



INSUBORDINATION VS. COMMAND RESPONSIBILITY

BY SID HEAL

It has long been understood that good order and discipline are vital for an effective tactical organization. Understandably, strict obedience is a necessary prerequisite. Insubordination, regardless of the circumstances, is one of the most disruptive things that can happen to an organization that is involved in dangerous assignments and is undoubtedly why it is taken so seriously. A question arises, however, if insubordination can ever be justified? As a matter of fact, there are conditions in which insubordination is not only justified, but expected!

In the simplest terms, *insubordination* is defined as willful disobedience of a lawful order. Hence, one exception is inherent in the definition — the order must be lawful. A subordinate must not follow an order that is patently against the law. A subordinate who follows orders but breaks

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a law cannot later use that as an excuse. This is called the “Nuremburg Defense” and was used unsuccessfully after World War II by Nazis accused of war crimes to excuse their misconduct, hence the name.¹

A second exception is when an order is unethical or immoral. While there are subtle differences between ethics and morals, for

all purposes here they may be considered as a single factor. An order that is unethical or immoral is one which clearly violates the acceptable rules of conduct. More precisely, it is wrong even if not illegal. In law enforcement tactical operations or disaster responses, it is an extremely rare circumstance that an action is legal but unethical. Nevertheless, it is possible. An example might be an order to lie to a news reporter or political official. While there is nothing illegal about such an act, it violates a trust that is essential for public servants to retain the confidence of those they represent.

The third exception is when an order is so unsafe that serious injuries or deaths will result.² No tactical operation or disaster response is free from risk of injury but an order that will clearly result in the unnecessary injury or death of another may provide

adequate justification for refusing to obey. One example might be an order to perform functions for which a person is unqualified, as in scuba diving, flying an aircraft, or disarming an explosive device.

It is imperative to understand that orders, in and of themselves, are presumed to be legal, ethical and safe, even if not completely risk-free. Hence, the burden for justifying disobedience lies entirely with the subordinate who refuses to follow an order. Lacking clear and compelling evidence and rationale, a subordinate can expect harsh penalties for disobedience.³ Regardless of the reasons, an incident commander who is confronted with insubordination in the midst of handling a tactical operation or disaster response must deal with it immediately and decisively. The most common method is to “relieve for cause.” With nearly no exceptions, a person relieved for cause because of insubordination is ordered from the scene to avoid exacerbating an already tense situation. An investigation is not immediately conducted since it creates a competing interest with the more urgent tasks involved with handling and resolving the situation. Instead, to the extent possible, the person is replaced and the operation continues through resolution. The issue is then dealt with through routine protocols afterwards.

Notwithstanding the responsibility of a subordinate to obey, a commander is also responsible for the conduct of subordinates. This is often referred to as the *doctrine of command responsibility*. In the most general terms, the doctrine of command responsibility holds that a commander is responsible for acts of misconduct of subordinates if they know (or should have known) that the misconduct was occurring and did not try and stop it. The basis for this doctrine can be traced as far back as Sun Tzu’s “Art of War” in the 6th century B.C., in which he argued that it is a command responsibility to ensure civilized conduct of subordinates.⁴ Nowadays, this concept has been expanded to the civilian world in the form of vicarious liability which holds that a superior can be held civilly liable for the acts of a subordi-

nate who is working under their supervision. This is referred to as the *respondeat superior doctrine*,⁵ which is Latin for “let the master answer.” A plea cannot be made that the superior was unaware of the misconduct if he should have known or suspected it because a lack of intervention is deemed consent.⁶

Incidents of insubordination are exceedingly rare in units where the roles are filled with trusted subordinates and led by competent and diligent leaders. The relationships that develop in such units are far more potent and durable than those imposed only by rules and regulations. Accordingly, even off-duty misconduct is rare. Regardless of their particular function, these units are more resilient, better able to deal with surprise and continually surpass expectations. The mutual respect of members for one another helps contribute to an esprit de corps that provides a force multiplier in its own right. ◀◀

Endnotes

1. It is also known as the “Superior Orders” or the “Lawful Orders” Defense.
2. It needs to be noted that in military environments, the only justification for insubordination is an unlawful order. There are no exceptions for an order that is unethical or unsafe. In point of fact, a subordinate can be ordered on a mission that one could consider suicidal and be prosecuted for insubordination if he or she refuses.
3. In civil service this may very well include dismissal from service and civil penalties for dereliction of duty. In nearly all military situations, including peacetime, the death penalty may be imposed.
4. While the Nuremberg trials brought the concept to widespread public attention and its roots can be traced back to Sun Tzu, the first recognized trial was in 1474 with the trial and execution of a knight of the Holy Roman Empire for atrocities he claimed were orders from his superiors.
5. This is also known as the “master-servant rule.”
6. The principle described here is also known as “silence is consent” and is the default mode of command in tactical operations and disaster management. (Conversely, “expressed consent” requires the expressed agreement of a superior before proceeding.)

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