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Running head: Ethics Paper

Dissent or Disloyalty; Free Speech and the Army

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### Abstract

Throughout the history of the world's armies, Soldiers have had varied restrictions on their freedoms. Accepted as part of the life of a Soldier, the surrender of freedoms to defend their government, their land, their people was commonplace. However, what of the Soldiers of the United States Army? After all, we are sworn to defend the Constitution, the hallmark of democracy. Unlike armies of the past, we defend our ideals first, are those ideals still afforded to the Soldier? The freedom of speech is one of our most treasured of rights, but does the American Soldier have the right to exercise that right unabated?

### Dissent or Disloyalty; Free Speech and the Army

'Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; *or abridging the freedom of speech*, or of the press; or the right of the people peaceably to assemble, and to petition the government for a redress of grievances.' So reads the first amendment to the Constitution of the United States, the very Constitution that Army Soldiers are sworn to uphold and "defend against all enemies foreign and domestic". However, military leaders have the inherent authority and responsibility to take action to ensure the mission is performed and to maintain good order and discipline. This authority and responsibility include placing lawful restriction on dissident and protest activities. Military leaders must preserve the service member's right of expression to the maximum extent possible, consistent with good order, discipline, and national security (Powers, 2005).

Many commanders have used the 'dissent is not disloyalty' as part of their command philosophy to help foster good communications with their subordinates. As leaders, we should be open to what Soldiers have to say; after all, fostering effective two way communication is a tenant of leadership.

No one voluntarily endures as many hardships on behalf of others as a professional Soldier. Therefore, one could argue that it is the inherent right for a Soldier to complain. In fact, some have taken it to an art form. Bill Mauldin joined the United States Army in 1940 and began producing cartoons for the 45th Division News. In 1943, he took part in the invasions of Sicily and Italy. The following year he became a full-time cartoonist for the *Stars and Stripes*. His cartoons often featured two infantrymen called Willie and Joe. He later recalled that: "I drew pictures for and about the soldiers because I knew what their life was like and understood their gripes. I wanted to make something out of the humorous situations which come up even when you don't think life could be any more miserable." (Mauldin, 1968). Although many found

his cartoons humorous, they drew GEN Patton's ire; his feeling was that Mauldin was intentionally attempting to circumvent good order and discipline by portraying officers and the Army in a less than glamorous way. The result was a meeting between the two so GEN Patton could 'enlighten' the cartoonist, yet there was no punitive action or official reprimand and Mauldin continued to show Army life from the infantryman's perspective through Willie and Joe.

Soldiers understand it is common to 'blow off steam' when complaining amongst themselves. It is accepted along with the multitude of missions and tasks. What makes this relative in the present is that private communication is more abundant in the contemporary operating environment. Soldiers can call, send email, keep an on-line "blog" (a website where entries are made in journal style and displayed in a reverse chronological order) and surf the internet from the battlefield or close proximity. Soldiers are no longer privately sharing their complaints; they are sharing them in the public domain with or without intended malice.

According to 'The Soldiers Speak Out' a blog posted on The Nation.com, over 600 active-duty Soldiers have signed an "Appeal for Redress" which states "As a patriotic American proud to serve the nation in uniform, I respectfully urge my political leaders in Congress to support the prompt withdrawal of all American military forces and bases from Iraq. Staying in Iraq will not work and is not worth the price. It is time for US troops to come home." The Appeal is to be delivered to Congress on Martin Luther King Day, 2007. Of course, the names and comments of those signing onto the initiative are not made public, so there is no way to confirm that if all or any are active duty Soldiers. As if to address that fact, the site also has the following statement - The Military Whistleblower Protection Act allows for "a protected communication" with Congress – but only while off-duty and out of uniform.

Other anti-war and political organizations such as the Political Action group Moveon.org have sought active duty Soldiers to speak out against the war in Iraq. This is not an innovative approach; such groups have followed this course of action in past conflicts. What challenges us now is how to deal with real-time communication. In the past, a Soldier could state an opinion and drive on with the mission, feeling better for expressing himself. The same done now in a different medium or done by Soldiers with more in mind than 'blowing off steam', can be exploited by others and become an entity in itself. So where is the line in the sand for the Soldier?

One parameter is legally established; however, it is more of an intermittent line in the sand because it is impossible to apply universally. Article 88 of the Uniform Code of Military Justice gives commanders a punitive option to help them maintain good order and discipline. It states, 'Any commissioned officer who uses contemptuous words against the President, the Vice President, Congress, the Secretary of Defense, the Secretary of a military department, the Secretary of Transportation, or the Governor or legislature of any State, Territory, Commonwealth, or possession in which he is on duty or present shall be punished as a court-martial may direct.' Even here, there lies a curious distinction. Article 88 specifically uses 'commissioned officer', so punitive action under this Article may only be applied to that population of the Army. The distinction is more than likely intentional. When Congress revised the UCMJ in 1950, the original version of Article 88 was narrowed from all service members to commissioned officers. There may be several reasons for this, the primary reason to prevent active duty military officers from interfering in politics, something that occurs with regularity in other countries. Secondary, that enlisted personnel are closer to civilian life, a majority view their service as a temporary status and not a career. Of course, we must maintain respect for the chain of command, without which any military organization would fall apart in combat. Articles

89 and 91 may be applied to all Soldiers, but only if the Soldier "behaved with disrespect" toward a superior commissioned or non-commissioned officer. However, the civilian officials who are specifically protected from criticism in Article 88 are not mentioned in Articles 89 and 91.

