

'Discredit' Definition is Broad; Be Alert to Prosecution's Moves

Q. Are there any offenses that do not qualify as "bringing discredit" upon the military?

A.

The military doesn't like getting egg on its face. That's why one of the three clauses on which an offense under Article 134 of the Uniform Code of Military Justice can be based is "conduct of a nature to bring discredit upon the armed forces." As the Manual for Courts-Martial notes, "discredit" means "to injure the reputation of." Further, service-discrediting conduct "has a tendency to bring the service into disrepute or lower it in public esteem."

These definitions are very broad, and troops facing charges must be alert to prosecutors who try to include questionable offenses under this clause.

What's not service-discrediting? The answer depends on not only the crime, but also how it was allegedly committed. Adultery, for example, may not qualify if it was "private and discreet in nature," according to the MCM.

In *U.S. v. Eagleson* (2001), the Air Force Court of Military Review held that an airman's simple negligence in the operation of a vehicle that led to the injury of another airman did not by itself qualify as service-discrediting.

However, had such negligent driving resulted in a homicide, that conduct would have been service-discrediting. The court said hinging service-discrediting conduct on whether a victim lives or dies "may seem a thin line," but the court believed "that such a line is warranted."

In *U.S. v. Sadler* (1990), the U.S. Court of Military Appeals ruled that violation of a state or foreign law may not be enough to prove a service member's conduct was service-discrediting. That case involved an Air Force captain who gave wine to, and took nude photos of, a girl who told him she was

17 years old when she was actually 15.

The government first argued that the captain's conduct was service-discrediting because he violated a New Mexico statute relating to the sexual exploitation of minors. But the Court of Military Appeals found that such a violation of state law was "neither decisive nor material in determining whether his conduct was service-discrediting."

The government tried to argue that the conduct was service-discrediting regardless of whether the captain violated state law. The court disagreed again, saying the "circumstances leading to the accused's mistake about the age were so understandable that the conduct simply did not bring discredit upon the armed forces."

Because of the legal nuances, troops accused of violating Article 134 due to service-discrediting conduct should contact a military law attorney, who may be able to help show the conduct was so discreet or understandable under the circumstances that it did not bring discredit upon the military.

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