

Jokes can lead to maltreatment charge

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Can a service member's jokes actually result in a charge of maltreatment?A.

When troops think about "maltreatment," an offense under Article 93 of the Uniform Code of Military Justice, they tend to think of hazing rituals such as blood pinning or branding. But under certain circumstances, jokes also can fall into this category, especially if they result in sexual harassment. An Article 93 offense involves "cruelty toward, or oppression or maltreatment of, any person subject to his orders." Whether the offender is in the victim's chain of command doesn't matter; the victim only needs to be someone who has the duty to obey the orders of the offender. Moreover, this offense is not limited to instances of victims suffering physical pain, according to the Manual for Courts-Martial. Maltreatment occurs "when the treatment, viewed objectively, results in physical or mental pain or suffering and is abusive or otherwise unwarranted, unjustified and unnecessary for any lawful purpose," the U.S. Air Force Court of Military Review said in *U.S. v. Neil J. Hanson* (1990). When a service member is the butt of a joke - or even if he or she is an audience to a crude joke - he or she may experience mental pain. The superior who told the joke could violate Article 93 even if there was no intent to embarrass or humiliate anyone. "The essence of the offense is not necessarily dependent on what a military superior may intend by words or acts," the court added. In fact, to convict a service member of maltreatment, the government would not have to prove that the alleged victim suffered mental pain because of an obscene or malicious joke. "It is only necessary to show, as measured from an objective viewpoint in light of the totality of the circumstances, that the accused's actions reasonably could have caused physical or mental harm or suffering," the U.S. Court of Appeals for the Armed Forces said in *U.S. v. Claude B. Carson Jr.* (2002). Jokes that are sexual in nature are especially dangerous for a superior with a comedic bent. The Hanson case, for example, involved an Air Force captain who was convicted of maltreatment of subordinate noncommissioned officers after he made sexually suggestive or explicit jokes. He later claimed he chose to "joke and be informal in order to establish good relationships with his subordinates." His subordinates, however, found the jokes "disruptive, embarrassing and vulgar." Although the court acknowledged that a "certain amount of banter and even profanity in a military office is normally acceptable," it found the captain's "jokes" crossed the line and constituted maltreatment. Service members charged with maltreatment should contact a military law attorney, who may be able to show that whatever the accused did or said could not have reasonably caused mental or physical pain. Mathew B. Tully is a veteran of the wars in Iraq and Afghanistan and founding partner of Tully Rinckey PLLC (www.fedattorney.com

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