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Operational Claims in Bosnia-Herzegovina and Croatia

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Introduction

During any non-combat deployment of U.S. forces into or within a foreign country (a receiving state), there may be injuries to the person or property of the U.S. forces, the receiving state, or the inhabitants of the receiving state. This article explains the various statutory authorities under which such claims are ordinarily settled. As a case study, this article focuses on the recent deployment into Bosnia-Herzegovina and Croatia by forces from the United States and other troop-contributing nations.

During the negotiations which led to the Status of Forces Agreements (commonly known as the Dayton SOFAs) and the Paris peace accords, which generated the General Framework Agreement for Peace (GFAP),[1] the negotiators discussed claims issues, among other things. The representatives of Bosnia-Herzegovina and Croatia expressed concern over the manner in which claims had been handled during the tenure of the United Nations protection force. They wanted a rigorous, jointly-administered claims arrangement to avoid the problems that they experienced with the United Nations claims system. The current stabilization force claims process accommodates the receiving state's concerns. Each troop-contributing nation settles claims against it using its own claims processes and funds.[2] The actual processes to be used in settling claims, however, continued to evolve as the subsequent implementation agreements were negotiated. The claims provisions that were negotiated in later agreements were often completely different than those in the preceding agreements.

Statutory Authority

Claims against U.S. forces which arise from non-combat operation-related damages in receiving states are ordinarily settled under two different statutory grants of authority: the Foreign Claims Act[3] (FCA) and the International Agreements Claims Act.[4] Under the FCA, meritorious claims for property losses, personal injury, or death caused by military personnel or members of the civilian component of the U.S. forces may be settled "[t]o promote and [to] maintain friendly relations" with the receiving state.[5] Claims are investigated, adjudicated, and settled or denied by military or civilian attorneys who serve as foreign claims commissioners.[6] The foreign claims commissioners apply local law and customs to determine liability and the amount of any award, and their decisions on claims are final.[7] Such claims are paid entirely with U.S. funds, but the claimants receive payment in the local currency.[8]

The International Agreements Claims Act allows settlement of meritorious claims against the United States pursuant to U.S. obligations under international law. A status of forces agreement (SOFA) is the most common form of agreement to trigger application of the statute. In such cases, the terms of the applicable SOFA would provide the mechanisms for investigating and settling (or denying) claims against U.S. forces.

The following example illustrates the application of the International Agreements Claims Act. Under the statute, the SOFA and subsequent agreements in effect between the Federal Republic of Germany and the United States[9] control the settlement of claims in Germany. Pursuant to those agreements, the

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1. Bosnia and Herzegovina-Croatia-Yugoslavia: General Framework Agreement for Peace in Bosnia and Herzegovina with Annexes, Dec. 14, 1995, Bosn.-Herz., 35 I.L.M. 75 [hereinafter GFAP]. The Dayton SOFAs are appendices to the General Framework Agreement for Peace and were signed in Dayton, Ohio on 21 November 1995 and in Brussels, Belgium two days later. *Id*. at 102, annex 1-A, app. B [Agreement Between the Republic of Bosnia and Herzegovina and the North Atlantic Treaty Organization (NATO) Concerning the Status of NATO and Its Personnel]; *id*. at 104 [Agreement Between the Republic of Croatia and the North Atlantic Treaty Organization (NATO) Concerning the Status of NATO and Its Personnel].

2. IFOR [Implementation Force] Claims Office Sarajevo Standard Operating Instructions (1st Revision) (21 July 1996) [hereinafter IFOR Claims Office Sarajevo SOI] (copy on file with the U.S. Army Claims Service, Europe); *id*. attachment A [The Legal Bases for the IFOR Claims Operation in Bosnia-Herzegovina] at 1.

3. 10 U.S.C. § 2734 (1994).

4. *Id*. § 2734a. "Where a claim is covered by a treaty provision requiring adjudication and payment by a receiving state, the receiving state's claims process normally is the claimant's exclusive remedy, rather than the Foreign Claims Act process." U.S. Dep't of Army, Reg. 27-20, Claims, para. 10-4 (1 Aug. 1995) [hereinafter AR 27-20]. *See id*. para. 7-12.

5. 10 U.S.C. § 2734(a).

6. AR 27-20, *supra* note 4, para. 10-14. "In exigent circumstances, a qualified non-lawyer employee of the Armed Forces may be appointed to a foreign claims commission . . . ." *Id.*

7. *Id.* para. 10-12f(4).

8. *Id.* para. 10-11e.

defense costs offices throughout Germany investigate, adjudicate, and settle (or deny) claims against U.S. forces that are incident to service, or "in-scope."[10] The defense costs offices pay the claimants then submit a schedule for reimbursement to the U.S. Army Claims Service, Europe, which reimburses seventy-five percent of the amounts paid.[11] The International Agreements Claims Act authorizes this type of reimbursement to the receiving state only when the United States is a party to an agreement which contains cost-sharing provisions.[12] "Non-scope" or "ex gratia" claims—those claims resulting from the private tortious acts of members of the U.S. forces—fall under the FCA. For this type of claim, the defense costs offices investigate, review the claim, and make payment recommendations to the U.S. Army Claims Service, Europe, [13] where foreign claims commissioners consider the claim de novo and settle or deny the claim under the FCA.[14] Claims adjudicators at the U.S. Army Claims Service, Europe, make independent judgments under German law as to the merits of the claims and the proper amounts to be awarded.[15]

The Foreign Claims Act in Detail

In Bosnia-Herzegovina and Croatia, U.S. forces use the FCA to settle or to deny claims. [16] The International Agreements Claims Act is inapplicable under the Dayton SOFAs because: (1) the agreements contain no cost-sharing measures and (2) the agreements are between implementation force representatives and the receiving states, not between the United States and the receiving states.

Applicability

The FCA applies outside of the United States, its territories, and its possessions.[17] The national and local governments of receiving states, as well as their inhabitants, [18] are proper FCA claimants.[19] Enemy or "unfriendly" nationals or governments, insurers and other subrogees,[20] inhabitants of the United States, and U.S. military and civilian component personnel who are in the receiving state incident to service are not proper claimants.[21] In addition to the restrictions as to who can be a proper claimant, the Army's implementing regulation for the FCA lists twenty-seven different types of claims that may not be allowed. These include claims for which payment would not be in the

9. *See* Agreement Between the Parties to the North Atlantic Treaty Regarding the Status of Their Forces, June 19, 1951, 4 U.S.T. 1792, 199 U.N.T.S. 67 [hereinafter NATO SOFA]; Agreement to Supplement the Agreement Between the Parties to the North Atlantic Treaty Regarding the Status of Their Forces with Respect to Foreign Forces Stationed in the Federal Republic of Germany, Aug. 3, 1959, 14 U.S.T. 531, 481 U.N.T.S. 262 [hereinafter Supplementary Agreement]; Administrative Agreement Concerning the Procedure for the Settlement of Damage Claims (Except Requisition Damage Claims) Pursuant to Article VIII of the Agreement Between the Parties to the North Atlantic Treaty Regarding the Status of Their Forces [NATO SOFA], dated 19 June 1951, in Conjunction with Article 41 of the Supplementary Agreement to that Agreement, as well as for the Assertion of Claims Pursuant to Paragraph (9), Article 41 of the Supplementary Agreement (SA), Oct. 8-Dec. 6, 1965 [hereinafter Administrative Agreement] (1997 update on file with U.S. Army Claims Service, Europe)."

10. Administrative Agreement, *supra* note 9, pt. A, paras. 3, 5, 15.

11. *Id.* pt. B, paras. 19, 21, 26-30.

12. 10 U.S.C. § 2734a(a) (1994).

13. Administrative Agreement, *supra* note 9, paras. 63-64.

14. AR 27-20, *supra* note 4, para. 7-11b.

15. Based on these de novo adjudications, some claimants are paid more than the defense costs offices recommended. During fiscal year 1996, 81 German ex gratia claims were received and processed at the U.S. Army Claims Service, Europe. Fifty-nine were paid, for a total amount of $143,885.74. Memorandum from MAJ William Kern, Chief, Operational Claims, U.S. Army Claims Service, Europe, to MAJ Jody M. Prescott, subject: Ex Gratia Claims (17 Sept. 1997).

16. The U.S. Army has single service responsibility for claims arising against U.S. forces in Bosnia-Herzegovina and Croatia. Memorandum, John H. McNeill, Senior Deputy General Counsel, Office of General Counsel, U.S. Dep't of Defense, to Colonel John P. Burton, Legal Counsel, Joint Chiefs of Staff, subject: Assignment under DOD Directive 5515.8 of the Department of the Army as the Single-Service Claims Authority for Operation Joint Endeavor (12 Mar. 1996). This designation means that the U.S. Army is the only service ordinarily authorized to settle claims against U.S. forces in the Bosnian Theater. U. S. DEP'T OF DEFENSE, DIR. 5515.8, SINGLE SERVICE ASSIGNMENT OF RESPONSIBILITY FOR PROCESSING OF CLAIMS (9 June 1990).

17. 10 U.S.C. § 2734(a).

18. Whether one is an "inhabitant of a foreign country" for purposes of the FCA is not dependent upon citizenship. The test is "whether the claimant dwells in and has assumed a definite place in the economic and social life of the foreign country." U.S. DEP'T OF ARMY, PAM. 27-162, CLAIMS, para. 7-4c(1)(a) (15 Dec. 1989) [hereinafter DA PAM 27-162].

19. 10 U.S.C. § 2734(a).

20. *Id.* §§ 2734(a), (b).

21. AR 27-20, *supra* note 4, para. 10-7b.

best interest of the United States and claims for losses resulting from combat, contractual disputes, and domestic obligations.[22]

To be allowable, a claim must result from a negligent or wrongful act or omission;[23] such acts or omissions are termed "non-combat activities."[24] *Army Regulation 27-20* defines "non-combat activities" as those which are "essentially military in nature, having little parallel in civilian pursuits, and which historically have been considered as furnishing a proper basis for payment of claims."[25] Examples include maneuvers, heavy convoys, and test firings of weapons.[26] Claims that result from "combat" or "combat-related" activities are not allowed.[27]

Claims Submission Procedure

Claimants under the FCA must ordinarily present their claims in writing to an authorized official within two years of the accrual of the claim.[28] Claims officials may accept verbal claims, but the claims must be reduced to writing within three years of accrual.[29] Written claims must state the time, place, and nature of the incident; the nature and extent of the damage, loss, or injury; and the amount claimed.[30]

Foreign Claims Commissions

A one-member foreign claims commission can settle or deny claims for less than $15,000.[31] A three-member commission can settle claims for less than $50,000 and can deny claims for any amount.[32] Claims between $50,000 and $100,000 can be settled by the commander of the U.S. Army Claims Service at Fort Meade, Maryland.[33] Claims for more than $100,000 can be settled only by the Secretary of the Army.[34]

Foreign claims commissions are required by regulation to make "[e]very reasonable effort" to "negotiate a mutually agreeable settlement on meritorious claims."[35] If a foreign claims commission intends "to deny a claim, [to] award less than the amount claimed, or [to] recommend an award less than claimed but in excess of its authority," it must notify the claimant accordingly and give the claimant an opportunity to submit additional information before a final decision is made.[36] Once the foreign claims commission issues its final decision and the claimant signs a claims settlement form, the claim is certified to the local Defense Finance and Accounting Office for payment in local currency.[37]

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22. *Id.* para. 10-9a-aa.

23. "[T]ortfeasors need not be acting within the scope of their employment [for] their wrongful acts or omissions [to] result in cognizable claims . . . ." DA PAM 27-162, *supra* note 18, para. 7-4e(3)(e).

24. AR 27-20, *supra* note 4, para. 10-8a.

25. *Id.* glossary § II at 73.

26. *Id.*

27. These terms are defined as: "Activities resulting directly or indirectly from action by the enemy, or by the U.S. Armed Forces engaged in, or in immediate preparation for, impending armed conflict." *Id.* at 72. "Peacekeeping" or "peace enforcement" operations present significant problems with the practical application of these definitions. Under United States law, "incidents arising out of training for combat and the operation of military facilities not directly involved in combat actions often will not be classified as combat activities and thus might be payable, although the purpose of the training or operation of the facilities may be to prepare for combat operations . . . ." DA PAM 27-162, *supra* note 18, para. 7-4e(2). The various claims conferences held by the NATO troop-contributing nations since the beginning of the operation have revealed a lack of consensus regarding the application of these concepts to claims.

28. 10 U.S.C. § 2734(b)(1) (1994); AR 27-20, *supra* note 4, paras. 10-5, 10-6a.

29. AR 27-20, *supra* note 4, para. 10-6a.

30. *Id.* United States forces in Bosnia-Herzegovina and Croatia devised bilingual claims forms to assist claimants in filing and properly documenting their claims. A standard form was not used, because different claims forms were required in different parts of the former Yugoslavia to address local cultural sensitivities. For example, many Croatian claimants preferred forms written in so-called "New Croatian," rather than Serbo-Croatian. Some claimants in the Republika Srpska preferred forms in Cyrillic, rather than Latinic, script.

31. *Id.* para. 10-15a. A non-lawyer foreign claims commissioner can only settle claims for $2500 or less. *Id. See supra* note 7.

32. AR 27-20, *supra* note 4, para. 10-15b.

33. *Id.* para. 10-15c.

34. *Id.* para. 10-15d.

35. *Id.* para. 10-12f (5).

36. *Id.* para. 10-12f.

The Legal Bases for Claims Activities in Bosnia-Herzegovina and Croatia

The Dayton SOFAs and the Balanzino Letter

The Dayton SOFAs provide that "[c]aims for damage or injury to government personnel or property, or to private personnel or property of the [receiving state] shall be submitted through governmental authorities of the [receiving state] to the designated NATO representatives."[38] The actual process to be followed in settling claims in Bosnia-Herzegovina was addressed in correspondence between NATO Acting Secretary General Sergio Balanzino and the Minister of Foreign Affairs for Bosnia-Herzegovina. If civil suits were brought against NATO personnel for actions performed in their official capacity, the implementation force commander could issue a certificate to that effect and remove the case to the "standing claims commission to be established for that purpose."[39]

> [A]ny appeal that both of the Parties agree to allow from the award of the Claims Commission shall, unless otherwise agreed by the parties, be submitted to a Tribunal of three arbitrators. The provisions relating to the establishment and procedures of the Claims Commission, shall apply, *mutatis mutandis*, to the establishment and procedures of the Tribunal. The decisions of the Tribunal shall be final and binding on both parties.[40]

The Technical Arrangements

Military representatives of the implementation force and the receiving states entered into technical arrangements[41] to implement the Dayton SOFAs and the GFAP. The claims commission and tribunal processes were described in greater detail in claims annexes to the technical arrangements.[42] The claims commission would consist of four members—two representatives of the implementation force and two representatives from the receiving states, all of whom must be legally qualified.[43] The claims commission was authorized to decide questions of liability and quantum and to order payment in accordance with its decisions.[44]

Payment orders were to be paid with funds from either NATO (implementation force) or troop-contributing nations, as appropriate.[45] Ordinarily, claims were to be submitted no later than ninety days from the date of discovery of the damage, and payment was to be made to injured parties no later than ninety days after the claim had been settled.[46] If the implementation force or a troop-contributing nation did not comply with a payment order, the payment order would be sent to NATO Headquarters in Brussels for payment.[47] The receiving states were required to pay claims brought by the implementation force or a troop-contributing nation against nationals of the receiving states.[48] The receiving states could then recoup these costs themselves from the responsible local national parties.[49]

The claims annexes also provided that a receiving state governmental agency would serve as the primary office to accept,

37. United States forces in Bosnia-Herzegovina make payments in Deutschemark on both sides of the Inter-Entity Boundary Line. Payments in Croatia are made in Kuna.

38. GFAP, *supra* note 1, at 102, annex 1-A, app. B, art. 15 [Dayton SOFAs].

39. Letter from Sergio Balanzino, NATO Acting Secretary General, to Muhamed Sacirbey, Minister of Foreign Affairs, Republic of Bosnia and Herzegovina, para. 4(a) (Nov. 23, 1995) [hereinafter Balanzino Letter]. In civil suits involving the private tortious acts of NATO personnel, the implementation force commander has the authority to issue a certificate, at the defendant's request, to the local court to have the proceedings delayed until such time as the NATO soldier could appear to defend himself before the court. *Id.* para. 4(b).

40. *Id.* para. 5. A copy of this letter, and identical versions addressed to the Croatian and Yugoslavian Foreign Ministers, were sent to the members of the NATO Political Committee. Memorandum from Allen L. Kleiswetter, Acting Chairman, to the Members of the Political Committee (24 Nov. 1995).

41. *See, e.g.*, Technical Arrangement Between the Government of the Republic of Bosnia and Herzegovina and the Implementation Force, Dec. 23, 1995 [hereinafter Technical Arrangement] (copy on file with U.S. Army Claims Service, Europe). The technical arrangements, at least with respect to claims matters, are practically identical. For simplicity, this article will therefore only reference the technical arrangement with the Republic of Bosnia and Herzegovina. At the April 1997 NATO Sending States Claims Conference in Paris, some of the representatives of the sending states indicated that they did not know whether their respective members on the NATO political committee were aware of the claims procedures under the technical arrangements.

42. *Id.* Claims Annex. The Claims Annex is referred to as Annex 17.

43. *Id.* Claims Annex, para. 3.

44. *Id.*

45. *Id.* Claims Annex, para. 4.

46. *Id.*

47. *Id.*

to investigate, and to adjudicate claims, much like the defense costs offices do in the Federal Republic of Germany.[50] Under the provisions of the claims annexes, the claims commission would then resolve disagreements between the implementation force (or the troop-contributing nations) and the receiving state agency tasked with handling claims.[51] If the parties to the claim still disagreed after the claims commission decision, the matter would be referred to the arbitration tribunal.[52] The decisions of the arbitration tribunal would be final and binding on both parties.[53]

The Claims Appendices

The parties to the agreement further refined and modified the claims processes in the claims appendices to the claims annexes. Under these agreements, decisions of the claims commissions must be unanimous.[54] Cases in which there was no unanimous decision would be referred to the arbitration tribunal "for final determination."[55] Claimants who were dissatisfied with the decision of the claims commission decision could appeal to the arbitration tribunal under the procedures set forth in the claims appendices.[56]

The Bosnian Protocols and the Zagreb Implementation Force Claims Procedures

The legal advisor to the implementation force recognized the administrative difficulties inherent in having government agencies of the receiving states serving as the primary bodies to conduct claims intake, investigation, and adjudication.[57] In the spring of 1996, representatives from the implementation force and the receiving states agreed to additional implementing arrangements that streamlined the claims process. The implementation force legal advisor negotiated separate agreements with the Ministry of Justice, Federation of Bosnia-Herzegovina, and the Ministry of Justice, Republika Srpska. The agreements give troop-contributing nations the primary responsibility for claims intake, investigation, and adjudication.[58] In case of unresolved disputes, the Sarajevo implementation force claims office would attempt to mediate a solution.[59] The claims commission was reserved to "hear appeals from either the claimant or the national contingent claims officer when a claims dispute [could not] be resolved between the claimant and the unit responsible for the loss or damage."[60]

Similarly, arrangements with the Croatian government give troop-contributing nations the primary responsibility for resolving claims against them.[61] The Zagreb implementation force claims office would attempt to mediate disputes between the "claimant[s] and the national contingent claims officer."[62] "Claims that [could] not be otherwise settled [would] be sent to the Claims Commission for resolution."[63] Claimants were allowed "three months after the redeployment out of Croatia of

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48. *Id.*

49. *Id.*

50. *Id.* Claims Annex, para. 6. *See supra* note 9.

