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ARTICLE 107, UCMJ: DO FALSE STATEMENTS REALLY HAVE TO BE OFFICIAL?

LIEUTENANT COLONEL COLBY C. VOKEY, USMC[1]

Getting to the bottom of things like that was impossible. You just had to take the practical view that a man always lied on his own behalf, and paid his lawyer, who was an expert, a professional liar, to show him new and better ways of lying.[2]

I. Introduction

In 1950, Congress passed the Uniform Code of Military Justice (UCMJ),[3] providing a comprehensive system of military justice applicable to all the armed forces. Through this landmark legislation, Congress specifically addressed offenses involving falsehoods by service members. Such falsehoods have always proven contrary to the ideals of trust and integrity vital to the maintenance of military discipline. Falsehoods and

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1. Judge Advocate, United States Marine Corps. Presently assigned as the Regional Defense Counsel for the Western Region of the United States. Master of Laws, 2003, The Judge Advocate General's School, U.S. Army; J.D., 1998, University of North Dakota; B.S., 1987, Texas A&M University. Previous assignments include Student, 51st Judge Advocate Officer Graduate Course, The Judge Advocate General's School, U.S. Army, Charlottesville, Virginia, 2002-2003; Legal Services Support Section, 1st Force Service Support Group, Camp Pendleton, California, 1998-2002 (Officer in Charge, Legal Services Support Team E; Officer in Charge, Legal Services Support Team D; Senior Defense Counsel); Inspector-Instructor, Headquarters Battery, 14th Marines, Dallas, Texas, 1992-1995; Officer in Charge, Classified Files and Special Correspondence, 3d Marine Division, Okinawa, Japan, 1991-1992; Executive Officer, Battery L, 2d Battalion, 12th Marines (10th Marines), Operation Desert Shield/Storm, Saudi Arabia/Kuwait, 1991; 4th Battalion, 12th Marines, 3d Marine Division, Okinawa, Japan, 1989-1991 (Assistant Battalion Operations Officer, Adjutant, Battery Fire Direction Officer). Member of the bars of Texas, North Dakota, the U.S. Court of Appeals for the Armed Forces, and the Supreme Court of the United States. This article was submitted in partial completion of the Master of Laws requirements of the 51st Judge Advocate Officer Graduate Course.

2. JAMES GOULD COZZENS, THE JUST AND THE UNJUST 330 (1942).

3. Act of May 5, 1950, ch. 169, 64 Stat. 107 (current version at 10 U.S.C. §§ 801-946).

false statements by service members are "condemned by military law as much for [their] unsoldierly qualities as for the deceit and fraud [they] may accomplish. A falsehood can never be interpreted as an innocent act."[4]

In order to address acts by service members involving falsehoods, Congress enacted three specific punitive articles in the UCMJ that cover these offenses. These three articles are: Article 107, False official statements; Article 131, Perjury; and Article 132, Frauds against the United States.[5] Additionally, a service member could be charged with an offense involving a falsehood under either Article 133, Conduct unbecoming an officer and gentlemen, or Article 134, General article.[6] This article concerns only Article 107, which proscribes the making of false official statements.

Service members often make false statements. Not all such statements, however, violate Article 107. In establishing Article 107, Congress provided that, "[a]ny person subject to this chapter who, with intent to deceive, signs any false record, return, regulation, order, or other official document, knowing it to be false, or makes any other false official statement knowing it to be false, shall be punished as a court-martial may direct."[7] The President of the United States thereafter promulgated the *Manual for Courts-Martial* (MCM)[8] to implement the UCMJ and provide supplemental rules. In the *MCM*, the President broke down the statute into four elements, established maximum possible punishments, and provided amplifications, explanations and definitions to aid practitioners and service members in understanding the UCMJ.[9]

The first element of the offense, as listed in the *MCM*, states "[t]hat the accused signed a certain *official* document or made a certain *official* statement."[10] Criminalizing false language under Article 107 requires the

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4. Robert S. Stubbs II, *Falsehoods*, JAG J., Mar. 1955, at 14, 18.

5. UCMJ arts. 107, 131, 132 (2002).

6. *Id.* arts. 133, 134. *See* Captain Kenneth M. Abagis, The False Statement: A Comparative Study of 18 U.S.C. 1001 and Article 107, Uniform Code of Military Justice 5 (1961) (unpublished thesis, The Judge Advocate General's Legal Center and School, U. S. Army) (on file with The Judge Advocate General's Legal Center and School Library, Charlottesville, Virginia).

7. 10 U.S.C. § 907 (1956).

8. MANUAL FOR COURTS-MARTIAL, UNITED STATES (2002) [hereinafter MCM].

statement be "official." The officiality of a certain statement depends on the facts of each case. Consider the following five scenarios:

1. In order to be excused from her apartment lease, a Marine lance corporal falsely tells her landlord that her father was killed in the September 11, 2001 terrorist attack on the Pentagon .[11]

2. An airman tells another airman that he was a star running back on his high school football team when, in fact, he was only the water boy.

3. A soldier lies to a civilian police officer during a state investigation concerning his involvement in a fight and shooting involving a senior non commissioned officer at an off-post bar and trailer park.[12]

4. In order to impress a civilian girl, a corporal falsely alters his leave and earnings statement to reflect a higher salary than he really receives.

5. A military recruiter lies to a civilian police officer during a state

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9. *Id.* The following excerpt from part IV, ¶ 31 of the *MCM* sets out the elements of proof and some of the explanation that corresponds with Article 107, UCMJ:

> b. *Elements.*
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> (1) That the accused signed a certain official document or made a certain official statement;
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> (2) That the document or statement was false in certain particulars;
>
> (3) That the accused knew it to be false at the time of signing it or making it; and
>
> (4) That the false document or statement was made with the intent to deceive.
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> c. *Explanation.*
>
> (1) *Official documents and statements.* Official documents and official statements include all documents and statements made in the line of duty.

Id.

10. *Id.* (emphasis added).

11. Gov't Mot. to Reconsider Ruling on Article 134 Preemption, United States v. MarksJones (Camp Pendleton 2002) (an unreported special court-martial that resulted in an acquittal) (on file at Legal Service Support Section, 1st Force Service Support Group, Camp Pendleton, California).

12. United States v. Johnson, 39 M.J. 1033 (A.C.M.R. 1994) (holding that oral statements by a soldier to civilian law enforcement officers, who were conducting a state investigation concerning an off-post altercation and shooting involving another service member, were not *official* under Article 107).

investigation into a fatal automobile accident involving another recruiter and a recruit.[13]

In each of the five scenarios, the service member made a false statement. The issue, however, is whether or not each false statement is "official" and thereby capable of sustaining a conviction under Article 107. Today, service members face a continually expanding application of the term "official" under Article 107. This article examines the scope of Article 107. Specifically, the article focuses on the first element of the offense, which limits proscribed conduct under Article 107 to "official" statements. Although the article reviews cases involving the so-called "exculpatory no" doctrine, that doctrine is not discussed in this article.[14]

Part II of this article analyzes a recent case applying Article 107, *United States v. Teffeau.*[15] *Teffeau* involved a Marine Staff Sergeant (SSgt) who lied to civilian police officers concerning an automobile accident involving another Marine and a recruit.[16] Affirming the conviction, the United States Court of Appeals for the Armed Forces (CAAF) found that SSgt Teffeau's false statements to Winfield, Kansas police officers were made in the line of duty and therefore "official" under Article 107.[17]

Part III examines the background and history of the UCMJ and Article 107. In particular, this section reviews the congressional debates and activities surrounding the enactment of the UCMJ, in order to shed some light on the purpose and meaning of Article 107. Additionally, the article discusses the drafting and promulgation of the *MCM*. The *MCM* implements the UCMJ and provides explanations and definitions for the application of Article 107.

Part IV looks at a similar civilian federal statute, Section 1001 of Title 18 of the United States Code (§ 1001).[18] The federal courts have dealt with

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13. United States v. Teffeau, 58 M.J. 62 (2003).

14. United States v. Hutchins, 18 C.M.R. 46 (C.M.A. 1955); United States v. Aronson, 25 C.M.R. 29 (C.M.A. 1957); United States v. Jackson, 26 M.J. 377 (C.M.A. 1988); United States v. Solis, 46 M.J. 31,34 (1997). The "exculpatory no" doctrine is based on the premise that an accused should not be prosecuted for making false statements to law enforcement officials by simply denying guilt or wrongdoing. *See* United States v. McCue, 301 F.2d 452 (2d Cir. 1962), *cert. denied*, 370 U.S. 939 (1962). Although this doctrine is found in military cases involving Article 107 offenses, the "exculpatory no" defense does not directly concern the officiality of false statements.

15. *Teffeau*, 58 M.J. at 62.

16. *Id.*

17. *Id.* at 69.

this falsity offense, in one form or another, since the close of the Civil War.[19] The military courts have followed § 1001 federal case law since 1955, regularly comparing § 1001 to Article 107 in order to define military officiality.[20]

Part V reviews other recent case law surrounding the officiality requirement of Article 107. Additionally, § 1001 and Article 107 treat oral and written statements somewhat differently. This article addresses these differences and shows how the military courts have further departed from Congress' original intent in enacting Article 107.

Finally, Part VI proposes a test to determine the officiality requirement of Article 107. This test focuses on both the capacity of the person making the statement and the identity of the recipient of the statement. The article concludes that false statements to civilians, by service members not in the actual performance of their duties, are not "official." Military courts now expand the scope of Article 107 well beyond what was written or intended by Congress, partially due to a blind reliance on the federal courts's interpretation of § 1001. Military courts should now place appropriate limits on Article 107 through a clear and unambiguous definition of "official."

II. *United States v. Teffeau*[21]

A. Background

Marine SSgt Charles E. Teffeau was a military recruiter assigned to the Marine Corps recruiting substation in Wichita, Kansas.[22] His duties included making weekly contact with recruits awaiting entry on active duty under the Delayed Entry Program. Ms. Jennifer Keely and Ms. Jennifer Toner were two such recruits. They enlisted in the U.S. Marine Corps, and both had another Marine, SSgt James Finch, as their military

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18. 18 U.S.C. § 1001 (2000).

19. Christopher E. Dominguez, Note, *Congressional Response to* Hubbard v. United States*: Restoring the Scope of 18 U.S.C. 1001 and Codifying the "Judicial Function" Exception*, 46 CATH. U. L. REV. 523, 531 (1997).

20. Lieutenant Colonel Bart Hillyer & Major Ann D. Shane, *The "Exculpatory No" – Where Did It Go?*, 45 A.F. L. REV. 133, 151 (1998).

21. 58 M.J. 62 (2003).

22. *Id.* at 63-64.

recruiter. Both Ms. Keely and Ms. Toner had already enlisted and were awaiting their call to active duty.[23]

On 2 January 1997, the two female recruits contacted SSgt Finch and SSgt Teffeau and made plans to celebrate Ms. Keely's impending departure for boot camp.[24] On the morning of 3 January, SSgt Teffeau notified his supervisor, Gunnery Sergeant (GySgt) Quilty, that he would accompany SSgt Finch to the town of Winfield, Kansas to visit two recruits. During this trip to Winfield, SSgt Teffeau was going to conduct recruiting duties in nearby Ark City.[25] Prior to arriving at Ms. Toner's home, the two recruiters stopped at a gas station where SSgt Finch purchased a case of beer.[26] Staff Sergeant Teffeau placed the beer in the trunk of the government sedan in which they were traveling. Just prior to 1100, the two recruiters arrived at the home of Ms. Toner.[27] A few minutes later, Ms. Keely also arrived at Ms. Toner's home, driving her own Ford Mustang.[28]

At Ms. Toner's home, the two recruiters, still in uniform, each drank a quantity of Jack Daniels bourbon. Ms. Keely drank schnapps.[29] Ms. Toner supplied all of the alcohol consumed at the residence.[30] Ms. Toner did not drink any alcohol, because she had the flu and had to work in her civilian job later that day.[31] The two recruiters and Ms. Keely continued drinking for almost three hours.[32] At 1350, Ms. Toner informed the recruiters and Ms. Keely that they had to leave, as she had to be at work at 1400.[33] The recruiters changed out of their uniforms prior to departing Ms. Toner's home.[34]

Staff Sergeant Teffeau, SSgt Finch and Ms. Keely then proceeded to Winfield Lake to continue their celebration.[35] Staff Sergeant Finch rode

