



Soldiers participate in a training video intended to familiarize the Alaska National Guard force with nonjudicial punishment. (U.S. Army video screen capture courtesy of Alaska National Guard Public Affairs)

Nonjudicial Punishment

By Master Sgt. Gina M. Onesto-Person

Published in *From One Leader to Another Volume II* by the U.S. Army Command and General Staff College in 2015

Punishment taken against military members has been around in some form since the very beginning of our Army; however it was formalized in 1920 and was then referred to as "disciplinary punishments." Congress approved Article 104 under the Articles of War where you will find information on disciplinary punishments. There are differences and some similarities in the punishments that can be imposed today. In 1920, the punishments that a commander could impose for minor offenses were admonition, reprimand, withholding of privileges-not exceeding one week, extra fatigue (work not exceeding one week, restriction to certain specified limits not to exceed one week, and hard labor without confinement not to exceed one week; it did not include forfeiture of pay or confinement under guard. (For more information on this read *The Article*

of War, 1920). Much like today, a Soldier could demand a trial by court-martial and also appeal the punishments imposed. It is amazing how far nonjudicial punishment has come and evolved. In 1950, The Uniform Code of Military Justice was enacted which outlined procedures for processing this disciplinary system. It is difficult to determine when the actual forms were established, but it doesn't seem that the Summarized Article 15 appeared until the 1980s according to the Judge Advocate General School Historian, Mr. Fred Borch.

There are three types of nonjudicial punishment established by Article 15 of the Uniform Code of Military Justice. The first type is the Summarized Article 15 which is normally imposed by a company grade officer. The maximum punishment allowed with a Summarized Article 15 is 14 days extra duty and/or restriction,



Mississippi Army National Guard Maj. Jonathan Bullock (far right), a Trial Defense Council, questions the accused during the 4th annual 167th Theater Sustainment Command mock court martial, August 2, 2018, at the Calhoun County Courthouse, Anniston, Alabama. Military judge, Lt. Col. Brian Howell, presides. (U.S. Army photo by Sgt. Jeremy Dunkle, 167th Theater Sustainment Command)

admonition or oral reprimand, or any combination of these. The second type is the company grade Article 15, also given by a company grade Officer which carries a maximum punishment of reduction of one grade for E-4 and below, forfeiture of seven days pay, 14 days extra duty and/or restriction, admonition or oral reprimand. Of note, noncommissioned officers cannot be reduced through a company grade Article 15. The third type is a field grade Article 15 which is imposed by a field grade officer with a maximum punishment of reduction of one or more grades for E-4 and below, and one grade for E-5 and E-6, forfeiture of half a month's pay for two months, extra duty and restriction for 45 days or, if given by itself, without extra duty, restriction for up to 60 days, and oral admonition or reprimand. It is the commander's discretion as to which type of Article 15 should be imposed. Typically the level of Article 15 should be commensurate with the type of offense ensuring that an "escalation of force" is exercised. The Soldier has the right to demand a trial by court-martial and also to appeal the punishment to the next higher commander if the Soldier feels the punishment was unjust. Any portion of the punishment may be suspended on a Summarized Article 15 for up to three months. Company grade and field grade Article 15s can be suspended for up to six months. A suspended punishment is a punishment that is not acted upon during the suspended time unless the Soldier commits another violation of the UCMJ. It is similar to probation,

and the Soldier is supposed to remain flagged during the duration of the suspension. A commander is the only person who may impose nonjudicial punishment.

Non-punitive measures, such as corrective training, are familiar to all NCOs and should be used before nonjudicial punishment is imposed. The NCO Creed states, "I will be fair and impartial when recommending both rewards and punishments." Occasionally NCOs take this sentence of our creed to mean more and they slip up by telling their Soldier that they are going to "give them an Article 15." However, as the NCO Creed indicates, an NCO can only recommend nonjudicial punishment. The power

to make these recommendations should not be taken lightly. NCOs should attempt non-punitive measures first and only turn to nonjudicial punishment as a last resort. Some impassioned NCOs only wanting the best for their Soldiers will occasionally forget the importance of the non-punitive measures, or, in their hurry to help the Soldier, they do not invest the adequate amount of time to ensure that the corrective training was effective. In so doing, their best efforts to assist the Soldiers often ends up being counterproductive. NCOs also need to ensure that they are using every available tool to correct a deficiency. This is all part of teaching, mentoring, and coaching. For example, if there is a Soldier that fails to report to formation and that Soldier is only given corrective training to show up 10 minutes earlier than normal, can that truly be effective? It may be for some, but what if that Soldier is really tested and given extra specific times and uniforms to show up all around post? As long as the NCO ensures that the Soldier is compliant, wouldn't that be a more effective solution? The bottom line is that NCOs need to know their Soldiers in order to provide the most effective measures for that individual.

