

# PROFESSIONAL FORUM



## Rule for Court-Martial 306 A Commander's Road Map

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The Uniform Code of Military Justice (UCMJ) allows a military commander to dispose of cases of misconduct in several different ways. His options range from taking no action at all to recommending a general court-martial. But how does a commander decide which option to choose in a case involving a member of his unit?

Rule for Court-Martial (RCM) 306 in the *Manual for Courts-Martial* lists a number of factors for a commander to consider before deciding upon a disposition option. These factors provide the commander with a road map he can follow in making decisions that are critical to the soldier involved and also to the unit's welfare.

In carrying out the RCM 306 mandate that "allegations of offenses should be disposed of at the lowest appropriate level," a commander must understand that no two cases are alike; he must therefore conduct a thorough investigation in each case. Although professional law enforcement officials often handle the essentials of an investigation, the decision as to a case's ultimate disposition is the commander's. A proper investigation will help the commander avoid the obvious pitfalls of relying upon incomplete or inaccurate information, assumptions, or

stereotypes. Proper investigation will ensure that the option chosen is warranted, appropriate, and fair.

The discussion section of Rule for Court-Martial 306(b) lists several factors that can help a commander choose an option in a particular case. The following factors—"to the extent that they are known"—act as a practical checklist for a commander, while also forcing him to confront issues that he may have overlooked or considered unimportant to the case:

**The character and military service of the accused.** Character has been defined as "the combined moral or ethical structure of a person or a group." The armed forces obviously depend upon people of strong character to carry out their missions successfully. Since the character of the accused is ultimately defined by the commander's subjective view, the commander should try to find out as much as possible about him. Obviously, he should use the chain of command in this effort. The commander should be able to determine whether the accused acted "out of character" in the case at hand, because the answer to that question may weigh heavily in his choice of a disposition option.

In evaluating the military service of the

accused, the commander must closely examine the soldier's military files. Past disciplinary problems or any evidence of negative counseling without subsequent improvement may weigh against options that are favorable to the accused. On the other hand, evidence of favorable counseling, a strong service record, and the perception of the accused as a "good soldier" normally weigh in his favor. The commander must be particularly sensitive to the manner in which he disposes of cases involving perceived "good performers" and "poor performers," because the handling of such cases can have a great effect on the morale and discipline of the rest of the soldiers in the unit.

**Consider the nature and circumstances surrounding the offense.** Some offenses, obviously, are more serious than others. Offenses against persons—such as assaults, sexual offenses, and homicides—are treated differently from such minor property offenses as larceny and wrongful appropriation. But some property offenses should also be considered serious. A "barracks larceny," for instance, can seriously affect a unit and should be treated accordingly.

The circumstances surrounding an offense that a commander should consider include such things as personal problems

the accused could be having and recent events in his life that could explain any aberrant behavior. Mental and physical stress or such problems as a death in the family can cause a soldier to do some unusual things.

The commander must also consider the effect of the offense on the unit's morale, health, safety, welfare, and discipline (as he should consider the effect of all actions on the unit). Some offenses—such as barracks larceny, disrespect, disobedience, absence, and any offense in which the victim is a unit member—require the utmost consideration, because these types of cases can have a deep, long-lasting effect on the unit.

**The appropriateness of the authorized punishment to the case.** Before making a decision, a commander should consult the *Manual for Courts-Martial*, Appendix 12, Maximum Punishment Chart. Some offenses carry fairly heavy punishment. If the potential maximum punishment for an offense is out of line with the commander's sense of justice in the case, an option other than general court-martial may be warranted. Command legal advisors are always available to advise a commander on the range of potential punishments available under the various options. Making the potential punishment fit the crime is often a function of disposing of a case at the appropriate level.

**Possible improper motives of the accuser.** The accuser's motives can be a factor in some cases. In the famous example of a thief who steals a loaf of bread to feed his family, for example, obviously, his punishment will not be severe, and the motive of the accuser can then be an important consideration. Does the accuser hold a personal grudge against the accused? Would the accuser benefit by his punishment? Is the accuser a believable person? A commander who thinks improper motives could be a factor should ask himself similar questions.

**The reluctance of the victim or others to testify.** This factor is important because the failure of victims or witnesses to testify could make it impossible to prove that a crime has been committed. A commander should look for this possibility in cases involving sexual

offenses, particularly when children are the victims. A consultation with mental health professionals is often necessary in cases of child abuse, and counselors can be helpful in determining the willingness of the victim to testify, as well as the potential effectiveness of the testimony. In addition, the concept of *privilege* could come into play. For instance, a wife cannot be compelled to testify against her husband. This is important if the key witness is the spouse of the accused.

Logistical problems can also develop when rounding up witnesses for a trial. A commander in the continental United States must consider the cost of summoning witnesses from overseas to fly in and testify at a court-martial. In serious cases,



any cost may be warranted; for borderline cases, however, options other than convening a court-martial should be considered.

