

Saturday Night Jurisdiction Over Reserve Soldiers

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I. Introduction

Certain members of the Selected Reserve (called troop program unit (TPU) Soldiers in the Army Reserve) attend inactive duty training (IDT) one weekend per month.¹ During this weekend, Reserve Soldiers typically report to their units in the morning (“sign-in”) and report out at the end of the duty day (“sign-out”). The issue arises as to whether these Soldiers remain subject to the Uniform Code of Military Justice (UCMJ) between sign-out at the end of the duty day and sign-in the following morning.

In order to illustrate this issue consider the following hypothetical. Members of Headquarters and Headquarters Company (HHC), 7th Civil Support Command arrive for training at Daenner Kaserne, Kaiserslautern, Germany, at 0630, Saturday morning for their monthly battle assembly (BA).² The HHC holds formation and conducts the morning sign-in at 0700. The HHC proceeds to conduct training throughout the day according to its training schedule. There is no order associated with the BA weekend other than the aforementioned training schedule. At the conclusion of the duty day, at 1730, the HHC holds a final formation and conducts sign-out. Those who have signed up for lodging-in-kind proceed to their lodging on Vogelweh Air Base in Kaiserslautern.³ The remaining Soldiers return to their homes or other accommodations for the evening. All Soldiers of the HHC are expected to return for formation and sign-in on Sunday morning at 0700. However, two of the HHC’s Soldiers decide to experience Kaiserslautern’s vibrant night life and go to several night clubs on Saturday evening. On their way back to their lodging-in-kind accommodations, they are arrested by local Polizei for driving under the influence (DUI) of alcohol. Instead of taking the Soldiers to the local clink, the Polizei turn them over to the U.S. military police station located on Vogelweh

Air Base for further disposition. At 0330, you receive a call from the HHC commander informing you of the situation and asking you his options under the UCMJ.

This article analyzes the attachment of UCMJ jurisdiction over Reserve Soldier misconduct during the gap period between two IDT periods. It first explains the mechanics of how UCMJ jurisdiction over Reserve Soldiers attaches by looking at the applicable statute, case law, and regulations. Then, it analyzes how UCMJ jurisdiction attaches for incidents that occur between IDT periods. This article concludes that a Reserve Soldier remains under UCMJ jurisdiction between IDT periods if such Soldier voluntarily submits to military authority and receives additional military benefits.

II. Mechanics of UCMJ Jurisdiction and Reserve Soldiers

Jurisdiction is the power of a court to try and determine a case and to render a valid judgment.⁴ Court-martial jurisdiction is dependent upon both personal and subject matter jurisdiction, in addition to a properly constituted court martial.⁵ Subject matter jurisdiction is concerned with violations of the UCMJ committed by persons subject to the Code.⁶ Thus, a court-martial has subject matter jurisdiction only over those violations of the UCMJ, which are committed by persons who are subject to the Code at the time of the offense.⁷

In contrast, personal jurisdiction looks at both military control over the individual at the time of trial and at the time of the offense.⁸ As stated by the Court of Appeals for the Armed Forces, “the only difference [between subject matter and personal jurisdiction] is that jurisdiction over the person depends on the person’s status as a ‘person subject to the Code’ both at the time of the offense and at the time of trial.”⁹ Consequently, a court-martial may have subject matter jurisdiction because a Soldier committed an offense, yet lack personal jurisdiction because the Soldier who committed the crime has been fully discharged from service.¹⁰ Conversely, a court-martial may have personal jurisdiction over an accused because of his service status, yet

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¹ See U.S. DEP’T OF ARMY, REG. 140-1, ARMY RESERVE MISSION, ORGANIZATION, AND TRAINING para. 2-1 (20 Jan. 2004) [hereinafter AR 140-1]. The Selected Reserve is part of the Ready Reserve of each Reserve component consisting of units and individuals who training participate and serve on paid active duty for training each year. USAR Selected Reserve units include individuals classified as troop program units (TPUs), Individual Mobilization Augmentees (IMA), and Active Guard Reserve (AGR) personnel. See *id.* sec. II, at 91.

