

The Commander's Role in Military Justice

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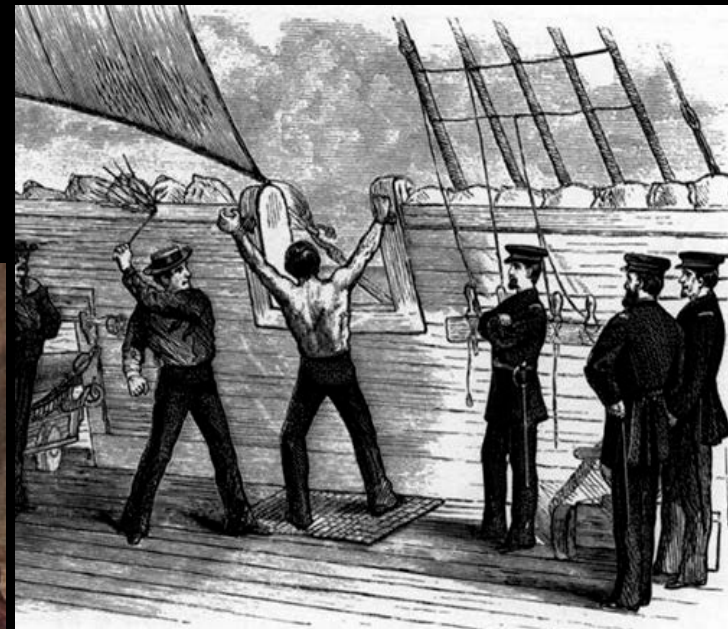
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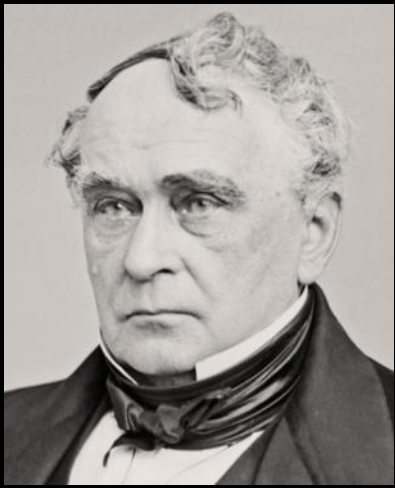
Agenda

- Brief History of Military Justice
- Military Justice Personnel
- Military Justice Process
- Your Responsibilities

