of punishment.[51]

Attorneys must pay close attention to the idiosyncrasies of Army NJPs. First, as with AFI 51-202, AR 27-10 specifies punishments commanders may impose in summarized[52] and formal proceedings.[53] However, unlike the Air Force, Army regulations do not permit commanders to reduce soldiers in the grade of E-7 or above at NJP, regardless of the grade of the commander.[54]

There are Army-specific administrative effects collateral to the NJP process. When a commander initiates NJP against an accused, the unit must also move to suspend any favorable personnel actions for the accused.[55] The relevant document, known as a **Flag**, prevents the subject from being transferred to another unit if initiated because of NJP proceedings.[56] The purpose of the Flag is to ensure the unit does not lose the soldier due to permanent change of station when a military justice action is ongoing. However, the Flag also means the unit cannot move the soldier until the military justice action (to include any NJP appeal) is complete, except in limited circumstances.[57] Flags fall within the remit of the Army S-1/G-1 office or the joint command's J-1 office. It is important for the attorney to advise the commander and S-1/G-1 offices not to move the soldier from the deployed environment until the appeal process is complete or the requirements in **AR 600-8-2** are satisfied.

Navy/Marine Corps

The Navy and Marine Corps rules for NJPs—colloquially known as **Captain’s or Admiral’s Mast** in the Navy and **Office Hours** in the Marine Corps—are also found in the JAGMAN.[58] As noted above, the Marine Corps falls under the Navy; consequently, Navy regulations apply to the Navy and the Marine Corps. The JAGMAN recognizes differences between the two services and articulates where different rules apply to each.[59] Once a commander reviews the evidence and decides to offer NJP, he or she must first notify the accused of all applicable rights.[60]

At this stage, the Navy/Marine Corps NJP process differs from the other services. First, an accused cannot refuse the offer of NJP if he or she is attached to or embarked on a vessel.[61] Next, according to the JAGMAN, “[t]here is no right for an accused to consult with counsel prior to [NJP].”[62] However, if the accused is not attached to or embarked in a vessel at the time of imposition of NJP, and the accused is not afforded the right to consult with an attorney, then the record of NJP cannot later be used as aggravating evidence in a court-martial for other offenses.[63] Conversely, if the accused is not attached to or embarked in a vessel at the time of imposition of NJP and is afforded a right to consult with independent counsel prior to imposition of NJP, the NJP can later be used as aggravating evidence.[64] If the accused is offered the right to speak with counsel and elects to do so before making decisions relevant to the NJP process, the process pauses until the accused has had a “reasonable” time to consult with his or her attorney.[65] Reasonableness varies depending on location and availability of the defense counsel; however, based on conversations with Navy JAGs, we have found it is customary to wait 48 hours. The forms for NJP proceedings are appendices to the JAGMAN. The appropriate form will depend on whether or not the accused is attached to or embarked on a vessel, and whether he or she is afforded the right to consult with an attorney prior to imposing NJP.[66]

Unlike the Army and Air Force, the standard for finding guilt in the Navy is preponderance of evidence.

After the accused is notified of his or her rights, and before the commander imposes punishment, the accused may request a personal hearing before the commander, which is granted “except when appearance is prevented by the unavailability of the [NJP] authority or by extraordinary circumstances.”[67] After a personal hearing and reviewing all evidence in the case, the commander determines punishment. Unlike the Army and Air Force, the standard for finding guilt in the Navy is preponderance of evidence.[68] This different standard is important to bear in mind if individuals from different services face NJP for similar offenses.

