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John Holstein – Testimonial

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John Holstein:

Testimonial: For purposes of formality, we're going to take a moment and analyze the military oath of enlistment (or commissioning).

Oath of Enlistment:

"I, _____, do solemnly swear that I will support and defend the Constitution of the United States against all enemies, foreign and domestic; that I will bear true faith and allegiance to the same; and that I will obey the orders of the President of the United States and the orders of the officers appointed over me, according to regulations and the Uniform Code of Military Justice. So help me God." (Title 10, US Code; Act of 5 May 1960 replacing the wording first adopted in 1789, with amendment effective 5 October 1962).

Oath of Commissioning:

"I, _____, having been appointed an officer in the (Service) of the United States, as indicated above in the grade of _____ do solemnly swear that I will support and defend the Constitution of the United States against all enemies, foreign or domestic, that I will bear true faith and allegiance to the same; that I take this obligation freely, without any mental reservations or purpose of evasion; and that I will well and faithfully discharge the duties of the office upon which I am about to enter; So help me God." (DA Form 71, 1 August 1959, for officers.)

Let us examine the first operative statement in either oath:

"...solemnly swear that I will support and defend the Constitution of the United States against all enemies, foreign and domestic..."

This is of course, relatively self explanatory, however, a deeper examination proves alternative motives. First, this statement, above all else, comes BEFORE any other part of the oath. This in itself shows the intent of the wordsmith, empowered by the Military Officers commissioning the drafting thereof, to

highlight the importance of defending the Constitution, a living document, over the orders of men.

Secondly,

”...that I will bear true faith and allegiance to the same...”

This reinforces the notion that the Constitution comes before ANYTHING else. The alliance is toward the Constitution, not toward an individual or office holder.

Thirdly,

“...and that I will obey the orders of the President of the United States and the orders of the officers appointed over me, according to regulations and the Uniform Code of Military Justice.”

In the first part of this section, the oath taker pledges they will obey the orders of the President and those officers appointed over him/her. In the second part, the operative part of the statement, “according to regulations and the Uniform Code of Military Justice.” the oath taker pledges to obey these orders as long as the orders are within the boundaries of the UCMJ. That is tantamount to the discussion at hand. What parts of the UCMJ are we speaking of? Example:

About.com says: “...Article 90 of the Uniform Code of Military Justice (UCMJ) makes it a crime for a military member to WILLFULLY disobey a superior commissioned officer. Article 91 makes it a crime to WILLFULLY disobey a superior Noncommissioned or Warrant Officer. Article 92 makes it a crime to disobey any lawful order (the disobedience does not have to be “willful” under this article).”

The most important word in the above is “lawful”.

If a superior officer (civilian or military) gives an UNLAWFUL order, it is the DUTY of the subordinate to NOT FOLLOW THAT ORDER and it is a prosecutable offense for any military service person to follow an UNLAWFUL ORDER.

More from About.com: “...An order which is unlawful not only does not need to be obeyed, but obeying such an order can result in criminal prosecution of the one who obeys it. Military courts have long held that military members are accountable for their actions even while following orders — if the order was illegal.”

Following your commanding officer blindly, breaking the law, circumventing the Constitution is UNLAWFUL, regardless if you knowingly or unknowingly commit these acts, you are held to the same standard as anyone else.

About.com on “ignorance of the law”: “I was only following orders,” has been unsuccessfully used as a legal defense in hundreds of cases (probably most notably by Nazi leaders at the Nuremberg tribunals following World War II). The defense didn’t work for them, nor has it worked in hundreds of cases since.

“...The Vietnam War presented the United States military courts with more cases of the “I was only following orders” defense than any previous conflict. The decisions during these cases reaffirmed that following manifestly illegal orders is not a viable defense from criminal prosecution. In *United States v. Keenan*, the accused (Keenan) was found guilty of murder after he obeyed in order to shoot and kill an elderly Vietnamese citizen. The Court of Military Appeals held that “the justification for acts done pursuant to orders does not exist if the order was of such a nature that a man of ordinary sense and understanding would know it to be illegal.” (Interestingly, the soldier who gave Keenan the order, Corporal Luczko, was acquitted by reason of insanity).”

I would implore those of you on active service to seriously consider the above statements as this could affect your lives tremendously in the coming years. To act as aggressors against your own people, regardless of what they’re accused of, violates the Posse Comitatus Act of 1878, unless “...in such cases and under such circumstances as such employment of said force may be expressly authorized by the Constitution or by act of Congress...”:

June 18, 1878

CHAP. 263 – An act making appropriations for the support of the Army for the fiscal year ending June thirtieth, eighteen hundred and seventy-nine, and for other purposes.

SEC. 15. From and after the passage of this act it shall not be lawful to employ any part of the Army of the United States, as a posse comitatus, or otherwise, for the purpose of executing the laws, except in such cases and under such circumstances as such employment of said force may be expressly authorized by the Constitution or by act of Congress; and no money appropriated by this act shall be used to pay any of the expenses incurred in the employment of any troops in violation of this section And any person willfully violating the provisions of this section shall be deemed guilty of a misdemeanor and on conviction thereof shall be punished by fine not exceeding ten thousand dollars or imprisonment not exceeding two years or by both such fine and imprisonment.

10 U.S.C. (United States Code) 375

Sec. 375. Restriction on direct participation by military personnel:

The Secretary of Defense shall prescribe such regulations as may be necessary to ensure that any activity (including the provision of any equipment or facility or the assignment or detail of any personnel) under this chapter does not include or permit direct participation by a member of the Army, Navy, Air Force, or Marine Corps in a search, seizure, arrest, or other similar activity unless participation in such activity by such member is otherwise authorized by law.

18 U.S.C. 1385

Sec. 1385. Use of Army and Air Force as posse comitatus

Whoever, except in cases and under circumstances expressly authorized by the Constitution or Act of Congress, willfully uses any part of the Army or the Air Force as a posse comitatus or otherwise to execute the laws shall be fined under this title or imprisoned not more than two years, or both.

The above means, without an act of Congress or without Constitutional power being granted (amendment), it is UNLAWFUL for the military to engage in civilian (law enforcement) duties. A presidential executive order IS NOT MENTIONED.

While the basis for this post was the above, I will go on to mention the final statement in the Oaths:

“.... So help me God.”

Which, above all else, has more meaning and is more important than any oath you may swear to any other entity.

Keep the faith brothers and sisters, keep the faith.

My name is John Holstein and I approve this message.

/john

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