



Article 31 Rights Advisories

Staff judge advocates (SJAs) must ensure investigators and leaders receive thorough and frequent Article 31 training. Investigators or members of the command who fail to provide required Article 31 advisories, or seek incriminating information after a member has expressed a desire to remain silent, undermine the pursuit of good order and discipline.

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Members have significantly more protections under Article 31 than under the Fifth Amendment of the Constitution. For example, unlike Fifth Amendment *Miranda* warnings, Article 31 advisories must be given by all Service members seeking to question a subject member about misconduct (not merely law enforcement) and regardless of whether the subject is in custody. Further, unlike *Miranda* warnings, Article 31 advisories must alert the subject to the offense they are suspected of. The expanse of Article 31 protections is designed to accommodate the inherently coercive environment of the military. Unlike the relationship between a law enforcement officer and a civilian, the relationship between a military leader and a subordinate is colored by the chain of command, a substantial disparity in rank and position, and an extraordinary power difference. These dynamics are especially coercive when a leader questions a subordinate after they invoke Article 31 protections or when a leader offers enticements or assurances (e.g., “don’t worry, this is all just between you and me”).

The high regard for Article 31 protections within the military communicates faithful adherence to the law and the Constitution. The issue is not whether a member’s Article 31 rights will be safeguarded, but how. Leaders who do not respect Article 31 protections invite enforcement by harsher mechanisms: exclusion of the statement or abatement of the proceedings. These consequences jeopardize the preservation of good order and discipline. Accordingly, scrupulous adherence to Article 31 protections is a leadership imperative and necessary for justice. SJAs underwrite these aims by: conducting thorough and frequent training; attending non-judicial punishment (NJP) proceedings whenever possible; and providing advice upholding the sanctity of Article 31.

Best practices for SJAs.

1. **Train the entire command team and subordinate commanders** on Article 31 protections and the imperative to scrupulously respect any invocation. To the extent practical, this training should extend to commanders exercising company-level NJP authority.
2. **Personally attend all NJP proceedings** conducted by a general court-martial convening authority or their principal assistant. Send the deputy SJA if the SJA is unavailable.

Best practices for commanders (topics for SJAs to emphasize during training).

1. Do not allow any member to be questioned about a potential major criminal offense (e.g., an offense involving death or serious injury, sexual misconduct, the loss or compromise of classified information, significant property damage, etc.) without first discussing the case with the SJA.
2. Always conduct an Article 31 advisory before questioning any member who is suspected of committing an offense punishable under the UCMJ when the questioning relates to the offense (e.g., asking questions or making statements that are likely to elicit an incriminating response).

3. If a member is suspected of an offense, Article 31 advisories should be given liberally. However, they are not required to question all members, only members *suspected* of an offense. Thus, an advisory is not required to question a witness who is not suspected of an offense; however, if they make a potentially incriminating disclosure during the interview, an advisory is required before further questioning. When in doubt, provide the advisory.
4. Conduct Article 31 advisories verbally and in writing, and have the subject member acknowledge their understanding and elections by signature.
5. If a member offers a vague or wavering invocation, stop the questioning and treat it as a conclusive invocation.
6. Provide a cleansing warning if a member suspected of an offense was previously questioned about that offense and did not receive an Article 31 advisory.
7. If, while questioning a member, the command begins to suspect that a member has committed an additional or different offense from the one that initially prompted the questioning, the command must immediately stop the questioning and complete a new advisory that explicitly includes the additional or different offense.
8. Do not question a member who is under the influence of drugs or alcohol, even if they appear to waive their Article 31 rights. For a proper waiver, a member must possess a physical and mental condition sufficient for a knowing, intelligent, and voluntary waiver of their Article 31 rights.
9. A confession must be voluntary. Do not use threats or false promises to elicit an incriminating statement because this may preclude the use of the statement at a later proceeding.
10. Only a general court-martial convening authority, or their designee, has authority to grant immunity or leniency in exchange for testimony. Accordingly, do not promise a member that their statement will not be used against them.
11. Never permit assurances, enticements of confidentiality, or claims that a statement has limited use or effect. These practices will imperil an otherwise valid Article 31 advisory.
12. Best practices for NJPs:
 - Prior to the NJP, ensure the subject receives a complete Article 31 advisory (for enlisted Marines, the senior enlisted advisor should provide the advisory; for officers, the deputy commander or executive officer should provide the advisory). Further, prior to the proceeding, the commander conducting the proceeding should be notified of whether the subject has elected to remain silent. This notice informs the commander about whether they should question, or otherwise elicit a response from, the member during the NJP proceeding.
 - If an invocation has occurred and the member attempts to make a statement during the NJP proceeding, the member should be stopped from speaking and immediately provided with an Article 31 advisory. The member should only be permitted to make a statement after the advisory is provided and documented.

Resources for commanders.

- **Article 31 Rights Advisory Template.** Appendix A-1-n of the JAGMAN (JAGINST 5800.7G) is a written Article 31 rights advisory template and includes a cleansing warning. The JAGMAN can be accessed here: <https://www.jag.navy.mil/documents/NJS/Quickman.pdf>
- **Article 31 Quick Reference Guide.** The USN/USMC Commander's Quick Reference Legal Handbook (QUICKMAN) includes an excellent, two-page quick reference on Article 31. The QUICKMAN can be accessed here: https://www.jag.navy.mil/library/instructions/JAGINST_5800.7G.pdf.

Points of contact.

Direct any questions or concerns about this practice advisory to the JMJ Branch Head at (703) 693-9005, the JMJ Deputy Branch Head at (703) 693-9299, or the Trial Counsel Assistance Program (TCAP) at (703) 614-1513.