51. Technical Arrangement, *supra* note 41, Claims Annex, para. 7.

52. *Id.* Claims Annex, para. 8.

53. *Id.* Claims Annex, para. 5.

54. *Id.* Claims Annex, app., para. 5 (copy on file with U.S. Army Claims Service, Europe). The appendix to the Claims Annex is entitled "Claims Commission Procedures.

55. *Id.*

56. *Id.* Claims Annex, app., para. 6.

57. IFOR CLAIMS OFFICE SARAJEVO SOI, *supra* note 2, attachment A, at 4.

58. Protocol Made on 4 April 1996 Between the Ministry of Justice of the Republic of Srpska and the IFOR Claims Officer, Apr. 4, 1996, para. 3 [hereinafter Srpska Protocol] (copy on file with U.S. Army Claims Service, Europe). The terms of the Srpska Protocol and the Federation of Bosnia-Herzegovina Protocol are identical.

59. *Id.*

60. *Id.* para. 4. Interestingly, this paragraph appears to interpret the term "claimant," which is found in the Claims Appendix to Annex 17, as not including a troop-contributing nation. *See* Technical Arrangement, *supra* note 41, Claims Annex, app., para. 6

61. Zagreb IFOR Claims Procedures, paras. 2A-2C (1996) [hereinafter Zagreb Procedures] (copy on file with U.S. Army Claims Service, Europe).

62. *Id.* para. 2C.

63. *Id.*

the national contingent force alleged to have caused any injury or damage" to file their claims.[64]

Issues Regarding Claims Activities in Bosnia-Herzegovina and Croatia

The Efficacy and Competence of the Claims Commissions and Arbitration Tribunal

Although the decisions of the claims commissions[65] and the arbitration tribunal are supposed to be final and binding under the technical arrangements and its subsequent agreements, the position of the United States is that these agreements are not binding on the United States. This position is premised on the fact that the United States is not a party to these agreements; therefore, compliance with the agreements would violate the provisions of the FCA and the statutory mandate that decisions of foreign claims commissioners are final and conclusive.[66] However, there is value in having independent bodies review claims disputes and make recommendations as to fair and reasonable settlements. In recognition of this value, the United States will participate in the claims commission and arbitration tribunal hearings in good faith, but without accepting the decisions of those bodies as final and binding.[67]

The United States was not alone in its position toward the decisions of the claims commissions and the arbitration tribunal. At the Mons NATO Sending States Claims Conference in October 1996, the legal advisor for Supreme Headquarters, Allied Powers, Europe (SHAPE) concurred with the French delegation's proposal that the troop-contributing nation against whom a claim is brought be allowed to appoint one of the stabilization force claims commissioners. Because the decisions of claims commissions must be unanimous, the French proposal had the practical effect of ensuring that no decision could be taken which was not satisfactory to the troop-contributing nation involved. At the Paris NATO Sending States Claims Conference in April 1997, the delegations all agreed that the decisions of the arbitration tribunal could not be final and binding against them on claims disputes.[68] As a first step to resolving this problem, the SHAPE legal advisor agreed with the French delegation's proposal.[69]

Damages to Transportation Infrastructure

Under the terms of the Dayton SOFAs, the receiving states agreed to "provide, free of cost, such facilities NATO needs for the preparation for and execution of the operation."[70] "Facilities" are defined as "all premises and land required for conducting the operational, training, and administrative activities by NATO for the operation as well as for accommodations of NATO personnel."[71] NATO is allowed to use the airports, roads, and ports of the receiving states without paying "duties,

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64. *Id*. para. 2D. Under the Claims Annex to the Technical Arrangement, claimants in the Republic of Bosnia and Herzegovina are ordinarily required to submit claims "within 90 days of the date of discovery" of damage. *See* Technical Arrangement, *supra* note 41, Claims Annex, para. 4. This requirement is reaffirmed in the Srpska Protocol and the Federation of Bosnia-Herzegovina Protocol. *See* Srpska Protocol, *supra* note 58, para. 1.

65. Although none of the pertinent documents explicitly grants the claims commissions the power to make final and binding decisions, this power has accreted over time. Under the Claims Annex to the Technical Arrangement, they may "take decisions" on liability and the kind and scope of damage, and they may order payment. *See* Technical Arrangement, *supra* note 41, Claims Annex, para. 3. Further, the claims commissions have the authority to obtain expert testimony to help them decide issues in cases before them and to direct the parties to provide them with whatever information they require. *Id*. Claims Annex, para. 4.

66. 10 U.S.C. § 2735 (1994); AR 27-20, *supra* note 4, para. 10-12f(4). Accordingly, if a claimant were to bring a case before a U.S. court resulting from the denial of a claim by a foreign claims commission, the court could only review the case to determine whether the foreign claims commission had followed the appropriate regulations in deciding the case, not whether the decision was correct. *See* Rodrigue v. United States, 968 F.2d 1430, 1432-34 (1st Cir. 1992). Although the claimants in *Rodrigue* contested the denial of their claim under the related Military Claims Act (10 U.S.C. § 2731), the same principle of finality of the administrative ruling would apply.

67. In its first case before the Croatian Arbitration Tribunal, the United States informed the tribunal that it did not accept the final and binding nature of any decision the tribunal might reach, but that it wished to participate in the arbitration tribunal process in good faith to find a pragmatic resolution to the case before the tribunal. Respondent's Statement of Defence at 1, Feliks, d.o.o. v. United States (Feb. 26, 1997) (copy on file with U.S. Army Claims Service, Europe). The tribunal did not contest the assertion. The United States found the tribunal's decision to be reasonable and paid the claim in accordance with the decision.

68. As a precondition to participation in the implementation force, all of the non-NATO troop-contributing nations expressly agreed "to be responsible for claims for damages arising out of [their soldiers'] acts and omissions and made by third parties from the nation in which the damage in question occurred." Letter from Gran Berg, Swedish Ambassador to Belgium, to Javier Solana, Secretary General, NATO (Dec. 19, 1995). In an exchange of letters, the non-NATO participants also agreed to "waive all claims against each other and other non-NATO contributing nations for damage to property owned or used by, and injury to personnel belonging to, their contingents in the [implementation force]." *Id*.

69. The Croatian Arbitration Tribunal used the London Court of International Arbitration Rules (L.C.I.A. rules) in *Feliks*. Feliks, d.o.o. v. United States (Feb. 26, 1997) (copy on file with U.S. Army Claims Service, Europe). Under the L.C.I.A. rules, the neutral third member of the arbitration tribunal makes a decision on the case if the other members are unable to agree. *See* L.C.I.A. Rules, art. 16.3 (1985). Accordingly, a decision can still be made on a case in which the troop-contributing nation does not agree.

70. GFAP, *supra* note 1, at 102, annex 1-A, app. B, art. 14 [Dayton SOFAs].

71. *Id.* art. 1.

dues, tolls, or charges," but cannot "claim exemption from reasonable charges for services requested and received . . . ."[72]

During the course of the operation, the wheeled and tracked vehicles of the troop-contributing nations have used the roads extensively in both Bosnia-Herzegovina and Croatia. Before the operation, the vehicles of the former warring factions and the United Nations protection force also used many of the same roads. Claimants have filed two large claims for road damage against the United States, one for approximately $10,000,000 in Croatia and one for DM 8,600,000 in Bosnia-Herzegovina. At the Paris NATO Sending States Claims Conference, the SHAPE legal advisor suggested that these alleged damages to the roads, the so-called main supply routes, should be claims against the stabilization force itself, not the individual troop-contributing nations. Further, it was the consensus of the delegations present that these claims should be waived as the unavoidable results of conducting the operation (similar to combat damages).[73] The delegations concurred with the SHAPE legal advisor's suggestion that he forward this issue to the NATO political committee for resolution.

Applicable Receiving State Law with Regard to Liability and the Amount of Awards

United States forces ordinarily apply receiving state law in adjudicating claims against them under the FCA. Croatia has made substantial progress in recodifying the law of the former Yugoslavia. Both the Federation of Bosnia-Herzegovina and the Republika Srpska appear to provisionally apply the law of the former Yugoslavia.[74] Fortunately, with regard to tort law and the appropriate measure of awards, the law of the former Yugoslavia is still substantially applicable in Bosnia-Herzegovina and Croatia.[75]

The ordinary standard of tort liability in Bosnia-Herzegovina and Croatia is comparative negligence.[76] Certain former Yugoslavian tort concepts, however, are quite different from ordinary Anglo-American law. For example, under the concept of "presumed fault," "whoever causes damage to another has an obligation to compensate for it, unless he or she can prove the damage was caused without his or her fault."[77] The principle of presumed fault is perhaps similar to that of a rebuttable presumption in Anglo-American law, for "only the mildest degree of fault is presumed."[78] In the administrative settlement of claims by U.S. forces, however, this concept rarely plays a role.

The largest single category of claims against U.S. forces results from vehicular accidents.[79] Using standard pricing guides[80] and estimates from local repair facilities, it is fairly easy to determine an objective basis upon which to pay the claim for property damage to the automobile. Cases of personal injury, however, are much more difficult to resolve. Under the law of Bosnia-Herzegovina and Croatia, so-called "immaterial damages," or what Anglo-American jurisprudence would recognize as damages for pain and suffering, are payable. As a basis for their negotiations in personal injury cases in both Bosnia-Herzegovina and Croatia, U.S. forces use a standardized compensation table for damages such as physical pain, fear, and mental anguish.[81]

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72. *Id.* art. 9. Non-temporary improvements made to receiving state infrastructures during the course of the operation "shall become part of and in the same ownership as that infrastructure. Temporary improvements or modifications may be removed at the discretion of the [stabilization force commander], and the facility returned to as near its original condition as possible." *Id.* art. 17.

73. The entities that comprise Bosnia-Herzegovina agreed to, and Croatia endorsed, the proposition that "the [implementation force] and its personnel shall not be liable for any damages to civilian or governmental property caused by combat damage or combat-related activities." GFAP, *supra* note 1, ann. 1-A, art. VI, para. 9(a).

74. IFOR CLAIMS OFFICE SARAJEVO SOI, *supra* note 2, attachment I, at 1.

75. Zakon o Obveznim Odnosima [The Law on Obligatory Relations]. The Zagreb and Sarajevo implementation force claims offices compiled the first translations and comparative analyses of applicable Bosnian and Croatian tort law in June and July 1996, respectively. Distribution of the translations and analyses to the troop-contributing nations' claims activities did not begin until late July 1996. From the beginning of the operation until the late summer of 1996, U.S. forces in Bosnia-Herzegovina and Croatia relied on general principles of U.S. tort law in settling less complex claims. Larger, more complex claims were deferred until the legal issues could be properly analyzed.

76. IFOR CLAIMS OFFICE SARAJEVO SOI, *supra* note 2, at 7.

77. Zakon o Obveznim Odnosima [The Law on Obligatory Relations] art. 154(1).

78. IFOR CLAIMS OFFICE SARAJEVO SOI, *supra* note 2, attachment I, n.1.

79. For example, during the period between 10 January and 10 February 1997, U.S. forces paid 58 claims in Bosnia. Of those claims, 25 resulted from vehicular accidents; 13 from crop damage; 9 from damage to residential property; 6 from the detonation of ordnance; 2 from damage to private roads; and 1 each for damage to public roads, personal property, and livestock. Memorandum from SSG Ross Steele, Claims NCOIC, 1st ID, Task Force Eagle, to MAJ Jody M. Prescott, subject: Monthly Breakdown, Task Force Eagle Claims (23 Feb. 1997) (copy on file with U.S. Army Claims Service, Europe).

80. EurotaxSchwacke Gmbh, Schwackeliste (May 1997). The Schwackeliste is a listing of used car valuations similar to the Automobile Red Books published by National Market Reports, Inc. in the United States.

81. IFOR CLAIMS OFFICE SARAJEVO SOI, *supra* note 2, attachment J.

Conclusion

Claims activities in the Bosnian Theater of Operations[82] involve the most complex set of claims regimes in which U.S. forces have ever worked. As of 7 May 1998, U. S. forces had already received 1770 claims in Bosnia-Herzegovina, for a total claimed amount of $11,814,276.[83] Of these claims, 1104 have been paid, for a total amount of $1,124,785.[84] In addition, 391 claims had been filed against U.S. forces in Croatia, for a total amount of $11,733,205.[85] Of these claims, 254 have been paid, for a total amount of $408,550.[86]

The business of investigating, adjudicating, and settling claims in Bosnia-Herzegovina is very time-consuming and difficult because of the force protection requirements, the difficult roads, the shattered economy, and the widespread destruction caused during the war. These problems are not as significant in Croatia. United States foreign claims commissions rely heavily on the U.S. civil-military affairs teams to provide the required translators and to make the investigations and personal contacts necessary to settle the claims.

The prompt payment of meritorious claims contributes to the peace process in Bosnia-Herzegovina and Croatia by promoting friendly relations between the troop-contributing nations and the receiving states. The payment of such claims also serves the interests of force protection, an aspect of claims activities that is of particular use to field commanders in operations such as Joint Endeavor and Joint Guard.

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82. For U.S. forces, the Bosnian Theater of Operations includes Austria, the Czech Republic, Hungary, and Slovakia, as well as the countries that comprised the former Yugoslavia.

83. Memorandum from MAJ William Kern, Chief, Operational Claims, U.S. Army Claims Service, Europe, to MAJ Jody M. Prescott, subject: May Statistics (7 May 1998).

84. *Id.*

85. *Id.*

86. *Id.*

TJAGSA Practice Notes

Faculty, The Judge Advocate General's School, U.S. Army

The following notes advise attorneys of current developments in the law and in policies. Judge advocates may adopt them for use as locally published preventive law articles to alert soldiers and their families about legal problems and changes in the law. The faculty of The Judge Advocate General's School, U.S. Army, welcomes articles and notes for inclusion in this portion of *The Army Lawyer*; send submissions to The Judge Advocate General's School, ATTN: JAGS-DDL, Charlottesville, Virginia 22903-1781.

Consumer Law Note

Federal Trade Commission Staff Issues Informal Interpretation of FCRA Changes

The Fair Credit Reporting Act[1] (FCRA) underwent significant changes effective 30 September 1997.[2] Businesses are now struggling to determine how to implement these new provisions. Businesses can seek guidance by requesting staff interpretations from the Federal Trade Commission (FTC). The FTC recently answered one such request made by an automobile dealer's association in August 1997.[3] This request asked several questions relating to access to credit reports.[4] The key question from a legal assistance practitioner's perspective was whether an automobile dealership could obtain a copy of a consumer's credit report if the consumer simply visits the showroom.[5] The FTC opined that the dealership could not.[6]

One of the key changes to the FCRA was the establishment of prerequisites that users of credit reports must meet before a credit reporting agency may issue a report for an authorized purpose.[7] Most significant were the limitations placed on the "catch-all" provision, which allows a user to request a credit report when he has a "legitimate business need."[8] Under the new law, the legitimate business need must arise from a transaction "initiated by the consumer,"[9] or the business must obtain the consumer's permission in writing.[10] The FTC opined that a business satisfies this provision only where "the consumer clearly understands that he or she is initiating the purchase or lease of a vehicle and the seller has a legitimate business need for the consumer report information in order to complete the transaction."[11] Thus, the FTC views the decision as a two-part test. First, the consumer must initiate the transaction. Second, the user must have a legitimate business need for a credit report to process that transaction.[12]

The informal staff opinion letter gave the following examples of consumer behavior that did *not* warrant access to a credit report: (1) asking questions about pricing and financing and (2) taking a test drive.[13]

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1. Pub. L. No. 91-508, 84 Stat. 1127 (1970).

2. *See* Consumer Law Note, *Fair Credit Reporting Act Changes Take Effect in September*, ARMY LAW., Aug. 1997, at 19.

3. *FTC Issues Opinion Letter for Auto Dealers*, Report 781, CONSUMER CREDIT GUIDE (CCH) (Feb. 24, 1998) [hereinafter CCH REPORT].

4. Informal Staff Opinion Letter from David Medine, Division of Credit Practices, Bureau of Consumer Protection, Federal Trade Commission (Feb. 11, 1998), *reprinted in* FEDERAL FAIR CREDIT REPORTING, CONSUMER CREDIT GUIDE (CCH) ¶ 26,608 [hereinafter Staff Letter]. The letter addressed the issue of access to credit reports, the form required for mandatory notices to consumers when a credit report is requested for employment purposes, and user and credit reporting agency responsibilities when an adverse employment action is taken based on a credit report.

5. *Id.*

6. *Id.*

7. *See* 15 U.S.C.A. § 1681b (West 1998) (defining the purposes for which a credit reporting agency may issue a credit report and the prerequisites that must be met). The section makes clear that reports may issue "under the [listed] circumstances and no other . . . ." *Id.* § 1681b(a).

8. *Id.* § 1681b(a)(3)(F).

9. *Id.* The FCRA also allows a user to obtain a credit report in order to "review an account to determine whether the consumer continues to meet the terms of the account." *Id*.

10. *Id.* § 1681b(a)(2).

11. Staff Letter, *supra* note 4.

12. *Id.*

13. *Id.*

In determining whether there was a legitimate business need for a credit report, the FTC staff looked to the nature of the transaction. The staff opined that the "dealer must have a specific need for the information directly related to the completion of the transaction."[14] The following are examples of situations where there is no legitimate business need for a credit report, even if the consumer initiates a transaction: obtaining information for purposes of negotiating or transactions where the consumer intends to pay cash.[15] There *is* a legitimate business need, however, where the consumer is requesting financing from the dealership or presents a personal check for payment.[16]

While this informal advisory opinion is not binding on the FTC, it does express the staff's enforcement view of the statute.[17] Consequently, it is important, particularly at this time of transition to the new provisions of the FCRA. For the legal assistance practitioner, the opinion demonstrates the powerful new protections available to soldiers for automobile and other consumer purchases. In the past, sellers may have used the social security number from the soldier's leave and earnings statement to obtain a credit report. This would enhance the seller's position and limit the soldier's options, since the seller would know a great deal about the soldier and his consumer credit history before any negotiations began. By restricting access to this information, the new provisions of the FCRA place the soldier on more of an equal footing with the seller.