**The cooperation of the accused in the apprehension or conviction of others.** This factor usually works in favor of the accused. For example, a young soldier who is accused of smoking marijuana, as detected by a random urinalysis, agrees to work with law enforcement authorities to infiltrate the drug scene on his installation. The soldier then makes numerous controlled-drug purchases from several higher-ranking soldiers, including leaders in his unit. This soldier then testifies against the other soldiers, and several narcotic dealers are convicted. These facts will probably be considered positive factors in deciding what to do with the young soldier. While some punishment may still be appropriate, the fact that the soldier took risks in working with law enforcement authorities,

resulting in the conviction of illegal drug distributors, should be considered favorably. In these situations, input from law enforcement personnel can be valuable in determining the amount of cooperation the accused provided.

**The availability and likelihood of prosecution of the same or similar and related charges against the accused by another jurisdiction.** A soldier may be apprehended by civilian authorities for conduct off post in a local community, and the local authorities may want to bring the soldier to trial. In these situations, a commander is not absolutely precluded from taking action under the UCMJ for the same conduct; this would not amount to double jeopardy. Quite often, however, commanders choose to allow the civilian court case to run its course and then take some administrative action against the soldier later. Commanders must check with their legal advisors to see whether there is some working agreement with local prosecutors that may govern the handling of these situations. Commanders overseas must also check with their legal advisors regarding the existence and applicability of a Status of Forces Agreement with the host country.

**The availability and admissibility of evidence.** Although this requirement appears obvious, it can involve some complex issues. Commanders must consider everything from the logistics of obtaining witnesses for trial to such legal issues as the admissibility of evidence seized during a search or an administrative inspection. The admissibility of evidence seized from a soldier could well determine whether the government can even charge him with an offense under the UCMJ. A commander should discuss such complex legal issues with his servicing judge advocate.

**The existence of jurisdiction over the accused and the offense.** This determination is no longer much of a problem, since the U.S. Supreme Court ruled in 1984 that the government no longer has to show a "service connection" with the offense. So long as the soldier is on active duty, however, the government does have jurisdiction over him under the UCMJ.

**Likely issues.** Finally, RCM 306 directs the commander to consider any other "likely issues." This catch-all requirement is entirely appropriate since no two cases are alike, and new issues in military justice come to light every day. Considerations ranging from "gut feelings" about a soldier's character to complex legal issues are all important to the fair administration of justice.

The military justice system is run by commanders. Decisions regarding the

disposition of criminal cases and the fate of individual soldiers fall directly upon the men and women who lead these soldiers. The decisions commanders make can affect not only individual soldiers but the entire unit.

Rule for Court-Martial 306 provides a commander with a valuable checklist that will help him organize the factors that he must consider. It also alerts him to some extremely important factors that may not be readily apparent. A working knowl-

edge of the RCM 306 factors is a valuable tool that commanders at all levels can use to ensure that military justice is fairly administered.

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# Company Family Support Groups As Combat Multipliers

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During my command of a light infantry rifle company and a battalion headquarters company, I heard many comments about company family support groups (FSGs). A common question was, "Why is a company FSG needed if the battalion has one?" But ask anyone who had the misfortune to be assigned to the unit devastated by the 1986 air tragedy at Gander, Newfoundland, or whose unit deployed during Operations DESERT SHIELD and DESERT STORM or for other extended periods. These soldiers and their family members will tell you how important well-prepared and active company FSGs are. (For a discussion of battalion family support groups, see "Family Support Program," by Lieutenant Colonel Marshall L. Helena, *INFANTRY*, July-August 1990, pages 16-17.)

A company FSG should not be just a "check-the-block" requirement. All company commanders and first sergeants must understand that FSGs are essential to successful company command. More

important, they are not only essential, they are the right thing to do. An active, effective, and caring family support group (FSG) is essential to successful company command because it helps married soldiers focus on their mission. It also builds unit cohesion.

An FSG is an informal, *voluntary* group of soldiers' spouses who maintain an information network in a unit, provide a social forum spouses can use to share their mutual concerns, and organize various company activities. Soldiers whose families are cared for by the company support group can better focus their attention on their jobs and their missions. Additionally, when company FSGs keep the families informed, the soldiers know their commanders care about them, and this builds unit morale. There are several ways to establish a good FSG.

**Leaders.** The first step is the careful selection of an FSG leader. Before making this critical selection, the commander should evaluate his sources of information—first sergeant, platoon leaders, pla-

toon sergeants. An FSG leader must have the desire and the time to care for all the soldiers' family members. This is not to say that the leader must be personally responsible for all of them. On the contrary, the FSG leader should use voluntary subordinate leaders to allow information to flow in both directions to all levels of the company. The leader should also have good communicative, diplomatic, and organizational skills. These skills are required for effective company representation within the battalion FSG and for credibility among the company's family members. For instance, some of the spouses of the young, junior enlisted soldiers in my companies were reluctant to participate in the FSG if they were initially contacted by an FSG member who, in their view, "wore her spouse's rank." Rather, they preferred to join a group of people with whom they could identify and socialize.

Finally, the company FSG leader does not have to be the spouse of either the commander or the first sergeant. Our