

DEPARTMENT OF THE NAVY
MILITARY SEA TRANSPORTATION SERVICE, PACIFIC AREA
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From: Commander Military Sea Transportation Service,
Pacific Area
To: Distribution List

Subj: Authority and Responsibility of commanding officers
under UCMJ

Ref: (a) JAG Manual

1. Purpose. To clarify the policy for authority and responsibility under UCMJ.

2. Background. A recent inquiry indicated the desirability of a statement of policy concerning the above subject under the following four conditions:

a. When a Navy or Marine unit with its own commanding officer or officer in charge is embarked for transportation;

b. When an Army or Air Force unit with its own commanding officer or officer in charge is embarked for transportation;

c. When casual Army or Air Force personnel are embarked for transportation;

d. When civilians, whether dependents or employees of the military departments and their dependents, are embarked for transportation.

3. Information. This inquiry was referred to the District Legal Officer, who responded as follows:

a. For USS transports:

(1) When a Navy or Marine unit having its own commanding officer is embarked, both the unit commanding officer and the ship commanding officer, as a matter of law, have court-martial and mast authority over the embarked

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unit personnel. Punishment imposed by either commanding officer upon a member of the embarked unit would be legal. However, the unit commanding officer will not exercise the authority but will in all cases defer to the ship commanding officer. Similarly, the commanding officer of a unit attached to the ship for duty therein will defer to the ship commanding officer. This policy is mentioned in sections 0101b(3) and 0106b of reference (a).

(2) As to punishment authority over embarked Army and Air Force unit personnel, while the law provides that each armed force has jurisdiction over all persons subject to the Code, paragraph 13, MCM, states as a matter of policy that the power will not be exercised unless specifically authorized by the President or the Secretary of Defense. The President made an exception to this policy in Executive Order 10428 by delegating to SECDEF the authority to empower a joint commander to convene courts-martial on all members of his joint command. The commanding officer of a USS transport is not a joint commander. He therefore should not exercise punishment authority over embarked Army or Air Force units. The ship commanding officer has at least two alternatives: (1) He may permit the embarked unit commanding officer to convene courts or hold mast; or, (2) he may report the non-Navy military offender to his parent armed service.

(3) For the reason stated in (2) above, the ship commanding officer has no court-martial or punishment authority over embarked casual personnel of the Army and Air Force. When a casual embarked person becomes an offender, the ship commanding officer should make an appropriate report to the offender's parent armed service. The commanding officer of a ship at sea has traditionally been responsible for the protection of life and property at sea, and pursuant to the exercise of the authority associated with this responsibility he has the duty and the right, if necessary, to confine an offender, restrict him in quarters, put a guard over him, put him in irons or a strait jacket, or take any other reasonable and necessary protective action. He may take such action without reference to the UCMJ inasmuch as such action could not possibly be categorized as punishment.

(4) The ship commanding officer has no court-martial or punishment jurisdiction over embarked dependents. The Code does give him court-martial jurisdiction over civilian employees, however; but this jurisdiction has been severely limited by the courts. Because of the tenuous legal problem, and also because of potentially bad public relations repercussions, a commanding officer should never exercise court-martial or punishment authority over embarked civilian employees without prior permission from superior authority. Where an embarked civilian employee commits a minor offense the commanding officer should report the offense to the civilian's employer for appropriate disciplinary action under NCPI. Where a major offense occurs, the commanding officer may deliver the offender to the United States Marshal or to the United States Attorney at the next U. S. port of call. Pending arrival at the next port the commanding officer may exercise his inherent protective power as it is outlined in (3) above.

b. For USNS transports:

(1) COMILDEPT has been authorized by the Secretary to convene special courts-martial on military personnel under his command. It follows that COMILDEPT has summary court-martial authority and Article 15 punishment power over the same personnel. But ordinarily, as a matter of policy only, the unit commanding officer will exercise the authority. See section 0101b(3), reference (a), for a statement of policy for units embarked in the ship for duty.

(2) COMILDEPT, because of paragraph 13, MCM, should not exercise court-martial authority over personnel of another armed service unless specifically authorized to do so by the President or by the Secretary of Defense. Embarked non-Navy unit personnel are subject to the court-martial authority of the embarked unit commander. Embarked non-Navy casual personnel who become offenders should be reported to their parent armed service. The shipmaster, while he has no court-martial or Article 15 punishment power, nevertheless is responsible for the protection of life and property on board his vessel, and pursuant to the exercise of the authority associated with this responsibility he has the duty and the right, if

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necessary, to confine any embarked offender whether military or civilian, or to take any other reasonable and necessary action to protect the vessel and those on board. The master's authority is based upon tradition, and it is an authority which does not reside in any embarked military commander.

(3) COMILDEPT has no court-martial or punishment jurisdiction over embarked dependents or embarked civilian employees. The embarked sponsor of a dependent should be held directly responsible for the conduct of the dependent, and where the sponsor is not on board it would be proper, depending on the seriousness of the case, to put the dependent ashore at the next American port. Where an embarked civilian employee commits a minor offense COMILDEPT should report the offense to the civilian's employer for appropriate disciplinary action under NCPI. As to major offenses, whether committed by a dependent or a civilian employee, COMILDEPT may recommend that the master of the ship deliver the offender to the United States Marshal or to the United States Attorney at the next U. S. port of call. Pending arrival at the next port the shipmaster may exercise his inherent protective power as outlined in b(2) above.



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