Soldiers must still be diligent to maintain their credit ratings, since their credit histories will be available to businesses before any financing arrangements are made. Still, the limitations on the seller's access to the soldier's credit information should help the soldier to shop for, to select, and to negotiate better terms for consumer purchases. These and other new FCRA protections should be featured in the preventive law efforts of all legal assistance offices. Major Lescault.

Tax Law Note

Estimating Tax Withholding

Estimating the correct amount of tax withholding is an important component of tax planning. The goal is to ensure that the taxpayer has no more tax withheld each month than necessary. At the same time, the taxpayer needs to be careful to ensure that enough taxes are withheld to avoid a tax penalty at the end of the year for under withholding of taxes.[18] Although there are several exceptions to the under withholding penalty,[19] the safest way to avoid the penalty is to ensure that the taxpayer has enough tax withheld during the year so that he will not owe any additional taxes at the end of the year.

During 1998, the importance of planning a taxpayer's withholdings has increased because of the Taxpayer Relief Act of 1997.[20] Prior to the enactment of this legislation, taxpayers with the same income and same number of dependents paid approximately the same amount of tax. As a result of the Taxpayer Relief Act of 1997, this is no longer always true. Taxpayers with dependents who are under the age of seventeen at the end of this year and taxpayers who are putting dependents through college could pay significantly less taxes in 1998. For example, a taxpayer with two children who are under the age of seventeen at the end of this year can expect to pay $800 less in income taxes than a taxpayer who has two children who are not under the age of seventeen. In addition, a taxpayer who has a freshman or sophomore in college may pay $1500 less in taxes than a taxpayer who does not. The obvious question for the tax planner is why should these taxpayers have to wait until next year to receive the benefit of these new credits. The answer is that they do not. By adjusting their W4 tax withholding forms now, these taxpayers can begin to receive some of those tax savings now.

In addition to this new need to do some tax planning with regard to withholding, there continues to be a need for assistance for taxpayers who owe taxes each year and who need to increase the amount of income taxes being withheld from their pay. Married couples with dual incomes and taxpayers with investment income frequently encounter this problem. The question is how much will their tax withholdings increase if they claim one less dependent? The information in this note can also be used to assist taxpayers in these situations.

Several pieces of information are needed to determine how much a taxpayer needs to have withheld during 1998 and how much will be withheld from the taxpayer if he claims a certain number of exemptions. First, how much will the taxpayer earn

14. *Id.*

15. *Id.*

16. *Id.*

17. CCH REPORT, *supra* note 3.

18. I R.C. § 6654 (CCH 1997).

19. *Id.* §§ 6654(d),(e). There is no penalty when the total taxes shown on the return are greater than or equal to the required annual payment. The required annual payment is the *lesser* of: (1) 90% of the tax shown on the return or (2) 100% of the tax shown on the preceding tax year's return. A taxpayer also does not owe a penalty when the total amount of his underpayment is less than $1000.

20. Pub. L. No. 105-34, 111 Stat. 788 (1997) (codified in scattered sections of 26 U.S.C.).

during 1998? This is not that difficult for most military personnel. Military pay for 1998 has already been set. So long as a taxpayer does not have significant unknown income from other sources (for example, mutual funds), the amount of his income is readily determinable. Even if the taxpayer does have an uncertain amount of income from mutual funds, a taxpayer can usually make an educated guess as to the amount of this income. Second, how much income tax will the taxpayer owe for 1998? Again, this is not difficult. All the information needed to calculate a taxpayer's 1998 income tax is readily available. The Internal Revenue Service has already published the income tax rates, standard deductions, and personal exemptions for 1998.[21] Finally, how much income tax will be withheld from a taxpayer based on his filing status and number of withholdings claimed on the IRS Form W4? This information is likewise readily available.[22]

Assuming that the taxpayer knows his approximate income for the year, the following information is needed to determine his approximate tax for the year. The personal exemption for 1998 is $2,700.[23] The standard deductions for 1998 are:[24]

Married Individuals filing a joint return	$7100
Head of Household	$6250
Single	$4250
Married Filing Separately	$3550

This is all the information needed to estimate taxable income. For example, Major Poor is a married client who has been in the Army for more than ten years. As a result, his monthly base pay is $3721.20. He receives no other taxable income from the military, and he has no other income from any other source. He does not own a house or file an itemized return. He is married and has three children. All three children will be under the age of seventeen at the end of 1998 and will qualify for the new tax credit.

Major Poor's taxes for 1998 can be estimated using the above information. His gross income will be $44,654.40, which is the product of $3721.20 times twelve. His taxable income will be $26,754.40, which is the difference of $44,654.40 minus both the standard deduction of $7100 and five times the personal exemption amount of $2700.

The tax rate tables for 1998 are:

Married Individuals Filing Joint Returns and Surviving Spouses

If Taxable Income Is:	***The Tax Is:***
Not Over $42,350	15% of the taxable income
Over $42,350 but not over $102,300	$6352.50 plus 28% of the excess over $42,350
Over $102,300 but not over $155,950	$23,138.50 plus 31% of the excess over $102,300
Over $155,950 but not over $278,450	$39,770 plus 36% of the excess over $155,950
Over $278,450	$83,870 plus 39.6% of the excess over $278,450

Heads of Household

If Taxable Income Is:	***The Tax Is:***
Not Over $33,950	15% of the taxable income
Over $33,950 but not over $87,700	$5092.50 plus 28% of the excess over $33,950
Over $87,700 but not over $142,000	$20,142.50 plus 31% of the excess over $87,700
Over $142,000 but not over $278,450	$36,975.50 plus 36% of the excess over $142,000
Over $278,450	$86,097.50 plus 39.6% of the excess over $278,450

Unmarried Individuals (Other Than Surviving Spouses and Heads of Households)

If Taxable Income Is:	***The Tax Is:***
Not Over $25,350	15% of the taxable income
Over $25,350 but not over $61,400	$3802.50 plus 28% of the excess over $25,350
Over $61,400 but not over $128,100	$13,896.50 plus 31% of the excess over $61,400
Over $128,100 but not over $278,450	$34,573.50 plus 36% of the excess over $128,100
Over $278,450	$88,699.50 plus 39.6% of the excess over $278,450

21. Rev. Proc. 97-57, 1997-52 I.R.B. 20.

22. U.S. INTERNAL REVENUE SERV., PUB. 15, CIRCULAR E, EMPLOYER'S TAX GUIDE (1998) (including 1998 wage withholding and advance earned income credit payment tables).

23. *Id.*

24. Rev. Proc. 97-57, 1997-52 I.R.B. 20.

Married Individuals Filing Separate Returns

If Taxable Income Is:	***The Tax Is:***
Not Over $21,175	15% of the taxable income
Over $21,175 but not over $51,150	$3176.25 plus 28% of the excess over $21,175
Over $51,150 but not over $77,975	$11,569.25 plus 31% of the excess over $51,150
Over $77,975 but not over $139,225	$19,885 plus 36% of the excess over $77,975
Over $139,225	$41,935 plus 39.6% of the excess over $139,225

Using the tax table for married filing a joint return for 1998, Major Poor's initial estimated income tax for 1998 is $4013.16, which is fifteen percent of $26,754.40. This initial estimate can be reduced because Major Poor will qualify for $1200 of tax credits for his three children. Thus, Major Poor's estimated tax liability for 1998 is $2813.16.[25]

Once a taxpayer determines his tax liability for 1998, he next needs to estimate the amount of income taxes that will be withheld from his pay. Again, there is a simple formula to determine the amount of income taxes that will be withheld from a taxpayer's wages. Since most legal assistance clients are paid either monthly or biweekly, only that withholding information is contained in this article. All active duty service members are treated as being paid monthly for tax purposes, even if they receive a mid-month paycheck. United States government civilian employees are paid biweekly.

If the taxpayer is paid monthly, take his monthly gross income[26] and subtract $225.00 for each exemption claimed on IRS Form W4. Take this amount and use the appropriate table to determine the amount of taxes that will be withheld from the taxpayer.

Single Person (to include head of household)

If the amount of wages (after subtracting withholding allowance) is:		The amount of income tax to withhold is:	of excess over:
Over	But not over		
0	$211	0	
$221	$2242	15%	$211
$2242	$4788	$303.15 plus 28%	$2242
$4788	$10,804	$1016.13 plus 31%	$4788

Married Person

If the amount of wages (after subtracting withholding allowance) is:		The amount of income tax to withhold is:	of excess over:
Over	But not over		
0	$538	0	
$538	$3896	15%	$538
$3896	$8038	$503.70 plus 28%	$3896
$8038	$13,363	$1663.46 plus 31%	$8038

If a taxpayer is paid biweekly, take his biweekly gross income and subtract $103.85 for each exemption claimed on IRS Form W4. Compare this amount to one of the following tables:

Single Person (to include head of household)

If the amount of wages (after subtracting withholding allowance) is:		The amount of income tax to withhold is:	of excess over:
Over	But not over		
0	$102	0	
$102	$1035	15%	$102
$1035	$2210	$139.95 plus 28%	$1035
$2210	$4987	$468.95 plus 31%	$2210

25. (.15 x $26,754) = $4013.16. $4013.16 - $1200 = $2813.16.

26. For service members, monthly gross income generally consists of base pay plus hazardous duty pay, if applicable. Gross income does not include BAH, BAS, or any other nontaxable allowance. The amount of gross income a service member has each month is reflected in the federal tax section of his leave and earnings statement.

Married Person

If the amount of wages (after subtracting withholding allowance) is:		The amount of income tax to withhold is:	of excess over:
Over	But not over		
0	$248	0	
$248	$1798	15%	$248
$1798	$3710	$232.50 plus 28%	$1798
$3710	$6167	$767.86 plus 31%	$3710

Assuming that Major Poor claims a status of married with five dependents on his IRS Form W4, he will have $3704.76 of federal taxes withheld from his income in 1998. This result is achieved by taking his monthly taxable income of $3721.20; reducing it by $1125 (five times $225); using the married taxpayer withholding rate table; and multiplying the result by twelve.

Since Major Poor's estimated taxes for 1998 are $2813.16, he can expect to receive a refund of $891.60. Instead of waiting until the end of the year, however, Major Poor can adjust his W4 now and receive more money right now. If Major Poor were to claim a filing status of Married with seven dependents on his IRS Form W4, he would achieve an optimal result. First, he would have $67.50 more income each month.[27] He would also still be entitled to a refund of $81.60 at the end of the year.[28]

The information in this article can also be used to assist taxpayers who are not having enough income taxes withheld. This typically occurs when both spouses work or when the taxpayers have investment income. These taxpayers typically need to claim fewer exemptions than they would otherwise be entitled to take on the IRS Form W4. This is necessary so that enough taxes are withheld to cover the taxes on their investment income. Legal assistance attorneys can use the information in this article to help their clients determine the proper number of exemptions to claim on IRS Form W4. Legal assistance attorneys should always ensure that their clients have enough income taxes withheld so that their clients do not get large tax bills and run the risk of having to pay penalties.

Providing this type of assistance can be a valuable service to legal assistance clients. Practitioners should exercise caution and ensure that their advice does not result in a client having too little taxes withheld. Legal assistance attorneys should never advise a client to claim more exemptions than allowed by his circumstances and the instructions that accompany IRS Form W4. Taxpayers who claim more exemptions than allowed can be subject to criminal and civil penalties.[29] Lieutenant Colonel Henderson.

SSCRA Note

Child Support and Paternity Case Stay Actions Impacted by the Welfare Reform Act of 1996

The "military stay" provision of the Soldiers' and Sailors' Civil Relief Act[30] (SSCRA) is frequently used for civil court actions. This provision states:

> At any stage thereof any action or proceeding in any court in which a person in military service is involved, either as a plaintiff or defendant, during the period of such service or within sixty days thereafter may, in the discretion of the court in which it is pending, on its own motion, and shall on application to it by such person or some person on his behalf, be stayed as provided in this Act unless, in the opinion of the court, the ability of plaintiff to prosecute the action or the defendant to conduct his defense is not materially affected by reason of his military service.[31]

The stay provision applies to pre-service and in-service court actions and proceedings. Upon request by a soldier's representative,[32] a civilian court may stay any hearing or ruling on such action, if the service member is unavailable (for example, unable to take leave)[33] and would be prejudiced or "materially affected" by his inability to attend the court proceedings personally.[34] As a result of the passage of the Welfare Reform Act of 1996,[35] however, the first prong of the stay requirement may be harder to meet.

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27. If Major Poor claimed M5 on his I.R.S. Form W-4, $308.73 of taxes would be withheld each month. If he claimed M7, $241.23 of taxes would be withheld. As a result, he would have $67.50 less in taxes withheld each month if he changed his I.R.S. Form W-4 withholding election from M5 to M7.

28. Major Poor's withholding for the year would be $2894.76, and his anticipated taxes would be $2813.16. Thus, he can expect a refund of $81.60.

29. I.R.C. §§ 6682, 7205 (CCH 1997).

30. Act of October 17, 1940, ch. 888, 54 Stat. 1178 (as amended) (currently codified at 50 U.S.C. App. §§ 501-593 (1994)).

31. *Id.* § 201 (current version at 50 U.S.C. App. § 521).

The Welfare Reform Act directed the Department of Defense (DOD) to promulgate regulations to facilitate service members in obtaining leave for appearances in paternity and child support cases.[36] On 10 September 1997, the Department of Defense, in compliance with the Welfare Reform Act, promulgated the following change to *Department of Defense Directive 1327.5, Leave and Liberty*:[37]

> When a service member requests leave on the basis of need to attend hearings to determine paternity or to determine an obligation to provide child support, leave shall be granted, unless: (a) the member is serving in or with a unit deployed in a contingency operation or (b) exigencies of military service require a denial of such request. The leave shall be charged as ordinary leave.[38]

The Department of the Army is in the process of revising *Army Regulation 608-99, Family Support, Child Custody, and Paternity*,[39] and *Army Regulation 600-8-10, Leaves and Passes*,[40] to conform to the requirements of the Welfare Reform Act and *DOD Directive 1327.5*.[41] The "exigencies of military service" provision will probably be quite narrowly construed to avoid shielding service members from meeting their legitimate child support obligations.[42]

What does this change mean for legal assistance attorneys who are attempting to obtain stays for their clients in paternity and child support cases? Civil courts will start to take notice of this new leave provision, which should limit successful stay attempts in child support and paternity support cases where the service member is not truly unavailable to attend court proceedings.[43] Nonetheless, those service members who are most deserving of a stay should be able to point to their contingency operation deployments or military exigency situations to bolster their requests for stays.

If the child support claim arises out of divorce or paternity proceedings that may be resolved by an administrative hearing,[44] this new directive will not have much impact. Administrative hearings are not subject to the SSCRA stay provisions. Thus, there are no stays for such administrative proceedings. Nonetheless, these proceedings will most likely be subject to the new "liberal leave" provision of the Welfare Reform Act.[45]

Civilian courts are already very reluctant to hold up child support or paternity support determinations. This is especially true when all of the facts are available to make the necessary child support calculations and when the amount of support is based on current child support formulas.[46] Unless the service member falls outside the formula guidelines, there is no factual dispute as to how much the service member owes for support. Civil courts, concerned for the welfare of children, are unlikely to find that military service materially affects a service mem-

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32. Legal assistance attorneys are strongly discouraged from directly contacting a court to assert a stay. Several states consider such stay requests by attorneys to be an appearance, which precludes the client from being able to reopen a default judgment under Section 520 [50 U.S.C. App.], if the stay request is denied. *See* Artis-Wergin v. Artis-Wergin, 444 N.W.2d 750, 753-54 (Wis. Ct. App. 1989); Skates v. Stockton, 683 P.2d 304, 306 (Ariz. Ct. App. 1984); Mary Kathleen Day, Comment, *Material Effect: Shifting the Burden of Proof for Greater Procedural Relief Under the Soldiers' and Sailors' Civil Relief Act*, 27 TULSA L.J. 45, 55 (1991); Major Howard McGillin, *Stays of Judicial Proceedings*, ARMY LAW., July 1995, at 68; Michael A. Kirtland, *Civilian Representation of the Military C*L*I*E*N*T*, 58 ALA. LAW. 288, 289 (1997). The better courses of action are to have the service member's commander request the stay or to request that opposing counsel raise the issue before the court. *See* Cromer v. Cromer, 278 S.E.2d 518 (N.C. 1981); Sacotte v. Ideal-Werk Krug, 359 N.W.2d 393 (Wis. 1984).

33. 50 U.S.C. App. § 521 (1994).

34. *Id.*

35. Welfare Reform Act of 1996, Pub. L. No. 104-193, 110 Stat. 2105 (1996).

36. *Id.* § 363(b), 110 Stat. 2248.

37. U.S. DEP'T OF DEFENSE, DIR. 1327.5, LEAVE AND LIBERTY (24 Sept. 1985).

38. *Id.* (IO 4, 10 Sept. 1997). The change became effective immediately.

39. U.S. DEP'T OF ARMY, REG. 608-99, FAMILY SUPPORT, CHILD CUSTODY, AND PATERNITY (1 Nov. 1994).

40. U.S. DEP'T OF ARMY, REG. 600-8-10, LEAVES AND PASSES (1 July 1994).

41. Telephone interview with John T. Meixell, Staff Counsel, Legal Assistance Policy Division, Office of The Judge Advocate General, U.S. Army (Mar. 9, 1998).

42. *Id.*

43. *See* Underhill v. Barnes, 288 S.E.2d 905 (Ga. 1982) (denying stay request upon taking judicial notice of service leave regulations, where soldier made no effort to request leave, even though the soldier had leave available); Palo v. Palo, 299 N.W.2d 577 (S.D. 1980). *See also* Bowman v. May, 678 So.2d 1135 (Ala. Civ. App. 1996); Judkins v. Judkins, 441 S.E.2d 139 (N.C. 1994).