In terms of punishment, there are salient distinctions between the Navy and other services. No accused may be reduced by more than one grade, and Navy personnel at E-7 or above and Marine Corps personnel at E-6 or above may not be reduced in grade at NJP.[69]

Finally, as with the other services, after imposition of punishment the commander informs the accused of his or her rights to appeal and must document this briefing.[70] The officer who imposed the punishment submits the contents of the appeal and NJP to the superior authority on appeal via a forwarding endorsement.[71] Specific contents of the forwarding endorsement are detailed in the JAGMAN. When NJP is imposed within a joint command or unit and is imposed by a joint commander, in the case of Navy personnel, “the appeal shall be made to the nearest Navy Region Commander or to a subordinate GCMCA designated by the Region Commander for this purpose.”[72] In the case of Marine Corps personnel at a joint command, “an appeal from NJP, in the absence of specific direction to the contrary by the Commandant, shall be made to the Marine Corps general officer in command geographically nearest and superior in rank to the officer who imposed the punishment.”[73]

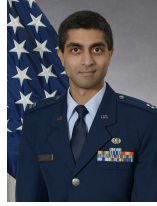
CONCLUSION

Ultimately, the goal of any administrative investigation is to figure out the facts: what happened? This goal remains constant, regardless of who is conducting the investigation or who is being investigated. The goal of NJP is to give commanders a flexible tool to maintain good order and discipline. Each service provides its own ways and means of discerning and then applying facts to promote good order and discipline. By first acknowledging these goals and realizing the basic similarities in investigation and NJP processes between the services, the deployed attorney can avoid being overwhelmed by the differences. If the JAG has a solid understanding of the principles, rules, and procedures under one service, then it is relatively straightforward to apply that understanding to the sister services. The challenge occurs in knowing where to look to obtain a fuller site picture of each service's idiosyncratic rules.

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When a commander confronts a military justice issue, he or she expects the JAG to know how to proceed and to give accurate advice. This is an opportunity for a military justice attorney to stand out in a joint environment by demonstrating familiarity and fluency in each service's military justice regulations. In doing so, JAGs can mitigate the challenges of maintaining good order and discipline and can help their commanders more effectively maintain mission focus.