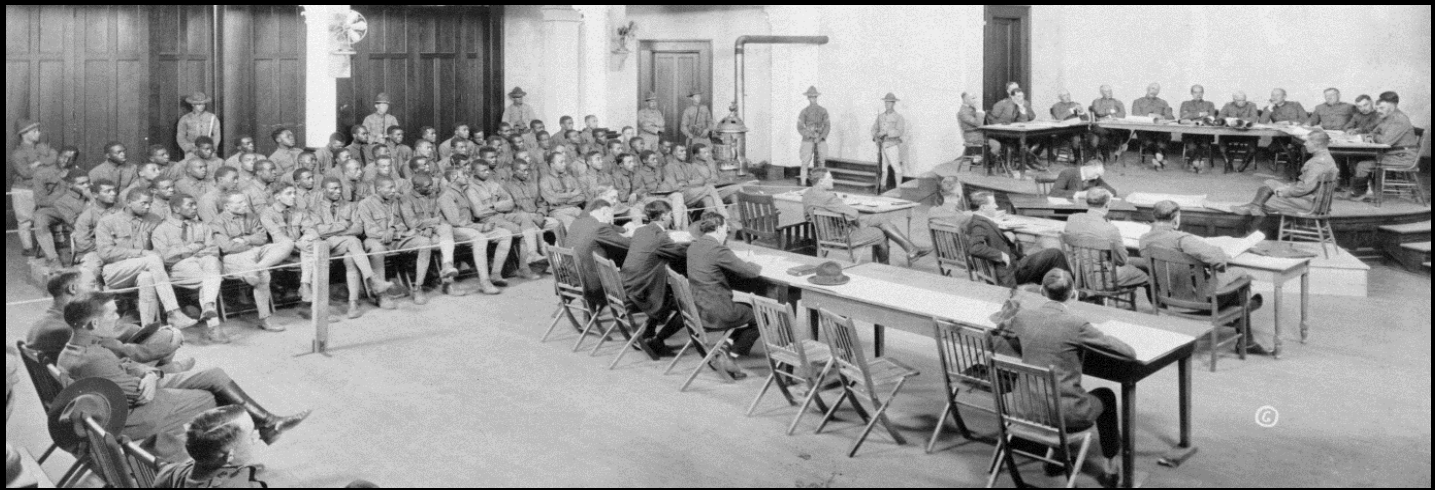
Purpose

- Explain why we have a separate system
- Discuss YOUR role in that system





Francis Lieber



Houston Riot Court-Martial, 1917

- **Articles of War** (1775, 1776, 1806, 1874, 1916, 1920, 1948)
- **Civil War** (Lieber Code) (AoW amended 1874)
- **WW I** (AoW amended 1916 and 1920)
- **WW II** (AoW amended 1948)
- **UCMJ** (Implemented 1951)