44. Welfare Reform Act of 1996, Pub. L. No. 104-193, § 363, 110 Stat. 2248 (1996).

45. *Id.*

ber's case when the service member has no good faith defense.[47] Similarly, the absence of the service member from a temporary child support hearing has been held to be non-prejudicial, since the decision is not final and is subject to further modification.[48]

Despite these legal trends and this new legislation, a service member should still be able to obtain a stay in a contested paternity case[49] where the service member is serving in a deployed unit in a contingency operation. Likewise, soldiers should still be able to obtain stays in divorce cases[50] where child support is not the only issue. Lieutenant Colonel Conrad.

USERRA Note

Jury Trials for USERRA Cases

A federal district court recently held that, under the Uniformed Services Employment and Reemployment Rights Act[51] (USERRA), plaintiffs may request jury trials in those cases where there is a claim for liquidated damages.[52] In *Spratt v. Guardian Automotive Products, Inc.*,[53] the U.S. District Court for the Northern District of Indiana ruled that a plaintiff is entitled to a jury trial under the liquidated damages provision of the USERRA.[54] The court determined that the USERRA provides for double damages where willful employer noncompliance is shown. As a result, the USERRA converts such cases to suits at common law for Seventh Amendment[55] right to jury trial purposes.[56]

Spratt marks a change in this area of the law. The previous reemployment rights statute, the Veterans' Reemployment Rights Act (VRRA), had no liquidated damages provision for willful misconduct by the employer.[57] Most courts interpreted the VRRA to have only provided for equitable remedies. Thus, under the VRRA, plaintiffs were not entitled to jury trials.[58]

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46. 42 U.S.C. §§ 651-667 (1994).

47. Ford v. Ford, 1996 WL 685787 (Ohio 1996) (holding that, where the court has all of the facts to determine child support, the presence of the military member is not necessary at a child support modification hearing); Power v. Power, 720 S.W.2d 683 (Tex. Ct. App. 1986); Jaramillo v. Sandoval, 431 P.2d 65 (N.M. 1967) (holding that the determination of a service member's obligation as to future support, which had been resolved in his absence, is nonprejudicial since paternity was adjudicated with the service member present); Roger M. Baron, *The Staying Power of the Soldiers' and Sailors' Civil Relief Act*, 32 SANTA CLARA L. REV. 137, 154-57 (1992).

48. Shelor v. Shelor, 383 S.E.2d 895 (Ga. 1989). Most state temporary child support statutes do not require the appearance of both parties at a hearing. *See, e.g.*, WIS. STAT. ANN. § 767.23(1)(a) (West 1997) (stating that the presence of only one party is required for a temporary support order).

49. *See* Baron, *supra* note 47, at 156-57. *See also* Mathis v. Mathis, 236 So.2d 755 (Miss. 1970) (holding that contested paternity must be resolved with the service member present, as absence materially affects his defense); Stringfellow v. Whichelo, 230 A.2d 858 (R.I. 1967).

50. *See* Baron, *supra* note 47, at 154-56. *See also* Kramer v. Kramer, 668 S.W.2d 457, 458-59 (Tex. Ct. App. 1984) (involving child custody in dispute); Lackey v. Lackey, 278 S.E.2d 811 (Va. 1981) (involving child custody in dispute); Smith v. Smith, 149 S.E.2d 468, 471 (Ga. 1966) (involving an alimony entitlement issue).

51. Uniformed Services Employment and Reemployment Rights Act of 1994, Pub. L. No. 103-353, 108 Stat. 3149 (1994) (codified at 38 U.S.C. §§ 4301-4333 (West Supp. 1997)).

52. Spratt v. Guardian Automotive Prods., Inc., No. 1:97-CV-323, 1998 WL 125939 (N.D. Ind. Mar. 17, 1998).

53. *Id.*

54. The USERRA liquidated damages provision states:

> (1)(A) The district courts of the United States shall have jurisdiction, upon the filing of a complaint, motion, petition or other appropriate pleading by or on behalf of the person claiming a right or benefit under this chapter—
> (i) to require the employer to comply with the provisions of this chapter; and
> (ii) to require the employer to compensate the person for any loss of wages or benefits suffered by reason of such employer's failure to comply with the provisions of this chapter; and
> (iii) to require the employer to pay the person an amount equal to the amount referred to in clause (ii) as liquidated damages, if the court determines that the employer's failure to comply with the provisions of this chapter was willful.
> (B) Any compensation under clauses (ii) and (iii) of subparagraph (A) shall be in addition to, and shall not diminish, any of the other rights and benefits provided for under this chapter.

38 U.S.C. § 4323(c) (West Supp. 1997). The provision does not apply to federal employees.

55. "In suits at common law, where the value of the controversy shall exceed twenty dollars, the right to a trial by jury shall be preserved . . . ." U.S. CONST. amend. VII.

56. *See Spratt*,1998 WL 125939, at *5.

57. *Compare* 38 U.S.C. § 2022 (West Supp. 1991) (containing the VRRA damages provision), *with* 38 U.S.C. § 4323(c) (West Suppl 1997). The VRRA provision provided only for monetary recovery of actual wages lost, but not punitive (liquidated) damages.

58. *See Spratt*, 1998 WL 125939, at *1.

In *Spratt*, the court reached its conclusion by reviewing the two possible sources for a constitutional right to trial by jury in federal cases: (1) where the statute expressly provides for trial by jury and (2) where the claim involves those rights and remedies typically enforced by a court of law, not a court of equity.[59] The court conceded that Congress did not expressly provide a right to jury trial in the USERRA statute,[60] but found that Seventh Circuit precedent provided that "actions seeking liquidated damages provided by statute are 'suits at common law' for constitutional purposes."[61] The court rejected the defendant's argument that the USERRA liquidated damages clause provided only for "court" determination of actual damages suffered.[62] The court observed that the word "court" could mean trial by either judge or jury.[63]

The employer argued that Congress, in the USERRA's legislative history, urged courts to incorporate into the USERRA the case law arising from the VRRA.[64] The court replied that the legislative history should be read to encourage incorporation of those concepts and prior cases from the VRRA that are still consistent with the USERRA. Since the VRRA never had a liquidated damages provision, those VRRA cases that indicate that there is no right to a jury trial would not be controlling in interpreting the USERRA liquidated damages provision.[65]

The employer then argued that the monetary remedies provided under the USERRA were in fact restitution, which would make them equitable in nature, especially when they are combined with the injunctive nature of the other USERRA remedies.[66] The court responded that the USERRA liquidated damages provision, unlike the VRRA back-pay provision, was not solely restitution for wages lost, but included a punitive aspect by doubling damages for willful employer violations of the statute.[67] Punitive damages are traditionally a legal remedy that must be imposed by a jury.[68]

Finally, the employer argued that the USERRA liquidated damages provision was intertwined with, or solely incidental to, equitable remedies under the Act. The court pointed out that the USERRA, unlike its predecessor, has a distinct and separate remedy for willful employer violations; that remedy is not incidental to any equitable relief.[69] As a separate punitive remedy for willful employer violations, the liquidated damages provision is not part of any equitable scheme to make a wronged employee whole. Rather, it is a separate potential punishment for employers who willfully violate the USERRA.

The potential prospect of a jury trial in a USERRA case can result in extra bargaining power for reservists and veterans in dealing with recalcitrant civilian employers on job reemployment and military status discrimination questions. The high employer costs of defending a case before a jury include lengthy delays in case resolution, jury unpredictability as to damage awards, significant attorney fees and court costs, and productive time lost due to depositions and trial proceedings. These additional burdens on employers may encourage greater employer cooperation in seeking pre-trial settlement of USERRA cases where employer willful misconduct is an issue. Lieutenant Colonel Conrad.

International and Operational Law Note

When Does the Law of War Apply: Analysis of Department of Defense Policy on Application of the Law of War

On 12 August 1996, the Chairman of the Joint Chiefs of Staff issued an instruction[70] that is intended to implement the Department of Defense Law of War Program.[71] With the following simple paragraph, this instruction established, as a mat-

59. *Id.* at *2-*3.

60. *Id.*

61. Calderon v. Witvoet, 999 F.2d 1010, 1014-17 (7th Cir. 1991). The court recognized a split of authority regarding whether actions seeking liquidated damages create a "suit at common law" for Seventh Amendment purposes outside of the Seventh Circuit. *See* Lorillard v. Pons, 434 U.S. 575, 577 n.2 (1978). The court compared the "willful misconduct" damages provisions of the law involved in the *Calderon* case to the present USERRA case and found the statutes similar. *Spratt*, 1998 WL 125939, at *3.

62. *Spratt*, 1998 WL 125939, at *5.

63. *Id. See* Kobs v. Arrow Serv. Bureau, Inc., 134 F.3d 893, 896 (7th Cir. 1998).

64. *Spratt*, 1998 WL 125939, at *3. *See* H.R. Rep. No. 103-65, at 19 (1994), *reprinted in* 1994 U.S.C.C.A.N. 2452.

65. *Spratt*, 1998 WL 125939, at *3.

66. *Id. See* Crocker v. Piedmont Aviation, Inc., 49 F.3d 735 (D.C. Cir. 1995).

67. *Spratt*, 1998 WL 125939, at *4.

68. *Id. See* Tull v. United States, 481 U.S. 412, 422 (1987).

69. *Spratt*, 1998 WL 125939, at *5.

ter of U.S. policy, the scope of applicability of law of war principles to U.S. operations:

> The Armed Forces of the United States will comply with the law of war during the conduct of all military operations and related activities in armed conflict, however such conflicts are characterized, and unless otherwise directed by higher competent authorities, will apply law of war principles during all operations that are categorized as Military Operations Other Than War.[72]

This one paragraph elevated the imperative that judge advocates understand, and be prepared to articulate, the "principles of the law of war." United States policy now extends the application of these principles to virtually every conceivable military operation.[73] While the imperative of application of law of war principles to these operations is clear, the meaning of what constitutes "principles of the law of war" is not. The instruction gives no indication as to which principles the Department of Defense is referring.[74]

Defining the "principles" of the law of war is no simple task. While there may be little dispute that concepts such as military necessity, proportionality, and the prevention of unnecessary suffering fall within this definition, the instruction arguably encompasses a much more extensive list of concepts related to regulating the conduct of combatants during conflict. The purpose of this note is to introduce judge advocates to a continuing series of practice notes, each of which will focus on a concept of the law of war which might fall under the category of "principle." These notes will improve the practitioner's understanding of law of war concepts and familiarize the practitioner with the substantive concepts that are potentially encompassed by the instruction.

To comprehend fully the significance of the instruction,[75] a discussion of how the law of war is triggered as a matter of international law is essential. The law of war is an aspect of international law, which is a body of law that regulates the conduct of states.[76] As a general proposition, international law requires some "justification" for intruding on the sovereign affairs of regulated states. In most cases, this "justification" results from the consensual obligations assumed by a state in exchange for receiving the benefit of being a member of the regulated community.[77]

In the case of the law of war, it becomes binding on states (and therefore state actors) only if a state of conflict exists.[78] The extent of regulation is contingent on the nature of the conflict. If the conflict results from a dispute between two states, the entire body of the law of war is "triggered," and the conduct and treatment of those involved or caught up in the conflict is regulated almost exclusively by international law.[79] If, however, the conflict is "not of an international character,"[80] the extent of regulation imposed by the law of war is much more limited.[81] The extent of regulation is not significant to this discussion. Instead, the significance lies in the recognition that, as a matter of international law, the law of war becomes technically binding *only during periods of armed conflict or belligerent occupation*.

This fact explains the significance of the U.S. policy to extend application of law of war principles to "all operations that are categorized as Military Operations Other Than War."[82] The impact of this policy is to extend application of these principles to operations that under international law would not necessarily trigger such application, because they do not involve "conflict."[83] Judge advocates who are unfamiliar with law of war concepts that arguably fall into the category of "principles of the law of war" are therefore unprepared to provide the advice necessary to enable supported commands to comply

70. CHAIRMAN, JOINT CHIEFS OF STAFF INSTR. 5810.01, IMPLEMENTATION OF THE DOD LAW OF WAR PROGRAM (12 Aug. 1996) [hereinafter JCS INSTR. 5810.01].

71. U.S. DEP'T OF DEFENSE, DIR. 5100.77, DOD LAW OF WAR PROGRAM (10 July 1979) [hereinafter DOD DIR. 5100.77].

72. JCS INSTR. 5810.01, *supra* note 70, para. 4.a.

73. The United States Army defines Operations Other Than War as "[U]se of Army forces in peacetime . . . ." U.S. DEP'T OF ARMY, FIELD MANUAL 100-5, OPERATIONS 2-0 (14 June 1993). Examples of peacetime use of the Army include "disaster relief, nation assistance, security and advisory assistance, counterdrug operations, arms control, treaty verification, support to domestic civil authorities, and peacekeeping." *Id.* at 2-0-1. The DOD Dictionary defines Operations Other Than War as follows:

> Military operations other than war—(DOD) Operations that encompass the use of military capabilities across the range of military operations short of war. These military actions can be applied to complement any combination of the other instruments of national power and occur before, during, and after war. Also called MOOTW.

U.S. DEP'T OF DEFENSE, JOINT PUBLICATION 1-02, DOD DICTIONARY (23 Mar. 1994) (updated through April 1997).

74. *See* JCS INSTR. 5810.01, *supra* note 70.

75. *See supra* note 70 and accompanying text.

76. "International law . . . consists of rules and principles of general application dealing with the conduct of states . . . with their relations *inter se* . . . ." RESTATEMENT (THIRD) OF THE FOREIGN RELATIONS LAW OF THE UNITED STATES § 101 (1986).

77. *See* ANTHONY D'AMATO, INTERNATIONAL LAW ANTHOLOGY 41-48 (1994).

with this instruction. The future installments in this series of practice notes will hopefully enable judge advocates to develop an understanding of some of these "principles." Major Corn.

Contract and Fiscal Law Note

Armed Services Board of Contract Appeals Voids Contract Tainted by Fraud

In a rather interesting case, the Armed Services Board of Contract Appeals (ASBCA) held that a contract obtained through bribery was void.[84] Moreover, the ASBCA specifically concluded that the Army did not have to pay the German contractor for work it performed—even work ordered by the Army after it learned of the fraudulent conduct.[85]

On 19 February 1990, the Army's regional contracting office in Fuerth, Germany awarded a firm fixed-price requirements contract for the interior and exterior painting of troop buildings in Wertheim and Wuerzburg, Germany. The Army issued a number of delivery orders under the contract. The Army did not contend that the contractor's performance under the delivery orders was deficient.

German police investigators learned that the contractor bribed the Army's contract specialist who was responsible for awarding the contract in this case. The contract specialist admitted that Mr. Jurgen Schuepferling, the owner of the contractor, gave her a bribe of DM 6000.00 to award the contract to his firm.[86] When questioned by the German authorities, Mr. Schuefpferling said that he "might have" paid the contract specialist for the contract.[87]

On 28 February 1991, Schuepferling was suspended from contracting with the government, making him ineligible to receive government contracts.[88] On 11 March 1991, the contracting officer ordered the Department of Engineering and Housing to stop issuing delivery orders and to stop processing all invoices under the contract with Schuepferling's firm.[89] On or about 23 April 1991, however, the government decided to continue issuing delivery orders under the contract. The reason for the decision was that the government did not have any place, other than the buildings that needed painting, to house troops who were returning from Desert Storm.

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78. U.S. DEP'T OF ARMY, FIELD MANUAL 27-10, THE LAW OF LAND WARFARE 9 (July 1956) (C1, 15 July 1976) [hereinafter FM 27-10]. "As the customary law of war applies to cases of international armed *conflict* and to forcible occupation of enemy territory generally as well as to declared war in its strict sense, a declaration of war is not an essential condition of the application of this body of law." *Id*. (emphasis added). *See* Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field, Aug. 12, 1949, Art. 2-3, T.I.A.S. No. 3362 [hereinafter GWS]; Geneva Convention for the Amelioration of the Condition of Wounded, Sick, and Shipwrecked Members at Sea, Aug. 12, 1949, art. 2-3, T.I.A.S. No. 3363 [hereinafter GWS Sea]; Geneva Convention Relative to the Treatment of Prisoners of War, Aug. 12, 1949, art. 2-3, T.I.A.S. No. 3364 [hereinafter GPW]; Geneva Convention Relative to the Treatment of Civilian Persons in Time of War, Aug. 12, 1949, art. 2-3, T.I.A.S. No. 3365 [hereinafter GC]; 1977 Protocol I Additional to the Geneva Conventions, Dec. 12, 1977, art. 1, 16 I.L.M. 1391; 1977 Protocol II Additional to the Geneva Conventions, Dec. 12, 1977, art. 1, 16 I.L.M. 1391 [hereinafter GP II]. One commentator notes:

> Humanitarian law also covers any dispute between two States involving the use of their armed forces. Neither the duration of the conflict, nor its intensity, play a role: the law must be applied to the fullest extent required by the situation of the persons and the objects protected by it.

COMMENTARY ON THE ADDITIONAL PROTOCOLS OF 8 JUNE 1977 TO THE GENEVA CONVENTIONS OF 12 AUGUST 1949, at 40 (Yves Sandoz et al. eds., 1987).

79. *See generally* FM 27-10, *supra* note 78, at 9. *See also* RICHARD I. MILLER, THE LAW OF WAR 17-27 (1975).

80. *See* GWS, *supra* note 78, art. 3; GWS Sea, *supra* note 78, art. 3; GPW, *supra* note 78, art. 3; GC, *supra* note 78, art. 3.

81. *See supra* note 80; *see also* GP II, *supra* note 78.

82. JCS INSTR. 5810.01, *supra* note 70, para. 4.a.

83. *See supra* note 73 and accompanying text.

84. Appeal of Schuepferling GmbH & Co., KG, ASBCA No. 45,564, 1998 WL 136175 (ASBCA Mar. 23, 1998).

85. *Id.* at 11.

86. *Id.* at 9.

87. *Id*. at 7. Mr. Schuepferling stated that he started paying bribes to obtain contracts because, without the payments, he was receiving fewer and fewer solicitations. However, he never complained to or sought information from U.S. Army contracting personnel with respect to not receiving solicitations.

88. *Id.* at 10. The contractor was eventually debarred for a period of approximately three years for his fraudulent conduct.

89. *Id*. at 7. On 22 March 1991, the government's regional counsel advised the contracting officer that "[p]lacing delivery orders in accordance with terms of the existing contract is not prohibited by FAR 9.405 or 9.405-1(b) . . . . The contract should not be modified to expand the scope of the work . . . ." *Id*.

