

Terrorists in the Ranks

By Major Michael Grygar

On 5 November 2009, Army Major Nidal Malik Hasan walked into a Fort Hood, Texas, facility and used two pistols to kill several unarmed Soldiers and a civilian. The question now facing the Army is, “How can we prevent a similar incident?”

The first step toward answering that question was taken when All Army Activities (ALARACT) 322/2009 was published.¹ ALARACT 322/2009 directed commanders to scrub their ranks to find anyone else fitting a profile like that of Major Hasan. But what should they do if they find such an individual? Must they wait for the Soldier to take some sort of adverse action—or can their belief that the Soldier fits such a profile be used to begin a separation action?

According to Article 88 of the Uniform Code of Military Justice, “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.”² Such contempt toward officials carries a maximum punishment of “dismissal, forfeiture of all pay and allowances, and confinement for one year.”³ However, to be punished, the officer must be publicly observed to be “contemptuous” toward the designated officials—though the term “contemptuous” is not officially defined—and those who witness the offense must complete sworn statements.

In addition, Article 134 of the Uniform Code of Military Justice states that “. . . all disorders and neglects to the prejudice of good order and discipline in the armed forces, all conduct of a nature to bring discredit upon the armed forces, and crimes and offenses not capital, of which persons subject to this chapter may be guilty, shall be taken cognizance of by a general, special, or summary court-martial, according to the nature and degree of the offense, and shall be punished at the discretion of that court.”⁴ Certain “disloyal statements” (including praising the enemy, attacking the war aims of the United States, or denouncing our form of government with the intent to promote disloyalty or disaffection among members of the armed services)

made by military personnel may be punishable under this article. According to the Manual for Courts-Martial, United States, “A declaration of personal belief can amount to a disloyal statement if it disavows allegiance owed to the United States by the declarant. The disloyalty involved for this offense must be to the United States as a political entity and not merely to a department or other agency that is a part of its administration.”⁵ The maximum punishment for this offense is dishonorable discharge, forfeiture of all pay and allowances, and confinement for 3 years.⁶

So why wasn’t Major Hasan charged under either of these articles? For that answer, I consulted with my local judge advocate general, who was unable to provide a legal opinion without access to the facts involved in the case. He did, however, give me a few pointers. And he explained the complexity of handling these situations due to the issue of free speech. He indicated that any commander who tries to put together a case of this type must ensure that all elements of the charge are met; this is generally not easy. In any case, the local judge advocate general should definitely be consulted for more detailed options before any actions are taken.

Endnotes:

¹ALARACT 322/2009, *Force Protection*, 23 November 2009.

²U.S. Code, Title 10, *Armed Forces*, Subtitle A, Part II, Chapter 47, “Uniform Code of Military Justice,” Subchapter X, *Punitive Articles*, §888, Article 88, *Contempt Toward Officials*.

³*Manual for Courts-Martial, United States (2008 Edition)*, Department of Defense, Joint Service Committee on Military Justice.

⁴U.S. Code, Title 10, *Armed Forces*, Subtitle A, Part II, Chapter 47, “Uniform Code of Military Justice,” Subchapter X, *Punitive Articles*, §934, Article 134, *General Article*.

⁵*Manual for Courts-Martial, United States (2008 Edition)*.

⁶*Ibid.*

At the time this article was written, Major Grygar was an Intermediate-Level Education student at Fort Lee, Virginia. He holds a bachelor’s degree in criminology and criminal justice from the University of Texas at Arlington and a master’s degree in business and organizational security management from Webster University.