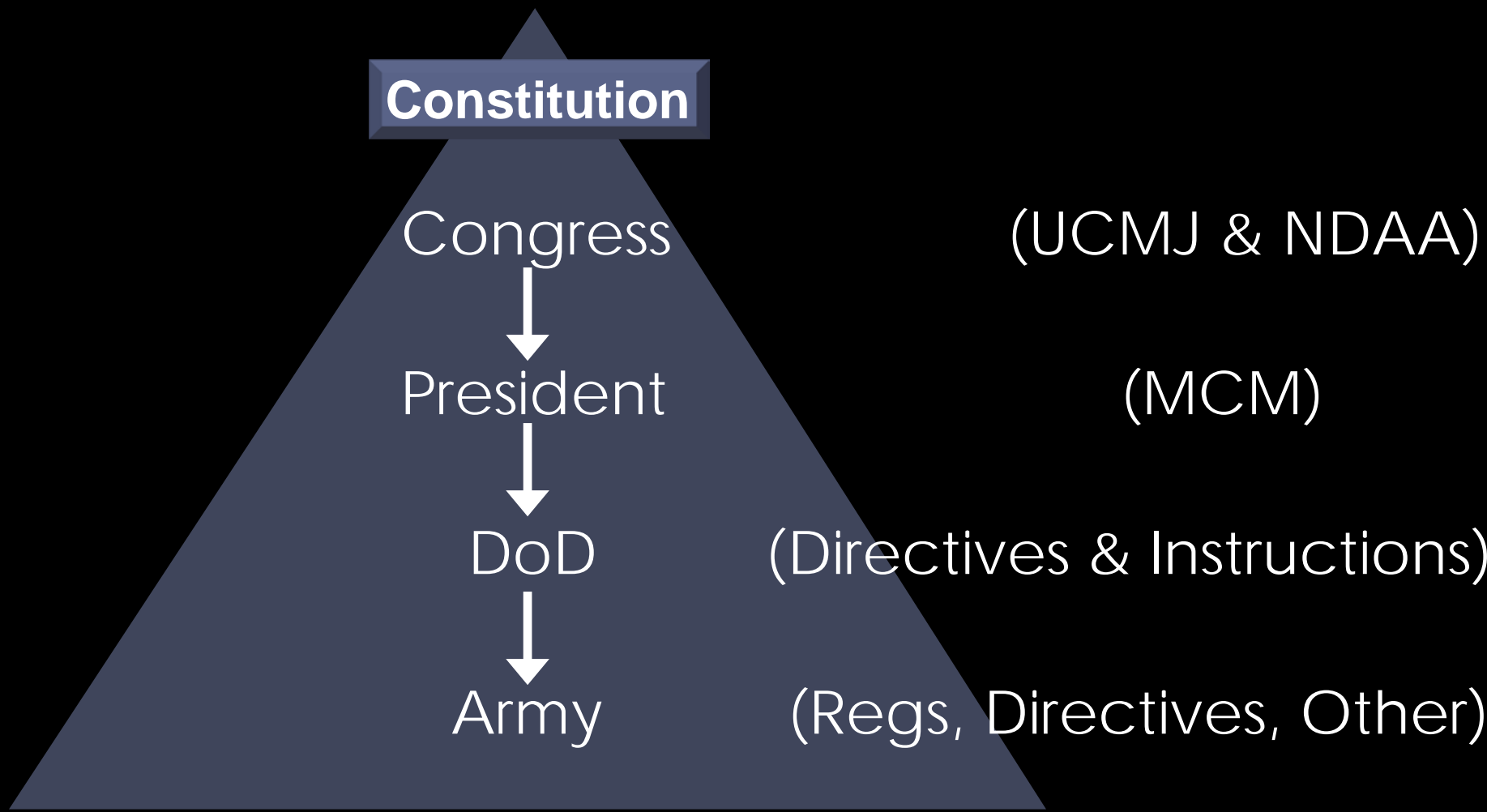


A Command-Driven System



But why?

Sources of Authority



The Manual For Courts-Martial (MCM)

PART I PREAMBLE

1. Sources of military jurisdiction

The sources of military jurisdiction include the Constitution and international law. International law includes the law of war.

2. Exercise of military jurisdiction

(a) *Kinds.* Military jurisdiction is exercised by:

(1) A government in the exercise of that branch of the municipal law which regulates its military establishment. (Military law).

(2) A government temporarily governing the civil population within its territory or a portion of its territory through its military forces as necessity may

thority of military commanders. Military law includes jurisdiction exercised by courts-martial and the jurisdiction exercised by commanders with respect to nonjudicial punishment. The purpose of military law is to promote justice, to assist in maintaining good order and discipline in the armed forces, to promote efficiency and effectiveness in the military establishment, and thereby to strengthen the national security of the United States.

4. Structure and application of the Manual for Courts-Martial

The Manual for Courts-Martial shall consist of

The purpose of military law is to promote justice, to assist in maintaining good order and discipline in the armed forces, to promote efficiency and effectiveness in the military establishment, and thereby to strengthen the national security of the United States.

(4) Nonjudicial punishment proceedings of a commander under Article 15. See Part V of this Manual.

3. Nature and purpose of military law

Military law consists of the statutes governing the military establishment and regulations issued thereunder, the constitutional powers of the President and regulations issued thereunder, and the inherent au-

[Note: The reference to 2002 in paragraph 4 is inaccurate. Amending paragraph 4 requires an Executive Order, hence the strikethrough font used above. Paragraph 4 has been amended three times since 1984; however, the text has not been updated to provide long-term naming convention guidance. See Appendix 21 in this Manual.]

The Department of Defense, in conjunction with the Department of Homeland Security, has published supplementary materials to accompany the Manual for Courts-Martial. These materials consist of a Discussion (accompanying the Preamble, the Rules for Courts-Martial, and the Punitive Articles), an Anal-

Why have a separate justice system?

MCM Preamble says:

- Promote justice
- Assist in maintaining good order and discipline
- Promote efficiency and effectiveness