The contractor completed work under the contract on or about 7 May 1991 and subsequently submitted several invoices for the work that it competed. The contracting officer notified the contractor in writing that payment on each invoice was being withheld due to preliminary findings that it paid substantial bribes to U.S. government employees in order to secure contract award. After a German court found the contract specialist guilty of accepting a bribe, the contractor filed a certified claim in the amount of DM 98,414.27—the amount of the unpaid invoices. On 12 January 1993, the contractor appealed the contracting officer's "constructive"[90] denial of the claim.[91]

The Army filed a motion to dismiss the contractor's claim based on a lack of jurisdiction. The Army argued that the contract was tainted with fraud because of the bribery and was, therefore, void ab initio. The contractor argued that the Army's motion must be denied.

> [I]n appellant's opinion, the evidence does not establish that bribery either led to the award of the contract to appellant or affected appellant's performance of the contract work. According to appellant, any payments which the Government alleges appellant made were not made to induce the Government to do anything regarding this contract which the Government was not legally obligated to do: i.e., to award the contract to the lowest responsible, responsive bidder . . . . In any case, the Government's failure to terminate the contract, notwithstanding its knowledge of the alleged fraudulent conduct, together with its continued demands for and acceptance of appellant's continued performance constitutes a ratification or affirmance of the contract by the Government thus negating any inherent Government right to avoid the contract.[92]

The ASBCA concluded that the contractor's argument was without merit. The board noted that the facts of the case "clearly and convincingly" establish that the contractor paid the contract specialist to manipulate the competitive bidding process with respect to the contract in question . In consideration for the payment of the DM 6000.00, the contract specialist gave Mr. Schuepferling the source list and deliberately failed to post the solicitation on the bulletin board for all competitors to see. Given these rather straightforward facts, the ASBCA found that the contract was tainted by fraud from the outset. Relying on *Godley v. United States*[93] and *J.E.T.S., Inc. v. United States*,[94] Administrative Judge J. Stuart Gruggel found that the contract was void ab initio and could not be ratified.[95]

The most interesting part of the case is the fact that the Army issued delivery orders to the contractor after there was compelling evidence that showed that the contractor engaged in fraud. When the delivery orders were issued, government representatives were aware that there was a strong likelihood that the contractor would not be paid for the additional work. The ASBCA's opinion does not indicate whether or not government representatives made this point clear to the contractor when they issued the delivery orders. Given this factual scenario, the contractor argued that the government was unjustly enriched by its work on the delivery orders.

Judge Gruggel specifically rejected the contractor's unjust enrichment argument[96] and compared the subject case to *United States v. Amdahl Corp*.[97] In *Amdahl*, the U.S. Court of Appeals for the Federal Circuit found that a contract was void ab initio because its terms and conditions were contrary to a statute.[98] Judge Gruggel noted that in *Amdahl* there was no hint or suggestion that the contractor engaged in any type of fraud, unlike the subject case. More specifically, the judge stated:

> It is well established that the absence of a criminal conviction of Mr. Schuepferling for bribery and assuming, arguendo, even the absence of a specific showing that the wrong-

90. It was a "constructive" denial of the claim because no final decision was issued.

91. *Schuepferling*, 1998 WL 136175, at 10. The ASBCA's opinion does not specify what happened between 1993 and 1995. The opinion notes that in 1995, the contractor was convicted of bribing U.S. government officials on two other construction contracts. The German court's order did not specify the instant contract. On 8 February 1996, the U.S. government notified the contractor of a gratuities clause violation proceeding to be held pursuant to FAR 52.203-3. On 22 May 1996, the Deputy Assistant Secretary of the Army (Procurement) concluded that the contractor committed a gratuities clause violation on the instant contract and accessed exemplary damages in the amount of approximately DM 24,000.

92. *Id.* at 11.

93. 5 F.3d 1473 (Fed. Cir. 1991).

94. 838 F.2d 1196, 1200 (Fed. Cir.), *cert. denied.*, 486 U.S. 1057 (1988).

95. *Schuepferling*, 1998 WL 136175, at 17-18.

96. *Id.* at 17.

97. 786 F.2d 387, 393-95 (Fed. Cir. 1986).

98. *Id.*

> doing adversely affected the contract does not preclude our holding that the contract is void ab initio and cannot be ratified . . . . *This is due to the primacy of the public interest in preserving the integrity of the federal procurement process as well as the overriding concern for insulating the public from corruption*.[99]

So where does this case leave the practitioner? The key lesson for the practitioner is to recognize the impact or significance of contractual remedies when combating procurement fraud. The Department of Defense's approach in combating procurement fraud is commonly referred to as a coordination of remedies approach. That is, the government should unleash their criminal, civil, administrative, and contractual remedies against contractors who engage in fraud. Historically, contractual remedies have been the Rodney Dangerfield of the remedies. That is, they have often been neglected or ignored, in deference to sexier approaches, such as criminal or civil sanctions. This case highlights the impact that contractual remedies can have on a contractor, even under circumstances in which they have some equities in their corner. The lesson is to ensure that the government brings all of its weapons to bear against bad contractors. Major Wallace.

99. Schuepferling, 1998 WL 136175, at 18 (emphasis added).

Note From the Field

Trial Plan: From the Rear . . . March!

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A contested criminal trial proceeds in stages. After disposing of legal issues in motions, every trial, military or civilian, will begin with voir dire and then proceed through opening statement, each side's case-in-chief (if the defense chooses to put on evidence), rebuttal (occasionally), instructions, and closing argument. This note discusses the need to backward plan one's trial presentation. The proposed methodology is designed to give practitioners an organized approach to integrating each stage of the trial process by beginning at the end when planning for trial and working one's way back to the beginning.[1]

If You Do Not Know Where You Are Going, All Roads Will Get You There

After conducting the initial investigation into the law and the facts, one drafts a theory of the case. Investigation continues throughout the entire process. As new information is discovered, the theory of the case is modified or, in some cases, entirely changed to account for all of the information that will come out at trial. Ignoring bad facts or hoping that the members will be sleeping when the damaging evidence comes out are not approaches grounded in reality.[2] The theory must incorporate all undisputed facts that will come out at trial.

Every case has to have a theory. Accurately developing the proper theory of the case is the most critical aspect of trial preparation because the theory drives every aspect of every stage of the trial. The theory of the case is the destination for the case. All evidence, objections, questions, and *every* other part of the trial presentation must support the theory.

Before discussing what a theory of the case is, it is important to note what it is not. A theory of the case is not "reasonable doubt." It is not "the accused must have done it because he is the only accused we have." It is not the elements of the offense. The theory of the case is the emotional or equitable "hook" that convinces the factfinder that your desired result is the just result. The theory of the case is the *simple* explanation of what happened and why. An effective theory of the case creates an emotional bond between the life experiences of the members and your side.

The theory of the case drives the backward planning process. Although the theory can be modified and changed, it provides the guidepost for the rest of the trial planning.

Courts-Martial: Tried Forward but Planned Backward

After conceptualizing the theory of the case, one begins to consider the closing argument. The closing will contain the facts, and inferences from the facts, developed during trial that support the theory. Each stage, from voir dire through the close of evidence to instructions, is designed to support closing. As each stage supports the overall theory of the case, each will also necessarily support the closing argument, since the closing is a summation of all that came before. One begins to prepare the closing by asking, "what does one want to argue?" Then, one game plans the trial to answer that question.

One must next consider the instructions that support the theory, as articulated in the closing. Most instructions are boilerplate, but it may be essential to weave some tailored instructions into a persuasive closing argument. For example, in a rape case where the victim is intimidated by the rank or duty position of the accused, counsel may wish to draft a constructive force instruction that is tailored to the facts of the case.

Next, one should consider the cross-examination evidence that supports the theory. Evidence from cross-examination is preferable to evidence from direct examination for two reasons. First, the open-ended nature of direct examination questions can result in non-responsive and damaging answers from one's own witnesses. Under the pressure of testifying, even the best prepared and rehearsed witness may say something new on direct which hurts the proponent's case. [3] This leads to the second point of the value of cross over direct. It is more persuasive

1. Like most thoughts on trial advocacy, there will be those who disagree with some, if not all, of my ideas. These concepts are one way to prepare for trial and are not offered as the only way or even the best way for everyone.

2. Suppressing damaging evidence so that it is not introduced is an effective way to counteract bad facts and need not be considered in the theory of the case.

3. If you are not convinced of this point, review the unsworn statement by the accused in the last three sentencing cases in your jurisdiction to see if he or she did not say something that the *government* could argue in closing.

if a fact which helps your side comes from the other side's witnesses. For example, this would allow the defense to argue: "The government's own witness believes SGT Jones (the accused) is a good NCO."

After determining which points one can make in cross, the next step is to prepare the direct examination needed to fill in the gaps for the closing argument. Trial counsel must devote much more time to preparing this stage since he has no guarantee that the defense will put on any witnesses to cross-examine.

Next, one should conceptualize the opening statement that will take the factfinder through the case. Opening statements are critical to trial success. A defense counsel who reserves opening lets the government's version of the case go unrebutted and misses the first opportunity to educate the members on the defense case.[4] A well-prepared opening, which is then supported by the evidence, enhances the advocate's credibility with the members—credibility that is critical to a persuasive closing.

The last stage to conceptualize is voir dire. Voir dire is hard. One should not do it unless one can do it well. If done well, however, an effective voir dire not only identifies challenges but also educates the members on the theory of the case. In a barracks larceny case, for example, the trial counsel could question the members on their views on the special need for trust in the Army.

Although this note addressed the trial stages in a linear fashion, the process is anything but linear. As the pretrial investigation continues, new information can lead to adjustments in each stage. For example, if the trial judge has a reputation for severely limiting voir dire, one may want to move some points from voir dire into the opening statement. If a new court decision impacts on one's theory, one may want to request a different instruction and, depending on the ruling, may have to modify the closing.

The theory of the case as a unifying theme assists not only in pretrial preparation but also in making decisions during the heat of battle itself. Only object if it furthers the theory of the case. Only cross-examine if it furthers the theory of the case. Only impeach if it furthers the theory of the case. One of the most difficult things for the trial attorney to say is nothing. If nothing is gained by cross-examining, do not cross-examine. If an objection will highlight the damaging (but probably admissible) evidence, do not object. If the government witness has given the defense some nuggets which support the defense theory, defense counsel should not impeach the witness. The theory of the case is a mental benchmark to assist the advocate in making quick decisions during trial.

The following example briefly illustrates how each stage sets up the next in furtherance of the theory of the case to support the closing argument. A defense counsel in a urinalysis case with chain of custody problems could use the concept of duty to persuade members to acquit. The theory of the case could be articulated as follows: (1) the unit has a duty to follow the regulations; (2) this duty protects the integrity of the process; (3) the members have a duty to be fair to the accused; (4) if the unit fails in its duty to follow regulatory guidance, the members have a duty to acquit. (From a defense perspective, the nice, but unspoken, emotional hook in a urinalysis case is that each member can identify with the accused in that they all have taken urinalyses and fear what a false positive could do to their careers.)

In this case, the defense counsel could voir dire the panel on the concept of duty. If the accused is not going to testify, the defense can also voir dire on the lack of a duty for the defense to put on any evidence. Then, during instructions, defense counsel could request that the judge give the instruction that the accused has a right not to testify. All of this sets up the closing argument of the unit's duty to follow the regulations, the government's duty to convince the members beyond a reasonable doubt, and the accused's absence of a duty to prove his innocence.

Conclusion

Developing a theory of the case and backward planning each stage leads to an integrated, cohesive presentation to the factfinder. Using this organized approach ensures that every aspect of trial strategy focuses on a consistent and persuasive theme, which maximizes the chances for success.

4. Defense counsel who reserve opening to surprise the government should also consider the fact that they are surprising the factfinder as well.

The Art of Trial Advocacy

Faculty, The Judge Advocate General's School, U.S. Army

Prevention of Juror Ennui—Demonstrative Evidence in the Courtroom

Introduction

You just received the most problematic case of your short career as a trial counsel in the Republic of Korea—not only do you have dull facts and a complicated fact-pattern, you have as your key witness a smarmy co-accused who will testify under a grant of testimonial immunity (oh, joy). The accused, Sergeant Brown, with the assistance of your key witness, Specialist (SPC) Wright, has been spiriting copious quantities of ground beef from the chow hall and black-marketing it "downrange." Brown and Wright were able to carry out their deceit for several months because of their clever manipulation of various Department of the Army (DA) forms.

Early in the case, as you begin to search for a theme, you realize that the real victims in this case are the soldiers in the unit. These soldiers, as a result of the accused's avarice, have been eating adulterated chili-mac for months. You also realize that, though you are committed to winning the case, you face two conundrums: (1) you must disabuse the panel members of the notion that "you can't play with pigs without getting dirty"[1]—in other words, they should give your crook, SPC Wright, credence—and (2) you must breathe life into a fact pattern that is, at first blush, coma-inducing.

Demonstrative Evidence

Upon receipt of case files, new counsel have so many issues with which to concern themselves that they rarely think about demonstrative evidence and how it might fit into their cases. This initial stage, however, is when lawyers should begin brainstorming about what potential pieces of evidence might help illustrate a witness' testimony.

Demonstrative evidence, in most cases, springs from the head of counsel. It has no historical connection to the case and is therefore distinguishable from "real evidence" that, for example, CID agents bring to trial, such as the clothing of the accused, or the cocaine found in the accused's wall-locker. Demonstrative evidence, contrarily, has no probative value in itself; it serves merely as an adjunct to the witness' oral testimony. It is a visual aid to assist the panel members in understanding the other evidence or to make your theory more understandable. Types of demonstrative evidence include models, replicas, diagrams, charts, maps, photographs, videotapes, computer-generated graphics, and in-court demonstrations.

Demonstrative evidence configures numerous different mental images into a singular, tactile reality. It transforms a crook into a pedagogue; a pedantic expert becomes a riveting raconteur. The witness, like a child in "show-and-tell" class, loses his self-consciousness, knowing that his audience is engaged by the descriptive piece of evidence, rather than his own verbal testimony. In addition, demonstrative evidence is important for another reason—it significantly increases juror retention. Panel member boredom visibly dissipates as counsel unveil the evidence. "Fully one-third of the human brain is devoted to vision and visual memory."[2] Clinical studies have demonstrated that people *immediately* forget two-thirds of what they *hear*,[3] but their retention increases an astounding 650% when both visual and oral presentations are used.[4] These statistics validate our common sense understanding that seeing *is* believing.

With the advent of desktop computers and powerful computer software packages, fiscally challenged counsel are no longer restricted to using rudimentary charts. Overhead projectors, though still useful in many circumstances, can be replaced with Powerpoint slides and computer-generated graphics. Counsel who require technicians to prepare the evidence can look to the local installation training support centers (TSC). Such TSCs usually have, as a sub-element, a visual information (VI) activity. The VI activity can prepare maps, diagrams, photographs, and videotapes, as well as enlarge and dry-mount photographs and other exhibits. The VI activity should also have state-of-the-art computer graphics and software programs.[5]

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1. The variant argument goes: "you can't cast a play in hell with angels."

2. Carole E. Powell, *Computer Generated Visual Evidence: Does Daubert Make a Difference?*, 12 GA. ST. U. L. REV. 577, 599 (1996) (quoting Roy Krieger, *Now Showing at a Courtroom Near You . . .*, A.B.A. J., Dec. 1992, at 92).

3. *Id.* at 579.

4. *Id.*

5. Procedurally, the TSC or VI activity will first require you to complete a DA Form 3903-R (VI Work Order), describing the work you need to be performed.

As a practical point, counsel and another person should haul the exhibits to the courtroom before trial and conduct a test run. Plan where evidence should be positioned and make sure the exhibit is large enough for easy viewing. Practice with technical equipment in the courtroom before trial and make sure that it actually works. Carefully select an appropriate sponsoring witness for the exhibit. This should usually be the witness with the most knowledge about the exhibit. Consider whether you will need more than one sponsoring witness (for example, with a to-scale diagram).[6] Call the witness early, so that you can admit the exhibit early. Consider seeking admission of the evidence in an Article 39(a) session before trial, or obtaining a stipulation of fact as to its admissibility. Using the exhibit in opening statement may be extremely persuasive.

During trial, go through the witness' verbal testimony once, fully, then lay the foundation for the exhibit[7] and have the witness "use" the evidence. By using the demonstrative evidence to walk the panel members through the witness' testimony, the witness is effectively testifying twice. Repetition of important points underscores your case theme and the crucial testimony, and it often wins the case. To be truly effective, you must have rehearsed with the witness more than once. In cases where the witness is a co-accused (and your key witness), spend considerable time going over the testimony.

In the vignette above, counsel can turn the potentially deadly witness, SPC Wright, into a credible and articulate teacher. Rather than simply having SPC Wright monotonously describe what he and the accused did, counsel can use an overhead projector and a greasepen and have SPC Wright show the members how he and the accused actually completed the forms. In the process, he will illustrate for the panel *exactly* why he could not have committed the crime alone and how he and the accused masked the missing meat from their technical supervisors for so many months. This low-budget, low-tech presentation is one way to present the evidence. Another way is to scan the forms into Powerpoint and have SPC Wright use a computer writing pen. In addition, counsel may want to offer photographs of the quantities of beef actually stolen. Another option is to haul into court a representative quantity,[8] or a portion of the quantity, of beef the accused stole.[9]

Conclusion

As with almost any other aspect of trial advocacy, successful use of demonstrative evidence depends, in large measure, on the facts and counsel's creativity. Creativity does not mean complication. Employ your innate creativity, not only in your courtroom arguments and interchanges with witnesses, but also in your use of demonstrative evidence. Major Moran.

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6. In a case in which you wish to admit a replica of a knife or a gun, you will need to call two witnesses to make the replica relevant. First, an eyewitness to the crime must describe the weapon actually used. Second, another witness must testify that the accused owned a weapon like the one the eyewitness described. With to-scale diagrams, usually the person who prepared the diagram to-scale should be called, in addition to the witness whose testimony you wish to illustrate.

7. The military judge should admit the evidence as long as it is: (1) relevant and (2) helpful to the factfinder. Be prepared to make or to answer a hearsay objection, a relevancy objection, or an objection under Military Rule or Evidence (MRE) 403. *See* MANUAL FOR COURTS-MARTIAL, UNITED STATES, MIL. R. EVID. 403 (1995). The proponent of the evidence should argue that MRE 403 favors admission. *See* United States v. Thomas, 19 C.M.R. 218, 224 (C.M.A. 1955).

8. Not the actual beef stolen, of course.

9. The practical consequences of this I leave to the reader.

USALSA Report

United States Army Legal Services Agency

Clerk of Court Notes

Courts-Martial Processing Times

The average pretrial and post-trial processing times for general, special, and summary courts-martial for fiscal years 1993 through 1997 are shown below.

