

Ask the Lawyer: Lying to Get Out of Trouble Gets You Into More Trouble

Q:

How bad is it if I stretch the truth a little when questioned by military police or a commander?

A:

For many people, it is unnerving to be questioned by a law enforcement officer. Even an officer's simple or benign inquiry can feel like an interrogation. Sometimes, as questioned individuals nervously search their thoughts for an answer, certain facts get distorted or omitted. This is where service members who committed one offense under the Uniform Code of Military Justice often run into another one: making false official statements in violation of Article 107.

Service members commit this offense when they make an official statement or sign an official document knowing it is false. For such actions to qualify as a violation, the service member must intend to deceive someone, such as an interrogator or the government in general. Any statement made in the line of duty is deemed "official." However, false statements made to certain civilian personnel or while off-duty can violate Article 107, too.

The U.S. Court of Appeals for the Armed Forces drove this point home in its ruling in *U.S. v. Day*. In this 2008 case, the court found an Air Force airman basic's false statements to air base firemen about the condition in which he found his deceased infant son were in fact "official" despite the civilian status of the emergency responders and his off-duty status.

Stretching the truth or only telling part of the truth will result in a violation of Article 107. CAAF reached this conclusion in the 2007 case of *U.S. v. Wright*, in which an Army sergeant was convicted of making a false statement when he told an investigating officer that while loading equipment into a van he noticed some government laptop computers were missing. What the sergeant failed to add was that he and another soldier stole the computers.

Service members worried that the truthful response to an official's question could get them into trouble should not lie. They need to remember the Fifth Amendment protects them against self-incrimination and they have a right to remain silent. Refusing to respond to an official's question may feel awkward and even seem to imply you have something to hide, but earlier this year CAAF ruled in *U.S. v. Clark* that an Air Force senior airman's post-apprehension silence cannot be used against him to prove guilt.

Article 31 prohibits military officials from interrogating UCMJ-subjected service members who are suspected of an offense, without first notifying them of their right to remain silent. Whatever information the service member volunteers before receiving this notice, however, can be used against him or her in a legal proceeding. Rather than concocting a tale that will more likely get them into trouble than out of it, service members can halt an interrogation by demanding they speak to an attorney.

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. The information in this column is not intended as legal advice.