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ENDNOTES

- [1] Pursuant to joint doctrine, the staff judge advocate is expected to support both investigations and military justice practice at a joint force command, including joint task forces. *See* JOINT CHIEFS OF STAFF, JOINT PUB. 1-04, LEGAL SUPPORT TO MILITARY OPERATIONS III-2 (2 Aug. 2016) [hereinafter JP 1-04]. The doctrine makes no exceptions based on the service of the judge advocate, but instead indicates that the attorneys are expected to provide this support.
- [2] U.S. DEP'T OF AIR FORCE, INSTR. 90-301, INSPECTOR GENERAL COMPLAINTS RESOLUTION para. 1.43.2.2 (28 Dec. 2018) [hereinafter AFI 90-301].
- [3] U.S. DEP'T OF AIR FORCE, SECRETARY OF THE AIR FORCE OFFICE OF THE INSPECTOR GENERAL, COMMANDER DIRECTED INVESTIGATION (CDI) GUIDE (1 Jun. 2018) [hereinafter CDI GUIDE].
- [4] Command authority may only be exercised by commissioned officers in the Air Force. U.S. DEP'T OF AIR FORCE, INSTR. 51509, APPOINTMENT TO AND ASSUMPTION OF COMMAND paras. 3.1, 3.3 (14 Jan. 2019) (hereinafter AFI 51-509). Enlisted personnel are not eligible to exercise command authority. *Id.* para. 3.5. Additionally, civilians can lead certain units in the Air Force, and can supervise and direct military and civilian personnel below them; however, civilians cannot exercise command authority over any Air Force unit or any Air Force personnel in any duty status. *Id.* para. 3.6. Civilians in charge of a unit will typically be titled as directors. *Id.* para. 3.6.1. Like unit commanders, civilian unit directors may also investigate issues within their unit, and will also follow the CDI GUIDE.
- [5] CDI GUIDE, *supra* note 3, para. 3.3.
- [6] *Id.*, Chapter 4.
- [7] *Id.*, Attachment 14.
- [8] AFI 90-301, *supra* note 2, para. 4.17.
- [9] *Id.*
- [10] CDI GUIDE, *supra* note 3, Attachment 17.
- [11] U.S. DEP'T OF ARMY, REG. 15-6, PROCEDURES FOR ADMINISTRATIVE INVESTIGATIONS AND BOARDS OF OFFICERS (1 Apr. 2016) [hereinafter AR 15-6].
- [12] *Id.*, paras. 1-8, 2-1(b).
- [13] *Id.*, para. 2-3 on who may be appointed as an IO. Absent military exigencies, an IO must be senior in rank to all individuals whose conduct is investigated. *See id.*, para. 2-3(f).
- [14] *Id.*, paras. 2-2, 2-6.
- [15] There are two DA Forms 1574, one for documenting investigations by an IO and the other for documenting investigations by boards of officers. The JAG should counsel the IO to use DA Form 1574-1, *Report of Proceedings by Investigating Officer*.
- [16] AR 15-6, para. 2-8(b).
- [17] *Id.*, paras. 2-8(c), 5-4.
- [18] U.S. DEP'T OF NAVY, JAGINST 5800.7F, MANUAL OF THE JUDGE ADVOCATE GENERAL CH-1 (JAGMAN) (1 Jan. 2019) [hereinafter JAGMAN]. The JAGMAN specifically encompasses the United States Marine Corps as well, stating "The words 'Navy' and 'Naval' as used in this Manual include the Marine Corps, except where the context indicates differently." *Id.* at i.
- [19] *Id.*, Chapter II.
- [20] *Id.*, sec. 0209. The JAGMAN also creates two additional types of commander-directed inquiries: litigation-report investigations and courts/boards of inquiry. *See id.*, §§ 0210-0211. However, we focus exclusively on the first class of investigations; the JAGMAN states, with respect to command investigations, that "[m]ost investigations will be of this nature." *Id.* sec. 0209.
- [21] *Id.*, sec. 0206, App. A-2-d.
- [22] *Id.*, sec. 0208, App. A-2-e.
- [23] Compare JAGMAN sec. 0209 and AR 15-6 para. 2-7.
- [24] JAGMAN, *supra* note 18, sec. 0209(g).
- [25] *Id.* sec. 0209(d)(2). In practice, statements can be collected on form OPNAV 5527/2, *Voluntary Statement*.
- [26] U.S. DEP'T OF AIR FORCE, INSTR. 36-2907, UNFAVORABLE INFORMATION FILE (UIF) PROGRAM ch. 4 (26 Nov. 2014) [hereinafter AFI 36-2907]; U.S. DEP'T OF ARMY, REG. 600-20, ARMY COMMAND POLICY (6 Nov. 2014).
- [27] JAGMAN, *supra* note 18, sec. 0105. Unlike the Army and Air Force administrative letters, the Navy NPLOC does not provide the recipient the opportunity to respond to the letter. *Id.* at App. A-1-a.
- [28] 10 U.S.C. § 815.
- [29] MANUAL FOR COURTS-MARTIAL, UNITED STATES PT. V (2019) [hereinafter 2019 MCM].