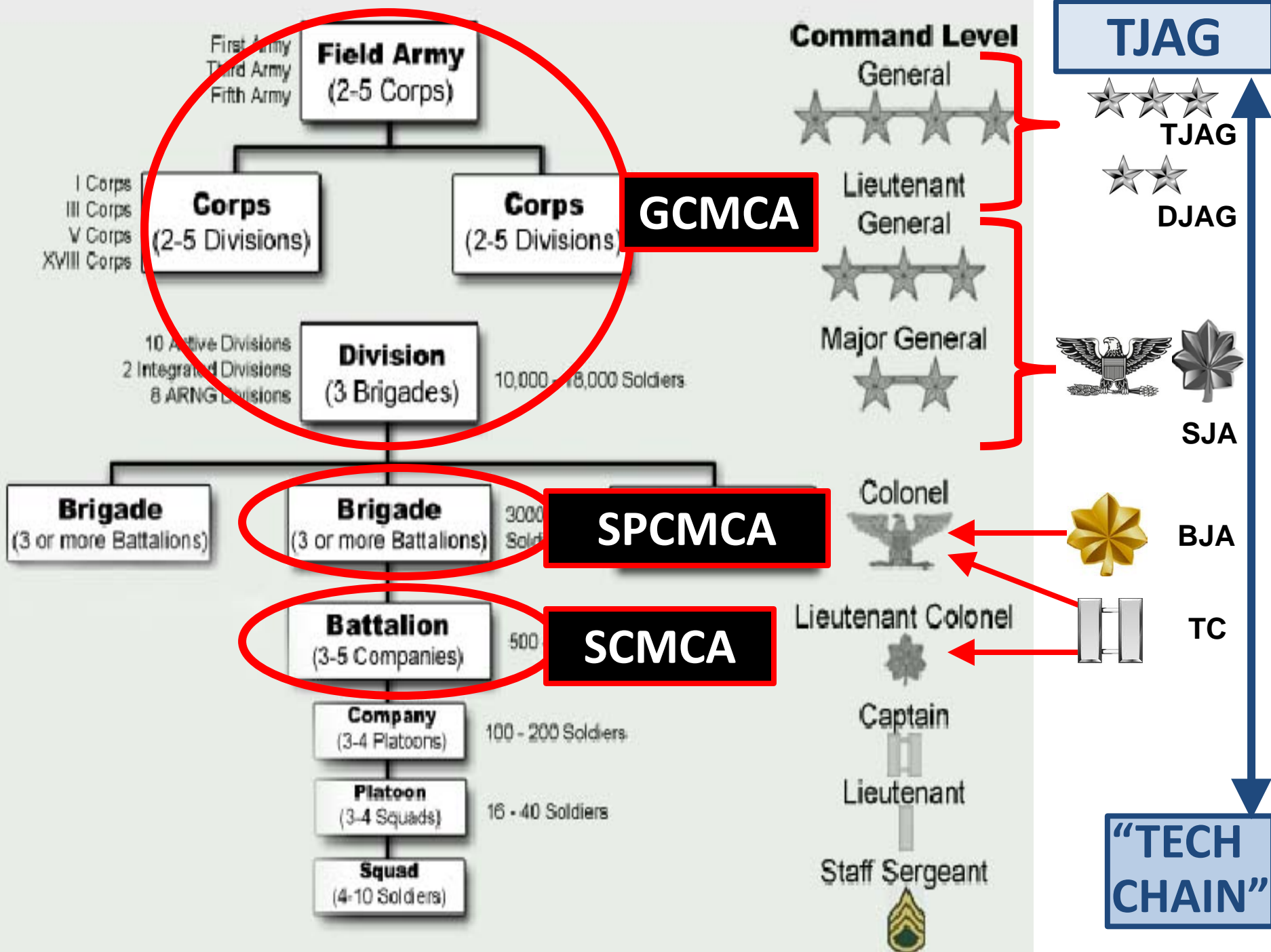
1. 24/7, worldwide JURISDICTION over Soldiers
2. Worldwide deployment
3. Need for instant mobility of personnel
4. Need for speedy trial to avoid loss of witnesses due to combat effects and military needs;
5. The peculiar nature of military life, along with stress of combat; and
6. READINESS!!

UCMJ and the Judge Advocate

- Law: (Article 6, UCMJ; 10 U.S.C. § 3037)
 1. TJAG owns and assigns all JA's;
 2. Convening Authorities shall at all times communicate directly with their staff judge advocate
 3. SJA's are entitled to communicate up/down the chain (Tech Chain)
- Mission: Deliver professional, candid, independent counsel and full-spectrum legal capabilities to the command
- Role:
 1. Personal staff to commanders and client is the Army, OR
 2. Represents individual Servicemembers

- Staff Judge Advocate (SJA)
- Command Judge Advocate (CJA)
- Brigade Judge Advocate (BJA)
- Trial Counsel
- Special Victim Prosecutor (SVP)

- Legal Assistance Attorney
- Defense Counsel
- Special Victim Counsel (SVC)
- Military Judge