² See AR 140-1, *supra* note 1, para. 3-4b. A multiple unit training assembly (MUTA) weekend is typically referred to as a battle assembly (BA) weekend. *Id.*

³ See U.S. DEP’T OF DEF., INSTR. 1225.9, 17, BILLETING FOR RESERVE COMPONENT MEMBERS (Dec. 01) [hereinafter DoDI 1225.9]. Lodging-in-kind is commercial lodging of like kind and quality as transient Government housing found on military installations. See *id.*

⁴ See *United States v. Ali*, 71 M.J. 256, 261 (C.A.A.F. 2012).

⁵ See *United States v. Oliver*, 57 M.J. 170, 172 (C.A.A.F. 2002).

⁶ See *United States v. Chodara*, 29 M.J. 943, 944 (A.C.M.R. 1990).

⁷ *Id.*

⁸ See *Oliver*, 57 M.J. at 172.

⁹ See *Ali*, 71 M.J. at 265.

¹⁰ See *Chodara*, 29 M.J. at 944 (citing *United States v. Howard*, 20 M.J. 353, 354 (C.M.A.1985)).

lack subject matter jurisdiction because the offense charged was committed at a time when the accused was not a member of the armed services and thus not a person subject to the Code.¹¹

Personal jurisdiction (and to a large extent subject matter jurisdiction) is governed by Article 2 of the UCMJ.¹² Members of the armed forces that are called or ordered to duty “from the dates” when they are required by the terms of the order to obey are subject to the UCMJ.¹³ Further, pursuant to Article 2(a)(3) of the UCMJ, “members of the reserve component *while on* inactive-duty training” are subject to the UCMJ.¹⁴ Finally, under Article 2(c) of the UCMJ, a person serving with an armed force who submits voluntarily to military authority, meets minimum competency and age standards, receives military pay and allowances, and performs military duties is also subject to UCMJ jurisdiction.¹⁵

In determining when UCMJ jurisdiction attaches to a Reserve servicemember for active duty (as opposed to “inactive-duty”), the courts have ruled that UCMJ jurisdiction attaches either on the day when the servicemember reports for duty regardless of the report time,

¹¹ See *id.* (citing *United States v. Jordan*, 29 M.J. 177, 184–85 (C.M.A. 1989)).

¹² See UCMJ art. 2 (2012); see also *Ali*, 71 M.J. at 265.

¹³ See UCMJ art. 2(a)(1). The provision reads:

Members of a regular component of the armed forces, including those awaiting discharge after expiration of their terms of enlistment; volunteers *from the time* of their muster or acceptance into the armed forces; inductees *from the time* of their actual induction into the armed forces; and other persons lawfully called or ordered into, or to duty in or for training in, the armed forces, *from the dates* when they are required by the terms of the call or order to obey it.

Id. (emphasis added). This means that Reserve component Soldiers ordered to annual training (AT), active duty for training (ADT), or other forms of active duty are subject to the Uniform Code of Military Justice (UCMJ). See *id.* See also MANUAL FOR COURTS-MARTIAL, UNITED STATES, R.C.M. 202 discussion (2)(A)(i) (2012) [hereinafter MCM].

¹⁴ See UCMJ art. 2(a)(3) (“[m]embers of a reserve component while on inactive-duty training, but in the case of members of the Army National Guard of the United States or the Air National Guard of the United States only when in Federal service.”); see also MCM, *supra* note 13, R.C.M. 204.

¹⁵ See UCMJ art. 2(c). Article 2(c) indicates in full that:

Notwithstanding any other provision of law, a person serving with an armed force who (1) submitted voluntarily to military authority; (2) met the mental competence and minimum age qualifications of sections 504 and 505 of this title at the time of voluntary submission to military authority; (3) received military pay or allowances; and (4) performed military duties; is subject to this chapter until such person’s active service has been terminated in accordance with law or regulations promulgated by the Secretary concerned.