Another parameter is the Army Values, unlike Article 88; this applies to all Soldiers, regardless of rank. From indoctrination, a set of professional Army Values are instilled in every Soldier to live up to on or off duty. Values are core beliefs such as duty, honor, and integrity that motivate actions and attitudes. Ethics are standards by which one should act based on values. Not all values are ethical values (integrity is; happiness is not). Ethical values relate to what is right and wrong and thus take precedence over non-ethical values when making ethical decisions (Powers, 2005).

If we examine some of the Army Values, there seems to be more disparity for the individual in regards to free speech. For example, Integrity - do what is right, legally and morally. *Integrity is a quality you develop by adhering to moral principles.* It requires that you do and say nothing that deceives others. Being faithful to one's convictions is a part of integrity.

Loyalty – Bear true faith and allegiance to the U.S. Constitution, the Army, your unit and other Soldiers. *Bearing true faith and allegiance is a matter of believing in and devoting yourself to something or someone.* A loyal Soldier is one who supports the leadership and stands up for fellow Soldiers. Examining the definition further, loyalty is not blind obedience or unquestioning acceptance of the status quo. Loyalty requires careful balancing among various interests, values, and institutions in the interest of harmony and cohesion.

Personal courage is to face fear, danger or adversity (physical or moral). With physical courage, it is a matter of enduring physical duress and at times risking personal safety. Facing moral fear or adversity may be a long, slow process of continuing forward on the right path,

especially if taking those actions is not popular with others. *You can build your personal courage by daily standing up for and acting upon the things that you know are honorable.*

It is no wonder that there is conflict among Soldiers when it comes to their speech. Occasionally, you have outright opinion voiced, such as according to an article in the New Yorker 'when in Baghdad, some of (Major General) Blount's soldiers complained to reporters. One, a private named Matthew C. O'Dell, told the (New York) *Times*, "You call Donald Rumsfeld and tell him our sorry asses are ready to go home." Blount's superiors in the Pentagon were furious, blaming his unit's recalcitrance on a lack of leadership'. Was PVT O'Dell just blowing off steam? Although he could not be charged under UCMJ, should he be punished? Statements of that very nature have probably been uttered throughout the history of armies among soldiers, but in this instance, there was someone (a reporter) there to capture it and share it with the world. What compass can a Soldier use to navigate between open, honest communication and unadulterated free speech?

The answer is not so simple to address. On the one hand, perhaps a revision to Article 88 should include Soldiers of all ranks. While serving in previous conflicts, dozens of enlisted men were court-martialed for expressing even mildly derogatory views about Presidents Lincoln, Wilson and Roosevelt, even in private conversation and correspondence (Falvy, 2003). One could imagine with the plethora of media available to Soldiers today that there may be many more cases to pursue. On the other hand, we could continue with the same policies we have now. We may conduct ethics training, explain media talking points to our Soldiers and hope for the best.

Perhaps the best course of action lies within us. Our actions, our knowledge and our speech have an impact on our Soldiers far greater than we can grasp. You can see the personality of a good leader imprinted on his organization. Our ethical values may be imitated

throughout our organization if we truly embody them. Leaders at every level must ensure our professional values are what we espouse and demonstrate at all times. If senior leaders make the decision to speak out or 'blow off steam' then we can only expect that our Soldiers will follow that example. I am sure that PVT O'Dell did not express any original thought; it was more than likely an opinion that he had heard within his unit and merely echoed. After all, he did not tell the reporter 'to send *my* sorry ass home'; he said "*our*" including his peers and leaders alike. If we are truly leading our Soldiers, we should know the difference when one 'blows off steam' or when one is truly disgruntled. We must be able to explain intelligently why we do what we do, why we are where we are and make no promises that we cannot effect. Enforce and demonstrate the Army Values and ensure our Soldiers know how as professional Soldiers, our professional values take precedence over our personal values.

Or perhaps we could echo the words of General MacArthur to advise all our Soldiers; "Let civilian voices argue the merits or demerits of our processes of government: Whether our strength is being sapped by deficit financing indulged in too long by Federal paternalism grown too mighty, by power groups grown too arrogant, by politics grown too corrupt, by crime grown to rampant, by mortals grown too low, by taxes grown too high, by extremists grown too violent; whether our personal liberties are as thorough and complete as they should be...And through all this welter of change and development your mission remains fixed, determined, inviolable. It is ours to win wars." (Whan, 1965, p. 357).

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