- [30] *Id.*, para. 1(h). The NJP process does not preclude the use of administrative measures to promote good order and discipline. *See id.*, para. 1(g).
- [31] *Id.*, para. 2(a)-(b). The 2019 MCM also notes that GCMCAs may delegate NJP duties to a principal assistant, if service regulations allow. *See id.*, para. 2(c).
- [32] 10 U.S.C. § 815(b).
- [33] Unfortunately, we have found no central repository of combatant command or joint forces command military justice instructions. Upon entering an area of responsibility, we recommend that a deployed JAG liaise with a higher command's legal office to obtain any such instructions.
- [34] U.S. DEP'T OF AIR FORCE, INSTR. 51-202, NONJUDICIAL PUNISHMENT (6 Mar. 2019) [hereinafter AFI 51-202].
- [35] *Id.*, Table 3.1, note 2.
- [36] *Id.*, para. 3.4. This implicit standard exists in all environments, not only deployed or joint environments. But, it is in joint environments that a JAG might encounter situations with subjects from different services, and so he or she must be cognizant of the different standards of proof for Navy and Army NJPs.
- [37] *Id.*, paras. 2.5-2.7. "The joint force commander has authority to impose NJP on Air Force members assigned or attached to the command, regardless of the commander's parent service, unless such authority is withheld by a superior joint commander." *Id.* para. 2.5.
- [38] *Id.*, para. 2.4.3.; AFI 36-2907, *supra* note 26, paras. 2.1.7, 2.2.7.
- [39] AFI 51-202, *supra* note 34. Although we do not focus on administrative paperwork, such as letters of reprimand, these documents can also correct deficient behavior. *See* AFI 36-2907, paras. 2.1.5, 2.2.5 on UIFs in a joint environment.
- [40] U.S. DEP'T OF ARMY, INTERIM REG. 27-10, MILITARY JUSTICE paras. 3-16 through 3-18 (1 Jan. 2019) [hereinafter AR 27-10].
- [41] *Id.*, para. 3-16(b).
- [42] *Id.*, para. 3-16(c).
- [43] *Id.*
- [44] *Id.*, para. 3-18(a)-(e).
- [45] *Id.*, para. 3-18(f).
- [46] In summarized proceedings, an accused soldier may be punished with extra duties for 14 days, restriction for 14 days, oral reprimand or admonition, or any combination of the foregoing. *See id.*, para. 3-16(a). Punishments for formal proceedings can vary, based on the grade of the accused and the grade of the imposing commander. Generally, beyond the punishments that can be imposed at summarized proceedings, in formal proceedings soldiers are potentially also subject to correctional custody, reduction in grade, and forfeiture of some pay. *See id.*, Table 3-1, *Maximum punishments for enlisted members and commissioned officers*.
- [47] *Id.*, para. 3-18(c).
- [48] *Id.*, Appendix B.
- [49] *Id.*, paras. 3-16(d)(4), 3-18(l).
- [50] *Id.*, para. 3-29.
- [51] *Id.* "If, at the time of imposition of punishment, the soldier indicates a desire not to appeal, the superior authority may reject a subsequent election to appeal, even though it is made within the 5-day period." *Id.*, para. 3-29(b).
- [52] *Id.*, para. 3-16(a).
- [53] *Id.*, para. 3-19(b), Table 3-1.
- [54] *Id.*
- [55] U.S. DEP'T OF ARMY, REG. 600-8-2, SUSPENSION OF FAVORABLE PERSONNEL ACTIONS (FLAG) para. 2-2(c) (11 May 2016) [hereinafter AR 600-8-2]. The regulation does not explicitly define favorable personnel actions; instead examples of favorable actions come from the definition of unfavorable status, and may include permanent or temporary movement or receiving an award or decoration. *Id.* at 31.
- [56] *Id.*, para 2-2(c).
- [57] *Id.*, paras. 2-2, 2-8.
- [58] JAGMAN, *supra* note 18, Chapter I, Part B.
- [59] *Id.* at i.
- [60] *Id.*, sec. 0109(a).

- [61] *Id.*, sec. 0108(a). However, the accused cannot be attached to a vessel solely for the purpose of preventing him or her from demanding trial by court-martial in lieu of NJP.
- [62] *Id.*, sec. 0109(a)(1).
- [63] *Id.*, sec. 0109(c).
- [64] *Id.*, sec. 0109(d). This same section provides guidance on what communication between the accused and counsel suffices.
- [65] *Id.*
- [66] *Id.* at App. A-1-b, A-1-c, A-1-d.
- [67] *Id.*, sec. 0110(a). A guide for conducting this hearing may be found at Appendix A-1-f to the JAGMAN.
- [68] *Id.*, sec. 0110(b).
- [69] *Id.*, sec. 0111(e).
- [70] *Id.*, at App. A-1-f.
- [71] *Id.*, at sec. 0116(c)
- [72] *Id.*, at sec. 0117(c)
- [73] *Id.*