Military Justice Process

- Key JAG Players

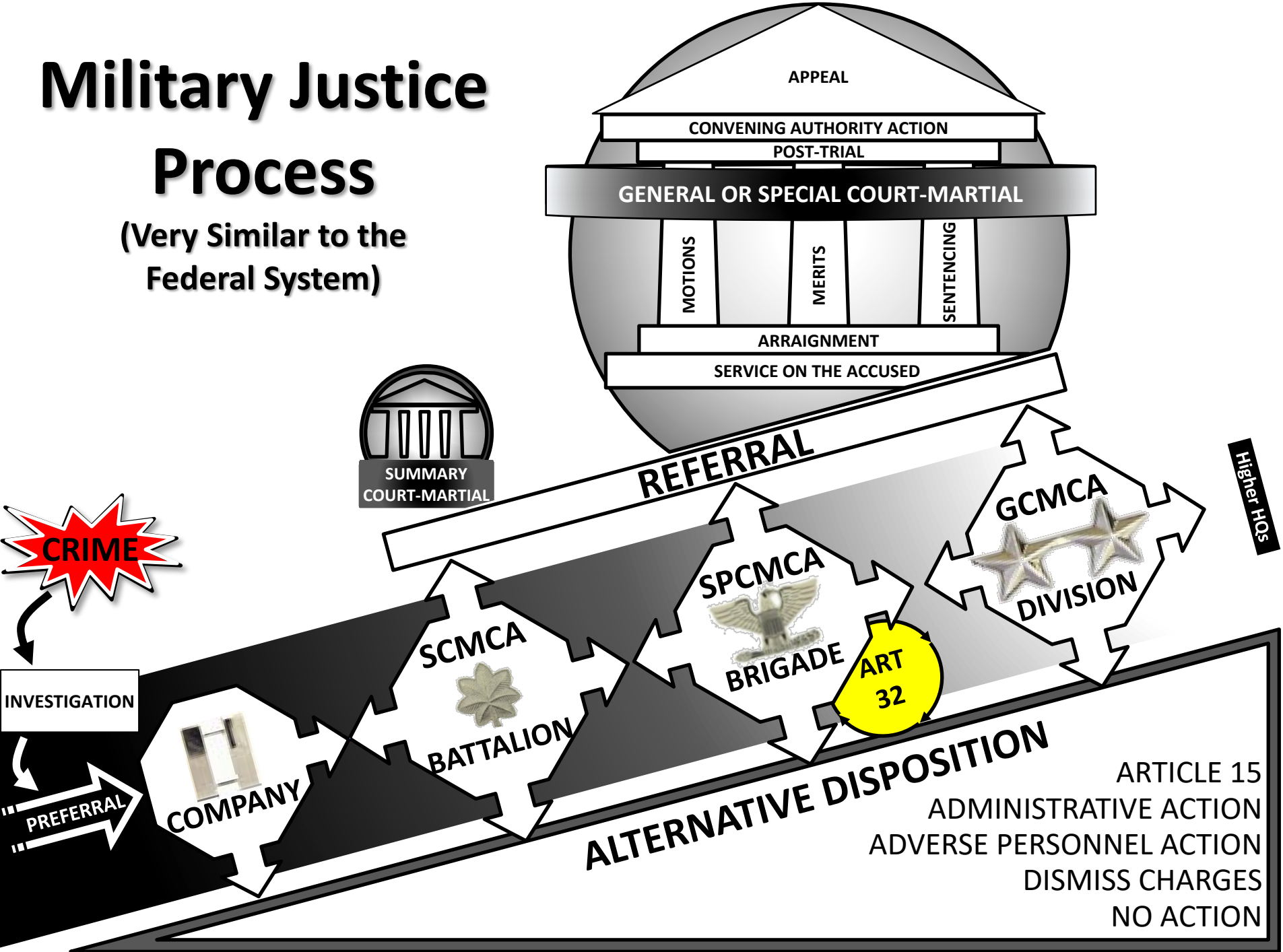
- Military Judge
- Trial Counsel
- Defense Counsel
- Special Victim Prosecutor (SVP)
- Special Victim's Counsel (SVC)
- Brigade / Command Judge Advocate
- MJ Staff (paralegals, court reporter)
- Administrative Law Attorney
- Staff Judge Advocate
- Convening Authority