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23. *Id.* at 64.
24. *Id*.
25. Supplement to Petition for Grant of Review at 2, United States v. Teffeau, 58 M.J. 62 (2003) (No. 02-0094/MC) (Appellant's Brief).
26. *Teffeau*, 58 M.J. at 64.
27. Brief on Behalf of Appellee at 4, United States v. Teffeau, 58 M.J. 62 (2003) (No. 02-0094/MC).
28. Appellant's Brief, *supra* note 25, at 4-5.
29. *Teffeau*, 58 M.J. at 64.
30. Appellant's Brief, *supra* note 25, at 2.
31. *Teffeau*, 58 M.J. at 64.
32. *Id.*
33. Appellee's Brief, *supra* note 25, at 4.
34. *Teffeau*, 58 M.J. at 64.
35. *Id.*

with Ms. Keely in her Ford Mustang, while SSgt Teffeau drove the government sedan.[36] Several hours later, the three departed Lake Winfield. Staff Sergeant Teffeau stopped at a convenience store and changed a flat tire on the government sedan.[37] About the same time, Ms. Keely and SSgt Finch were involved in a car accident after Ms. Keely's Mustang skidded 243 feet and hit a tree. Ms. Keely was killed and SSgt Finch was injured. Ms. Keely's blood-alcohol content (BAC) was determined to be 0.07. SSgt Finch's BAC was 0.14.[38]

Due to the fatality and alcohol involvement, police officers from Winfield conducted an official police investigation into the circumstances surrounding the car accident.[39] The Commanding Officer of the 8th Marine Corps District also directed a command investigation into the accident. The investigations were conducted independent of each other.[40]

As part of their official accident investigation, Winfield police officers interviewed SSgt Teffeau concerning his knowledge of the circumstances surrounding the accident. Staff Sergeant Teffeau went to the Winfield police station for the interview, accompanied by his supervisor, GySgt Quilty. During the questioning, SSgt Teffeau was in uniform. Staff Sergeant Teffeau made several false statements to the Winfield police officers. As a result, the Marine Corps charged SSgt Teffeau with three specifications in violation of Article 107.[41]

At trial, SSgt Teffeau moved to dismiss the Article 107 specifications for failure to state an offense.[42] The defense claimed that SSgt Teffeau's statements to the civilian investigators were not official, because the civilian investigators were not enforcing military law. Therefore, SSgt Teffeau was neither acting in the line of duty nor under any military duty or obligation to speak to them.[43] During the motion, the prosecution argued that the term "official" was not restricted to the party receiving the statement. Instead, the prosecution stated that the officiality of a false statement can be based on its issuing authority *rather than on the person receiving it* or

36. *Id.*
37. Appellant's Brief, *supra* note 25, at 3.
38. *Teffeau*, 58 M.J. at 64.
39. *Id.* at 67.
40. *Id.* at 69; Appellant's Brief, *supra* note 25, at 11.
41. *Teffeau*, 58 M.J. at 68.
42. *Id.*
43. Appellant's Brief, *supra* note 25, at 11.

the purpose for which it is made.[44] The military judge expressly adopted the prosecution's legal analysis.[45]

In denying the motion, the military judge concluded that the accused's statements "were made in the line of duty because they directly related to the performance of his military duties as a Marine recruiter assigned to the local area wherein the alleged offenses took place."[46] The military judge, however, failed to adequately explain how the act of making statements to civilian police officers was "in the line of duty" for a military recruiter. After the presentation of evidence, members of SSgt Teffeau's general court-martial found him guilty of making these false official statements in violation of Article 107.[47]

B. Service Court Decision

There was no question as to the falsity of the statements made to the civilian investigators. Staff Sergeant Teffeau lied to the Winfield police officers, who were conducting an investigation in accordance with Kansas state law. The issue on appeal was whether or not SSgt Teffeau's statements to state criminal investigators were "official" within the meaning of Article 107. The Navy-Marine Corps Court of Criminal Appeals (NMCCA) agreed with the trial court, affirming SSgt Teffeau's conviction for making false official statements.[48]

Staff Sergeant Teffeau argued on appeal that Article 107, like the similar federal statute, 18 U.S.C. § 1001, was intended only to protect departments and agencies of the United States from deceptive practices.[49] For this proposition, SSgt Teffeau cited *United States v. Johnson*,[50] a 1994 Army Court of Military Review (ACMR) case that overturned an Article 107 conviction of a soldier who also lied to state police officers conducting a criminal investigation.[51] Since SSgt Teffeau's false statements to Winfield police were part of an independent state criminal investigation, he

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44. United States v. Teffeau, 55 M.J. 756, 758 (N-M. Ct. Crim. App. 2001), *rev'd on other grounds*, 58 M.J. 62 (2003) (App. Ex. II, at 2).

45. *Id.*

46. *Teffeau*, 58 M.J. at 68 (citing Record at 76).

47. *Id.* at 63.

48. *Teffeau*, 55 M.J. at 760.

49. *Id.* at 759.

50. 39 M.J. 1033 (A.C.M.R. 1994).

51. *Id.*; *Johnson*, 39 M.J. 1033 (A.C.M.R. 1994).

argued that such statements could not corrupt or pervert the functions of any military department or agency. Thus, false statements to civilian officials conducting their own investigation of a car accident did not directly affect the functioning of the Marine Corps and were not "official."[52]

The Navy-Marine Corps court disagreed with appellant's argument and openly rejected the reasoning of *Johnson*. Instead, that court relied on two higher court cases, *United States v. Hagee*[53] and *United States v. Smith*.[54] Both the *Hagee* and *Smith* cases, however, involved the alteration of government documents and their subsequent submission to private parties. Equating SSgt Teffeau's false statements to false statements created by the falsification of official documents, the NMCCA then wrote that the identity of the recipient of false statements is irrelevant.[55] The court further concluded that "[p]rivate parties and local officials *should* be able to rely with equal confidence on the integrity of both" official United States documents and oral assertions made by a service member.[56] While this may be a desired moral result, it is not the law. Such a conclusion would make any false statement by a service member to any private party a *per se* violation of Article 107. To be criminal under Article 107, false statements must be "official."[57]

The NMCCA next issued its holding, correctly stating that an "intentionally deceptive statement made by a service member *in the line of duty* to a private party or a local official is within the scope of Article 107."[58] The question then before the court was whether SSgt Teffeau's statements were made in the line of duty and therefore official. The court, however, did not primarily focus on the circumstances surrounding the making of the statements. Instead, it looked to the underlying misconduct surrounding the meeting with Ms. Keely and Ms. Toner.[59] Accordingly, the court pointed out that SSgt Teffeau was on government business at the time he visited the recruits. While this fact was relevant to the other offenses, SSgt Teffeau's duty status at the time he visited the recruits should not be relevant to whether his later false statements to the Winfield police were offi-

52. *Teffeau*, 55 M.J. at 759.
53. United States v. Hagee, 37 M.J. 484 (C.M.A. 1993).
54. United States v. Smith, 44 M.J. 369 (1996).
55. *Teffeau*, 55 M.J. at 760.
56. *Id.* (emphasis added).
57. UCMJ art. 107 (2002).
58. *Teffeau*, 55 M.J. at 760 (emphasis added).
59. *Id.*

cial. Rather, the court should have asked whether SSgt Teffeau's *act* of speaking with Winfield police officers was an *act* in the line of duty.

Instead, the court made a big leap in logic. It focused on Winfield investigators' knowledge that SSgt Teffeau was in the military at the time of the questioning. Equating the police officers' knowledge of appellant's military status to a determination that the statements were in the line of duty, the court stated that "any statements the appellant decided to provide in response to questioning by the Winfield police investigators about the events preceding the fatal auto accident *would touch inevitably upon his official duties at the time as the investigators attempted to determine the cause of the accident.*"[60] Such reasoning, however, is flawed. Using the NMCCA's rationale, any service member could be convicted of violating Article 107 for making false statements as long as the recipient of the statement was aware of that service member's military status.

C. The CAAF Decision

Staff Sergeant Teffeau then appealed his case to the CAAF. The CAAF certified the issue of:

> [w]hether the lower court misapplied the law, and in the process created a conflict with the Army Court of Military Review's decision in *United States v. Johnson*, 39 M.J. 1033 (A.C.M.R. 1994), in finding that appellant's statements to civilian police officers investigating an automobile accident were made "in the line of duty" for purpose of Article 107, UCMJ.[61]

The court answered this question in the negative, affirming SSgt Teffeau's conviction for violating Article 107. The CAAF, however, came to this conclusion in a different manner than the lower court. The court recited Article 107 and next defined "official" statements as those "made in the line of duty."[62] The court did not define the phrase, "in the line of duty."

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60. *Id.* (emphasis added).

61. United States v. Teffeau, 58 M.J. 62, 63 (2003). The CAAF granted review of three issues in the case. Issue II was the subject issue concerning officiality of false statements. Issue I concerned a question of material variance in relation to an Article 92 violation. Issue III dealt with the viability of a defense to the offense of false official statement based on the paragraph 31c(6)(a) of Part IV of the *MCM*. *Id.* MCM, *supra* note 8, pt. IV, ¶ 31c(6). Neither Issue I nor III is discussed in this article.

62. *Teffeau*, 58 M.J. at 68. *See* MCM, *supra* note 8, ¶ 31c(1).

The court only said that the President did not intend to "limit 'line of duty' in this context to the meaning those words may have in other, non-criminal contexts."[63]

Next, the court concluded that the appellant was acting in the line of duty in making his false statements to Winfield police officers.[64] The court relied on a number of factors in reaching this conclusion.[65] The appellant was a canvassing military recruiter. He knew the two women recruits and SSgt Finch as a direct result of his official duties as a recruiter. Appellant traveled to Winfield, Kansas on 3 January 1997 with SSgt Finch as part of his duties as a military recruiter. Appellant reported this travel to his supervisor, GySgt Quilty. Both he and SSgt Finch arrived at Ms. Toner's residence in uniform to meet both women.[66]

Furthermore, in support of its conclusion, the court cited a number of factors related to the questioning at the Winfield police station.[67] The appellant arrived for the questioning in uniform. Gunnery Sergeant Quilty accompanied him. The court also noted there was a "parallel" military investigation into the appellant's activities.[68] Finally, the CAAF also emphasized that some of the other misconduct from the civilian investigation subjected the appellant to military criminal liability, noting that the Winfield investigation was "of interest to the military and within the jurisdiction of the courts-martial system."[69] In light of the above-mentioned factors, the court determined that the appellant's statements were made "in the line of duty," and therefore, found that the statements were "official" within the meaning of Article 107.[70]

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63. *Teffeau*, 58 M.J. at 68 (explaining the President's intent not to limit the phrase, "line of duty." The court highlighted several of these non-criminal contextual uses, such as; "'line of duty' determinations made to determine a servicemember's entitlement to medical care at government expense, to determine entitlement to disability compensation at a physical evaluation board, or to determine Government liability under the Federal Tort Claims Act, 28 U.S.C. § 2671-72 (2002)"). *See, e.g.*, U.S. Dep't of Navy, Office of the Judge Advocate General, Jag Instr. 5800.7C, Manual of the Judge Advocate General (JAGMAN) 2-23, 2-24 (3 Oct. 1990); U.S. Dep't of Air Force, Instr. 36-2910, Line of Duty (Misconduct) Determination 5 (4 Oct. 2002).

64. *Teffeau*, 58 M.J. at 69.

65. *Id*.

66. *Id*.

67. *Id.*

68. *Id*.

69. *Id.* Of note, SSgt Teffeau was not charged with any violations of state laws in his trial by court-martial.

70. *Id.*

The CAAF's findings invite criticism. First, much of the courts' focus surrounds the subject of the conversation instead of Staff Sergeant Teffeau's official military status or duties at the time the statements were made. At the time of the questioning, SSgt Teffeau was not performing duties as a canvassing recruiter. He was being interviewed as a witness to an accident investigation that occurred within the investigatory jurisdiction of the Winfield police. Nonetheless, the court concluded there was a military nexus between the statements and his duties, stating that his responses "bear a clear and direct relationship to" his official duties.[71] As the court pointed out, SSgt Teffeau was not ordered or directed by the military to speak with the Winfield police.[72] Ultimately, the court failed to adequately explain how SSgt Teffeau was discharging his duties as a recruiter or service member by making a statement to civilian investigators.

Additionally, the court highlighted the military command investigation and the military officials's interest in SSG Teffeau's actions on the day of the accident.[73] The court, however, failed to adequately explain how a "parallel" military investigation was relevant to the false statements made to Winfield police.[74] Although false statements to military officials may result in independent Article 107 violations, such statements have no bearing on the criminality of separate false statements to civilian police. Winfield police officers were conducting their own, independent accident investigation. While the Marine Corps may have had an interest in the results of the police investigation, the reverse was not necessarily true. Winfield law enforcement and the state of Kansas would have little or no interest in whether SSgt Teffeau violated purely military offenses, such as violation of general orders or dereliction in the performance of his duties.[75]

Looking behind the decision, the CAAF opinion leaves a number of unanswered questions. First, there was a noticeable absence of legal analysis; factual determinations and conclusions comprised the bulk of the opinion. Despite the court's reference to *United States v. Johnson*,[76] the

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71. *Id.*

72. *Id.* at 68.

73. *Id.*

74. *Id.*

75. In addition to the three Article 107 specifications for making false statements to Winfield police officers, SSgt Teffeau was also convicted at trial of conspiring to violate a general order, failing to obey a lawful general order, dereliction of duty, making false official statements to military officials, and obstructing justice, in violation of Articles 81, 92, 107, and 134, UCMJ. *Id.* at 63.

