



Answers for  
Sailors, Marines & their families

Search

[RSS Feeds](#) | [Feedback](#) | [Site Map](#)

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▶ Military Life

In This Section

▶ Joining the Navy

▼ New to the Military

- ▶ Boot Camp
- ▶ OCS
- ▶ ROTC/Service Academies
- ▶ Values/Leadership
- ▶ Navy Communities
- ▶ Navy Organization Structure
- ▶ Navy Ranks and Rates
- ▶ Navy Uniforms
- ▶ First Duty Station
- ▶ First Deployment
- ▶ Etiquette/Culture/Traditions
- ▶ Support Services
- ▶ Resources

▶ Military Careers

▶ Basic Life Skills

▶ Education & Training

▶ Pay and Benefits

▶ Personal Finances

▶ Personal Health & Safety

▶ Emergencies/Trauma/Terrorism

▶ Family Life

▶ Travel/Recreation/MWR

▶ Relocation

▶ Housing

▶ Deployment

▶ Casualty

▶ Reserves

▶ Retirees

▶ Military Transition Assistance

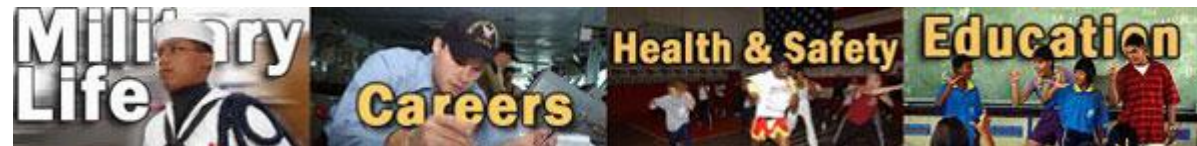
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▶ News & Events

▶ Videos & Training

▶ Family Life



## Unlawful Orders: Proceed at Your Own Risk

By Jennifer Dyer Cornelissen for LIFELines  
(Last Reviewed Friday, September 16, 2005)

If you learn anything during boot camp, it's to follow orders without question. Under military law, service members are morally and legally obligated to obey orders — unless those orders are unlawful, as was the case with LT William Calley. In spite of his claim that he was only following orders, Calley was convicted of murder for his role in the 1968 massacre of unarmed civilians at Mai Lai, Vietnam. As Calley's conviction shows, Sailors must understand the difference between lawful and unlawful orders so they can respond appropriately.

### The UCMJ and You

According to LCDR Jim Carsten of the Office of the Navy Judge Advocate General, all United States active and reserve military members (when on active duty or drilling) are subject to the Uniform Code of Military Justice ([UCMJ](#)). The UCMJ sets forth the military justice system, including rules and regulations for the military command and individual conduct, service member protections, specific offenses and punishments, and a structure for appeals.

Under the UCMJ, military personnel have a duty to obey all orders in every circumstance except when those orders are not lawful. In fact, when service members take the military oath, they swear to obey the orders of officers appointed over them. Willful disobedience may be punished under Articles 90, 91 and 92; could result in a court-martial; and could end your career. Ultimately, the lawfulness of an order is a question of law to be decided by a military judge and court — not by the disobeying individual.



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### It's the Law

Article 90 of the UCMJ says all orders are presumed to be lawful, and disobedience is at your own risk: "An order requiring the performance of a military duty or act may be inferred to be lawful, and it is disobeyed at the peril of the subordinate. This inference does not apply to a patently illegal order, such as one that directs the commission of a crime."

In plain language, you should always assume an order is lawful unless it's obviously illegal. Should you refuse to follow an order, then you must prove the order is unlawful to avoid punishment for disobedience. However, "obeying a clearly unlawful order could subject the service member to discipline for following that order," says Carsten.

Understanding the legal basis for lawfulness is crucial. The Manual for Courts-Martial (MCM) defines a "lawful order" as one that is given by an appropriate authority, does not violate constitutional rights, and relates to military duty. Military duty includes all activities related to mission, morale, discipline, usefulness, and good order. Unless it has a legitimate military purpose, an order can't "interfere with private rights or personal affairs."

Regardless of ethical concerns, a lawful order always trumps individual beliefs. "The dictates of a person's conscience, religion, or personal philosophy cannot justify or excuse the disobedience of an otherwise lawful order," says the MCM.

### Handling Doubts

If given a questionable order, a Sailor must **proceed carefully**. Because some orders are issued with the expectation that they will be obeyed immediately, the act of questioning could be a violation. While no formal process exists, several possible approaches can be taken:

- | In a respectful tone and manner, request clarification of the order.
- | Request the officer reissue the order in the presence of a third party.
- | Request confirmation of the order by a superior officer. If still unsure, advise your superior that you believe the order is unlawful.
- | Request confirmation of the order by the commanding officer.
- | Refuse to obey the order if you still believe that it is unlawful. Remember that you are morally and legally obligated to obey all orders that are presumed to be lawful just as you are obligated to disobey any order that is "patently unlawful."

Before you act, think carefully about the consequences. Military courts have consistently held individuals responsible for their actions. They will hold you liable for disobeying lawful orders as well as for obeying orders that are obviously illegal.

**Where to Learn More**

Sailors should speak with a superior officer in their chain of command for further information. You may also direct questions to the command staff judge advocate or legal officer. [Military Law and Legal Links](#) offers online resources as well.

Remember, "orders that are unlawful are generally so obvious there is no question," says Carsten.

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