Id.

or on the day when she starts travel to report for duty.¹⁶ In *United States v. Cline*, an Air Force noncommissioned officer (NCO) argued that the court lacked personal jurisdiction over his case because his distribution of marijuana occurred prior to the reporting time for his annual training order.¹⁷ The NCO sold marijuana on Norton Air Force Base on the date his annual training order was to begin, but prior to his reporting time.¹⁸ In deciding the case, the court first looked at the exact language of Article 2(a)(1).¹⁹ The court found the NCO was not a “volunteer” or “inductee” within the meaning of Article 2(a)(1), which calls for a time-based analysis for UCMJ jurisdiction.²⁰ The court further found that the NCO was among the last class of persons indicated in Article 2(a)(1) as one who was called or ordered to duty and, therefore, subject to the UCMJ “*from the dates*” when he was required by the terms of the call or order to obey it.²¹ Therefore, the court reasoned that the NCO was subject to the UCMJ from one minute past midnight on the report *date* indicated on his annual training order.²²

The court addressed the NCO’s argument that reservists are equivalent to the militia and are subject to a departure for duty standard exercised in the National Guard.²³ The court found the Air Force Reserve was clearly a federal entity that is not subject to prior practices of the militia.²⁴ The court further found that certain statutes and regulations covering travel of reservists that arguably created a departure for duty rule for travel benefits were unrelated to the issue of UCMJ jurisdiction.²⁵ Therefore, the Air Force NCO was subject to the UCMJ for the entire twenty-four hours with respect to the report date of his annual training order regardless of the specific reporting time indicated on the order.²⁶

In *United States v. Phillips*, an Air Force Reserve lieutenant colonel admittedly ingested marijuana laced brownies while in a travel status the night before her annual training order was to begin.²⁷ The Reserve lieutenant colonel

¹⁶ See *United States v. Cline*, 29 M.J. 83 (C.M.A. 1989); *United States v. Phillips*, 56 M.J. 843 (A.F. Ct. Crim. App. 2002).

¹⁷ See *United States v. Cline*, 29 M.J. 83 (C.M.A. 1989).

¹⁸ See *id.* at 84.

¹⁹ See *id.* at 85.

²⁰ *Id.* Article 2(a)(1) covers volunteers from the time of their muster or acceptance into the armed forces, and inductees from the time of their actual induction are subject to the UCMJ. See *supra* note 13.

²¹ See *Cline*, 29 M.J. at 85–86.

²² See *id.* at 86.

²³ See *id.* at 85.

²⁴ *Id.*

²⁵ *Id.*

²⁶ See *id.* at 86.

²⁷ See *United States v. Phillips*, 56 M.J. 843 (A.F. Ct. Crim. App. 2002).

argued that the Air Force lacked jurisdiction over her use of marijuana because her active duty tour did not begin until 0001 hours on the report date indicated in her order.²⁸ The officer's order required her to report for duty at 0730 on 12 July and be released from duty on 23 July with an optional one day of travel on 11 July.²⁹ The court found that the officer was subject to UCMJ jurisdiction on 11 July under Article 2(a)(1) because she was a person "lawfully called or ordered into . . . duty in or for training . . . from the dates when [she was] required by the terms of the call or order to obey it."³⁰ The court stated that the officer could have been called to duty on the date she was required to start her training, 12 July, or she could have exercised her option to take a day of travel and be called to duty on 11 July.³¹ Because the officer chose the latter option, personal jurisdiction attached on 11 July.³²

Most interestingly, the court also found the officer subject to the jurisdiction of the court under Article 2(c).³³ The court reasoned the officer had submitted to military authority by voluntarily traveling on 11 July and accepting the military conditions of her travel to use government quarters.³⁴ Further, the officer clearly met age and mental requirements for active service and received pay and allowances for the day of travel.³⁵ The court also found the officer performed military duties on her travel day.³⁶ It stated, "Travel is a normal part of military duty. In the discharge of that duty, it was incumbent upon the appellant to adhere to military standards and to the UCMJ."³⁷ Therefore, the court also maintained personal jurisdiction over the case pursuant to Article 2(c) of the UCMJ.³⁸

Aside from the statutory language of Article 2 of the UCMJ and the case law interpreting its application, one must look to the governing regulations regarding IDT. Two regulations are relevant to this issue: Army Regulation (AR) 27-10, *Military Justice*, and AR 140-1, *Army Reserve Mission, Organization, and Training*.