CAAF failed to discuss, distinguish or compare *Johnson*. In fact, the only cite to *Johnson* is found in an insignificant and inaccurate citing signal at the end of the decision.[77] *Johnson* cited over forty years of U.S. Supreme Court and military decisions in support of its conclusions of law.[78] In *Teffeau*, the CAAF referred to little precedent of any kind.

While the court purported to define the term "official," that definition merely recited paragraph 31c(1) of Part IV of the *MCM*.[79] Paragraph 31c(1) simply says that a statement is "official" if that statement is "made in the line of duty."[80] No other attempt was made to define the word "official."[81] The CAAF also failed to define the phrase "in the line of duty." The court simply concluded that since the underlying events had their origin in his official duties, SSgt Teffeau was "in the line of duty" when making statements to Winfield police.

Finally, the CAAF's decision left open many questions concerning the relationship between Article 107 and § 1001. Starting in 1955, soon after the enactment of the UCMJ, military courts have turned to the § 1001 federal false statement statute for guidance in interpreting Article 107.[82] In *Teffeau*, the CAAF ignored, without explanation, a long line of military decisions that compare Article 107 to § 1001.[83] The court merely stated that "the scope of Article 107 is more expansive than its civilian counter-

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76. United States v. Johnson, 39 M.J. 1033 (A.C.M.R. 1994).

77. *Teffeau*, 58 M.J. at 69 (citing *Johnson*, using a *See, e.g.* citing signal, for the proposition that the court "reject[s] any absolute rule that statements to civilian law enforcement officials can never be official within the meaning of Article 107"). The opinion, however, in *Johnson* reveals no such assertion. In fact, the Army court specifically considered situations in which statements to civilian law enforcement officials would sustain a conviction under Article 107. That court said, "[w]e can envision situations where a service member may be prosecuted for making false statements to state or nonmilitary federal officials acting on behalf of the armed forces . . . [and] may be found to have violated Article 107." *Johnson*, 39 M.J. at 1036 n.3.

78. *Johnson*, 39 M.J. at 1035.

79. *Teffeau*, 58 M.J. at 68.

80. MCM, *supra* note 8, ¶ 31c(1).

81. *Webster's Unabridged Dictionary* provides several relevant definitions of the word "official": "[1] of or pertaining to an office or position of duty, trust or authority: official powers; and [2] authorized or issued authoritatively: an official report." RANDOM HOUSE WEBSTER'S UNABRIDGED DICTIONARY 1345 (2d ed. 1998).

82. United States v. Hutchins, 18 C.M.R. 46 (C.M.A. 1955). *Hutchins* first linked the two statutes by announcing that the purpose of Article 107 was the same as § 1001. That purpose was "to protect the authorized functions of governmental departments and agencies from the perversion which might result from the deceptive practices described. United States v. Gilliland, 312 U.S. 86, 93 (1941).

part, 18 U.S.C. § 1001."[84] Furthermore, the court reasons that the scope is more expansive because "the primary purpose of military criminal law—to maintain morale, good order, and discipline—has no parallel in civilian criminal law."[85] While this "primary purpose" statement may be true as to military criminal law, that premise simply means the two statutes "differ in significant respects."[86] Accordingly, interpretation of Article 107 should not be blindly "based upon or dependent upon Section 1001 or cases arising thereunder."[87] Aside from discussing the alleged expansiveness of Article 107, the CAAF made no other reference to § 1001.

In deciding *Teffeau*, the CAAF relied heavily on facts leading up to and surrounding the accident to determine the officiality of the statements to the civilian police officers.[88] But the lack of legal analysis and specific conclusions of law left practitioners guessing as to the meaning of the terms "official" and "in the line of duty." Although the CAAF said it examined Staff Sergeant Teffeau's conduct "in light of the *language and purposes* of Article 107," the court failed to identify or discuss the *language* or the *purposes* of Article 107.[89] To fully address the shortcomings of *Teffeau*, it is necessary to look at the history and background of the UCMJ and Article 107 and the purpose and similarities of the federal statute, 18 U.S.C. § 1001.

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83. *See Hutchins*, 18 C.M.R. at 46; United States v. Smith, 44 M.J. 369 (1996); United States v. Stallworth, 44 M.J. 785 (1996); *Johnson*, 39 M.J. at 1033; United States v. Dorsey, 38 M.J. 244 (C.M.A. 1993); United States v. Prater, 32 M.J. 433 (C.M.A. 1991); United States v. Ellis, 31 M.J. 26 (C.M.A. 1990); United States v. Jackson, 26 M.J. 377 (C.M.A. 1988); United States v. Aronson, 25 C.M.R. 29 (C.M.A. 1957).

84. *Teffeau*, 58 M.J. at 68.

85. *Id.* at 68 (citing United States v. Solis, 46 M.J. 31, 34 (1997)). This cite to *Solis*, an Article 107 case involving the "exculpatory no" doctrine, however, is inaccurate, at best. *Solis* stands for the proposition that Article 107 and § 1001 are significantly different, not that Article 107 is necessarily more expansive than § 1001. *Solis*, 46 M.J. at 34.

86. *Id.*

87. *Id.*

88. *Teffeau*, 58 M.J. at 69.

89. *Id.* (emphasis added).

III. History of the UCMJ and Article 107

A. Pre-UCMJ Military Justice Systems

Militaries have used their own systems of justice for centuries. Some systems established to enforce discipline in armed forces predate written codes of law.[90] The Romans developed a formal and organized system to deal with misconduct within its armies which would serve as a template for many subsequent military codes.[91] In 1621, King Gustavus Adolphus of Sweden produced the first known written military code when he published his 167 articles for the maintenance of order.[92] Following the evolution of the courts of chivalry from the Middle Ages and the promulgation of King Adolphus' written code, the British developed their own military justice model.[93] Over a period of several centuries, the British court-martial system evolved to include several key themes. These themes included the development of military due process, the restriction of court-martial jurisdiction to cover only soldiers, and the inclusion of legislatures in the military justice process.[94]

The American court-martial system originally imitated the British model.[95] In 1775, the Continental Congress adopted a new American code for maintaining order and discipline of the Army and Navy, based almost entirely on British military law.[96] Since 1775, American military justice has maintained a legal code and court system substantially different and separate from legal systems governing American civilians.[97]

Two distinct and separate codes governed the American armed forces prior to 1950.[98] The Army had the Articles of War;[99] the Navy used the Articles for the Government of the Navy.[100] Both the Army[101] and Navy[102]

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90. David A. Schlueter, Military Criminal Justice: Practice and Procedure § 1-4, at 13 (4th ed. 1996).

91. *Id.* at 15.

92. *Id.* at 15-17.

93. *Id.* at 17.

94. *Id.* § 1-5, at 22-23.

95. *Id.* at 19.

96. Edward M. Byrne, Military Law §§ 104, 107, at 4, 8 (3d ed. 1981).

97. Cathy Packer, Freedom of Expression in the American Military: A Communication Modeling Analysis 108 (1989).

98. Byrne, *supra* note 96, at 4, 8.

99. Act of June 4, 1920, ch. 227, 41 Stat. 787, 10 U.S.C. §§ 1471-1593, *repealed by* UCMJ, *infra* note 114.

100. Act of April 2, 1918, 40 Stat. 501, *repealed by* UCMJ, *infra* note 114.

systems addressed crimes involving falsehoods and certain types of false statements. These prohibitions were narrower in scope, however, than those currently found in Article 107 of the UCMJ.[103]

B. Enactment of the UCMJ

After World War II, the public became increasingly discontent with the existing military criminal justice system.[104] Over twelve million Americans were under military law at the peak of the war.[105] During World War II, the U.S.military services convened 1.7 million courts-martial.[106] This staggering number of military courts-martial resulted in great criticism from the press, Congress, and the large population of new World War II veterans.[107]

In 1948, James Forrestal, Secretary of the newly formed Department of Defense, appointed a new committee to write a modern unified legal code for all the armed services "with a view to protecting the rights of those subject to the code and increasing public confidence in military justice, without impairing the performance of military functions."[108] The committee was chaired by Edward Morgan, a professor of the Harvard Law School and former Army lieutenant colonel in the Judge Advocate General's department during World War I.[109] The result of the Morgan Committee's efforts was the submission of a bill to Congress to provide a UCMJ applicable to all the armed forces.[110]

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101. Articles of War 56 and 57, 10 U.S.C. §§ 1528-29 (1948).

102. Articles 8(14) and 8(1) of Articles for the Government of the Navy, 34 U.S.C. § 1200 (1934). The Navy code was also commonly referred to as the "Rocks and Shoals." BYRNE, *supra* note 96, at 5.

103. *See* LOUIS F. ALYEA, MILITARY JUSTICE UNDER THE 1948 AMENDED ARTICLES OF WAR (1949) (citing Articles of War 56, False Muster, and 57, False Returns).

104. PACKER, *supra* note 97, at 109.

105. *Id*.

106. *Id.*

107. *Id.* at 110.

108. WILLIAM T. GENEROUS, JR., SWORDS AND SCALES: THE DEVELOPMENT OF THE UNIFORM CODE OF MILITARY JUSTICE 34 (Kennikal Press 1973).

109. The Papers of Edmund M. Morgan, Jr., Special Collection & University Archives, The Jean and Alexander Heard Library, Vanderbilt University, *available at* http://www.library.vanderbilt.edu/speccol/morgane_bio.shtml (last visited July 4, 2004).

110. H.R. 2498, 81st Cong. (1949).

Subcommittees of the Committees on Armed Services of both the House of Representatives and the Senate held lengthy hearings on the issue of a new military justice system. However, "the primary foci of the hearings and the subsequent House and Senate [floor] debates were the proposed Court of Military Appeals and command control over military courts-martial."[111] With the emphasis on individual rights and civilian oversight of military courts, "very little discussion . . . of the punitive articles that would be used by the military" occurred during congressional consideration of the UCMJ.[112] In fact, one of the purposes of the proposed code was the "listing and definition of offenses, redrafted and rephrased in modern legislative language."[113] The Code was to bring civilian supervision and increased procedural and due process rights but not substitute civilian offenses for military ones. The proposed punitive articles included a brief commentary and references to applicable Army Articles of War and Articles for the Government of the Navy.[114] One of the articles proposed by the Morgan Committee was Article 107: "False official statements,"[115] which Congress adopted when it enacted the UCMJ.[116] Other than the simple rephrasing of a few non-substantive words, the Morgan Committee's (and Congress') false official statement statute remains unchanged to this day.[117]

In April of 1950, Congress passed the UCMJ, containing punitive articles based primarily on the Army's Articles of War.[118] The new Code became law on 5 May 1950 and by 31 May 1951 was in full force and effect.[119] As mentioned above, Congress scarcely mentioned the punitive articles, either in committee or during floor debates. Article 107 was no exception. No substantial discussion of the false statement statute took place.[120] Because of the limited discussion by Congress of Article 107, the legislative record offers little as to the intent or meaning of the false official statement prohibition. One must examine other sources to understand the purpose and meaning of the law that continues to criminalize false official speech.

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111. PACKER, *supra* note 97, at 113.

112. *Id.*

113. 81 CONG. REC., vol. 95, pt. 5, at 5718 (May 5, 1949), *reprinted in* Department of the Navy Judge Advocate General, Congressional Floor Debate on the Uniform Code of Military Justice, at 4 (1959) (statement of Rep. Brooks).

114. H.R. 2498, 81st Cong. (1949), *reprinted in* 1 INDEX AND LEGISLATIVE HISTORY TO THE UNIFORM CODE OF MILITARY JUSTICE, 1950, at 1467 (1985).

115. *Id.*

C. History of False Official Statement as a Punitive Article

Gustavus Adolphus provided the first written falsehood offense in his 1621 code, in which he delineated the act of "false muster" as an offense, or military crime.[121] The British later prohibited the same offense.[122] Mirroring the British Code, the first American Articles of War also listed the offense of "false muster."[123] The U.S. Army had another prohibition

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116. The proposed Article 107 draft by the Morgan Committee, as submitted to Congress in H.R. 2498, read as follows:

> ART. 107. False Official Statements.
> Any person subject to this Code who, with intent to deceive, signs any false record, return, regulation, order or other official document, knowing the same to be false, or makes any other false official statement knowing the same to be false, shall be punished as a court-martial may direct.
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> - - - - -
>
> References:
> AW 56, 57
> AGN Art. 8(14)
> Proposed AGN, Art. 9(24)
>
> *Commentary*:
> This Article consolidates AW 56 and 57. It is broader in scope in that it is not limited to particular types of documents, and its application includes all persons subject to this Code.
>
> The Article extends to oral statements, and the mandatory dismissal for officers has been deleted.

H.R. REP. NO. 4080, 81st Cong. (1949), *reprinted in* 2 INDEX AND LEGISLATIVE HISTORY TO THE UNIFORM CODE OF MILITARY JUSTICE, 1950, at 1467-68 (1985).

117. *Id.*; UCMJ art. 107 (2002).