Convening Authority

- Role:
 - A **quasi-judicial** decision maker and as commander, the **custodian of good order and discipline**
- Owns the Military Justice Process
 - Appoints Preliminary Hearing Officers (SCMCA, SPCMCA, GCMCA)
 - Prosecutorial—Referral of Charges (SCMCA, SPCMCA, GCMCA)
 - Orders Depositions (GCMCA)
 - Selects the Court-Martial Panel (GCMCA)
 - Grants Pre-Trial Delay (SPCMCA, GCMCA)
 - Appoints Experts (GCMCA)
 - Takes Post-Trial Action—Clemency (GCMCA)
 - Immunity (GCMCA)

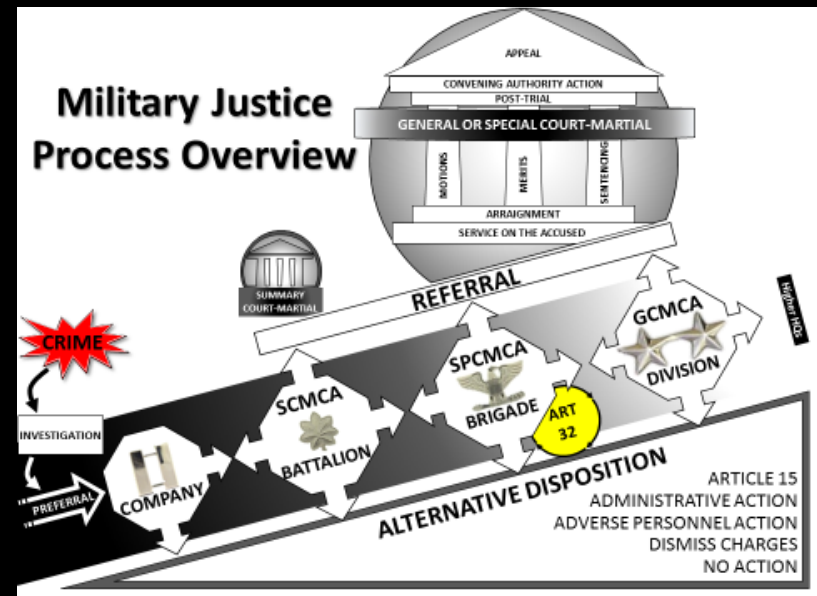
Military Justice Process

(Very Similar to the Federal System)



Command Decision Points

1. Report of an offense
 - SAIRO, CCIR, other reports
 - Restriction or Confinement
 - Protect the Victim
2. Investigation (RCM 303)
 - Inquiry (RCM 303) or Investigation (AR 15-6)
3. “Initial Disposition” (RCM 306)
 - Prefer Charges / Refer to court-martial
 - Execute NJP
 - Take Admin Action or Counsel
 - Take No action



Disposition Considerations

1. Lowest CDR starts (except sex assault)
2. Consider factors (severity of crime; weight of evidence; victim; good order and discipline; etc.)
3. Timeliness / Systems
4. Avoid UCI

Notice of the Offense



- RCM 303
 - “Shall” investigate
- How is up to you
 - MPI/CID
 - CDR inquiry
 - 15-6 Investigation
- Sex Offenses to CID
- Let the IO or CID handle it (stay neutral)
- Issue MPO as needed

Restriction or Confinement?

RESTRICTION:

1. Conditions on liberty
 - a. No-pass
 - b. No Contact (MPO)
 - c. Restriction
2. CANNOT confine or otherwise hold

CONFINEMENT:

1. Probable cause that Soldier committed offense; AND
2. Flight risk, or, future serious misconduct; AND
3. Less severe forms of restraint “were considered”



Start Here!!