Army Regulation 27-10 states that Reserve Soldiers in Title 10, U.S. Code (so called "Title 10") status are subject to the UCMJ.³⁹ Typical Title 10 duty statuses are the following: active duty (AD), active duty for training (ADT), annual training (AT), active guard reserve duty, and IDT.⁴⁰ "Inactive duty training normally consists of weekend drills by TPUs, but may also include any training authorized by appropriate authority."⁴¹ Most importantly, AR 27-10 states that "All . . . [U.S. Army Reserve] Soldiers are subject to the provisions of the UCMJ *from the date* scheduled to report to AD, ADT, AT, or IDT until *the date* the Soldier is released from that status."⁴²

Army Regulation 140-1, *Army Reserve Mission, Organization, and Training*, mandates TPUs conduct IDT in the form of unit training assemblies (UTAs).⁴³ It defines a UTA as "an authorized and scheduled training assembly of at least [four] hours, including roll call and rest periods."⁴⁴ A TPU Soldier who satisfactorily completes an entire UTA may earn at least one day's pay or one retirement point or both.⁴⁵ A TPU may not conduct more than two UTAs of equal duration per day regardless of the number of hours of training actually conducted.⁴⁶ Therefore, each UTA period is a minimum of four hours in duration and a maximum of twelve hours in duration.⁴⁷

III. Analysis of UCMJ Jurisdiction and IDT

A commander may only exercise UCMJ jurisdiction over a Reserve Soldier between IDT periods if such periods are covered by Article 2.⁴⁸ Article 2(a)(1) is only applicable

²⁸ See *id.* at 845.

²⁹ *Id.*

³⁰ See *id.*

³¹ *Id.*

³² *Id.* But see *United States v. Phillips*, 58 M.J. 217 (C.A.A.F. 2003) (finding jurisdiction over the accused under Article 2(c) without addressing Article 2(a)(1)).

³³ See *id.* at 846–47.

³⁴ *Id.* at 846. In affirming the lower court's holding, the Court of Appeals for the Armed Forces also emphasized that the officer must be "serving with an armed force" as a pre-requisite to finding jurisdiction under Article 2(c). *Phillips*, 58 M.J. at 220. The court easily found that the officer was serving with an armed force on the 11 July due to her pay status, receipt of retirement points, and receipt of military benefits such as lodging. See *id.*

³⁵ *Phillips*, 56 M.J. at 846.

³⁶ *Id.* at 847.

³⁷ *Id.*

³⁸ *Id.*

³⁹ See U.S. DEP'T OF ARMY, REG. 27-10, *MILITARY JUSTICE* para. 20-2a (3 Oct. 2011) [hereinafter AR 27-10] ("Army Reserve Soldiers will be subject to the UCMJ whenever they are in a . . . [Title 10, U.S. Code] (Title 10) duty status.").

⁴⁰ *Id.* ("Examples of . . . [Title 10] duty status are active duty (AD); active duty for training (ADT); annual training (AT); active guard reserve (AGR) duty; inactive duty training (IDT).").

⁴¹ *Id.*

⁴² *Id.* para. 20-2a.

⁴³ See AR 140-1, *supra* note 1, para. 3-4b.

⁴⁴ *Id.*

⁴⁵ *Id.*

⁴⁶ See *id.* para. 3-4c.

⁴⁷ See *id.* para. 3-4.

