

# COMMANDER'S FAVORITISM

**Situation:** A Battalion commander had previously recommended several Soldiers for court martial for multiple drug and absent without leave (AWOL) offenses. Policy and precedence had been established such that Soldiers who were repeat drug offenders coupled with other offenses such as AWOL were recommended for court martial. Although mitigating circumstances were considered on a case by case base, a Soldier's gender and appearance were not considered legally appropriate mitigating factors.

A company commander had a Soldier accused of multiple drug offenses and AWOL. She had previously received a Field Grade Article 15 for similar offenses. Since the Soldier showed no desire for rehabilitation the company commander decided to prefer charges against her. As the unit Trial Counsel, I prepared the case for the battalion commander's (BN CDR) signature. The BN CDR was promoted below-the-zone twice. I brought the case to the BN CDR for signature figuring it to be like any other drug/AWOL case he signed many times before. This time, however, he told me, he wanted to drop this case because the Soldier "is cute and I don't want to ruin her career." Knowing this was an invalid reason to drop a case -- let alone unfair and could affect the cases of the other Soldiers the BN CDR signed off on for prosecution in the past (and those that will come up in the future who aren't "cute") I expressed my concerns and stated my desire for the case to proceed to the Brigade Commander. The BN CDR then ordered me to drop the case, and questioned my loyalty to him by wanting to take this to the Brigade Commander.

I had two courses of action. The first was to drop the case but this could have serious negative consequences on all pending and subsequent cases. The second choice was to go directly to the Brigade commander despite the BN CDR's order to drop the case. I felt this was the right thing to do but would have repercussions in terms of my working relationship with the BN CDR. I was not sure how it would be affected but expected some fallout.

## REFLECTION...

I did go to the BDE CDR to present the case and explain that the BN CDR did not sign it and wanted to drop the case. The BDE CDR supported the case and recommended court-martial. Once the BN CDR found this out, he called me to his office and loudly and in front of other staff, dressed me down and accused me of "disloyalty" and "insubordination" and "banned me from talking to him, his staff, and his CDRs, or he would court-martial me for 'failing to follow an order' and 'insubordination'." At this point I had to decide whether to drop the issue or take a stand. I knew the order to not talk to any of the commanders was unlawful but would I get any support from them or from my own chain of command? I talked to the initiating company commander and my Staff Judge Advocate superior. Both wanted to pursue the case. But I had to decide how to deal with the irate BN CDR. I could go over his head again but that would not improve my working environment within the unit. I could drop the case but that was not an option I could seriously consider. I decided to schedule an office call with the BN CDR. The Staff Judge Advocate, a LTC, offered to accompany me but I refused. The company commander who initiated the court martial request did accompany me.

Together we explained why we felt the reasons for the BN CDR not concurring on the case were bad for the unit and all involved. After a short discussion the BN CDR agreed the best course of action to maintain unit discipline and morale was to court-martial the Soldier. He then asked the company commander to leave and for me to stay for a moment. He told me I was right in my legal assessment and for standing up for Army values but I should have come to him with the company commander before going to the BDE Commander. He said I had a lot to learn about being a team player but was willing to let the issue drop. I told him that I shouldn't have to tell an officer in his position how wrong sexist favoritism is. I then gathered my things and walked out. In the remaining nine months I worked with this BN CDR I never had another conflict arise nor experienced any fallout for taking a stand on my principles or for my comment.

Ethical Dilemma at the Time of the Incident: I had to decide whether to bypass the BN CDR and go to the BDE CDR. As a JAG officer I owe a duty to protect and also work for the BDE CDR as well as the Co and BN CDRs. What should I do and how should I go about doing it? Under Army Regulations, Trial Counsel Officers cannot form an attorney-client relationship with any commander – Trial Counsel's "client" is the Army.

Rules/Laws That Apply: The BN CO's decision to show favoritism based on his viewing a Soldier as good looking and cute is arguably unethical. The order to drop the case and not proceed to the BDE CO created an ethical dilemma for me as I felt an obligation to the Army and the unit as a whole as well as all the commanders involved.

At What Point Did You Say "Enough is Enough"? When And How Did You Take Action? I discussed the issue with my superior, the senior JAG officer, and the initiating company commander. Both supported the decision to go to the BDE CDR.

Conflict or Tension of the 7 Army Values? How Did You Resolve Those Conflicts? I had a conflict of loyalty. I knew it was right to take the matter before the BDE Commander. My conflict was how to deal with the BN Commander. I sought advice and support from both my superior and the initiating company commander.

Consideration of Other COAs and the 2nd and 3rd Order Effects. Current and pending cases could be thrown out if the BN Commander is viewed as bias in his dealings with subordinates. It would also adversely affect morale, with male Soldiers viewing female Soldiers as something other than equal.

How Did You Get the Courage To Do the Harder Right? I felt a sense of duty which overrode my desire to avoid conflict with the BN Commander.