

FACT SHEET - #3

SUBJECT: Unlawful Command Influence

1. PURPOSE. To provide information and guidance concerning unlawful command influence.

2. FACTS.

a. Article 37 of the Uniform Code of Military Justice and Rule for Courts-Martial 104, Manual for Courts-Martial, 2000, prohibit commanders from asserting unlawful command influence in military justice proceedings. Army Regulation 27-10 extends this prohibition to non-judicial punishment under Article 15, UCMJ.

b. Unlawful command influence is any action by a commander that is intended to influence or may be perceived as an attempt to influence the fair and impartial administration of military justice. Commanders at all levels must be free to use their own independent judgment in reviewing cases and in determining what if any action is appropriate.

c. The following are obvious examples of prohibited acts of unlawful commander influence:

(1) Directing or suggesting that all offenses of a specified type be tried by court-martial.

(2) Directing or suggesting that a specified minimum or maximum punishment be imposed for certain types of offenses.

(3) Attempting in any way to dissuade a subordinate from testifying on behalf of a soldier facing judicial or non-judicial action.

d. Most incidents of command influence are not as obvious as those listed above. Often a commander unknowingly asserts unlawful command influence through his comments to subordinates regarding his philosophy of discipline. Subordinates often misinterpret such comments as directing actions such as those listed above. To avoid possible problems of command influence, commanders should publish military justice policies and have these policies reviewed by their trial counsel. Also, before discussing military justice philosophy and policies with subordinates, commanders should consult with their judge advocate.

3. POC is the Administrative Law Division at 4-7414/4668.

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THE TEN COMMANDMENTS OF UNLAWFUL COMMAND INFLUENCE

1. The commander may not order a subordinate to dispose of a case in a certain way.
2. The commander must not have an inflexible policy on disposition or punishment.
3. The commander, if accuser, may not refer the case.
4. The commander may neither select nor remove court members in order to obtain a particular result in a particular trial.
5. No outside pressure may be placed on the judge or court members to arrive at a particular decision.
6. Witnesses may not be intimidated or discouraged from testifying.
7. The court decides punishment. An accused may not be punished before trial.
8. Statements and actions of staff and subordinate commanders may be imputed to the commander and constitute unlawful command influence.
9. The commander may not have an inflexible attitude towards clemency.
10. If a mistake is made, raise issue immediately.