118. Act of May 5, 1950, ch. 169, 64 Stat. 107 (current version at 10 U.S.C. §§ 801-946); *see* BYRNE, *supra* note 96, at 9.

119. *Id.*

120. In fact, other than the proposed code, there was only one direct reference specifically concerning Article 107. That one reference came from John J. Finn, Judge Advocate, Department of the District of Columbia of the American Legion. Mr. Finn merely expressed to the Senate subcommittee, among other things, that Article 107 should also encompass those who direct the signing of a false official statement, in addition to the one who actually signs the statement. *To Establish a Uniform Code of Military Justice: Before the Subcomm. of the Comm. on Armed Services*, 81st Cong. 189-90 (May 9, 1949).

121. WILLIAM WINTHROP, MILITARY LAW AND PRECEDENTS app. III, art. 121 (William S. Hein & Co., 2d ed. 2000) (1920).

122. JAMES SNEDEKER, MILITARY JUSTICE UNDER THE UNIFORM CODE § 3006, at 727 (1953).

against false returns by accountable officers in order to protect the funds and equipment of the Army.[124] Although operating from a distinct and separate code, the Articles for the Government of the Navy, the Navy also developed a false muster provision similar to the one held by the Army.[125] Additionally, the sea service had another specific offense entitled, "falsehood."[126] This Navy "falsehood" was a false official statement made with the intent to deceive.[127] The Army also punished similar false statements but did so under their general article.[128] The Navy's "falsehood" offense, however, required that the statement be a material one.[129] The Army, on the other hand, held that materiality was not required and that knowledge of the falsity was not an element, as was required in the Navy courts-martial.[130]

Morgan's UCMJ committee reviewed and consolidated all of these various falsehood offenses into Article 107. Article 107 broadened the scope of the previous Army and Navy articles in several ways. First, Article 107 eliminated the limitations of the offense to particular types of documents. Second, it made the offense applicable to all persons subject to the UCMJ, not just officers. Next, it omitted any materiality requirement, as previously required by Navy law.[131] Finally, the new Article 107 covered oral statements as well as written ones.[132]

In addition to enacting the new Code, Congress also directed the President to implement the new military justice system. In turn, the President promulgated the 1951 *Manual for Courts-Martial United States* as Executive Order 10,214 on 8 February 1951.[133] Under the direction of the Office of the Secretary of Defense, representatives from the armed services combined efforts to draft the *MCM*.[134] Prior to drafting the *MCM*, the services conducted a review of the entire UCMJ. The *MCM* drafters' review

123. Art. 49 of AW of 1775.

124. AW 18 of 1806; AW 8 of 1874; AW 57 of 1916 and 1920.

125. A.G.N. 8(14) of 1874.

126. *Id.* 8(1) of 1874.

127. SNEDEKER, *supra* note 122, at 728.

128. *Id.*

129. *Id.*

130. *Id.*

131. *Id.*

132. H.R. REP. NO. 4080 (1940), *reprinted in* 2 INDEX AND LEGISLATIVE HISTORY TO THE UNIFORM CODE OF MILITARY JUSTICE, 1950, at 1467-68 (1985).

133. LEGAL AND LEGISLATIVE BASIS: MANUAL FOR COURTS-MARTIAL UNITED STATES 1951, at V (History, Preparation and Processing) (reprinted 1958).

134. *Id.*

included brief commentaries on each of the punitive articles.[135] The comments concerning Article 107 were substantially the same as those found in the Morgan Committee report.[136]

The *MCM* drafters' comments state that Article 107 was derived from Articles of War 56 (False Muster) and 57 (False Returns) and Articles 8(14) (False Musters) and 8(1) (Falsehoods) of the Articles for the Government of the Navy.[137] The comments also mentioned, as is emphasized by the courts today, that Article 107 was to be broader in scope than its predecessor Army and Navy articles.[138] Article 107, however, is only broader "*in that it applies to all persons subject to the code* instead of only to officers, and also *it is not limited (where documents are involved) to particular types of documents* and *extends to oral statements*."[139]

Missing within the congressional debates and hearings, committee reports, and *MCM* drafters' notes is any direct reference to any federal stat-

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135. *Id.*

136. The comments from the *MCM* drafters on Article 107, as prepared by Commander William A. Collier during Conference No. 12e-f, were as follows:

> 186 False official statements.—Article 107 is derived in part from Articles of War 56 and 57 and is closely related to similar provisions of law now governing the Navy and the Coast Guard. This article is broader in scope than the specified articles of war in that it applies to all persons subject to the code instead of only to officers, and also it is not limited (where documents are involved) to particular types of documents and extends to oral statements. On the other hand, it does not cover the second sentence of Article of War 57, which is directed against a deliberate or negligent failure to render a return, nor does this article include the clauses of Articles of War 56 and 57, which provides for the mandatory punishment of dismissal.
>
> Articles 8(14) and 8(1), A.G.N., (False musters, Falsehood), which are comparable to Article 107 do apply to every person in the Navy.

Id.

137. *Id.*

138. *Id.*

139. *Id.* (emphasis added). While broadening the scope of Article 107 in several respects, the comments actually place some limitations on its scope. "On the other hand, it does not cover . . . . " *Id.*

utes used as a model or reference in the drafting of Article 107.[140] In other words, Congress neither relied upon nor referred to 18 U.S.C. § 1001 in the enactment of Article 107.

Since its enactment in 1950, Congress has made several changes to the UCMJ. The language of Article 107, however, remains unchanged.[141] On the other hand, there have been several changes in the *MCM*'s analysis of Article 107 since the *Manual* was first promulgated in 1951.[142] First, the 1951 and 1969 versions of the *MCM* did not include the text of the actual statute within either's discussion of the punitive articles.[143] The format consisted of two paragraphs.[144] The first, entitled "Discussion," provided definitions, explanations and considerations for the offense.[145] The second paragraph, entitled "Proof," broke the actual statute down into separate elements to be proven.[146]

Since 1984, the reformatted *MCM* included Part IV, which covers the punitive articles.[147] Within each punitive article, the *MCM* provides 6 paragraphs: (a) Text (of the actual statute); (b) Elements; (c) Explanation; (d) Lesser included offenses; (e) Maximum punishment; and (f) Sample specifications.[148] In paragraph 31 of Part IV, which covers Article 107, portions of the text in paragraphs (b) through (f) have changed through the years.[149] Some of the original 1951 text remains but other language has been added or deleted.[150] There is, however, one sentence describing offi-

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140. In the *Congressional Record*, general statements indicated that "many sources" were consulted in preparing the UCMJ, including the "Revised Articles of War, the Articles for the Government of the Navy, the Federal Code, the penal codes of various states and voluminous reports on military and naval justice which [had] been made in recent years by various distinguished persons." 81 CONG. REC., vol. 95, pt. 5, at 5718 (May 5, 1949), *reprinted in* Department of the Navy Judge Advocate General, Congressional Floor Debate on the Uniform Code of Military Justice, at 4 (1959).

As to Article 107, however, there is no evidence to suggest that other non-military sources of law were considered in writing this particular statute. Specifically, there is no mention or reference anywhere to the then existent and well-established federal false statement statute, 18 U.S.C. § 1001 (1948).

141. MCM, *supra* note 8, pt. IV, ¶ 31.

142. *Id.* app. 25.

143. MANUAL FOR COURTS-MARTIAL, UNITED STATES (1951) [hereinafter MCM 1951] and MANUAL FOR COURTS-MARTIAL, UNITED STATES (1969) [hereinafter MCM 1969].

144. MCM 1951, *supra* note 143 and MCM 1969, *supra* note 143.

145. MCM 1951, *supra* note 143 and MCM 1969, *supra* note 143.

146. MCM 1951, *supra* note 143 and MCM 1969, *supra* note 143.

147. MANUAL FOR COURTS-MARTIAL, UNITED STATES (1984) [hereinafter MCM 1984].

148. *See, e.g.*, MCM, *supra* note 8, ¶ 31.

149. *Id.* app. 25 (providing executive orders directing changes to the *MCM*).

ciality that has remained unchanged. "Official documents and official statements include all documents and statements made in the line of duty."[151]

IV. Comparison of 18 U.S.C. § 1001 to Article 107, UCMJ

A. The Initial Link between § 1001 and Article 107

While Article 107 of the UCMJ is derived from prior military codes, the military courts often compare it to the federal false statement statute, 18 U.S.C. § 1001. Specifically, the military courts turn to § 1001 to define Article 107's officiality requirement.[152] Although the two statutes have comparable language, nothing within the legislative history of the UCMJ links Article 107 to § 1001.[153] Instead, that link was first forged in the early UCMJ case of *United States v. Hutchins.*[154] In *Hutchins*, the accused was an Army major who was charged with lying to an investigating officer appointed to look into the circumstances surrounding the death of the accused's jeep driver, Corporal (CPL) Grout.[155] Corporal Grout's death occurred when his jeep overturned. The accused made a sworn statement to the investigating officer that the CPL did not have permission to drive the jeep on the occasion of his death. Based partly on the statement of the accused, the investigating officer concluded that the corporal's death was not "in the line of duty."[156] The accused later admitted that he actually ordered the CPL to drive to the division headquarters on the evening of the accident.[157]

After his court-martial conviction for violating Article 107, Major Hutchins appealed his case, arguing there was no violation of Article 107 in that his statement to the investigating officer was not material to the investigation.[158] The issue before the court was whether a false statement

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150. *Id.*

151. MANUAL FOR COURTS-MARTIAL, UNITED STATES (1951), (1969), (1984), and (2002).

152. Abagis, *supra* note 6, at 14.

153. Lieutenant Brent G. Filbert, *Article 107, Uniform Code of Military Justice: Not a License to Lie,* ARMY LAW., Mar. 1995, at 3, 15.

154. 18 C.M.R. 46 (C.M.A. 1955).

155. *Id.* at 47.

156. *Id.*

157. *Id.* at 48.

158. *Id.*

must be about a "material" matter to sustain an Article 107 conviction.[159] The Court of Military Appeals (COMA) answered in the negative and affirmed the conviction. In the analysis portion of the opinion, however, the court struggled with an apparent conflict of authority between Army and Navy law, as it existed prior to the enactment of the UCMJ.[160] To resolve this dispute, the court turned to the federal code for assistance.[161]

The COMAs' Chief Judge Quinn stated that "[s]ome further support for holding that the falsity must be in respect to a material fact may also be found in the *general analogy* between Article 107 . . . and section 1001, Title 18 of the United States Code."[162] This court stated that "some similarity of language in section 1001 and Article 107 is undeniably present."[163] The *Hutchins* court then went even further towards cementing the two statutes together. Having said that the two statutes were "generally analogous," the court then cited federal court and Supreme Court decisions that previously interpreted the purpose of § 1001. The court found that this interpreted purpose of § 1001 also "succinctly states the purpose of Article 107."[164] Thus the inseparable link between Article 107 and § 1001 was born.

B. The Origins of 18 U.S.C. § 1001

Since *Hutchins*, the military courts have interpreted Article 107 using the federal courts' construction of § 1001.[165] To fully understand the link between the two statutes, it is necessary to review the history and treatment of § 1001 in the federal courts. Section 1001, Title 18 of the United States Code, in pertinent part now provides:

> (a) Except as otherwise provided in this section, whoever, in any matter within the jurisdiction of the executive, legislative, or judicial branch of the United States, knowingly and willfully-

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159. *Id.* at 47.

160. *Id.* at 49.

161. *Id.* at 50.

162. *Id.* (emphasis added).

163. *Id.* at 51. It is clear, however, that this court was only making a *general* analogy between the two statements. Chief Judge Quinn also went on to say, "[b]ut there is also a difference in language which might require a difference in result." *Id.*

164. *Id.*

165. Filbert, *supra* note 153, at 4.

> (1) falsifies, conceals, or covers up by any trick, scheme, or device a material fact;
>
> (2) makes any materially false, fictitious, or fraudulent statement or representation; or
>
> (3) makes or uses any false writing or document knowing the same to contain any materially false, fictitious, or fraudulent statement or entry; shall be fined under this title or imprisoned not more than 5 years, or both.[166]

The federal statute, that would later become § 1001, began as an attempt to stem the tide of false claims and inflated claims against the federal government pertaining to Civil War activities.[167] As a result, Congress passed the False Claims Act in March of 1863.[168] This statute criminalized both the act of presenting a false claim for payment to the federal government and the act of making false statements to facilitate payment of a false claim.[169] In 1918, Congress slightly expanded the scope of the False Claims Act by including government corporations under the umbrella of the Act.[170]

In 1934, during the Great Depression and in response to the "hot oil" scandals, Congress broadened the scope of the act by deleting the previ-

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166. 18 U.S.C. § 1001(a) (2000).
167. Dominguez, *supra* note 19, at 531.
168. Act of Mar. 2, 1863, 12 Stat. 696. This Act made it a crime for:

> any person in the land or naval forces of the United States . . . [to] make for cause to be made, or present or cause to be presented for payment of approval to or by any person or officer in the civil or military service of the United States, any claim upon or against the Government of the United States, or any department or officer thereof, knowing such claim to be false, fictitious, or fraudulent; . . . any person in such forces or service who shall, for the purpose of obtaining, or aiding in obtaining, the approval or payment of such claim, make, use or cause to be made or used, any false bill, receipt, voucher, entry, roll, account, claim, statement certificate, affidavit, or deposition knowing the same to contain any false or fraudulent statement or entry.