General Courts-Martial

	FY 1993	FY 1994	FY 1995	FY 1996	FY 1997
Records received by Clerk of Court	1035	789	827	793	712
Days from charges or restraint to sentence	54	53	58	62	67
Days from sentence to action	66	70	78	86	90
Days from action to dispatch	7	8	7	9	10
Days en route to Clerk of Court	8	9	8	9	10

BCD Special Courts-Martial

	FY 1993	FY 1994	FY 1995	FY 1996	FY 1997
Records received by Clerk of Court	174	150	161	167	156
Days from charges or restraint to sentence	38	37	35	45	44
Days from sentence to action	59	58	63	85	75
Days from action to dispatch	7	7	6	6	10
Days en route to Clerk of Court	7	9	8	8	9

Non BCD Special Courts-Martial

	FY 1993	FY 1994	FY 1995	FY 1996	FY 1997
Records reviewed by SJA	65	53	46	57	32
Days from charges or restraint to sentence	35	33	44	50	46
Days from sentence to action	25	28	32	44	56

Summary Courts-Martial

	FY 1993	FY 1994	FY 1995	FY 1996	FY 1997
Records reviewed by SJA	353	335	297	226	390
Days from charges or restraint to sentence	14	14	16	22	16
Days from sentence to action	8	8	8	7	8

Courts-Martial and Nonjudicial Punishment Rates

Courts-martial and nonjudicial punishment rates for the first quarter of fiscal year 1998 are shown below. The figures in parentheses are the annualized rates per thousand. The rates are based on an average strength of 484,710.

	ARMYWIDE	CONUS	EUROPE	PACIFIC	OTHER
GCM	0.33 (1.32)	0.33 (1.32)	0.41 (1.62)	0.35 (1.42)	0.46 (1.83)
BCDSPCM	0.10 (0.39)	0.11 (0.43)	0.11 (0.44)	0.04 (0.18)	0.00 (0.00)
SPCM	0.01 (0.02)	0.01 (0.03)	0.00 (0.00)	0.00 (0.00)	0.00 (0.00)
SCM	0.22 (0.88)	0.27 (1.07)	0.07 (0.30)	0.11 (0.44)	0.00 (0.00)
NJP	19.47 (77.89)	20.49 (81.95)	17.96 (71.84)	20.99 (83.94)	10.52 (42.10)

Five-Year Military Justice Statistics, FY 1993-1997

General Courts-Martial

FY	Cases	Conviction Rate	Discharge Rate	Guilty Pleas	Judge Alone	Courts w/Enlisted	Drug Cases	Rate/ 1000
1993	915	93.6%	84.8%	56.2%	65.3%	23.6%	20.7%	1.56
1994	843	92.8%	87.9%	60.1%	64.5%	26.0%	20.2%	1.51
1995	825	92.9%	83.5%	58.1%	66.0%	28.1%	20.7%	1.57
1996	789	93.5%	85.5%	56.6%	65.3%	26.4%	24.4%	1.60
1997	741	94.6%	84.8%	58.0%	67.3%	27.2%	25.1%	1.52

Bad-Conduct Discharge Special Courts-Martial

FY	Cases	Conviction Rate	Discharge Rate	Guilty Pleas	Judge Alone	Courts w/Enlisted	Drug Cases	Rate/ 1000
1993	327	85.3%	54.1%	51.3%	63.3%	28.7%	16.5%	.58
1994	345	89.8%	54.1%	57.1%	58.2%	34.2%	24.3%	.62
1995	333	87.3%	55.6%	56.4%	64.5%	28.8%	19.5%	.64
1996	329	87.2%	60.9%	51.6%	62.6%	33.1%	21.8%	.67
1997	312	86.8%	57.9%	57.0%	67.6%	29.4%	26.9%	.64

Other Special Courts-Martial

FY	Cases	Conviction Rate	Discharge Rate	Guilty Pleas	Judge Alone	Courts w/Enlisted	Drug Cases	Rate/ 1000
1993	45	51.1%	NA	20.0%	48.8%	33.3%	0.0%	.08
1994	32	62.5%	NA	18.7%	50.0%	37.5%	9.3%	.06
1995	20	80.0%	NA	40.0%	60.0%	35.0%	5.0%	.04
1996	28	71.4%	NA	21.4%	50.0%	42.8%	10.7%	.06
1997	13	61.5%	NA	7.6%	46.1%	53.8%	7.6%	.03

Summary Courts-Martial

FY	Cases	Conviction Rate	Guilty Pleas	Drug Cases	Rate/ 1000
1993	364	86.3%	36.3%	10.2%	0.62
1994	349	92.0%	35.2%	11.2%	0.63
1995	304	93.1%	34.5%	11.8%	0.58
1996	238	89.9%	37.8%	17.2%	0.48
1997	396	96.2%	40.9%	25.5%	0.81

Nonjudicial Punishment

FY	Total	Formal	Summarized	Drug Cases	Rate/ 1000
1993	44,207	77.5%	22.5%	6.4%	75.42
1994	41,753	78.3%	21.7%	6.6%	74.89
1995	38,591	79.3%	20.7%	8.4%	73.72
1996	36,622	78.3%	21.7%	7.8%	74.18
1997	39,907	77.05%	22.95	8.23%	82.00

Average strength for rates per 1000: FY 1993, 586,149; FY 1994, 556,684; FY 1995, 524,043; FY 1996, 493,700; FY 1997, 486,668.

Environmental Law Division Notes

Recent Environmental Law Developments

The Environmental Law Division (ELD), United States Army Legal Services Agency, produces the *Environmental Law Division Bulletin* (*Bulletin*) to inform environmental law practitioners about current developments in environmental law. The ELD distributes the *Bulletin* electronically in the environmental files area of the Legal Automated Army-Wide Systems bulletin board service. The latest issue, volume 5, number 5, is reproduced in part below.

EPA's New Standards for Mercury-Bearing Wastes

The Environmental Protection Agency (EPA) is in the process of rewriting treatment standards for mercury-bearing wastes[1] under the Resource Conservation and Recovery Act.[2] Of primary interest to the Department of Defense (DOD) is how mercury-containing lamps will be managed. The EPA has not announced whether these lamps will be excluded from regulation as a hazardous waste or whether they will be regulated under the EPA's universal waste rule.[3] The EPA proposed these two options in a 1994 rulemaking to modify the management of waste mercury-containing lamps.[4]

If the EPA includes the mercury-containing lamps under the universal waste rule, the lamps would be classified as hazardous waste but would be managed under a streamlined procedure.[5] A conditional exclusion from regulation as a hazardous waste would allow the lamps to be disposed of in permitted landfills.[6] There has been some industry opposition to the EPA's consideration of the exclusion option. The Association of State and Territorial Solid Waste Management Officials and the Solid Waste Association of North America have expressed concern that the exclusion would not provide standards to protect human health and the environment for transportation, storage, or disposal of lamps.[7] These organizations believe that the EPA should manage mercury lamps outside the solid waste stream until the EPA can show that there is no hazard when mercury-containing lamps are disposed in solid waste landfills.

The Institute of Scrap Recycling Industries supports the application of a conditional exclusion for recyclable materials.[8] Some trade groups believe that the current regulations are protective of human health and the environment and cite the lack of conclusive studies on the hazard presented by mercury in landfills.[9] They believe that the EPA should reduce the number of lamps that are disposed in solid waste landfills by encouraging the development of spent lamp recycling centers.

An advance notice of proposed rulemaking for mercury-bearing wastes is not likely to be issued before the end of 1998 or the beginning of 1999. Major Anderson-Lloyd.

EPA Issues Proposed Rule for Drinking Water Consumer Confidence Reports

On 13 February 1998, the Environmental Protection Agency (EPA) issued its proposed rule for consumer confidence reports,[10] as required by the 1996 amendments to the Safe Drinking Water Act[11] (SDWA). The amendments impose a 6 August 1998 deadline for the EPA to develop and to issue regulations that address consumer confidence reports.[12]

In the preamble to the proposed rule, the EPA states that consumer confidence reports are "the centerpiece of public right-to-know in [the Safe Drinking Water Act]."[13] This view is reflected in the proposed rule's broad interpretations of the statutory disclosure and discussion requirements.[14]

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1. *RCRA Regulations*, ENVTL POL'Y ALERT (Inside EPA), Jan. 14, 1998, at 15.

2. 42 U.S.C.A. §§ 6901-6991 (West 1997).

3. 40 C.F.R. pt. 273 (1995).

4. 59 Fed. Reg. 38,288 (1994).

5. 40 C.F.R. pt. 273.33.

6. 59 Fed. Reg. 38,288.

7. *Management of Mercury-Containing Lamps to be Decided by the Summer*, HAZARDOUS WASTE NEWS, Jan. 12, 1998, at 13.

8. *Id.*

9. *Id.*

10. National Primary Drinking Water Regulations: Consumer Confidence Reports, 63 Fed. Reg. 7606 (1998) (to be codified at 40 C.F.R. pts. 141, 142).

11. Safe Drinking Water Act Amendments of 1996, Pub. L. No. 104-182, 110 Stat. 1613 (codified as amended in scattered sections of 16 U.S.C., 33 U.S.C., and 42 U.S.C.).

12. 42 U.S.C.A. § 1414(c)(4)(A) (West 1997).

The proposed rule applies to community water systems (those public water systems with at least fifteen service connections used by year-round residents or that regularly supply at least twenty-five year-round residents). It will require these systems to provide consumer confidence reports to customers within thirteen months of the effective date of the proposed regulations and at least every twelve months thereafter.[15]

Source Water

The reports must identify sources of the drinking water that the water system delivers to customers—ground water, surface water, or a combination thereof—as well as the common name and location of the water source.[16] The proposed rule encourages system operators to use maps to further communicate this information, but this is not a mandatory requirement.[17] If a source water assessment has been completed for the particular community water system, the report must advise customers of that fact and how to obtain a copy.[18]

Definitions

The amendments require the reports to define four terms pertaining to the nation's primary drinking water regulations—"maximum contaminant level goal," "maximum contaminant level," "variances," and "exemptions."[19] In the proposed rule, the EPA suggests definitions for these terms, as well as for two other terms that are not required by the amendments ("treatment technique" and "action level").[20]

Levels of Contaminants

The EPA is proposing that community water systems advise their customers, in separate sections of the reports, about the results of monitoring that is required by regulations for regulated and unregulated contaminants, as well as the results of voluntary monitoring that show the presence of radon, Cryptosporidium, or the presence of any additional contaminant that a system chooses to reference in the report.[21] The information provided must be sufficient to show customers an "accurate picture of the level of contaminants they may have been exposed to during the year," although these reporting requirements do not apply to contaminants that occur at levels below the minimum detection limits (as defined in 40 C.F.R. 141, subpart C).[22] In several provisions, the proposed rule also mandates how the data is to be presented to customers in the reports.[23]

National Primary Drinking Water (NPDW) Regulation Compliance

The SDWA Amendments also require that consumer confidence reports contain information on the NPDW regulation compliance.[24] In the proposed rule, the EPA interprets "compliance" as going beyond merely certifying "compliance/noncompliance." Under the EPA's interpretation, "compliance" includes reporting any violation of the NPDW standards in clear and readily understandable language, as well as providing a description of the health significance of the violation.[25]

Variances and Exemptions

The amendments also require a community water system to provide its customers with notice if the system is "operating under variance or exemption" and to identify in the notice "the basis on which the variance or exemption is granted."[26] The

13. National Primary Drinking Water Regulations: Consumer Confidence Reports, 63 Fed. Reg. at 7606.

14. *See generally id.*

15. *Id.* Community water systems that begin delivering water to customers after the effective date of the regulations will have 18 months. *Id*.

16. *Id.* at 7609.

17. *Id.* at 7610.

18. *Id.*

19. 42 U.S.C.A. § 1414(c)(4)(A) (West 1997).

20. National Primary Drinking Water Regulations: Consumer Confidence Reports, 63 Fed. Reg. at 7610-11.

21. *Id.* at 7611.

22. *Id.* at 7623.

23. *Id.* at 7611.

24. 42 U.S.C.A. § 1414(c)(4)(B)(iv).

25. National Primary Drinking Water Regulations: Consumer Confidence Reports, 63 Fed. Reg. at 7613.

proposed rule also requires community water systems to advise customers of the dates when the variances or exemptions were issued; when they are due for renewal; and the steps the system is taking to "install treatment, find alternative sources of water, or . . . comply with the . . . variance or exemption."[27]

Additional Information

The proposed rule requires community water systems to include in their reports an explanation regarding contaminants that may reasonably be expected to be present in drinking water, including bottled water.[28] The rule contains minimal language concerning this requirement.

The SDWA Amendments require consumer confidence reports to be mailed at least once annually to customers of a system.[29] In the preamble to the proposed rule, the EPA recognizes that "customers" may not include all "consumers" of a system's water. Thus, the proposed rule requires systems to mail copies to customers and to "make a 'good faith' effort to reach consumers who do not receive water bills . . . ."[30] The EPA defers to the directors of state drinking water programs in determining what means are appropriate for this "good faith" effort, although the agency did suggest methods such as Internet publishing, publication in subdivision newsletters, or having apartment landlords or managers post the report in conspicuous places.[31]

Finally, under the amendments, states with primary enforcement responsibility may establish alternative requirements regarding the form and substance of consumer confidence reports. However, the EPA maintains that any state alternative must be no less stringent than the proposed regulations. The EPA interprets stringency as equivalent to the type and amount of information provided.[32]

As noted above, the EPA is seeking comments on the proposed rule and has provided a breakdown of the proposed costs of providing the reports. Environmental law specialists are encouraged to review the proposed rule, including the cost breakdown, and to contact the Environmental Law Division prior to 30 March 1998 if they have significant comments. Major DeRoma.

Ashoff v. City of Ukiah

In *Ashoff v. City of Ukiah*,[33] the U.S. Court of Appeals for the Ninth Circuit explained whether a citizen could bring an action pursuant to a federal environmental statute where the implementation of the program has been adopted by the state. This decision should provide adequate fodder for both sides of the debate over the extent to which claims of this nature might be brought.

The Resource Conservation and Recovery Act[34] (RCRA) directs the Environmental Protection Agency (EPA) to classify waste as hazardous or nonhazardous and to establish regulatory controls over the disposition of the two categories of waste pursuant to subtitles C and D of the RCRA.[35] Upon promulgation of criteria for classification, each state must adopt and implement a permit program or other system that ensures compliance with the federal criteria.[36] The RCRA authorizes citizens' suits in approved states. The citizens' suit provision states that "any person may commence a civil action on his behalf . . . against any person . . . who is alleged to be in violation of any permit, standard, regulation, condition, requirement, prohibition, or order which has become effective pursuant to this chapter."[37]

In 1993, pursuant to the procedures of subtitle D of the RCRA, the EPA approved California's permit program for sanitary landfills. The California program was more stringent than the EPA's codified criteria.[38] Gilbert Ashoff and others sued the

26. 42 U.S.C. A. § 1414(c)(4)(B)(iv).

27. National Primary Drinking Water Regulations: Consumer Confidence Reports, 63 Fed. Reg. at 7613.

28. *Id.*

29. The amendments allow state governors to exempt from the mailing requirement those systems that serve less than 10,000 people. 42 U.S.C. A. § 1414(c)(4)(C).

30. National Primary Drinking Water Regulations: Consumer Confidence Reports, 63 Fed. Reg. at 7614-15.

31. *Id.* at 7615.

32. *Id.*

33. 130 F.3d 409 (1997).

34. 42 U.S.C.A. §§ 6901-6992k (West 1997).

35. *Id.* § 6921(a).

36. *Id.* § 6945(c)(1)(b).

37. *Id.* § 6972(a)(1)(A).

City of Ukiah under the RCRA citizens' suit provision, but the suit claimed violations only of the state standards that exceeded the federal criteria. The Ninth Circuit held that the citizens' suit provision of the RCRA is available to challenge state standards only to the extent that the state standards mirror the federal criteria.[39] The court stated that the underlying federal criteria provide legal effect to the state standards under federal law, and standards that exceed any of those criteria are without legal effect in federal court.[40]

Ashoff provides solace for the plaintiff's bar because it affirmatively answers any lingering doubts about the availability of the RCRA citizens' suit provision for states with approved programs.[41] In fact, the 17 December 1997 issue of the *Environmental Policy Alert* cites an unnamed source close to the case who holds open the possibility that this ruling may create "a new avenue for environmentalists to challenge state solid waste activities."[42]

Although this holding may provide a new avenue for litigation, the defense bar should be quick to point out that this avenue does not provide unimpeded access. A citizens' suit can only prevail to the degree that the plaintiffs can prove a violation of federal criteria. The attorney who is tasked to defend a citizens' suit of this nature would be well advised to scrutinize carefully the specifics of the allegations to determine whether the complaint addresses a federal standard. Major Egan.

Litigation Division Note

Ex-Soldier Pays Twice For Crime

Introduction

In *Graham v. United States*,[43] the United States Court of Federal Claims adds a twist to the old saying that crime doesn't pay. The court's decision demonstrates that a criminal can pay more than once for the same offense because people who are convicted by courts-martial for fraud-related crimes could face harsh civil penalties under the False Claims Act,[44] in addition to stiff criminal sentences.

Background[45]

On 4 August 1989, the plaintiff enlisted in the United States Army Reserve for three years. On 6 December 1990, his reserve unit, 420th Military Police Company, received orders to mobilize to active duty in support of Operation Desert Shield. After approximately four months, Mr. Graham returned early from Saudi Arabia to have his knee examined by physicians at Fort Lewis. After minor knee surgery, Mr. Graham was placed on seven days convalescent leave. Instead of reporting for duty upon expiration of his convalescent leave on 28 May 1991, Mr. Graham altered his leave form to reflect sixty days convalescent leave and departed Fort Lewis for Vermont. When the time designated on his first false leave form expired, he falsified another form to reflect 120 days of convalescent leave.

Mr. Graham wrongfully collected $5769.67 in pay, housing benefits, and other allowances by sending copies of the falsified leave forms and false rental receipts to his servicing finance office.[46] When Mr. Graham's scheme was eventually discovered, he was reported as a deserter, and the finance office stopped his pay and allowances. Civilian authorities apprehended Mr. Graham on 9 October 1991 and returned him to military control the next day.

On 5 and 6 December 1991, Mr. Graham was tried by a general court-martial for desertion, making a false official statement, larceny of $5769.67 from the government, and falsifying two separate passes. Mr. Graham was found guilty of all charges and was sentenced to reduction to the grade of E-1,[47] forfeiture of all pay and allowances, confinement for seven

38. *See* 40 C.F.R. pt. 258 (1997).

