

Act Carefully Before Responding to Questionable Order from Commander

My commanding officer has given me a directive that I believe is unlawful. What are the consequences for obeying or disobeying the order?

It depends on the type of directive and whether it's really unlawful. The consequences for obeying an unlawful order and disobeying a lawful order can be equally severe.

This issue has been in the news in the case of the soldiers facing an Article 32 tribunal for war crimes in the killing of Afghan civilians. Some defendants allege that a squad leader ordered the killings and created a hostile environment for subordinates who did not participate.

The defense that a service member was merely following orders has historically been unsuccessful in military courts because there is no requirement to obey an order that is unlawful.

Nazi leaders unsuccessfully used this defense at the Nuremberg trials after World War II, and it has been attempted unsuccessfully hundreds of times since.

Those are extreme cases, as orders rarely involve war crimes or civilian deaths.

The consequences of obeying an unlawful order depend on the nature of the action, but can range from dishonorable discharge to death. Keep this in mind if a directive seems blatantly illegal.

That said, a service member should exercise extreme caution when disobeying an order. Discipline is the foundation of the military; those who disobey an order could be pressured or harassed and may have to defend their decision in court, where the legality of the order would ultimately be determined.

A service member who fails to obey an order that is deemed lawful can be charged under numerous Uniform Code of Military Justice articles.

There is no easy course of action in this situation. I would advise anyone faced with it first to ask the commanding officer for clarification.

After that, if you still think the order is unlawful, explain why you think so. (If the commander changes his mind, make sure you report the incident to the inspector general so you are protected by whistle-blower regulations.)

If that is unsuccessful, ask for the order in writing, and while the order is being written, contact your judge advocate general for advice and assistance. If you must execute the order, report the situation to the Defense Department inspector general as soon as possible afterward by calling 800-424-9098 or e-mailing hotline@dodig.mil.