Id.

Of note, military officers and service members were among those specifically targeted by the language of the Act. *Id.*

169. *Id.*; Dominguez, *supra* note 19, at 532.
170. Act of Oct. 23, 1918, ch. 194, 40 Stat. 1015; Dominguez, *supra* note 19, at 533.

ously required element of pecuniary or property loss.[171] This 1934 Act proscribed not only false financial claims but also prohibited all false statements "in any matter within the jurisdiction of any department or agency of the United States or of any corporation in which the United States of America is a stockholder."[172]

The first reported case to interpret Congress's 1934 amendment was *United States v. Gilliland*.[173] *Gilliland* involved defendants charged with making false statements to the Interior Department regarding the petroleum trade. On appeal, the Supreme Court determined that Congress's intent in broadening § 1001 was to ensure the efficacy of the ever-increasing federal regulatory system.[174] The Court then concluded that the purpose of the 1934 amendment was to "protect the authorized functions of governmental departments and agencies from the perversion which might result from the deceptive practices described" in the statute.[175]

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171. United States v. Lange, 528 F.2d 1280, 1284 (5th Cir. 1976). This change was made

> at the behest of the Secretary of the Interior, that the scope of the act was broadened to cover the statements on reports submitted in accordance with Interior Department regulations regarding the interstate transportation of oil. Prior to the 1934 amendment, there was no law prohibiting the filing of such statements. Indeed the Supreme Court had held prior to 1934 that the act applied only to false statements made in a claim against or to defraud the government.

Hillyer & Shane, *supra* note 20, at 135; *see also* United States v. Cohn, 46 S. Ct. 251 (1926).

172. 18 U.S.C.A. § 35 (West 1934). The amended statute provided as follows:

> [O]r whoever shall knowingly and willfully falsify or conceal or cover up by any trick, scheme, or device a material fact, or make or cause to be made any false or fraudulent statements or representations, or make or use or cause to be made or used in any false bill, receipt, voucher, roll, account, claim, certificate, affidavit, or deposition, knowing the same to contain any fraudulent or fictitious statement or entry, in any matter within the jurisdiction of any department or agency of the United States or of any corporation in which the United States of America is a stockholder.

Id.

173. 312 U.S. 86 (1941).

174. *Id.*; *see also* Friedman v. United States, 374 F.2d 363, 366 (8th Cir. 1967); *Lange*, 528 F.2d at 1284.

175. *Gilliland*, 312 U.S. at 93.

The *Gilliland* decision signaled the Court's belief that Congress had intended to protect the federal government by expanding the application of the prior false claims statute to all falsifications and frauds against the federal government. Thereafter, in 1948, Congress again revised the statute, separating the crime of false claims from false statements.[176] The false statement portion of the 1948 amendment became Section 1001 of Title 18 of the United States Code.[177]

In the following years, the courts faced repeated cases challenging the scope of § 1001. In particular, the courts had to define the words "department" and "agency" and the phrase "in any matter within the jurisdiction of any department or agency of the United States."[178] In 1955, the Supreme Court again tried to define the scope of § 1001 in *United States v. Bramblett*.[179] Bramblett was a U.S. Congressman convicted of violating § 1001 for making false and fraudulent representations to the disbursing office of the U.S. House of Representatives.[180] He challenged the conviction by asserting that the House of Representatives Disbursing Office was not an "agency or department" and therefore he could not be charged with a § 1001 violation for false statements made to this office.[181] The Court disagreed, holding that § 1001 applied to the legislative and judicial branches, as well as to the executive.[182]

This application of § 1001's "agency or department" language would stand for forty years.[183] However, in 1995, the Supreme Court struck

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176. 18 U.S.C. § 1001 (1948). The false statement statute then read as follows:

> Whoever, in any matter within the jurisdiction of any department or agency of the United States knowingly and willfully falsifies, conceals or covers up by any trick, scheme, or device a material fact, or makes any false, fictitious or fraudulent statements or representations, or makes or uses any false writing or document knowing the same to contain any false, fictitious, or fraudulent statement or entry, shall be fined not more than $10,000 or imprisoned not more than five years, or both.

Id.

177. *Id.*; Hillyer & Shane, *supra* note 20, at 135.

178. *See, e.g.*, United States v. Levin, 133 F. Supp. 88 (D. Colo. 1953) (holding that a false statement, not under oath, to FBI agents conducting a criminal investigation was not the kind of "matter" that Congress intended to criminalize under 18 U.S.C. § 1001).

179. 348 U.S. 503 (1955).

180. *Id.* at 505.

181. *Id.* at 508.

182. *Id.*

183. Dominguez, *supra* note 19, at 535.

down *Bramblett* in *Hubbard v. United States.*[184] In *Hubbard*, the appellant challenged his conviction for filing unsworn papers, which contained falsehoods, in federal bankruptcy court.[185] The Court changed course and held that § 1001 does not apply to either the judicial or legislative branches.[186] Finding that the *Bramblett* Court had interpreted § 1001 too broadly, the *Hubbard* Court emphasized the need to apply the statute's plain language unless there is an "indication that doing so would frustrate Congress' clear intention or yield patent absurdity."[187]

After the Court set aside Hubbard's conviction, both the U.S. House of Representatives and the U.S. Senate reacted quickly. In 1996, the 104th Congress amended the statute to specifically include false statements made to the judicial and legislative branches. Since then, § 1001 has remained unchanged.[188]

While the meaning of "agency or department" now appears to be well defined, litigants frequently test § 1001's other jurisdictional parameters. Almost any reading of § 1001 leads a reader to the conclusion that false statements to a federal executive agency concerning a matter directly involving that agency violate the federal statute. But the phrase "in any matter within the jurisdiction of the executive, legislative, or judicial branches (and the former departments or agencies) of the United States" causes the courts great difficulty in determining what is and is not within an agency or departmental jurisdiction.

For example, assume a private businessman falsely tells the head of the Department of Energy (DOE) that the oil he is selling to the DOE is a high grade of oil, when actually it is of low grade, the difference greatly affecting the price. The statement was made directly to the DOE, a department of the executive branch, concerning the direct purchase of oil by the U.S. government. Clearly, this would entail a "matter within the jurisdiction of the executive . . . . branch of the United States," as required by the statute.[189]

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184. 514 U.S. 695, 715 (1995).

185. *Id.* at 697-98.

186. *Id.* at 715.

187. *Id.* at 701, 703 (quoting BFP v. Resolution Trust Corp., 511 U.S. 531, 570 (1994) (Souter, J., dissenting)).

188. 18 U.S.C. § 1001 (2000). For the current full text of this statute, *see supra* note 162.

189. *Id.*

Now assume that the false statement was not made to the DOE. Instead, in a sale to an independent private company not acting as an agent of the United States, the private businessman simply annotates an invoice with a handwritten certification of the quality of oil he is selling.[190] Like any similar business that buys and sells petroleum, this private company is required to inform the DOE of the oil sale and the quality certifications pursuant to the DOE's authority to regulate the oil industry.[191] The example is now more complicated. Do the invoices submitted by the private businessman to a private company become a "matter within the jurisdiction" of a department or agency of the United States merely because the DOE performs a minimal regulatory function in reviewing the invoices from a private transaction?[192]

This is an issue that federal courts face year after year. The question is whether Congress intended to prohibit false statements that may be only remotely connected to the federal government. The seminal case interpreting what constitutes "matters within the jurisdiction" of a federal branch of government is *United States v. Rodgers*.[193] Defendant Rodgers falsely reported to the Federal Bureau of Investigation that his wife had been kidnapped. He then made another false report to the U.S. Secret Service the she was involved in a plot to kill the President of the United States.[194] The trial court found him guilty of making false statements. Rodgers appealed his § 1001 conviction, however, on the grounds that his statements were not "matter[s] within the jurisdiction of a department or agency of the United States" because the two federal law enforcement agencies did not have "the power to make final or binding determinations."[195]

Speaking for a unanimous Court, then Justice Rehnquist stated that there is no requirement for a department or agency that receives false statements to be the one that makes "final or binding determinations."[196] Both

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190. United States v. Wolf, 645 F.2d 23, 24 (10th Cir. 1981).

191. *Id.*

192. *Id.* at 25 (holding that the false invoices, while not made directly to a governmental agency or department, were a "matter within the jurisdiction" of a federal agency). Such statements were within the scope of § 1001 because they "directly concerned a regulatory or contractual scheme in which the federal government acted as a supervisor." *Id.*

Additionally, a false statement does not need to be made directly to a federal agency or department if federal funds are involved. United States v. Lewis, 587 F.2d 854 (6th Cir. 1978); United States v. Petullo, 709 F.2d 1178 (7th Cir. 1983).

193. 466 U.S. 475 (1984).

194. *Id.* at 477.

195. *Id.* (citing Friedman v. United States, 374 F.2d 363, 367 (8th Cir. 1967)).

196. *Rodgers*, 466 U.S. at 481.

of the subject investigative agencies had a federal statutory basis for conducting the investigation and there was a valid legislative interest in protecting the integrity of such official inquiries.[197] Ensuring broad interpretation reach for the statute, Justice Rehnquist stated that the language of § 1001 "covers all matters confided to the authority of an agency or department."[198]

Since that landmark case, the courts generally have construed § 1001 very broadly.[199] In addition to *Rodgers*, the Supreme Court and the federal courts have crafted some other useful guidance in interpreting § 1001. The currently undisputed purpose of the statute is "to protect the authorized functions of governmental agencies from the perversion which might result from the deceptive practices described" in the statute.[200]

False statements do not have to be made directly to a federal agency or agent in order to fall within the scope of § 1001. On the other hand, reason would seem to dictate that jurisdiction would require a nexus between the prohibition of making false statements and an actual governmental role, such as the existence of a regulatory or supervisory function.[201] As the Supreme Court directed, the term "jurisdiction" as found in § 1001, however, should not be "narrowly construed."[202] In application, "jurisdiction" should be read to be synonymous with "power" to act upon information when it is received.[203]

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197. *Id.* at 481-82.

198. *Id.* at 479.

199. United States v. Jackson, 26 M.J. 377, 379 (C.M.A. 1988).

200. United States v. Gilliland, 312 U.S. 86, 93 (1941). *See also* United States v. Fern, 696 F.2d 1269 (11th Cir. 1983) (noting that the purpose of the statute is to protect the government from fraud and deceit and the reach of § 1001 covers all materially false statements, including non-monetary fraud, made to any branch of the government).

201. *See* Friedman v. United States, 374 F.2d at 363, 364 (8th Cir. 1967) (stating that, "if the Government is to regulate, it must be able to protect its regulatory functions from those who would utterly destroy these functions by presenting false information").

202. *Rodgers*, 466 U.S. at 480.

203. United States v. Adler, 380 F.2d 917 (2d Cir.), *cert. denied*, 389 U.S. 1006 (1967). *See* United States v. Petullo, 709 F.2d 1178, 1180 (7th Cir. 1983) (holding that it is "the existence of federal supervisory authority that is important, not necessarily its exercise").

C. Modern Comparison of § 1001 and Article 107

1. Early UCMJ Cases and § 1001

Beginning with *United States v. Hutchins*,[204] the military courts often looked to federal cases involving § 1001 for help in defining the scope of Article 107. Just a few years after *Hutchins*, the COMA again relied upon § 1001 and federal case law to solve military specific issues in the case of *United States v. Aronson*.[205] Airman First Class (A1C) Aronson was entrusted with maintaining the base trailer park fund at the base where he was assigned but stole money from that fund.[206] After a shortage in the fund was discovered, military criminal investigators questioned Aronson. Aronson lied to Air Force investigators, stating that he did not take any of the money.[207] The Air Force charged and convicted A1C Aronson of larceny of the money and making false statements to military investigators.[208] On appeal, the issue before the COMA was whether false statements to military law enforcement are "official" and therefore fall under the purview of Article 107.[209]

In affirming the decision of the Air Force appellate court and upholding the conviction, the COMA held that such false statements to investigators by someone who had a duty to account for a base trailer fund were "official."[210] The court also strengthened the link between Article 107 and § 1001 by finding "the word 'official' used in Article 107 [was] the substantial equivalent of the phrase 'any matter within the jurisdiction of any department or agency of the United States' found in § 1001."[211]

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204. 18 C.M.R. 46 (C.M.A. 1955).
205. 25 C.M.R. 29 (C.M.A. 1957).
206. *Id.* at 31.
207. *Id.*
208. *Id.*
209. *Id.*
210. *Id.* at 34.
211. *Id.* at 32.