Disposition Options

Administrative Action	Nonjudicial Punishment (NJP)	Courts-Martial
On-the-spot correction	Summarized Article 15	Summary Court-Martial
Corrective Training	Company Grade Article 15	Special Court-Martial
Counseling	Field Grade Article 15	General Court-Martial
Pass Revocation	General Officer Article 15	(Chapter 10)
Bar to Reenlistment		
Administrative Reprimand		
Administrative Separation	(minor offenses)	(major offenses)

OTH, General, or Honorable

DD, BCD, Dismissal

**Preponderance
or lower**

Beyond a Reasonable Doubt

MRE DON'T Apply

MRE DO Apply

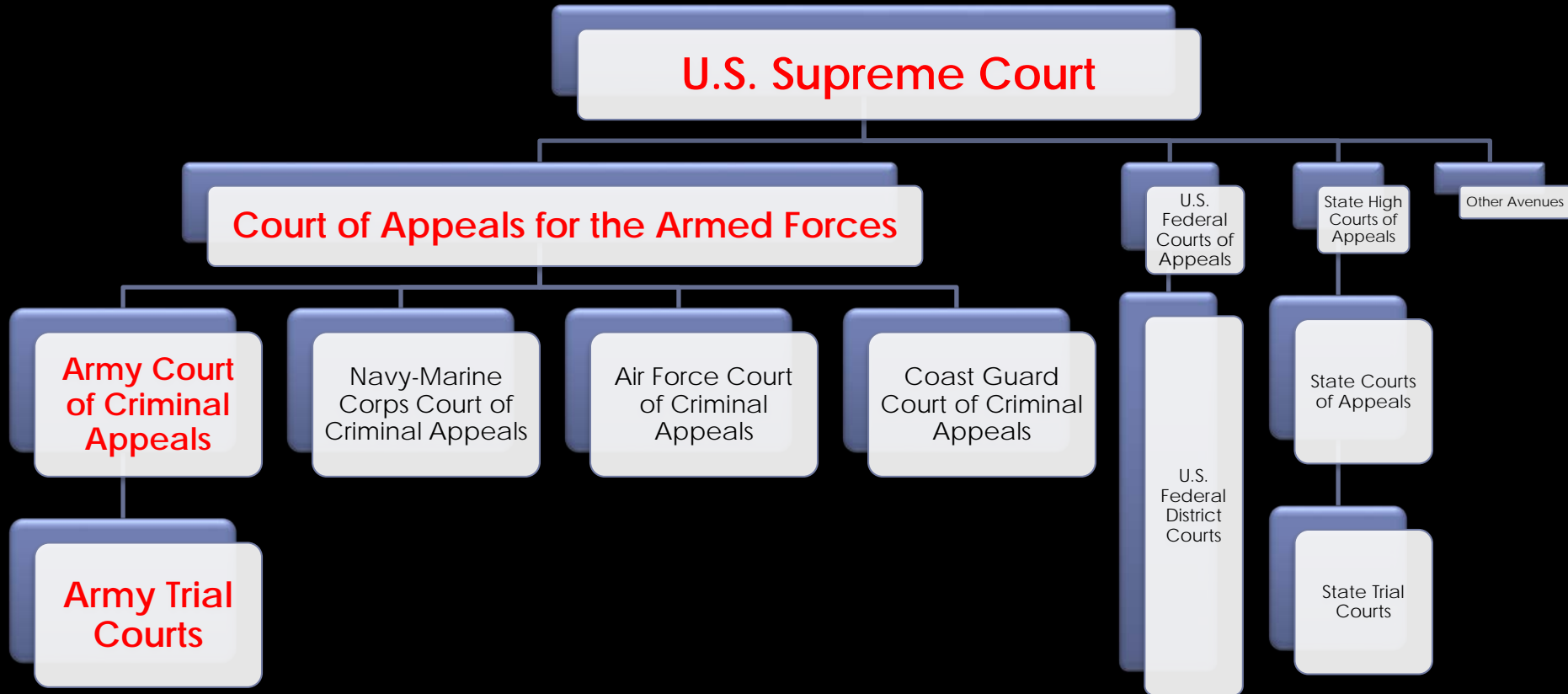
Problems

Pretrial punishment

Extra training



Appellate Process



Q&A