ATZK-JAA 11 March 2002

FACT SHEET - #18

SUBJECT: Rights Warnings

1. PURPOSE. To provide information on when and how to advise suspects of their rights under Article 31b, UCMJ.

2. FACTS.

a. When a soldier is suspected of violating law or regulation, the logical first step is to question the soldier. If the soldier is suspected of a violation, and the person doing the questioning is acting in an official capacity, then a rights warning is required.

(1) A soldier is a suspect if there is a reasonable belief or suspicion the soldier committed a crime or violated a regulation.

(2) A questioner is acting in an official capacity when performing a role as a member of the command or Army. In simple terms, unless the questions are being asked for purely personal reasons, the questioning is official.

b. If a warning is required, decide how to give the warning. First, always read the warning verbatim from a rights warning card. Second, if possible, have witnesses to the warning and waiver process. Third, use a rights waiver certificate, DD Form 3881, when possible. Fourth, ensure that the atmosphere surrounding the questioning is not obviously coercive. The following common mistakes should be avoided:

(1) Not reading the warning verbatim from the card.

(2) Assuming that you do not have to provide a rights warning because of the following:

(a) I'm not the commander.

(b) I had a good relationship with the suspect.

(c) I had not yet decided to take any action.

(d) He approached me and wanted to talk.

c. Always attempt to coordinate your actions with your trial counsel or legal NCO.

d. Be prepared. Make sure you have rights warning cards available and DD Forms 3881 accessible. Commanders, first sergeants, and supervisors of soldiers should carry a rights warning card with them at all times.

3. POC is the unit trial counsel.

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