39. Ashoff v. City of Ukiah, 130 F.3d 409, 412 (1997).

40. *Id.*

41. The EPA has endorsed this position numerous times. *See* 61 Fed. Reg. 2584, 2593 (1996) ("The Subtitle D federal revised criteria are applicable to all Subtitle D regulated entities, regardless of whether EPA has approved the state/tribal permit program. Violation of [these] criteria may subject the violator to a citizen suit in federal court."); 49 Fed. Reg. 48,300, 48,304 (1984) ("It is EPA's position that the citizen suit provision of RCRA is available to all citizens whether or not a state is authorized."); 45 Fed. Reg. 85,016, 85,021 (1980) (stating that "any person, whether in an authorized or unauthorized State, may sue to enforce compliance with statutory and regulatory standards").

42. Litigation Note, *Gilbert Ashoff et al. v. City of Ukiah, CA*, ENVTL. POL'Y ALERT (Inside EPA), Dec. 17, 1997, at 15.

43. 36 Fed. Cl. 430 (1996).

44. 31 U.S.C.A. § 3729 (West 1997).

45. The facts were taken from the opinions in this case. *See Graham*, 36 Fed. Cl. 430; Graham v. United States, 37 M.J. 603 (A.C.M.R. 1993).

46. Mr. Graham was not entitled to these benefits because a service member who is absent without leave forfeits *all* pay and allowances for the period of the absence. 37 U.S.C.A. § 503 (West 1997).

years, and a fine of $5769.67. Mr. Graham's sentence to confinement could be extended for a period of two years if the fine was not paid. Finally, the court-martial sentenced him to be discharged from the service with a dishonorable discharge. On 3 April 1992, after reviewing Mr. Graham's request for clemency, the convening authority approved the sentence as adjudged and, except for that part extending to the dishonorable discharge, ordered it to be executed. On appeal, the U.S. Army Court of Military Review affirmed in part the findings and sentence.[48]

The Civil Law Suit

While in confinement, Mr. Graham filed a lawsuit in the United States Court of Federal Claims asserting entitlement to approximately $5000.00 in military pay and allowances. He argued that he was owed this money because he was returned to full active duty status at the time he was apprehended and returned to military control. He argued that he therefore should have been paid from the time of his arrest until the convening authority approved his court-martial sentence.[49] In response to Mr. Graham's complaint, the Army filed a counterclaim based on Mr. Graham's conviction for larceny of currency and the fact that Mr. Graham was otherwise indebted to the United States as a result of several overpayments of military active duty pay that Mr. Graham obtained by fraud.

The Army's counterclaim alleged that the plaintiff had engaged in at least three specific fraudulent acts in order to receive the sum of $5769.67. The first act occurred when Mr. Graham knowingly made and used false rental receipts to obtain Basic Allowance for Quarters and Variable Housing Allowance. The second and third acts occurred when he submitted the two falsified leave forms. The Army sought $10,000 in civil penalties for each fraudulent act, treble damages, and recovery of the government's investigative and litigation costs.[50] Additionally, the Army maintained that Mr. Graham's fraud operated to forfeit any claim he might have for military pay and allowances to which he may otherwise be entitled.[51]

On 20 January 1998, the United States Court of Federal Claims granted the Army's motion for summary judgment and awarded the United States $47,309.01 and costs on its counterclaim. The court's award reflected $30,000 in False Claims Act civil penalties and treble damages on $5769.67.

Conclusion

This case illustrates the effective use of the False Claims Act not only in defending a suit for back pay, but also in affirmatively recovering amounts that a party has fraudulently obtained. Former soldiers who seek to profit from their confinement need to be aware that the False Claims Act is available for use against them in a civil trial. As Mr. Graham discovered, a suit seeking $5000 in disputed pay can end up costing a plaintiff. In Mr. Graham's case, it was close to $50,000.00. Lieutenant Colonel Elling and Major Mickle.

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47. Mr. Graham held the rank of Sergeant (E-5) before his trial and sentence to a reduction in grade.

48. Specifically, the court found the evidence insufficient to support a finding of guilty as to desertion and approved a finding of guilty to absent without leave; the court affirmed the remaining findings of guilty. On reassessing Mr. Graham's sentence, the court reduced the original period of confinement to six years and affirmed the remaining elements of the sentence. *See Graham*, 37 M.J. at 603.

49. Mr. Graham's pay and allowances were reinitiated upon his return to military control in early October 1991 and stopped upon his scheduled ETS on 1 December 1991. By an order issued on 23 August 1997, the court denied the Army's motion for summary judgment. The court concluded that the *Department of Defense Pay Manual*, sections 10316-10317; Rule for Courts-Martial 1107; and *Army Regulation 635-200*, paragraph 1-24, appeared to indicate that Mr. Graham should have continued to receive pay and allowances through 3 April 1992, the date of the convening authority's action. *Graham*, 36 Fed. Cl. 430.

50. The False Claims Act mandates that any person who violates 31 U.S.C. §§ 3729(a)(1), (a)(2), or (a)(7) shall be "liable to the United States Government for a civil penalty of not less than $5,000 and not more than $10,000 . . . ." 31 U.S.C.A. § 3729(a) (West 1997). In addition to the civil penalties above, anyone who violates the False Claims Act also shall be "liable to the United States Government for . . . 3 times the amount of damages which the Government sustains because of the act of that person . . . ." *Id.* "A person violating this subsection shall also be liable to the United States Government for the costs of a civil action brought to recover any such penalty or damages." *Id*. § 3729.

51. The Army's counterclaim in this regard was based on 28 U.S.C. § 2514, which provides in pertinent part: "A claim against the United States shall be forfeited . . . by any person who corruptly practices or attempts to practice any fraud against the United States in the proof, statement, establishment, or allowance thereof." 28 U.S.C.A. § 2514 (West 1997).

Claims Report

United States Army Claims Service

Personnel Claims Note

Effective Date of New Regulation

The effective date of the new claims regulation[1] and new claims pamphlet[2] is 1 April 1998. Any new rules contained in the regulation and pamphlet apply only to claims filed on or after this date.[3] Claims filed prior to 1 April 1998 are still covered by the previous claims regulation[4] and pamphlet.[5]

There is one important exception to this rule: the new vehicle theft and vandalism provisions apply only to *incidents* occurring on or after 1 April 1998.[6] The new vehicle rules provide expanded authority to pay for certain types of vehicle theft and vandalism occurring anywhere on post and, in limited circumstances, theft and vandalism off post.[7] To determine whether these new rules apply, claims personnel must look to the date on which the incident occurred rather than the date the claim was filed.

For example, if a claimant's vehicle is vandalized in the post exchange parking lot on 30 March 1998, his claim would not be payable, regardless of when it was filed. The previous version of the claims regulation would apply, and it generally only permits payment for vehicle vandalism which occurs at quarters.[8] If the vandalism occurred on 1 April 1998, the new regulation would apply and would permit payment for vandalism occurring anywhere on post under these circumstances.[9] Therefore, the claim would be payable, as long as the claimant could produce clear and convincing evidence that the vandalism occurred on post. Lieutenant Colonel Masterton.

Carrier Liability Rates

Recent changes to non-temporary storage and direct procurement method maximum liability rates seem to have caused some confusion that has extended to all categories of carrier liability. This note reviews shipment categories and liability rates to assist practitioners in applying these rates properly.

Most personal property shipments are transported using a "through government bill of lading" (TGBL), under which a single carrier or freight forwarder is responsible for all phases of the transportation (including packing, moving, temporary storage, and delivery). The TGBL carrier or forwarder may perform these functions with its own personnel or contract with other companies for all or part of the transportation. If the TGBL carrier or forwarder contracts with other companies, however, those companies become agents of the carrier or forwarder, and the carrier or forwarder is liable for all loss and damage.

Shipments that use a TGBL may be within the United States or between the United States and some point overseas.[10] The procurement or contracting with these carriers and forwarders is centralized at the Military Traffic Management Command Headquarters. There are various codes to describe these shipments.

Shipping Codes and Carrier Liability Rates

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1. U.S. DEP'T OF ARMY, REG. 27-20, LEGAL SERVICES, CLAIMS (31 Dec. 1997) [hereinafter AR 27-20].

2. U.S. DEP'T OF ARMY PAM. 27-162, LEGAL SERVICES, CLAIMS PROCEDURES (1 Apr. 1998) [hereinafter DA PAM 27-162].

3. *See* AR 27-20, *supra* note 1, para. 1-22 (stating that "[a]ny instructions in this regulation that both differ from the previous version and affect the adjudication of a claim apply only to claims filed on or after the effective date of this regulation").

4. U.S. DEP'T OF ARMY, REG. 27-20, LEGAL SERVICES, CLAIMS (1 Aug. 1995) [hereinafter PREVIOUS AR 27-20].

5. U.S. DEP'T OF ARMY, PAM. 27-162, LEGAL SERVICES, CLAIMS (15 Dec. 1989).

6. AR 27-20, *supra* note 1, para 11-5h(6) (providing that "[t]o the extent the provisions of this paragraph [on vehicle theft and vandalism claims] make vehicle loss claims payable, when they would not be payable under previous policy, such claims will be considered for payment only if the loss occurred after the effective date of this regulation").

7. *See* AR 27-20, *supra* note 1, para. 11-5h. *See also* Lieutenant Colonel Masterton, *Policy Changes to be Published in New Regulation*, ARMY LAW., Feb. 1998, at 54.

8. *See* PREVIOUS AR 27-20, *supra* note 4, para. 11-5e.

9. *See* AR 27-20, *supra* note 1, para. 11-5h.

10. When the shipment is between the United States and some point overseas, the bill of lading is an "international through government bill of lading" or ITGBL.

Shipping codes 1 and 2 are used for household goods shipments within the continental United States (CONUS) that are fully paid for by the government. Since 1 May 1987, the maximum rate of the carrier's liability for these categories of shipments has been $1.25 multiplied by the net weight of the shipment.

Shipping codes 3, 4, and 6 are used for household goods shipped between CONUS and overseas areas (including Hawaii). Prior to 1 October 1993, the carrier's liability was sixty cents multiplied by the weight of the article. From 1 October 1993 through 30 September 1995, the rate was $1.80 multiplied by the weight of the article. Effective 1 October 1995, the liability rate was changed to $1.25 multiplied by the net weight of the shipment.

Household goods that are placed in containers by a civilian carrier and are transported to a military ocean terminal use shipping code 5. The Military Sealift Command transports the items to the designated delivery port, where a civilian carrier receives the articles and transports them to their final destination. The rate of carrier liability has been, and remains, the same as the rates for codes 3, 4, and 6.

When household goods are placed in containers by a civilian carrier and transported to a Military Airlift Command (MAC) terminal, shipping code T is used. The MAC transports the articles to the designated delivery terminal, where a civilian carrier receives the articles and transports them to their final destination. The carrier liability rates are the same as for codes 3, 4, 5, and 6.

Code 5 and code T shipments are similar in that the government and a civilian carrier share the shipping functions. In both of these situations, any initial demand against a civilian carrier will only be for fifty percent of the overall recovery amount. If the carrier refuses to pay or does not reply in a timely manner, the charge will be increased to 100%.

Shipping codes 7, 8, and J are used for worldwide shipment of unaccompanied hold baggage. The rates are the same as for codes 3, 4, 5, 6, and T.

Direct Procurement Method Shipments

The transportation officer may arrange to ship personal property by contracting with separate companies for each phase of the shipment. These shipments are known as direct procurement method shipments (DPM), because the transportation officer procures the necessary services directly through local or regional contracts. A government bill of lading may be used for each or any one of the segments of a DPM shipment.

There are several types of DPM shipments. One of the most common is a local move. The transportation office may arrange with a single DPM contractor for a local, intra-city, or intra-regional shipment that involves all phases of the shipment—packing, pickup, transportation, delivery, and unpacking. These are known as Schedule III shipments, and the liability is the same as for TGBL shipments: $1.25 multiplied by the net weight of the shipment.

A second type of DPM shipment involves more than one contractor. Sometimes the transportation office will arrange for one DPM contractor who will pack the goods, place them in large shipping boxes or containers, load them on a truck, and take them to a freight terminal near the residence where the goods were packed. This company is referred to as a packing and containerization contractor, the outbound contractor, or the Schedule I contractor. When the first contractor is finished, a second contractor, usually a motor freight company rather than a household goods carrier, will move the containers as a freight shipment under a government bill of lading to a terminal near the destination address. The transportation office will then contract with the DPM packing and containerization carrier for the area of the destination address (also known as the inbound or Schedule II contractor) to transport the property from the inbound terminal to the destination address and to unpack and to place the property in the home. In these cases, the maximum liability for each contractor may be different.

The maximum liability for the freight carrier will be listed on the government bill of lading. The liability for the outbound (Schedule I) and Inbound (Schedule II) carrier is $.60 per pound per item, unless there is evidence of actual negligence by the carrier. If there is evidence of negligence, the carrier is liable for the full value of the loss or damage. Full value in this context means the actual repair or depreciated replacement cost.

Normally, the claim for loss or damage noted on delivery will be sent to the inbound contractor, and maximum liability will be $.60 per pound per item. If the contractor noted damages on a joint inspection with the terminal operator or freight carrier, the liability for those damages shifts back to the terminal or freight carrier. If the inbound carrier has evidence (for example, photos, statements, or government inspection reports) that the damage is the result of poor packing by the outbound carrier, liability for the loss can be shifted to the outbound carrier. Because there is likely to be evidence of negligence in such situations, the outbound carrier is liable for the full value of the loss.

For overseas DPM shipments, the local packing and containerization contractor will pack, pickup, and transport the shipment to a terminal at an air or sea port. The goods will be transported by an air or ocean carrier to a terminal in the destination country. The inbound DPM contractor will pick up the shipment from the inbound terminal. This contractor may either carry the shipment to another terminal for onward transportation by a freight carrier; take it to a terminal where it will be picked up by a delivery contractor; or, more often, deliver it directly to the owner. The liability of the outbound packing and containerization contractor and the inbound delivering carrier is the same as discussed above. In overseas DPM shipments,

however, the air or ocean leg of the movement may be through the Defense Transportation System (DTS) on Department of Defense (DOD) vessels or aircraft. In those cases, a transportation control number will be entered in block 15 of the government bill of lading. If joint inspection at the inbound terminal reveals that damage or loss occurred while the goods were in the DTS, the Army will not recover for that loss or damage, because the Army does not assert claims against other DOD or government agencies.

Non-temporary Storage

Household goods are sometimes placed in a warehouse for long term storage (not storage in transit). For all storage shipments booked prior to 1 January 1997, the liability of the warehouse is $50 per line item. For shipments booked on or after 1 January 1997, the liability is the same as for TGBL shipments: $1.25 multiplied by the net weight of the shipment.

Conclusion

The following chart indicates carrier liability rates and was developed as a guide to answer most questions in this area. The chart should be used in conjunction with the information contained in *Department of the Army Pamphlet 27-162*,[11] paragraphs 3-8 through 3-15. Mr. Goetzke and Mr. Lickliter.

Code 1 & 2	**CODES 3, 4, 5, 6, 7, 8, T, & J:** [a]	**DPM**	**Nontemporary Storage**
Since 1 May 1987: $1.25 X net weight of the shipment.	Prior to 1 October 1993: $.60 X weight of the article. 1 October 1993 through 30 September 1995: $1.80 X weight of the article. 1 October 1995 to present: $1.25 X weight [b] of the shipment.	Schedule I & II contractors: $.60 X weight of the article (if no evidence of carrier negligence). If there is evidence of negligence: full value of the loss.[c] If sufficient evidence exists to shift liability from the delivery carrier to the origin (packing) outbound carrier, there is probably sufficient evidence to hold the outbound carrier liable for the entire amount of loss, in which case the liability is the repair or depreciated replacement cost. Schedule III contractors (intra-city/ intra-region moves): $1.25 X weight of the shipment. Line haul contractors (usually a freight carrier): maximum liability is stated on the government bill of lading.	Booked prior to 1 January 1997: $50 per line item. Booked on or after 1 January 1997: $1.25 X weight of the shipment.

a. When Code 5 or Code T is involved, the initial demand on the carrier should be for only 50% of the recovery amount. If the carrier refuses to settle or does not make a timely response, the charge will be increased to 100%.

b. Liability is based on gross weight for codes 7, 8, and J. Net weight is used to determine liability for codes 3, 4, 5, 6, and T.

c. Full value in this context means the repair or depreciated replacement cost.

11. DA PAM 27-162, *supra* note 2.

CLAMO Report

Center for Law and Military Operations (CLAMO), The Judge Advocate General's School

The Battle Command Training Program

Mission and Organization

The mission of the combat training centers (CTCs) is to conduct realistic, stressful training for units, commanders, and staffs. The Battle Command Training Program (BCTP) at Fort Leavenworth, Kansas is the Army's capstone CTC, and it concentrates its training on the "command and staff" element of the CTC mission. The BCTP trains commanders and their staffs from all levels by providing battle staff training through computer simulated exercises, known as War Fighter exercises (WFXs). The BCTP training features a "free thinking" world-class opposing force (OPFOR), certified observer controllers (OCs) and observer trainers (OTs), and senior observers who act as mentors and coaches.

The BCTP's mission is an ambitious one. While it is a "CTC"—an elaborate training apparatus that occupies a crucial role in the Army training system—it is unlike the other CTCs. The Combat Maneuver Training Center (CMTC) in Hohenfels, Germany; the Joint Readiness Training Center (JRTC) in Fort Polk, Louisiana; and the National Training Center (NTC) in Fort Irwin, California, are known as the "maneuver" CTCs, a label that does not apply to the BCTP. All of the CTCs test battlefield operating systems (commonly referred to as "BOS" elements), but the maneuver CTCs require the actual movement of forces in relation to the enemy. The BCTP does not test tactical units on skills such as fire and maneuver. True to its title, it tests the battle-command system—the art of battle, decision-making, leading, and motivating soldiers and organizations into action to accomplish missions. The art is more commonly known as "command and control" or "C2."

The BCTP also differs from the maneuver CTCs because, although it is a "center" in the sense that it concentrates expertise and experience, it cannot be identified with any particular place. The OPFOR and the operations group personnel (who actually run the training) are permanently stationed at Fort Leavenworth, but most of each rotation occurs at the training unit's home installation. For example, the fictional attack by Kim Chong Il's North Korean forces on the 101st Airborne Division (Air Assault), the subject of CLAMO's *In the Operations Center: A Judge Advocate's Guide to the Battle Command Training Program*,[1] took place completely on Fort Campbell, and the "battle" was simulated on computers. This is not to say, though, that no one "goes to the field;" many headquarters elements get cold and muddy in field command posts. There are not, however, any real OPFOR paratroopers wearing multiple integrated laser engagement system (MILES) gear and landing in drop zones.