⁴⁸ See UCMJ art. 2 (2012).

to Reserve Soldiers “called or ordered” to duty pursuant to active duty orders.⁴⁹ Therefore, Article 2(a)(1) is inapplicable to IDT.⁵⁰ Article 2(a)(3) states that Reserve Soldiers are covered by the UCMJ while “on inactive duty training.”⁵¹ The UCMJ does not define when a Reserve Soldier is on IDT.⁵² However, AR 27-10 appears to fill this gap when it states that the UCMJ applies to all U.S. Army Reserve Soldiers from the date scheduled to report to IDT until the date the Soldier is released from that status.⁵³ Army Regulation 27-10 places IDT in parity with a call or order to active duty with respect to UCMJ jurisdiction, applying Article 2(a)(1)’s date-based, and not time-based, approach in determining UCMJ jurisdiction.⁵⁴ Therefore, following the holding in *United States v. Cline*, UCMJ jurisdiction would presumably attach at one minute after midnight on the date scheduled for IDT.⁵⁵

But, there are several issues associated with equating IDT with active duty service. First, IDT periods are for a minimum of four hours (maximum of twelve hours), not twenty-four hours as is applicable to active duty service.⁵⁶ Second, IDT periods are marked by the discrete acts of “sign-in” and “sign-out” at unit battle assemblies, which are inapplicable to active duty service.⁵⁷ Finally, and most fundamentally, the express language of Article 2(a)(3) does not support this parity.⁵⁸

The court in *United States v. Cline* placed great emphasis on the language of Article 2(a)(1) differentiating between different categories of individuals subject to UCMJ jurisdiction.⁵⁹ Applying the same analysis, one finds that Article 2 also distinguishes between members performing IDT (“while on inactive duty training”) and members performing active duty (“from the dates when they are required by the terms of the call or order to obey it”) regarding personal jurisdiction.⁶⁰ Article 2(a)(3) does not define the period of UCMJ jurisdiction for IDT by use of the term date, it uses the non-defined term “while on” IDT.⁶¹ In the absence of statutory specificity, one can only evaluate

the period of IDT jurisdiction with time in accordance with AR 140-1.⁶² Army Regulation 27-10 fails to capture this distinction by conflating IDT with Reserve active duty service (i.e., ADT and AT) and applying the Article 2(a)(1)’s date-based approach⁶³ to determine UCMJ jurisdiction for IDT.⁶⁴ Hence, AR 27-10 appears to improperly expand the express language of Article 2(a)(3).⁶⁵

By regulation, IDT is governed by minimum time standards in its performance.⁶⁶ A Reserve unit commander has the discretion to schedule UTAs for a minimum of four hours or a maximum of twelve hours based upon the needs of the unit.⁶⁷ Reserve Soldiers are clearly “on inactive-duty training” from the time they are scheduled to report to the Reserve unit for training until the Soldiers are released from such unit at the end of the duty day. During this period, they are in a pay status and receiving retirement points.⁶⁸ Any expansion of UCMJ jurisdiction under Article 2(a)(3) beyond this minimum standard is problematic. In fact, the court in *Cline* expressly rejected applying any “departure-for-duty” standard as the inception of UCMJ jurisdiction over Reserve Soldiers performing active duty training.⁶⁹ Given that Congress did not include Reserve Soldiers on “inactive duty training” in Article 2(a)(1) but instead differentiated them by creating Article 2(a)(3), the date standard to jurisdiction should not be applied to IDT. Therefore, a time-based approach to defining “while on inactive-duty training” appears appropriate.

If a Soldier, however, remains under some military authority upon release from his Reserve unit at the end of the training day, then such Soldier may remain under UCMJ jurisdiction pursuant to Article 2(c).⁷⁰ This is especially the case if the Soldier is offered on-post billeting or lodging-in-kind. In that case, the Soldier would be voluntarily submitting to military authority by billeting in a location chosen by the Soldier’s unit. Further, the Soldier would

⁴⁹ See *id.* art. 2(a)(1).

⁵⁰ *Id.*

⁵¹ See *id.* art. 2(a)(3).

⁵² See *id.* art. 2.

⁵³ See AR 27-10, *supra* note 39, para. 20-2a.

