

of evidence introduced as corroboration is a factor to be considered by the trier of fact in determining the weight, if any, to be given to the admission or confession.

(5) *Procedure.* The military judge alone is to determine when adequate evidence of corroboration has been received. Corroborating evidence must be introduced before the admission or confession is introduced unless the military judge allows submission of such evidence subject to later corroboration.

(d) *Disclosure of Statements by the Accused and Derivative Evidence.* Before arraignment, the prosecution must disclose to the defense the contents of all statements, oral or written, made by the accused that are relevant to the case, known to the trial counsel, and within the control of the armed forces, and all evidence derived from such statements, that the prosecution intends to offer against the accused.

(e) *Limited Use of an Involuntary Statement.* A statement obtained in violation of Article 31 or Mil. R. Evid. 305(b)-(c) may be used only:

(1) to impeach by contradiction the in-court testimony of the accused; or

(2) in a later prosecution against the accused for perjury, false swearing, or the making of a false official statement.

(f) *Motions and Objections.*

(1) Motions to suppress or objections under this rule, or Mil. R. Evid. 302 or 305, to any statement or derivative evidence that has been disclosed must be made by the defense prior to submission of a plea. In the absence of such motion or objection, the defense may not raise the issue at a later time except as permitted by the military judge for good cause shown. Failure to so move or object constitutes a waiver of the objection.

(2) If the prosecution seeks to offer a statement made by the accused or derivative evidence that was not disclosed before arraignment, the prosecution must provide timely notice to the military judge and defense counsel. The defense may object at that time and the military judge may make such orders as are required in the interests of justice.

(3) The defense may present evidence relevant to the admissibility of evidence as to which there has been an objection or motion to suppress under this rule. An accused may testify for the limited purpose of denying that the accused made the statement or that the statement was made voluntarily.

(A) Prior to the introduction of such testimony by the accused, the defense must inform the military judge that the testimony is offered under subdivision (f)(3).

(B) When the accused testifies under subdivision (f)(3), the accused may be cross-examined only as to the matter on which he or she testifies. Nothing said by the accused on either direct or cross-examination may be used against the accused for any purpose other than in a prosecution for perjury, false swearing, or the making of a false official statement.

(4) *Specificity.* The military judge may require the defense to specify the grounds upon which the defense moves to suppress or object to evidence. If defense counsel, despite the exercise of due diligence, has been unable to interview adequately those persons involved in the taking of a statement, the military judge may make any order required in the interests of justice, including authorization for the defense to make a general motion to suppress or general objection.

(5) *Rulings.* The military judge must rule, prior to plea, upon any motion to suppress or objection to evidence made prior to plea unless, for good cause, the military judge orders that the ruling be deferred for determination at trial or after findings. The military judge may not defer ruling if doing so adversely affects a party's right to appeal the ruling. The military judge must state essential findings of fact on the record when the ruling involves factual issues.

(6) *Burden of Proof.* When the defense has made an appropriate motion or objection under this rule, the prosecution has the burden of establishing the admissibility of the evidence. When the military judge has required a specific motion or objection under subdivision (f)(4), the burden on the prosecution extends only to the grounds upon which the defense moved to suppress or object to the evidence.

(7) *Standard of Proof.* The military judge must find by a preponderance of the evidence that a statement by the accused was made voluntarily before it may be received into evidence. When trial is by a special court-martial without a military judge, a determination by the president of the court that a statement was made voluntarily is subject to objection by any member of the court. When such objection is made, it will be resolved pursuant to R.C.M. 801(e)(3)(C).

(8) *Effect of Guilty Plea.* Except as otherwise expressly provided in R.C.M. 910(a)(2), a plea of guilty to an offense that results in a finding of guilty waives all privileges against self-incrimination and all motions and objections under this rule with respect to that offense regardless of whether raised prior to plea.

(g) *Weight of the Evidence.* If a statement is admitted into evidence, the military judge must permit the defense to present relevant evidence with respect to the voluntariness of the statement and must instruct the members to give such weight to the statement as it deserves under all the circumstances.

(h) *Completeness.* If only part of an alleged admission or confession is introduced against the accused, the defense, by cross-examination or otherwise, may introduce the remaining portions of the statement.

(i) *Evidence of an Oral Statement.* A voluntary oral confession or admission of the accused may be proved by the testimony of anyone who heard the accused make it, even if it was reduced to writing and the writing is not accounted for.

(j) *Refusal to Obey an Order to Submit a Body Substance.* If an accused refuses a lawful order to submit for chemical analysis a sample of his or her blood, breath, urine or other body substance, evidence of such refusal may be admitted into evidence on:

- (1) a charge of violating an order to submit such a sample; or
- (2) any other charge on which the results of the chemical analysis would have been admissible.

### **Rule 305. Warnings about Rights**

(a) *General Rule.* A statement obtained in violation of this rule is involuntary and will be treated under Mil. R. Evid. 304.

(b) *Definitions.* As used in this rule:

(1) "Person subject to the code" means a person subject to the Uniform Code of Military Justice as contained in Chapter 47 of Title 10, United States Code. This term includes, for purposes of subdivision (c) of this rule, a knowing agent of any such person or of a military unit.

(2) "Interrogation" means any formal or informal questioning in which an incriminating response either is sought or is a reasonable consequence of such questioning.

(3) "Custodial interrogation" means questioning that takes place while the accused or suspect is in custody, could reasonably believe himself or herself to be in custody, or is otherwise deprived of his or her freedom of action in any significant way.

(c) *Warnings Concerning the Accusation, Right to Remain Silent, and Use of Statements.*

(1) *Article 31 Rights Warnings.* A statement obtained from the accused in violation of the accused's rights under Article 31 is involuntary and therefore inadmissible against the accused except as provided in subdivision (d). Pursuant to Article 31, a person subject to the code may not interrogate or request any statement from an accused or a person suspected of an offense without first:

- (A) informing the accused or suspect of the nature of the accusation;
- (B) advising the accused or suspect that the accused or suspect has the right to remain silent; and
- (C) advising the accused or suspect that any statement made may be used as evidence against the accused or suspect in a trial by court-martial.

(2) *Fifth Amendment Right to Counsel.* If a person suspected of an offense and subjected to custodial interrogation requests counsel, any statement made in the interrogation after such request, or evidence derived from the interrogation after such request, is inadmissible against the accused unless counsel was present for the interrogation.

(3) *Sixth Amendment Right to Counsel.* If an accused against whom charges have been preferred is interrogated on matters concerning the preferred charges by anyone acting in a law enforcement capacity, or the agent of such a person, and the accused requests counsel, or if the accused has appointed or retained counsel, any statement made in the interrogation, or evidence derived from the interrogation, is inadmissible unless counsel was present for the interrogation.

(4) *Exercise of Rights.* If a person chooses to exercise the privilege against self-incrimination, questioning must cease immediately. If a person who is subjected to interrogation under the circumstances described in subdivisions (c)(2) or (c)(3) of this rule chooses to exercise the right to counsel, questioning must cease until counsel is present.

(d) *Presence of Counsel.* When a person entitled to counsel under this rule requests counsel, a judge advocate or an individual certified in accordance with Article 27(b) will be provided by the United States at no expense to the person and without regard to the person's indigency and must be present before the interrogation may proceed. In addition to counsel supplied by the United States, the person may retain civilian counsel at no expense to the United States. Unless otherwise provided by regulations of the Secretary concerned, an accused or suspect does not have a right under this rule to have military counsel of his or her own selection.