

FACT SHEET

SUBJECT: Pretrial Punishment

1. **PURPOSE:** To provide facts regarding pretrial punishment

2. **FACTS:**

a. **BACKGROUND:** Punishment of an accused soldier prior to court-martial or imposition of an Article 15 is forbidden by the U.S. Constitution and Article 13 of the Uniform Code of Military Justice.

b. **SOME EXAMPLES OF PRETRIAL PUNISHMENT:**

(1) public humiliation of an accused-- name calling, cadences, forced association with known criminals, public spectacle Article 15, and calling a soldier out of a formation to be put in pretrial confinement.

(2) unnecessary pretrial restraint or confinement (see pretrial restraint fact sheet).

(3) unlawfully taking a soldier's money or property.

c. **DOES NOT INCLUDE LEGITIMATE CORRECTIVE ACTIONS:**

(1) TRADOC Regulation 350-6 empowers the chain of command to use legitimate corrective actions in order to deal with minor unwanted behavior as well as deficiencies in skills and knowledge.

(2) Examples include the use of pushups for negative reinforcement of minor unwanted behavior, repetitive taskings to reinforce the skills necessary for accomplishment of missions and operations, and extra instruction time to compensate for knowledge deficiencies.

(3) Used only for minor infractions of military behavior. Should be immediate and proportional.

(4) Should not be used when judicial or non-judicial punishment is contemplated.

d. **POTENTIAL CONSEQUENCES OF PRETRIAL PUNISHMENT:**

(1) curative reduction in the accused's sentence.

(2) admonition, reprimand, relief, Article 15, or even prosecution for cruelty and maltreatment of a subordinate under Article 95 of the UCMJ.

(3) A commander who expresses an opinion on the guilt or innocence of an accused soldier in front of other soldiers who may be serving as witnesses has engaged in unlawful command influence and risks prosecution under Article 134 of the UCMJ for obstruction of justice.

3. **QUESTIONS?** Each case is unique and fact specific. Call your trial counsel at 624-3544. During non-duty hours, the on-call JAG officer can be reached by pager at 943-6502.