

Disloyalty: Troops Have a Shorter Leash Than Civilians

By Mathew B. Tully

Q. Am I being disloyal if I criticize the government?

A.

Service members used to gripe about things that bothered them in so-called "bull sessions," which usually never went further than their immediate buddies.

These days, the Internet gives troops much broader outlets to publicly express discontent, be it over Facebook or Twitter or other social media. At the same time, the Internet has created new and easier ways for troops to violate Article 134 of the Uniform Code of Military Justice by making disloyal statements.

Service members have a right to criticize the government, but their ability to do so under the First Amendment's free speech protections is more limited compared with their civilian peers.

Under the Manual for Courts-Martial, an Article 134 offense is committed when a service member communicates a statement with the intent "to promote disloyalty or disaffection toward the United States by any member of the armed forces or to interfere with or impair the loyalty to the United States or good order and discipline of any member of the armed forces."

Under the UCMJ, communicating such disloyal statements must also be either a discredit to the service or prejudicial to good order and discipline. Troops must be careful not to praise the enemy, criticize military missions, disavow their allegiance to the U.S. or denounce its form of government, the MCM warns.

So you may wonder what room is left for a service member to lawfully voice opinions that may be critical of the government.

For starters, the U.S. Court of Military Appeals pointed out in *U.S. v. Harvey* (1970), that mere "[d]isagreement with, or objection to, a policy of the government is not necessarily indicative of disloyalty to the United States."

That case involved a Marine lance corporal, an African-American, who did not want to go to Vietnam and told other African-American Marines that they also should not go and fight in a "white man's war."

The court said the Marine's disavowal of an order to transfer to Vietnam "could possibly have had the effect of reducing the military effectiveness of the United States in the Vietnam War," but ruled that "he was not disloyal to the United States."

Disloyal statements are not the only thing troops have to worry about when criticizing the government or its leaders. For example, by harshly criticizing the president, troops could end up facing charges of contempt toward officials in violation of Article 88 of the UCMJ.

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