⁵⁴ *Id.*

⁵⁵ See *United States v. Cline*, 29 M.J. 83, 85 (C.M.A. 1989).

⁵⁶ See AR 140-1, *supra* note 1, para. 3-4.

⁵⁷ See *id.* para. 3-9g.

⁵⁸ See UCMJ art. 2 (2012).

⁵⁹ See *Cline*, 29 M.J. at 83–85.

⁶⁰ See UCMJ art. 2.

⁶¹ *Id.* art. 2(a)(3).

⁶² *Id.*; *cf. id.* art. 2(a)(1); see also AR 140-1, *supra* note 1, para. 3-4.

⁶³ Article 2(a)(1) only applies UCMJ jurisdiction “from the dates” a member is called or ordered to duty with respect to active duty orders. See UCMJ art. 2(a)(1).

⁶⁴ AR 27-10, *supra* note 39, para. 20-2a.

⁶⁵ See AR 27-10, *supra* note 39, para. 20-2.

⁶⁶ See AR 140-1, *supra* note 1, para. 3-4.

⁶⁷ *Id.*

⁶⁸ *Id.*

⁶⁹ See *United States v. Cline*, 29 M.J. 83, 86 (C.M.A. 1989) (“[T]he Senate eventually imposed the more particular time requirement for jurisdiction only on inductees, volunteers, and members of the National Guard. Applying the principle of statutory construction, “*expressio unius est exclusio alterius*” [(“[a] canon of construction holding that to express or include one thing implies the exclusion of the other,” BLACK’S LAW DICTIONARY 661 (9th ed. 2009))], members of the Reserves do not gain the benefit Congress intended these other special groups to have.”).

⁷⁰ See UCMJ art. 2(c).

continue to meet age and mental capacity qualifications and be receiving military pay and allowances. Although the Soldier would not receive any additional salary after sign-out at the end of the duty day, the Soldier would be receiving an additional benefit from the Government, i.e., free billeting, which would likely be construed as form of compensation. The Soldier would also be performing military duties. As noted by the court in *United States v. Phillips*, travel related activities such as billeting are part of a Soldier's normal military duties.⁷¹

IV. Conclusion

The jurisdiction of the UCMJ applies to Reserve Soldiers from the time scheduled to report to their Reserve unit for IDT until released by such unit at the conclusion of the duty day. Jurisdiction may further apply to Reserve Soldiers after they sign-out of their Reserve units at the end of the duty day if they voluntarily submit to military authority and receive a further benefit from the Government.

Under the hypothetical presented in the introduction, the Soldiers arrested for DUI would not be subject to the UCMJ with regard to Article 2(a)(3). Upon release from their unit at sign-out, these Soldiers were no longer "on inactive duty training" within the meaning of Article 2(a)(3). However, they would likely remain subject to the UCMJ during Saturday night under Article 2(c) because they voluntarily

submitted to military authority for the evening via their receiving lodging-in-kind. This voluntary receipt of benefits from their unit would be a form of compensation and subject them to additional military duties associated with their lodging in the form of conducting themselves in accordance with military rules and discipline.

Although not presented in the hypothetical, it would be a good practice to reiterate to all Soldiers accepting lodging-in-kind that they remain subject to the jurisdiction of the military during their stay and to conduct themselves in accordance with such jurisdiction. This reiteration could take the form of an additional sign-in and sign-out for the evenings where lodging-in-kind is applicable. Units could also delay the evening sign-out for all those Soldiers accepting lodging-in-kind until the following morning. The intent of these actions would be to make clear that accepting lodging-in-kind will subject Soldiers to military discipline between IDT periods.

⁷¹ See *United States v. Phillips*, 56 M.J. 843, 847 (A.F. Ct. Crim. App. 2002). *Contra id.* at 849 (Pecinovsky, J., concurring in part, dissenting in part) (rejecting the court's determination that accused's transportation to and lodging at duty station prior to report date as performing military duty under Article 2(c), UCMJ).