

UNLAWFUL COMMAND INFLUENCE

As the military courts have often emphasized, unlawful command influence (UCI) is the mortal enemy of military justice. The courts have been equally quick, however, to distinguish proper command influence from UCI. The key is to understand what constitutes proper involvement by the commander, and what crosses the line into UCI.

- Superior commanders are not prohibited from establishing and communicating policies necessary to maintain good order and discipline. They are also free to pass on their experience and advice regarding disciplinary matters. Having done so, however, the superior commander must then step back and allow the subordinates to exercise their discretion in the matter, examples of **proper or lawful** command involvement are:
 - Withholding a subordinate's authority to act in an individual case or types of cases
 - Requesting a subordinate to reconsider his/her action in light of new evidence
 - Consulting with subordinates on judicial decisions at the subordinate's request; however, the subordinate alone must decide what action to take
 - "Tough talk" policy letters, talks and briefings on issues of concern are permissible so long as they are not indicative of an inelastic attitude or an attempt to influence the finding and sentence in a particular case
 - Focusing on problem areas is permissible, examples include: characterizing illegal drug use as a threat to combat readiness or referring to "ferreting out" illegal drug dealers as a legitimate command concern
- Superior commanders must not make comments that would imply they expect a particular result in a given case or type of cases, examples of **unlawful** command influence include:
 - A commander states at an officers' call that all drug users must be removed from the Air Force. Potential court members for an upcoming court involving drugs are present. The inference may be that the commander expects the court to impose a punitive discharge.
 - A commander makes comments on his displeasure at the light sentences adjudged by previous courts. The concern is future panel members may adjudge a harsher sentence than they might otherwise in order to please the commander.
 - A commander expresses his concern about court-martial cases in which subordinate commanders preferred charges, recommended a court, and then testified during sentencing on behalf of the accused. The suggestion was they refrain from testifying for

the accused in upcoming courts. Any attempt to discourage a witness from testifying is improper.

- A commander, speaking informally to a group of officers, jokingly says he does not care how long a particular court takes, as long as the members “hang the SOB.” The impression is that he believes the accused to be guilty and expects the members to agree.
- A convening authority may not exclude classes of individuals from serving as court members if done to obtain a more severe sentence
- Interfering with a party’s access to witnesses
- Intent to actually interfere with a case is not required. Command actions that unintentionally discourage witnesses to testify or cause witnesses to alter their testimony may constitute UCI.
- Commanders at each level are given authority by virtue of their commands to impose discipline upon subordinates within their command. For example, a squadron commander may discipline anyone assigned to his/her squadron. Since that squadron would normally fall under a group and then a wing, those squadron members would likewise be subject to discipline from their group and/or wing commanders. Each commander in the chain must remain free to exercise his/her own discretion to impose discipline without inappropriate interference from a superior commander.
 - The key consideration is whether a commander is taking disciplinary action based upon that commander’s own personal belief that the disciplinary action is appropriate or whether the commander is merely acquiescing to direction from a superior to impose the particular discipline
 - A superior commander must not direct a subordinate commander to impose a particular punishment or take a particular action. To do so would constitute UCI because the decision was not that of the commander taking action or imposing punishment, but rather that of the superior commander.
 - The superior commander can remove or withhold the authority from the subordinate commander to act in a particular case or type of cases and impose punishment himself

REFERENCES:

MANUAL FOR COURTS-MARTIAL, UNITED STATES (2012)

AFI 51-201, *Administration of Military Justice* (6 June 2013), Including AFGM
25 November 2013