2. Strengthening of the Bond Between § 1001 and Article 107

The military courts continued their reliance on and deference to the line of cases referencing the federal civilian statute.[212] In *United States v. Jackson*,[213] the COMA reaffirmed the bond between the two statutes. *Jackson* involved a non-suspect who lied to military investigators during an investigation in order to protect her friend, who was the subject of the investigation.[214] Affirming the conviction, the *Jackson* court said that "in view of the close relationship between Article 107 and 18 U.S.C. § 1001 . . . we conclude that Article 107 should be interpreted in a manner consistent with *Rodgers*."[215]

The linkage of Article 107 with § 1001 continues today, with military courts continually citing § 1001 and corresponding federal court decisions to solve false official statement riddles within the military justice system.[216] What started as a "general analogy" to a federal statute, in order to provide "some support" for an early UCMJ case, has become something more akin to the blood pact made between Tom Sawyer and Huckleberry Finn.[217] And while numerous military court opinions cite the similarities between the two statutes, few describe any major differences.[218]

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212. United States v. Osborne, 26 C.M.R. 215 (C.M.A. 1958). *But see* United States v. Dozier, 26 C.M.R. 223 (C.M.A. 1958) (finding there can be no perversion of a government function from a false statement "that was incapable of affecting or influencing such function") (quoting Freidus v. United States, 223 F.2d 598 (D.C. Cir. 1955)).

213. 26 M.J. 377 (C.M.A. 1988).

214. *Id.* at 378.

215. *Id.* at 379 (citing United States v. Rodgers, 466 U.S. 475, 479 (1984), for the proposition that the language of § 1001 "covers all matters confided to the authority of an agency or department").

216. *See, e.g.*, United States v. Teffeau, 58 M.J. 62 (2003); United States v. Stallworth, 44 M.J. 785 (1996); United States v. Smith, 44 M.J. 369 (1996); United States v. Johnson, 39 M.J. 1033 (A.C.M.R. 1994); United States v. Dorsey, 38 M.J. 244 (C.M.A. 1993); United States v. Prater, 32 M.J. 433 (C.M.A. 1991); United States v. Ellis, 31 M.J. 26 (C.M.A. 1990).

217. Mark Twain, The Adventures of Tom Sawyer 57 (Dover Publications., Inc. 1998) (1876) (swearing to never speak of the murderous actions of Injun Joe, after drawing blood from their palms with a knife).

218. *Jackson*, 26 M.J. at 379 (stating there is a "close relationship between Article 107 and 18 U.S.C. 1001—a *relationship often adverted to by this Court"*) (emphasis added). *But see* United States v. Solis, 46 M.J. 31, 34 (1997) (stating that "our opinions have made it clear that Article 107 differs from Section 1001 in significant respects").

3. Contrast of Federal and Military Statutes

Several major differences between Article 107 and § 1001 exist. First, convictions for violations of § 1001 require proof of an additional element not found anywhere in Article 107; the materiality of false statements.[219] Second, while both address falsehoods, the actual language of the two statutes differs significantly. Article 107 is only applicable to those subject to the UCMJ and makes specific mention of proscribed falsehoods, such as "record, return, regulation, and order."[220] All of these terms have a unique connection to military service. More importantly, though, Congress specifically used the term "official" to describe applicable documents and statements.[221] On the other hand, § 1001 makes no mention of the word "official" anywhere in paragraph (a) of the statute.[222] Additionally, § 1001 covers statements made in any matter within the jurisdiction of the three branches of the federal government.[223]

As discussed previously, the origins of the two statutes also differ greatly. Section 1001 originated as a method to combat false claims and statements that caused the United States pecuniary and property loss during the Civil War and, later, during the "hot oil" scandals of the Great Depression.[224] Article 107 was a consolidation of Army and Navy statutes that primarily dealt with uniquely military offenses, such as false muster, false returns, and false statements inherently military in nature.

Finally, the purpose and value of the statutes is actually very different. While each attempts to punish and deter fraud and deceit, the distinct nature of the armed forces and its inherent internal focus require that punitive articles, such as Article 107, be viewed from the unique vantage point of the military. While both the armed forces and federal government desire and value the truth as a virtue, truthfulness in the military is more than an

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219. *Solis*, 46 M.J. at 34.

220. *Id.*

221. *Id.* As the term "official" is in the title of the statute itself, it is absolutely clear that Congress intended the crime to cover only those statements that were, in fact, "official." *See* 50 U.S.C. § 701 (1950) (original UCMJ statute); 10 U.S.C. § 907 (1956) (revised section of UCMJ). *See also* WAYNE R. LEFAVE & AUSTIN W. SCOTT, JR., SUBSTANTIVE CRIMINAL LAW § 2.2, at 115 (1986) (explaining that "[s]ometimes a statute's title throws some light on the meaning of an ambiguous statute").

222. 18 U.S.C. § 1001 (2000).

223. *Id.*

224. Hillyer & Shane, *supra* note 20, at 135.

aspiration. Integrity within the ranks of military organizations is integral to accomplishing their most basic mission of fighting in combat.

As military courts repeatedly acknowledge, the "primary purpose of military criminal law—to maintain morale, good order, and discipline—has no parallel in civilian criminal law."[225] It is the ideal of integrity itself within the military ranks that must be protected.[226] On the other hand, the purpose of § 1001 is simply to protect government agencies and departments from those who would try to defraud or deceive them.

V. Survey of Modern Article 107 Case Law

A. Military Justice Decisions Since *Jackson*

While military courts relied upon the breadth of § 1001 to expand the scope of Article 107, over the past twenty years false official statement cases have explored the outer limits of statutory interpretation. Shortly after the 1988 *Jackson* decision, the COMA again wrestled the meaning of "official."[227] Air Force Senior Airman (SrA) Ellis was pending an administrative discharge for his negligent maintenance of survival kits for F-16 fighter planes.[228] With the aid of his girlfriend, SrA Ellis sent an anonymous letter to his command. This letter was purportedly from another member of the unit, who was now supposedly accepting responsibility for the improperly maintained survival kits.[229] Senior Airman Ellis sent the

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225. *Solis*, 46 M.J. at 34.

226. *See also* 81 CONG. REC., vol. 95, pt. 5, at 5718 (May 5, 1949), *reprinted in* Department of the Navy Judge Advocate General, Congressional Floor Debate on the Uniform Code of Military Justice, at 20 (1959) (statement of Rep. Vinson).

> Now, why was this bill assigned to the Armed Services Committee rather than to the Judiciary Committee? The answer lies in the fact that life in the armed forces differs from civilian life. The objective of civilian society is to make people live together in peace and in reasonable happiness. The object of the armed forces is to win wars. This being so, military institutions necessarily differ from civilian society. Every American cherishes his right to rebuff the orders of the boss. But the same act in the military is an offense. In civilian life, if you do not like your job you quit. The same act in the military constitutes desertion and, in time of war, may be punished by death. In civilian life, a group of workers may walk off the job in protest. In the armed forces that act is mutiny and may be punished by death. These examples point out and emphasize the fundamental difference between civilian society and the military. They are differences that must be preserved.

Id.

227. United States v. Jackson, 26 M.J. 377 (C.M.A. 1988).

228. United States v. Ellis, 31 M.J. 26, 27 (C.M.A. 1990).

letter in hopes that it would exculpate him and he could avoid the pending administrative separation.[230]

In affirming Ellis' conviction under Article 107, COMA followed the *Jackson* court's adherence to § 1001 interpretation, as stated in *United States v. Rodgers*.[231] Although SrA Ellis claimed anonymous statements are inherently unreliable and not "official," the court sustained the conviction even though there was no "official duty" to make the statement.[232] The statement was "official" because SrA Ellis "believed that official action would be taken by the recipients" who were Air Force personnel "acting within the scope of their duties" when they received and acted upon the false statement.[233]

In the1993 case *United States v. Caballero*,[234] the court again tried to grasp officiality when it addressed whether purely oral false statements by a sailor to his first class petty officer were "official." In *Cabellero*, the accused falsely stated he departed for the physical therapy clinic.[235] The court correctly found that the appellant's false statements were "official" under Article 107.[236] In its holding, the court addressed whether Congress intended Article 107 to cover oral as well as written statements. The COMA found the "clear language of Article 107 includes both '*signed . . . . official documents'* and the 'making [of] *any other* . . . . official statement,' [and] therefore Congress expressly proscribed both written and oral statements in Article 107."[237]

The court approved the lower NMCCMR, holding that the statements were "official" because recipients of the statements were responsible for the accountability of the appellant. Such a theory of responsibility is based on the "well-established concept of supervisory military authority."[238] The

229. *Id.*

230. *Id.*

231. *Id.* (citing *Jackson*, 26 M.J. 377 (citing United States v. Rodgers, 466 U.S. 474 (1985))).

232. *Ellis*, 31 M.J. at 27.

233. *Id.* at 28.

234. 37 M.J. 422 (C.M.A. 1993).

235. *Id.* at 424.

236. *Id.* at 425.

237. *Id.* at 424. Relying on the plain language of the statute to determine oral statements are *expressly* subject to Article 107 seems to be an unnecessary step. A review of the 1948 Morgan Committee draft UCMJ, as considered by Congress, and the *Legal and Legislative Basis, Manual for Courts-Martial 1951* clearly indicates the intent to extend the false official statement statute to cover oral statements. *Id.*

COMA then referred to the Explanation section of paragraph 31, *MCM*, stating "a false official statement includes all statements made in the line of *military* duty."[239] However, the court fell short of defining the phrase "in the line of duty." Instead, the court used the phrase to reemphasize the established rule that there need not be a "duty to account" to sustain a conviction under Article 107.[240]

In *Caballero*, the appellant made the statements "in the line of duty." They were "official" for two reasons. First, the appellant's statements were made to a superior concerning a military matter, his place of duty.[241] Second, the recipients of the statements were military leaders acting in their supervisory capacity.[242] Therefore, a statement's officiality is based on the identity of the recipient and the position, rank or status of the service member at the time he makes the statement.

One year later, the ACMR turned its attention to a soldier convicted of making false official statements of a different sort. In *United States v. Johnson*,[243] Specialist (SPC) Johnson was charged with a violation of Article 107 for making false statements to a state police officer. While at an off-post bar, SPC Johnson started an argument and physical fight with Sergeant First Class Rylant.[244] Sergeant Rylant pulled out a knife and chased Johnson, who ran several hundred feet to his off-post trailer home.[245] Johnson then retrieved a pistol and fired several shots into the air and ground.[246] Later, when a civilian policeman interviewed Johnson, he denied having any knowledge of the incident.[247] Charged with violating Article 107, Johnson moved for a finding of not guilty at trial based on his assertion that the statement was not "official."[248] In denying the motion, the military judge equated officiality to the § 1001 phrase "covering any matter within the jurisdiction of any department or agency of the United

238. *Caballero*, 37 M.J. at 425.

239. *Id.* (emphasis added); MCM, *supra* note 8, pt. IV, ¶ 31c(1).

240. *See Jackson*, 26 M.J. at 379. The *Caballero* court also cited a federal case interpreting § 1001 in the same manner, keeping the marriage of the two statutes strong. United States v. Plasencia-Orozco, 768 F.2d 1074 (9th Cir. 1985).

241. *Caballero*, 37 M.J. at 423.

242. *Id.*

243. 39 M.J. 1033 (A.C.M.R. 1994).

244. *Id.*

245. *Id.*

246. *Id.*

247. *Id.*

248. *Id.* at 1035.

States" and found the statement to the police officer was "official."[249] Once again, the court dissected the meaning of the word "official."[250]

The Army appellate court reversed Johnson's Article 107 conviction, holding that such a statement to a civilian police officer was not "official" and that "neither the Uniform Code of Military Justice nor the Manual for Courts-Martial satisfactorily defines the term 'official' to encompass the factual situation in this case."[251] The *Johnson* court then reaffirmed the previously held purpose of Article 107, as borrowed from § 1001, "to protect the authorized functions of governmental departments and agencies from the perversion which might result from the deceptive practices described."[252] The court also cited *United States v. Disher*[253] for the proposition that a false statement "must be about and pertain to a matter within the jurisdiction of [*the armed forces*] of the United States" to constitute a violation of Article 107.[254]

Finally, the court also renewed the long-standing false official statement requirement, as adopted from § 1001, that a statement that violates Article 107 must "pervert an authorized function of a government agency in furtherance of a *military* interest."[255] Johnson lied to a state police officer, a Texas official; the policeman was enforcing the laws of his state, not military law. Accordingly, Johnson's false and intentionally deceitful statement "neither perverted nor corrupted the functions of an agency of the armed forces or any agency authorized to act on behalf of the armed

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249. *Id.*

250. *But see* United States v. Lynn, 50 M.J. 570 (N-M. Ct. Crim. App. 1999). Incredibly, the Navy-Marine Corps Court of Criminal Appeals declared that "the meaning of the word 'official' contained in the term 'official statement' was within the common knowledge of mankind." *Id.* at 574. Ironically, the court failed to provide this "common knowledge" definition in its opinion. *Id.*

251. *Johnson*, 39 M.J. at 1035.