There are many myths out there about Article 15s, similar to the example previously mentioned in which NCOs are authorized to give an Article 15. For instance, Soldiers might say that they have to have three FTRs in order to receive an Article 15. A statement like that is untrue. A commander can give an Article 15 at any

point in time for any violation of the Uniform Code of Military Justice. Another example is that an Article 15 cannot be imposed if corrective training was given. That, too, is also very untrue. While the commander can charge the Soldier with failure at corrective training combined with the original offense, there is nothing that prohibits the commander from imposing nonjudicial punishment even though corrective training was executed properly or otherwise. There are three things a commander should consider when deciding on whether to impose an Article 15 per Army Regulation 27-10. A commander will personally exercise discretion in the nonjudicial punishment process by—(1) evaluating the

On appeal, a commander can lessen a punishment but cannot increase it. One more common myth is that in the period during which a Soldier has received a vacated suspended punishment, the commander cannot give that Soldier another Article 15. That is incorrect. There is nothing that prohibits the commander from vacating a suspension and executing another Article 15 for the same offense.

In my experience, the most difficult part of the Article 15 process is in preparing the proper counseling statements. Many leaders have problems with the five Ws (who, what, when, where, and why). The reason is not all that surprising: Soldiers sometimes will not come clean



U.S. Army trainees assigned to Foxtrot 1st Battalion, 34th Infantry Regiment conduct push-ups for corrective training in the barracks on the first day of Basic Combat Training at Fort Jackson, South Carolina, June 12, 2017. (U.S. Army photo by Sgt. Philip McTaggart, 982nd Combat Camera Company)

case to determine whether proceedings under UCMJ, Article 15 should be initiated, (2) determining whether the Soldier committed the offense(s) where UCMJ, Article 15 proceedings are initiated and the Soldier does not demand a trial by court-martial and (3) determining the amount and nature of any punishment, if punishment is appropriate, which can be found in AR 27-10, 3 Oct 11 edition. Another myth is that when a Soldier appeals an Article 15, the Soldier is appealing the specific Article 15 charges. The reality is that when a Soldier appeals, the Soldier is appealing the punishment, not the offenses.

on the alleged offenses. What leaders have to understand is that in order to support a charge on an Article 15, all of the elements must be met under the Article in the Manual for Courts-Martial. If all the elements are not met, that charge cannot be imposed. Of course, this can frustrate the command. But if they ensure that the counseling is done properly, the allegedly offending Soldier will see justice through the Article 15 process. For example, for FTR, the counseling needs to contain time, date, and location. Many times the location is missing, and that is one of the elements that must be met. The rule of

thumb of the five Ws will go a long way toward alleviating this or any other issue with any of the articles, and will go far in ensuring that leaders adequately address the offenses within their counseling statements.

NCOs must remember that recommendations for an Article 15 should be the last resort in order to maintain discipline. Soldiers deserve the opportunity to correct their deficiencies either on their own or through non-punitive measures as they grow in the Army. Some Soldiers will correct themselves after experiencing corrective training, some after an Article 15, and others just might not be the right fit for the Army and need to be administratively separated. I have had to recommend two Article 15s and support two recommendations when

other NCOs wanted to recommend them in my 19 years of service. I have been fortunate throughout my career to see corrective training work to address Soldier issues. It might be true that corrective training was conducted differently ten to 15 years ago. However, from 1920 until now, one thing remains constant: when NCOs take the time to know their Soldiers and to train them properly, their Soldiers have the best chance for success.

If you would like to research more information on this topic I recommend you turn to [Army Regulation 27-10](#), Military Justice (chapter 3), [The Articles of War \(1920\)](#), the [Military Justice Act of 1968](#), the [Military Justice Act of 1983](#), and the [Manual for Courts-Martial](#). ■



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