

In the Wrong Place, At the Wrong Time ***A cautionary tale of tragedy, consequences, and criminal jurisdiction...***

by Joe Hall

Unfortunately, there really are some folks with criminal tendencies, but not all those behind bars are hardened criminals; nor are all crimes planned or intended.

Sometimes everyday people become criminals and trusting innocents become victims, just because they were in the wrong place, at the wrong time, in the wrong circumstances.

One such scenario is date rape, a tragedy that typically occurs between 0200 and 0500 hours, and involves a volatile combination of alcohol and sex. It often stems from a celebration that went wrong, or sometimes through incomprehensible innocence betrayed. Besides sex offenses, in those dark hours a lack of sleep, too much alcohol, and other things can trigger crimes against property, assaults, and sometimes death: “want some fun?” – let’s break mirrors on parked cars and walk on car roofs; “want some excitement?” – let’s start a fire; “out of money?” – let’s beat up the taxi driver to skip out on the fare, or beat up the passer-by and steal his money. The possibilities are endless. And the consequences can be extremely serious.



In most every case, the perpetrator is caught – many times the crime is out of character for the perpetrator – “he’s a good Soldier; max’d his PT test; does his job really well,” but some innocent person still has to suffer the economic loss, inconvenience, physical pain, and sometimes lasting grief of what everyone, including at times the perpetrator, thinks was a stupid act. The perpetrator can wind up in confinement, lose money, be demoted, or get kicked out of the service, and perhaps live with a lifetime of guilt, “when I just wanted to go out and have some fun.”

The thought here is, anyone can become a criminal, or a victim – so be careful. If you are going out for late-night partying: choose your friends; stay with the group; know your alcohol limits; keep enough cash to pay for a taxi; and don’t put a knife or other weapon in your pocket just to feel safe – you could seriously hurt someone with it, or they could use it to hurt you.

What happens when a crime occurs, be it late at night or at any other time of day? Commanders often want to act quickly on the offenses. Sometimes, for the “good Soldier” when the offense or its consequences do not seem particularly serious, the commander’s intent is to put the event behind us and move on. In other more serious cases, the intent may be to get the case before a court-martial.

Can the commander just forget about the incident and move on? Can he take UCMJ action against the Soldier? The answer to both questions is, maybe. But before the commander acts or does not act, the issue of who has criminal jurisdiction over the case — the command or host nation authorities — has to be resolved.

Article VII of the NATO Status of Forces Agreement (SOFA) sets out the rules on who has criminal jurisdiction to prosecute offenses involving US Forces members in Germany (and all the other NATO host nations).

- If the Soldier commits an offense against another Soldier, against a SOFA-status US Forces civilian/dependent, or against US Government property, the US Forces/commander has primary jurisdiction and is free to take whatever administrative or UCMJ action he deems appropriate against the perpetrator.

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- If the offense is committed against a person without SOFA status, or against any non-US Government property, the host nation has primary jurisdiction over the matter. In such cases, the commander may not take any UCMJ action against the perpetrator, and must flag the Soldier, until the host nation releases jurisdiction to the US Forces. Commanders need to get with their supporting JAG Trial Counsel to determine if/when the host nation has released its jurisdiction. In most all cases, at least in the Kaiserslautern area, jurisdiction is released relatively rapidly to the US Forces.

As a postscript, once jurisdiction is released to the US Forces, the commander is free to take whatever administrative or UCMJ action he deems appropriate. In deciding what action to take, however, one of the factors to consider is the effect the commander's choice of action will have on the local host nation community – the commander's action not only furthers order and discipline within the unit, it also serves the interests of justice in both the Army and the host nation.

Self-Reporting of Criminal Offenses Now Required

by SPC Matthew Teemant

On September 21, 2011, Army Directive 2011-17, entitled "Self-Reporting by Officers and Senior Enlisted Members of Criminal Convictions," was issued. It applies to U.S. Army commissioned officers, warrant officers, and enlisted members in the pay grade of E-7 and above on Active Duty or in the Reserve Component. It requires these individuals to report to their commander any conviction announced on or after March 1, 2008 for violation of a criminal law of the United States.

"Convictions" include a plea or finding of guilty, a plea of no contest, and all other actions "tantamount to a finding of guilt," including deferred prosecution, pretrial intervention, and similar dispositions.

"Criminal law of the United States" includes any conviction of Federal criminal law or any State, district, commonwealth, territorial or equivalent criminal law or ordinance, as well as any criminal law or ordinance of any county, parish, municipality, or local subdivision of any such authority, "other than motor vehicle violations that do not involve a court appearance."

Upon receipt of a report of a conviction, commanders must forward the report to the Special Court-Martial Convening Authority (SPCMCA), along with any statements of mitigation or extenuation. The SPCMCA will forward the conviction and supporting paperwork to the General Court-Martial Convening Authority with a recommendation on whether to file the conviction in the local or performance fiche of the Soldier's OMPF.

Commanders at all levels may consider the conviction for all official purposes, including, but not limited to, evaluation reports, assignments, selection for schools, awards, initiation of separation, and suspension of security clearances.

Legal Assistance Attorneys can advise Soldiers on whether they have criminal convictions that require reporting, and help them ensure their reports are in the proper format, contain the requisite information, and are timely filed through the proper channels. They can also assist Soldiers in preparing statements of extenuation and mitigation.

If the nature of the conviction is such that the command may take adverse action against the Soldier, the Legal Assistance Attorney may refer the Soldier to the Trial Defense Service for additional advice or representation.

If you think this new self-reporting requirement may affect you, call DSN 483-8848 or Civilian 0631-411-8848 to make an appointment to discuss your situation with a Legal Assistance Attorney at the Kaiserslautern Legal Services Center.