252. *Id*. at 1034; United States v. Hutchins, 18 C.M.R. 46, 51 C.M.A. 1955) (quoting United States v. Gilliland, 312 U.S. 86, 93 (1941)); *accord* United States v. Aronson, 25 C.M.R. 29 (C.M.A. 1957); United States v. Arthur, 25 C.M.R. 20 (C.M.A. 1957). The court also acknowledged expanding the scope of Article 107 so that it applied to "all matters confided to the authority of an agency or department." *Jackson*, 26 M.J. at 379 (quoting United States v. Rodgers, 466 U.S. 475, 479 (1984)).

253. 25 C.M.R. 683 (A.B.R. 1958).

254. *Johnson*, 39 M.J. at 1035 (citing *Disher*, 25 C.M.R. at 686) (emphasis added).

255. *Id.* at 1035 (emphasis added).

forces."[256] Therefore, Johnson's statements were not "official" and did not violate Article 107.[257]

B. False Official Document Cases

Another class of false official statement cases causes great problems for military courts and produces inconsistent or illogical results. These cases involve the making of false documents. The term "document" encompasses many different forms of written statements, including records, returns, regulations, orders, and other official documents.[258] When a service member signs or utters a false document and that document is made in the line of duty, it is "official" and falls within the purview of Article 107.[259]

In *United States v. Ragins*,[260] the COMA faced a false official document case that did not involve an actual government document. Navy Chief Petty Officer Ragins was assigned to the commissary store at a naval shipyard.[261] His duties included receiving food shipments from commercial vendors.[262] While on duty at the commissary, the accused conspired with a civilian bakery deliveryman to falsify invoices for bread deliveries.[263] The accused receipted for bread purportedly delivered to the commissary, as shown by the invoices, but the deliveryman sold the bread to third parties.[264] At trial, the accused pleaded guilty to a charge under Article 107 for signing the false invoices for bread deliveries.[265] On appeal, Chief Ragins claimed his plea was improvident, claiming the invoices

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256. *Id.* The court acknowledged an Article 107 conviction could be sustained for false statements to a state policeman if that state official is acting on behalf of the military. *Id.* at 1036. Furthermore, the court also said "false statements to non-military federal investigative agencies may also be prosecuted *but not under Article 107.* Instead, the third, crimes and offenses not capital, clause of Article 134 could be used to incorporate the allegation of 18 U.S.C. [§] 1001" (alteration in original). *Id.*

257. *Id.* The court also did not rule out the possibility that Johnson could have been convicted for these false statements as a clause 1 or 2 offense under Article 134. *Id.* at 1038.

258. UCMJ art. 107 (2002).

259. MCM, *supra* note 8, pt. IV, ¶ 31c.

260. 11 M.J. 42 (C.M.A. 1981).

261. *Id.* at 43.

262. *Id.*

263. *Id.*

264. *Id.*

265. *Id.* at 44.

were not official statements but only receipts given to the baking company.[266]

The court disagreed, citing the fact that it was Chief Ragins's duty to sign the invoices for bread deliveries.[267] The COMA looked to § 1001 and federal precedent in order to determine the officiality of the invoices. The court opined that "official," as used in Article 107, was the substantial equivalent of the § 1001 phrase "in any matter within the jurisdiction of any department or agency of the United States." Finding that § 1001 case law did not require false statements to be actually submitted to a department or agency of the United States, the court reasoned that Chief Ragins's statement was utilized in a matter that was within the jurisdiction of the military.[268] The invoice need not be a military document. A military department or official need not actually receive it. The accused acted in his capacity as a military commissary store worker. Because it was his military duty to sign such invoices, the invoices were "official" under Article 107.[269]

In *United States v. Simms*,[270] the ACMR also faced a case where the recipient of a false document was a private party and the document was not of the military kind. The appellant was convicted of making a false document by signing his commander's name to an Army Emergency Relief (AER) loan form without authority.[271] While its mission is to provide financial assistance and counseling to military members, the AER is a private, non-profit corporation.[272] In order to receive a loan from the group, AER requires that the member's commander recommend approval of the loan and sign the loan form.[273]

Similar to the result in *Ragins*, the Army court found that Sergeant (SGT) Simms' forged loan form constituted an "official" document.[274] The court focused on the capacity of the one who makes such recommendations for loan forms. In this case, only military commanders sign such forms. Although SGT Simms placed his commander's signature on the

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266. *Id.* at 43.
267. *Id.* at 44.
268. *Id.* at 45.
269. *Id.* at 44.
270. 35 M.J. 902 (A.C.M.R. 1992).
271. *Id.* at 903.
272. *Id.* at 904.
273. *Id.*
274. *Id.*

form without permission, the capacity of the one who issues such statements is controlling.[275] The signed form is an "official" military document, because the required signature is a function of a military commander in the discharge of his military duties. Sergeant Simms was attempting to discharge these duties himself.

Over the next few years, the highest military court heard two false document cases that further expanded the reach of Article 107. In 1993, the COMA decided *United States v. Hagee*.[276] In *Hagee*, the accused wrote a set of fake travel orders for two friends. The friends gave the false orders to their civilian landlord to get out of a housing lease. In upholding the conviction for violation of Article 107, the COMA cited that "close relationship" between Article 107 and § 1001.[277] The court then pointed out that § 1001 case law contained instances of crimes which involved the use of false papers to victimize private parties.[278] Unfortunately, the COMA did not discuss the ambit of similar § 1001 cases. Instead, the court's reasoning was entirely contained within a large quote from *United States v. Meyers*,[279] a 1955 federal district court § 1001 case. The *Hagee* court did not appear to focus on the facts at bar nor provide a scintilla of

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275. *Id.*

276. United States v. Hagee, 37 M.J. 484 (C.M.A. 1993).

277. *Id.* at 486; *see also* United State v. Jackson, 26 M.J. 377, 379 (C.M.A. 1988).

278. *Hagee*, 37 M.J. at 486.

279. *Id.* at 486-87; United States v. Myers, 131 F. Supp. 525, 531-32 (N.D. Cal. 1955) (holding that the use of a U.S. Government Certificate of Release of Motor Vehicle Form 97 by the Deputy Property Disposal Officer at an Army arsenal, to effect the registration of his private vehicle with the state of California, involved a "matter within the jurisdiction of any department or agency of the United States," and thus a violation of § 1001.) In contrast to *Hagee*, the accused in *Myers* signed the form in his official capacity as the Deputy Property Disposal Officer. The duties of his office included the submission of such forms to the state authorities. The accused in *Myers* simply abused his position of authority within the U.S. government by executing the duties of his office to receive personal gain. *Id.*

In contrast, the accused in *Hagee* did not issue others travel orders for the purpose of submission to state government offices. Travel orders, identification cards, leave and earnings statements, and other military personnel documents are often used by service members for a variety of purposes in dealing with private parties. However, the primary purpose of such government documents is to allow the military member to perform his military duties. The submission of such documents to military authorities or to non-military parties when executing military duties would render such documents "official." *Hagee*, 37 M.J. at 486-87; *Jackson*, 26 M.J. at 379; *see also* United States v. Collier, 48 C.M.R. 789 (C.M.A. 1974). A document submitted to a private party for personal reasons, such as obtaining civilian leases, car loans, or insurance, are not "official." Such a document does not "pervert an authorized function of a governmental agency acting in furtherance of a military interest." United States v. Johnson, 39 M.J. 1033, 1035 (A.C.M.R. 1994).

factual analysis. Instead, after quoting *Myers*, the court simply held the false duty orders to be "official."[280]

At first glance, *Hagee* appears very similar to *Ragins* and *Simms*. On closer examination, one important distinction appears. Although signed without authority, the accused in *Hagee* made a document that purported to be "official" and caused that document to be provided to a private party.[281] In both *Ragins* and *Simms*, the documents were of a type thats military purpose was to provide private parties with information.[282] In *Hagee*, the travel orders were not used in accordance with the purpose of military travel orders. The false orders were used by the friends of the accused for a personal reason: to get out of a contractual obligation.[283] Because a civilian lease is not about and does not pertain "to a matter within the jurisdiction of [the armed forces] of the United States," it appears the COMA erred by finding the false orders "official."[284]

The highest military court continued its expansion of "official" documents in *United States v. Smith*.[285] In *Smith*, the accused falsely made an employment verification letter, a military leave and earnings statement, and a military identification card.[286] He submitted these three documents to a civilian car dealer to obtain a car loan.[287] The accused was convicted of three specifications of making false official statements in violation of Article 107. The CAAF correctly cited to *Ragins* for the proposition that statements to private parties can be "official" if made for a government purpose or if the government is accountable for the representations.[288] However, the court followed the rationale in *Hagee* and found government-issued forms "official," regardless of the actual purpose for which the documents were transmitted to a private party. The court failed to adequately explain how a civilian car loan application "pervert[ed] an authorized function of a government agency acting in furtherance of military interest."[289] Instead, CAAF further expanded the scope of Article 107 by

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280. *Hagee*, 37 M.J. at 487.
281. *Id.* at 485.
282. United States v. Ragins, 11 M.J. 42, 44 (C.M.A. 1981); United States v. Sim, 35 M.J. 902, 903 (A.C.M.R. 1992).
283. *Hagee*, 37 M.J. at 485.
284. United States v. Disher, 25 C.M.R. 683, 686 (A.B.R. 1958); *Johnson*, 39 M.J. at 1035.
285. United States v. Smith, 44 M.J. 369 (1996).
286. *Id.* at 370.
287. *Id.*
288. *Id.* at 372; United States v. Ragins, 11 M.J. 42, 44 (C.M.A. 1981).
289. *Johnson*, 39 M.J. at 1035.

stating that one of purposes of the statute was to offer "*broad protection* . . . to government and military documents."[290]

Over the last twenty years, the military courts have expanded Article 107's application. They continue to find a wide variety of false statements, made to private parties and non-military authorities, to be "official" statements. While military courts have been consistent in looking toward § 1001 and its related precedent for help in interpreting Article 107, they have been inconsistent in their application of both federal and military case law. Aside from occasionally substituting language from § 1001, military courts have failed to adequately define officiality as required by Article 107.

VI. Proposed Test for Officiality under Article 107

First, officiality is a question of law to be decided by a court.[291] It has been almost fifty years since military courts first tried to define the deceptively simple word "official." Aside from recognizing the President's explanation that "official" statements and documents are those "statements and documents made in the line of duty," the military courts supply no consistent guidance or definitions to determine officiality.[292] In order to prevent virtually every false statement by a service member from becoming a violation of Article 107, the courts should focus on the circumstances surrounding the statement *at the time the statement is made*.

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290. *Smith*, 44 M.J. at 372.

291. U.S. DEP'T OF ARMY, PAM. 27-9, LEGAL SERVICES: MILITARY JUDGES' BENCHBOOK para. 3-31-1 (1 Apr. 2001) [hereinafter BENCHBOOK].

> Whether a statement or document is official is normally a matter of law to be determined as an interlocutory question. However, even though testimony concerning officiality may be uncontroverted, or even stipulated, when such testimony permits conflicting inferences to be drawn, the question should generally be regarded as an issue of fact for the members to resolve.

Id.

292. *See* United States v. Lynn, 50 M.J. 570, 573 (N-M. Ct. Crim. App. 1999) (finding "[t]he fact that the statement [is] not made in the line of duty is *totally irrelevant*" in a case involving Article 107) (emphasis added). Just two years later, that same court would decide *United States v. Teffeau*, holding that "an intentionally deceptive statement made by a service member in the line of duty to a private party or a local official is within the scope of Article 107, UCMJ." *Teffeau*, 55 M.J. 756 (N-M. Ct. Crim. App. 2001), *rev'd on other grounds*, 58 M.J. 62 (2003).

To do so, a court should ask two questions: (1) To whom is the statement made? and (2) In what capacity was the declarant serving at the time of the statement?[293] The first question is fairly straightforward. If the statement is made to a military authority (a military superior or other service member acting pursuant to his or her duties), then any statement made is likely to be "official."[294] Courts must distinguish, however, official statements from social ones. Statements that are purely social in character can never be "official."[295]

While there is a strong inference of officiality for statements made to military supervisors, statements made to non-military authorities and private parties should be presumed to not be "official," absent a showing that the service member was discharging his duties. The military courts should not expand the scope of Article 107 in order to encompass as many different forms of false statements as possible. Criminal statutes must be narrowly construed.[296] For cases involving statements to non-military authorities and private parties, courts should find the declarant service

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293. *See* BENCHBOOK, *supra* note 291 (providing military judges some guidance on defining the nature of an "official" document).

> For a document to be regarded as official, it must concern a governmental function and must be made to a person who in receiving it is discharging the functions of his or her particular office, or to an office which in receiving the document or statement is discharging its functions.

Id.

294. *See* United States v. Osborne, 26 C.M.R. 235, 237 (C.M.A. 1958) (Latimer, J., dissenting) (stating "[i]t is quite necessary to a properly functioning military establishment that subordinates be required to furnish certain information to those in authority").

