

ENCLOSURE A11

_____, was then (on duty), (present)], to wit:
“_____” or words to that effect.

15. Article 89 (10 U.S.C. 889)—Disrespect toward superior commissioned officer; assault of superior commissioned officer

a. *Text of statute.*

(a) **DISRESPECT.**—Any person subject to this chapter who behaves with disrespect toward that person’s superior commissioned officer shall be punished as a court-martial may direct.

(b) **ASSAULT.**—Any person subject to this chapter who strikes that person’s superior commissioned officer or draws or lifts up any weapon or offers any violence against that officer while the officer is in the execution of the officer’s office shall be punished—

(1) if the offense is committed in time of war, by death or such other punishment as a court-martial may direct; and

(2) if the offense is committed at any other time, by such punishment, other than death, as a court-martial may direct.

b. *Elements.*

(1) *Disrespect toward superior commissioned officer.*

(a) That the accused did or omitted certain acts or used certain language to or concerning a certain commissioned officer;

(b) That such behavior or language was directed toward that officer;

(c) That the officer toward whom the acts, omissions, or words were directed was the superior commissioned officer of the accused;

(d) That the accused then knew that the commissioned officer toward whom the acts, omissions, or words were directed was the accused’s superior commissioned officer; and

(e) That, under the circumstances, the behavior or language was disrespectful to that commissioned officer.

(2) *Striking or assaulting superior commissioned officer.*

(a) That the accused struck, drew, or lifted up a weapon against, or offered violence against, a certain commissioned officer;

(b) That the officer was the superior commissioned officer of the accused;

(c) That the accused then knew that the officer was the accused’s superior commissioned officer; and

(d) That the superior commissioned officer was then in the execution of office.

[Note: if the offense was committed in time of war, add the following element]

(e) That the offense was committed in time of war.

c. *Explanation.*

(1) *Superior Commissioned Officer.* See 10 U.S.C. § 801(5) (“The term ‘superior commissioned officer’ means a commissioned officer superior in rank or command.”).

(2) *Disrespect toward superior commissioned officer.*

(a) *Knowledge.* If the accused did not know that the person against whom the acts or words were directed was the accused’s superior commissioned officer, the accused may not be convicted of a violation of this article. Knowledge may be proved by circumstantial evidence.

(b) *Disrespect.* Disrespectful behavior is that which detracts from the respect due the authority and person of a superior commissioned officer. It may consist of acts or language, however expressed, and it is immaterial whether they refer to the superior as an officer or as a private individual. Disrespect by words may be conveyed by abusive epithets or other contemptuous or denunciatory language. Truth is no defense. Disrespect by acts includes neglecting the customary salute, or showing a marked disdain, indifference, insolence, impertinence, undue familiarity, or other rudeness in the presence of the superior officer.

(c) *Presence.* It is not essential that the disrespectful behavior be in the presence of the superior, but ordinarily one should not be held accountable under this article for what was said or done in a purely private conversation.

(d) *Special defense—unprotected victim.* A superior commissioned officer whose conduct in relation to the accused under all the circumstances departs substantially from the required standards appropriate to that officer’s rank or position under similar circumstances loses the protection of this article. That accused may not be convicted of being disrespectful to the officer who has so lost the entitlement to respect protected by Article 89.