295. "'Official' means that the statements were not made in a conversation of a social character." SNEDEKER, *supra* note 122, at 728.

296. *See* LEFAVE, *supra* note 221, at 108 (restating the age-old rule of statutory interpretation: "criminal statutes must be strictly construed in favor of the defendant"). "[A]mbiguity concerning the ambit of criminal statutes should be resolved in favor of lenity." Rewis v. United States, 401 U.S. 808, 812 (1971). *See also* McBoyle v. United States, 283 U.S. 25, 27 (1931).

> Although it is not likely that a criminal will carefully consider the text of the law before he murders or steals, it is reasonable that a fair warning should be given to the world in language that the common world will understand, of what the law intends to do if a certain line is passed. To make the warning fair, so far as possible the line should be clear.

Id.

member to be acting in a military capacity in order to declare a statement as "official."

The second question of the proposed officiality test requires the court to determine in what capacity the declarant was serving at the time the statement was made. An "official" statement is one "made in the line of duty."[297] Under this premise, a statement cannot be "official" unless the declarant was acting in accordance with his rank, position or status as a military service member at the time of the making of the statement. There must be a nexus between the making of the statement and the scope of the declarant's duties at the time of the statement. The determination of officiality cannot be established merely because the context of the statement concerns or touches upon military matters.[298] An "official" statement can only be made while acting in a military capacity or pursuant to military authority.[299]

For written documents, the second question requires some additional considerations. In examining written false statements, the focus should remain on the capacity of the service member at the time the document is passed or uttered to another. False documents subject to Article 107 scrutiny may take the form of standard military forms, papers with special military insignias or seals, or letters with official military letterhead. The form of the false document, however, does not make the statement official, *per se*. The making of a false official statement to a private party occurs when the statement is made or presented *to* the private party. The actual act of altering a military identification card may, in itself, constitute a violation of the UCMJ.[300] The presentation of that falsified identification card to one's mother, however, does not mean that statement (made at the time the document is presented to mom) is "official." An official statement is one that is made *while* in the line of duty.[301]

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297. MCM, *supra* note 8, pt. IV, ¶ 31c; *Teffeau*, 58 M.J. at 68.

298. *Contra Teffeau*, 58 M.J. at 69.

299. *See* United States v. Johnson, 39 M.J. 1033, 1035 (A.C.M.R. 1994).

300. *See, e.g.*, UCMJ art. 123 (2002) (Forgery). Article 123—Forgery, in pertinent part, reads as follows:

> Any person subject to this chapter who, with intent to defraud – (1) falsely makes or alters any signature to, or any part of, any writing which would, if genuine, apparently impose a legal liability on another or change his legal right or liability to his prejudice . . . is guilty of forgery and shall be punished as a court-martial may direct.

Id.

Consider the five scenarios presented in the Introduction under this proposed officiality test:

1. In scenario one, a Marine lance corporal falsely told her landlord that her father died in the Pentagon attack in an attempt to nullify her lease.[302] Looking at the first question of the proposed officiality test, the statement was made to a civilian landlord. The landlord was acting as a private party and did not receive the statements as a representative or agent of the U.S. military. The second question of the test would require determining the capacity in which the lance corporal was serving at the time of the statement. In this case, the lance corporal was acting in a personal capacity in a landlord-tenant transaction. While the subject of her conversation may have touched upon a military incident or concerned her current situation at her unit, she was not acting pursuant to her duties or any military orders by speaking with her landlord. Thus, the statement cannot be "official."

2. In the second scenario, an airman told another airman that he had been a high school football star when he was actually only the water boy. In this case, the airman was speaking with another airman in a conversation that appears to be social. As statements that are social in character are not made in the line of duty, the statement of the airman, while false, was not "official."[303] Therefore, there is no need to look to the second half of the test. However, if that other service member were the airman's commander, then it would become necessary to determine the capacity of the airman in making the false statement. The duties of a commander and the senior-subordinate relationship would likely make this statement an "official" one. The airman would be providing information to a commander whose responsibility is to know her subordinates, understand their capabilities and weaknesses, and look out for their welfare.

3. In the third scenario, a soldier lied to a civilian police investigator about his involvement in a fight and shooting at an off-

301. *See Johnson*, 39 M.J. at 1035.

302. Gov't Mot. to Reconsider Ruling on Article 134 Preemption, United States v. MarksJones (Camp Pendleton 2002) (an unreported special court-martial that resulted in an acquittal; on file at Legal Service Support Section, 1st Force Service Support Group, Camp Pendleton, California).

303. SNEDEKER, *supra* note 122, at 728.

post location. This scenario comes from the case, *United States v. Johnson*.[304] The answer to the proposed officiality test's "to whom" query is obvious: the accused made the false statement to a civilian police officer who was "not a military criminal investigator nor was he acting on behalf of the armed forces."[305] Absent some substantial evidence that the accused was acting within the scope of his military duties, such a statement is not an "official" one. Examining the capacity of the accused in this case, it is apparent that he was not acting pursuant to military orders or authority when making the statement. The police officer was questioning a person reportedly involved in a civil incident within civilian police jurisdiction. The accused's capacity was that of a civilian witness/suspect at the time of the statement. The fact that the subject of the statement involved an altercation with a senior non commissioned officer does not determine the statement's officiality. Moreover, the falsity of the statement affected the ability of state law enforcement; the statement did not "pervert an authorized function of a governmental agency acting in furtherance of a military interest." Therefore, the statement is not "official."[306]

4. In scenario four, a corporal falsely altered his leave and earnings statement (LES) to impress a civilian girl. If one were to strictly follow the court in *United States v. Hagee*,[307] one would conclude that this corporal was actually guilty of violating Article 107. According to the *Hagee* court, "[n]othing in the plain language of this statute limits its scope to deceptions in which the United States is the intended or actual direct victim."[308] The use of a falsified LES to deceive a private party, albeit a potential girlfriend, would still violate Article 107 because it is the United States who is actually "victimized by the threat to the integrity of its official documents and to the good-faith reliance to which its

304. *Johnson*, 39 M.J. at 1035 (holding that oral statements by a soldier to civilian law enforcement officers, who were conducting a state investigation concerning an off-post altercation and shooting involving another service member, were not *official* under Article 107).

305. *Id.* "As a police investigator for Harker Heights, a governmental body chartered under the laws of the State of Texas, his authority extended to enforcing the laws of that jurisdiction only." *Id.*

306. *Id*. at 1035-36.

307. United States v. Hagee, 37 M.J. 484 (C.M.A. 1993).

308. *Id*. at 485.

official documents are—and must be—entitled."[309] However, such a result in this scenario would border on the absurd. Applying the two-part officiality test, one reaches a more rational and reasonable conclusion. First, the statement was clearly made to a private party. This statement, *made* at the time the LES was shown to the girl, was one of a social character and cannot be "official." Although the corporal's statement took the form of a United States document, he was not acting in a military capacity or within the scope of his duties. He was no more than a hopeful paramour.

5. Scenario five involved a military recruiter who lied to a civilian investigator about a fatal automobile accident involving another recruiter and a recruit. This scenario, of course, came from *United States v. Teffeau*.[310] In that case, the CAAF found that Staff Sergeant Teffeau's actions leading prior to the automobile accident provided the necessary connection to the military to declare his subsequent statement to civilian police officers as "official."[311] Furthermore, the subject of Staff Sergeant Teffeau's statements inevitably touched upon his duties as a recruiter since he was required to explain why the other recruiter and potential enlistee were together on that fatal day. Largely due to Staff Sergeant Teffeau's other misconduct and actions prior to the accident, the CAAF found that his later statements to police were made in the line of duty and, therefore, "official."[312] As mentioned earlier in the article, the problem with this rationale is the timing of the statement. Officiality of statements to non-military authorities or private parties must be based on circumstances existing at the time of the statement. Officiality cannot be based merely on earlier misconduct that happens to be one topic of discussion during a state police questioning.[313]

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309. *Id*. at 487.

310. United States v. Teffeau, 58 M.J. 62 (2003).

311. *Id*. at 69.

312. *Id*. at 63. Staff Sergeant Teffeau was also convicted of conspiring to violate a general order, failing to obey a lawful order, dereliction of duty, making false statements to military officials, and obstructing justice, in violation of Articles 81, 92, and 134, UCMJ. *Id.*

313. Appellant's Brief, *supra* note 25. "They [Winfield police] interviewed Appellant because he was a witness concerning an accident who incidentally happened to serve in the military." *Id.*

Applying the officiality test to the facts of this case produces a different result. First, the statements were made to a state policeman, a non-military authority who was not acting on behalf of the military. As a result, there must be some substantial evidence to overcome a presumption that such a statement is not "official." The second prong requires the determination of SSgt Teffeau's capacity *at the time* he *made* the statement. There is no question that he committed misconduct under the UCMJ in his dealings, as a military recruiter, with the recruits. *At the time the statement was made*, SSgt Teffeau, however, was not acting as a recruiter. The police were not seeking his expertise as a military recruiter nor asking him to recruit at the time of the statement. He was not questioned because he was a recruiter. As with *Johnson*,[314] SSgt Teffeau was interviewed as a witness to a state criminal accident investigation.[315] The making of the statement was not within the scope of his military duties. His statement was not an action based on his position, rank or status as a member of the armed forces. He was a civilian witness. Thus, he did not make the statement while in the line of duty. The statement should not have been considered "official."

VII. Conclusion

When faced with charges involving Article 107, courts must make greater efforts to determine officiality by identifying the recipient of statements and focusing on the military capacity of the accused declarant. Not all false statements by service members are "official." Courts must not hesitate to strike down those statements that are legally insufficient to sustain an Article 107 conviction. Even if not found to be a violation of Article 107, there may be other alternatives available to punish such falsehoods.[316] In short, Congress did not pass Article 107 to protect state or local governments from false statements made to any civilian authority; it did so to protect the military from intentionally deceptive statements and documents.

The history of falsehood offenses and the enactment of the UCMJ and Article 107 show that Congress did not contemplate punishing a wide variety of false statements to private parties. The courts, however, now face many situations where service members are criminally charged with lying to persons other than military authorities. For many years, the military

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314. United States v. Johnson, 39 M.J. 1003 (A.C.M.R. 1994).
315. *Teffeau*, 58 M.J. at 67.

courts turned to the federal falsehood statute, 18 U.S.C. § 1001, for assistance in interpreting officiality and determining the purpose of Article 107. Caution must be taken, however, when applying more than a "general analogy" of § 1001 to Article 107.[317] While the two statutes are somewhat similar in purpose, there are distinct and important differences between them. The purpose of military justice is unique in its need to maintain order and discipline in the ranks of the armed forces.

A special need exists in the military to maintain the highest standards of honor and integrity.[318] As a result of this need, the UCMJ "proscribes lying to protect the ethical element called 'honor,' which is critical to unit cohesion and combat readiness."[319] The aim of the UCMJ is not, however, to proscribe every false statement ever made by service members to private parties. If a false statement is not made while acting in a military capacity, such a statement will likely have no effect on a military unit's ability to train and fight wars.

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316. There are several possible charging options, aside from Article 107, for an accused who utters falsehoods. If the statement is otherwise of a nature that brings discredit upon the armed forces, it can be charged using Article 134. UCMJ art. 134 (2002). *See* United States v. Stone, 40 M.J. 420, 422 (C.M.A. 1994) (holding the evidence legally sufficient to support the findings of guilty of the offense of making a false speech, which caused discredit to the armed forces). In *Stone*, the accused wore his Army uniform and spoke to two assemblies at a high school. He falsely told school students and faculty that, while participating in Operation Desert Storm, he parachuted into Baghdad as leader of a Special Forces team, that he had been in Iraq in 1990 before the outbreak of hostilities, and that the students may be in danger because terrorists may retaliate against him. *Id*. at 421.

False statements to civilian federal investigative agencies may also be prosecuted as a Clause 3, Article 134 violation for violating § 1001. UCMJ art. 134; *see Johnson*, 39 M.J. at 1036 n.3. Of course, a United States District Attorney may also prosecute such § 1001 violations in federal court. *See, e.g.*, United States v. Rodgers, 466 U.S. 475, 477 (1984) (permitting the prosectuion of Rodgers in a Missouri federal district court by holding that § 1001 "clearly encompasses criminal investigations conducted by the FBI and the Secret Service).

Additionally, false statements to state officials, as in *Teffeau,* may be pursued by states in their own state courts. *See, e.g.*, TEX. PENAL CODE § 37.08 (2002) (False Report to Peace Officer or Law Enforcement Employee); VA. CODE ANN. § 18.2-460 (2003) (Obstructing Justice [by making materially false statement or representation to a law-enforcement officer]).

317. United States v. Hutchins, 18 C.M.R. 46, 50 (C.M.A. 1955).

318. United States v. Harrison, 20 M.J. 710, 712 (A.C.M.R. 1985).

319. *Id.*