Providing training for organizations of this size is a daunting task. The BCTP has a strength of approximately 500 officers, enlisted soldiers, civilians, and contractor personnel. The organization consists of a headquarters, four operations groups, and the OPFOR. The four operations groups (called teams) have primary training responsibility for all exercises/rotations and consist of support personnel, civilian contractors, and OCs or OTs.[2] The OTs and OCs are branch-qualified officers who have completed a successful company-level command and NCOs who have completed a rigorous certification course. In addition, the chief of staff of the Army appoints retired senior general officers as senior observers (SRO) to coach and to mentor a unit's senior leadership and to watch over doctrinal standardization.

The four operations groups train units of different sizes and compositions. Operations groups A and B conduct corps and division WFXs. They are organized identically and can execute division WFXs independently, but they must combine to perform corps WFXs. Operations group C conducts brigade WFXs for Army National Guard brigades and select active component (AC) brigades. Operations group C also trains AC observer controllers.

Operations group D observes, trains, and assists Army level commanders and their staffs in conducting joint and combined operations at the Joint Task Force (JTF) and the Army Force level. They also work with the Joint Training Analysis and Simulation Center (JTASC), a United States Atlantic Command organization located in Suffolk, Virginia, as part of the Unified Endeavor exercises.

Operations group D's training helps prepare Army organizations to operate in a joint combined or multi-agency environment as either the Army component or as the nucleus for a JTF headquarters. They also provide staff assistance for contingency operations involving U.S. Army units (such as Desert Storm, Somalia, and Bosnia). As post-Desert Storm experiences have demonstrated, modern operations are likely to be joint (involving more than one United States service component) and combined (involving other countries). Training to

1. CENTER FOR LAW AND MILITARY OPERATIONS, IN THE OPERATIONS CENTER: A JUDGE ADVOCATE'S GUIDE TO THE BATTLE COMMAND TRAINING PROGRAM (1996) [hereinafter IN THE OPERATIONS CENTER].

2. Personnel in teams A, B, and C are referred to as OCs, while team D personnel are referred to as OTs. This is because of the different roles they have in the BCTP exercises.

operate in these joint and combined environments is, therefore, of increasing importance.

The BCTP also serves as a data source for improvements on United States joint doctrine and Army doctrine, training, leader development, organizations, material, and soldiers (DTLOMS, referred to as "Det-loms" or "Dee-tee-loms"). The Army has been applauded for its use of "lessons learned," and the CTCs are key vehicles by which to gain, to analyze, and to disseminate these lessons. The CTCs test doctrine, leaders, organizational techniques, and equipment, and then recommend refinements to doctrine as necessary.

Warfighter Exercise

The judge advocates who support the training unit go well beyond strictly "legal" skills or activities. They help to develop staff estimates, assist in drafting operations plans and reviewing orders, and perform myriad other functions at the division's main and rear command posts. Judge advocates are, in every sense, fully functional staff members. While legal issues are important and may have strategic consequences in a deployment, legal issues do not arise during a WFX as often as many judge advocates would like. They must remember, however, that judge advocates perform a supporting (and very important) role, rather than a central role, in training. The BCTP process—a program that forges generals and staffs that are adaptive, creative, and militarily competent—is longer than nine months in duration. The legal issues that arise, though perhaps complicated and of great consequence, may be but one of many challenges that arise for the commander and for each of the staff sections during the short, compact, and very intense week-long WFX. There is no need to worry—enough legal issues will arise during a WFX to keep the legal staff fully employed.

The WFXs are conducted frequently and worldwide. The BCTP conducts more than forty training exercises per year—fourteen division WFXs, fourteen brigade rotations, and ten operational level war exercises, in addition to seminars and contingencies.

The first step in which judge advocates are likely to be involved is the Battle Command Seminar. The seminar is used in operations group A, B, and C exercises and takes place 100 days prior to the start of the WFX. It is likely the first time that the training unit judge advocate and the judge advocate OC or OT will meet. It is imperative that judge advocates, especially the training unit's operational law attorney, are involved in the exercises which take place during the seminar. In fact, *FORSCOM/TRADOC Training Regulation 350-50-3 (Draft)* requires the staff judge advocate and the operational law judge advocate to attend the seminar.

The operations group plans and executes the week-long seminar, the purpose of which is to provide the commanding general with an opportunity to build his battle command team. The battle staff support cell, a reduced staff from the training unit, deploys to the BCTP headquarters at Fort Leavenworth, where they focus on doctrine and tactics. The battle staff support cell should include judge advocates, who must ensure their participation long in advance. The commanding general chooses which members of his staff will participate, and he then acts as trainer and coach during the seminar.

Judge advocates should be involved in all of the seminar activities, because this is when the staff comes together as an integrated team. The involvement of judge advocates is especially important in targeting cell activities. The targeting cell is a coordinating group within the staff that plans and controls the execution of the division's deep fires operations (such as artillery fires) and its command and control communications countermeasures.[3] The deep battle targets enemy forces that are not yet in contact, and it typically focuses on enemy regiments or other priority targets two to three days away.

In the targeting cell, a judge advocate can be expected to provide guidance on the rules of engagement (ROE), particularly the legal ramifications of engaging nominated targets. This role requires judge advocates to be familiar with: weapons systems and capabilities; all division materials on ROE; and, at the very least, the basic principles of public international law. A common question regarding ROE, for example, is the use of "unobserved fires into populated areas." What are the requirements of "observed" fires? Are electronic eyes good enough? Must human eyes be watching? What is a populated area? The judge advocate must consider all of these questions; indeed, all of these may be directed at the judge advocate.

Following the week-long seminar, the battle staff support cell returns to its home station to continue training for the BCTP WFX. As the WFX approaches, judge advocates will have more contact with the judge advocate OC or OT and the rest of the operations group, the main body of which arrives approximately five days prior to the start of the WFX. Communication allows the judge advocate OC or OT to meet with the staff judge advocate and his staff; to read and to crosswalk the unit's operation order and that of the higher headquarters; to see where the unit is set up; and to gain a complete understanding of the plan.

The battle itself—though a computer-driven exercise—must be seen to be believed. From the training unit perspective, the WFX appears to be simple and, at times, magical. Only after looking behind the curtain and seeing all of the moving pieces can one gain an appreciation for how much work goes into the exercise.

3. Command and control communications countermeasures, also known as C2W, are "the warfighting application of [information warfare] in military operations." U.S. DEP'T OF ARMY, FIELD MANUAL 100-6, INFORMATION OPERATIONS 2-4 (Aug. 1996).

The battle is controlled by three elements: the operations center, the work stations, and the exercise control cell (EXCON). The operations center, run by the operations officer, is responsible for tracking everything that happens during a WFX. It sets up and maintains the computer hardware, adjusts unit strengths (based on casualties and other factors) and supply levels, maintains communications, and coordinates briefings for the BCTP commander and the chief, operations group (COG).

The work stations are controlled by members of battalion staffs from the training division or corps who are playing their real world roles. These people input guidance from the training unit (BLUEFOR) chain of command into the corps battle simulation (CBS), the computer that controls the exercise, as if they were carrying out maneuver or movement orders from above. The COG, meanwhile, focuses on providing guidance to the OCs and the civilian contract analysts, with a view toward assembling material for the after action review (AAR).

The EXCON is located in the battle simulation center. Its mission is to facilitate conduct of the WFX by representing higher echelons, adjacent units, combat multipliers, and intelligence systems. In essence, the EXCON is responsible for filling gaps in the CBS. While the CBS can do much to replicate all of the factors that impact on the command and control of a unit during a real fight, it cannot recreate all of these factors, including legal issues. The EXCON defines the environment in which the battle is fought—it writes orders and messages that would normally originate from higher, flank, rear, and deep units and provides intelligence collection and reporting data for both friendly forces and the OPFOR. It executes the scripting and role-playing events it has drafted and inserted into the training scenario, always careful to ensure that these "scripted" events are transparent to the training unit. The EXCON contains the workers who actually "run" the exercise.

The battle is computer driven and is based on the unit mission, the mission essential task list (METL),[4] and the commander's stated training objectives. Little happens during the battle that the operations group has not anticipated or coordinated. Due to the basic warfighting nature of the exercise, the scenario does not usually give rise to the same type of spontaneous legal issues that arise at the other CTCs. This is not to say, however, that such issues will not arise. While the OC or OT inserts a majority of legal issues, there are still a large number of legal issues that arise through the normal course of the exercise.

Legal issues, such as weapons utilization and targeting, will occur in the normal course of the exercise, especially when sharp judge advocates crosswalk the various BOS annexes and identify prospective issues. A judge advocate may, for example, discover that the commander contemplates laying down scatterable mines in an area where a large number of displaced civilians are expected. He may discover this, and might be the only staff member who does, by over-laying all of the annexes and appendices upon each other.

Although rotations differ based on the commander's intent and the unit METL, certain legal issues will undoubtedly arise. Personnel issues are an example. In an effort to promote realism, the "box" is used to strictly control the flow of logistical and other support into the area of operations (AO). When casualties are suffered, "replacements" must be introduced, and those "replacements" may claim conscientious objector status, see their family care plans fall apart, and commit crimes. When the unit conducts combat operations, the appropriateness and use of weapons systems will become an issue. The unit will acquire prisoners of war and encounter civilians on the battlefield. Special Forces and Psychological Operations assets often generate legal issues.

Such events might not arise, or additional issues might be needed. The OT or OC can insert issues into the training scenario through the master events list (MEL). Even though the BCTP is a simulated exercise, realism is the standard. To retain realism while increasing the quality of training, all inserted events must be precise, factual, and consistent with the scenario. Most legal issues will enter the exercise through MELs and should appear seamless and transparent to the training unit. Prior to the WFX, judge advocates from the training unit will have an opportunity to provide the OT or OC with training objectives. Legal issues will be scripted to ensure that training occurs on those objectives.

The first step in this elaborate and painstaking process is the scripting itself—what will be said and who will be the role-players. A "solution" to the problem must also be drafted and must address two perspectives: (1) from a staff coordination point of view, who should be involved and what should they do? and (2) from a legal perspective, what substantive laws and rules apply, and what advice should be given to the command? The event must then be coordinated with the EXCON and the work cell, through which the MEL will be inserted.

Role players are necessary to act out the event. Unlike the maneuver CTCs, which have civilian and military personnel traversing the battlefield in garb, the BCTP does not have a "cast." The agreements at the start of the exercise (which clarify responsibilities during the course of the WFX) now require the training unit's staff judge advocate section to provide two legal NCOs (E-6 or above) to work in the special operations force (SOF) cell during a WFX. They provide twenty-four hour coverage in the cell and serve as role players for inserted events.

The next step is to determine where in the scenario the event should be inserted. A thorough review of the operation plan and operation order is a must. The event must occur at a logical time within the exercise, but it must also be consistent with the

4. Collective tasks in which an organization must be proficient to accomplish some portion of its wartime mission.

mission being performed. Suppose, for example, that the commander wishes to employ FASCAM (family of scatterable mines) to channel enemy forces into an engagement area. This point in the scenario might be an excellent opportunity for adding civilians to the exercise by inserting an event that suggests that displaced civilians may use the same area as their avenue of egress. After deciding where the event will occur, the OT or OC begins the extensive process of coordinating with the scenario developers to get the event approved and actually inserted into the battle.

The positioning and placement of OCs mirrors the training unit; each functional element of command receives individual attention and feedback on performance. Each rotation requires forty-four OCs, and "augmentee OCs" (AOCs) are often needed from the training unit or other areas on the installation. During each exercise, there is only one operational law OC, and he often relies on judge advocate AOCs. They usually work a swing shift to maintain twenty-four-hour coverage of training.

To train augmentees, the BCTP and CLAMO have instituted a judge advocate augmentee OC training and certification program.[5] Under this program, staff judge advocates nominate officers who have operational law experience or exceptional leadership and teaching skills. Upon selection, these officers receive training at home station via distance learning and attend a week-long training program with the operations group at Fort Leavenworth. The training concludes with attendance at, and participation in, an actual WFX at Fort Leavenworth.

The operational law OC and AOC observe the training unit's judge advocate's responses to events as they arise and provide training based on those responses. They also observe the integration and synchronization between the commander's staff and the staff judge advocate section. Additionally, they may consider such things as:

> (1) How does the ROE process, especially as it relates to supplementation and dissemination, occur? Have changes been noted with the date/time group (DTG) so that everyone knows which ROE are now in effect? Is the G3 taking the lead on ROE issues with input from judge advocates? Have the ROE been "cross-walked" through the various staff sections to ensure that the different battlefield operating system sections have knowledge and input?
>
> (2) Are judge advocates familiar with the operation order, not just the legal and ROE annexes?
>
> (3) Are judge advocates aware of what is happening in the G3 plans section and G3 current operations?
>
> (4) When acting as part of a JTF, do judge advocates ensure coordination with naval, marine, and air forces? Do they know what is happening on the battlefield?
>
> (5) Have judge advocates brought the appropriate legal references to assist the command in resolving legal issues? Are they coordinating properly with the chain of command to resolve such issues? Are they utilizing the Rucksack Deployable Law Office?
>
> (6) Are judge advocates manning the TOC and keeping logs? Are the log entries standardized so that everyone can understand them? Does the log contain a clear statement of the issue and how it was resolved?
>
> (7) Are unit claims officers trained on adjudication of claims under the Foreign Claims Act? Does the staff judge advocate section have a standing operating procedure for processing foreign claims?
>
> (8) Are judge advocates fully integrated into the targeting cell and other staff sections where they can address issues and interact with appropriate staff members?
>
> (9) Are judge advocates familiar with the tactical standing operating procedure (TACSOP)? Does the TACSOP provide for workspace, living space, and transportation for the legal element?
>
> (10) Are trial counsel deployed with their brigades during the exercise?

This is certainly not an exhaustive list of all of the issues[6] that may arise during a WFX, but it highlights some general areas in which issues frequently occur. The secret to success in most of these areas is integration. Judge advocates must become part of the staff so that staff members know where and from whom to seek answers to legal questions as they arise.

The training process ends, or, if you prefer, begins anew, with the end of the exercise (ENDEX) and the AAR process. Army training doctrine requires leaders to conduct their own AARs during all collective training. Every BCTP rotation fea-

5. The next augmentee OC training program will begin in late July 1998. Staff judge advocates who would like to nominate officers to receive this exceptional training should contact CLAMO immediately.

6. *See generally* IN THE OPERATIONS CENTER, *supra* note 1.

tures at least two formal, COG-led AARs. These typically last about two hours. Individual OCs conduct informal AARs for their respective units. These informal AARs usually last one hour. After action reviews are also conducted during the WFX, usually during pauses in the exercise (or PAUSEX), which are timed to coincide with the change of mission.

According to the BCTP's internal guidance, an AAR is a structured review process that allows training units to discover for themselves what happened, why it happened, and how it can be done better. A specific agenda provides structure for the videotaped, tailored review. The operations group regards the AARs as the most important events of a rotation. Here are their guidelines:

(1) Focus directly on key METL-driven training objectives.

(2) Emphasize meeting Army standards rather than pronouncing judgment of success or failure.

(3) Use leading questions to encourage participants to self-discover important lessons from the training event.

(4) To maximize the training value and sharing of lessons learned, allow a large number of people to participate.

Conclusion

The overview of the BCTP in this note will assist judge advocates in preparing for WFXs. Judge advocates should get involved early and integrate into the staff. Although the primary role of judge advocates in WFXs is to address legal issues that arise, their role goes beyond strictly "legal" issues. Judge advocates must be fully functional staff members to contribute to the success of the training. Captain DeWoskin and Major Kantwill.

CLE News

1. Resident Course Quotas

Attendance at resident continuing legal education (CLE) courses at The Judge Advocate General's School, United States Army, (TJAGSA) is restricted to students who have confirmed reservations. Reservations for TJAGSA CLE courses are managed by the Army Training Requirements and Resources System (ATRRS), the Army-wide automated training system. **If you do not have a confirmed reservation in ATRRS, you do not have a reservation for a TJAGSA CLE course.**

Active duty service members and civilian employees must obtain reservations through their directorates of training or through equivalent agencies. Reservists must obtain reservations through their unit training offices or, if they are nonunit reservists, through the United States Army Personnel Center (ARPERCEN), ATTN: ARPC-ZJA-P, 9700 Page Avenue, St. Louis, MO 63132-5200. Army National Guard personnel must request reservations through their unit training offices.

When requesting a reservation, you should know the following:

TJAGSA School Code—**181**

Course Name—133d **Contract Attorneys Course** 5F-F10

Course Number—133d Contract Attorney's Course **5F-F10**

Class Number—**133d** Contract Attorney's Course 5F-F10

To verify a confirmed reservation, ask your training office to provide a screen print of the ATRRS R1 screen, showing by-name reservations.

The Judge Advocate General's School is an approved sponsor of CLE courses in all states which require mandatory continuing legal education. These states include: AL, AR, AZ, CA, CO, CT, DE, FL, GA, ID, IN, IA, KS, KY, LA, MN, MS, MO, MT, NV, NC, ND, NH, OH, OK, OR, PA, RH, SC, TN, TX, UT, VT, VA, WA, WV, WI, and WY.

2. TJAGSA CLE Course Schedule

1998

June 1998

1-5 June	1st National Security Crime and Intelligence Law Workshop (5F-F401).
1-5 June	148th Senior Officer Legal Orientation Course (5F-F1).
1-12 June	3d RC Warrant Officer Basic Course (Phase 1) (7A-550A0-RC).
1 June-10 July	5th JA Warrant Officer Basic Course (7A-550A0).
8-12 June	2nd Chief Legal NCO Course (512-71D-CLNCO).
8-12 June	28th Staff Judge Advocate Course (5F-F52).
15-19 June	9th Senior Legal NCO Course (512-71D/40/50).
15-26 June	3d RC Warrant Officer Basic Course (Phase 2) (7A-55A0-RC).
29 June-1 July	Professional Recruiting Training Seminar.

July 1998

6-10 July	9th Legal Administrators Course (7A-550A1).
6-17 July	146th Basic Course (Phase 1, Fort Lee) (5-27-C20).
7-9 July	29th Methods of Instruction Course (5F-F70).
13-17 July	69th Law of War Workshop (5F-F42).
18 July-25 September	146th Basic Course (Phase 2, TJAGSA) (5-27-C20).
22-24 July	Career Services Directors Conference.

August 1998

3-14 August	141st Contract Attorneys Course (5F-F10).

Note: The 10th Criminal Law Advocacy Course (5F-F34) has been rescheduled to 14-25 September 1998.

~~3-14 August~~	~~10th Criminal Law Advocacy Course (5F-F34).~~
10-14 August	16th Federal Litigation Course (5F-F29).
17-21 August	149th Senior Officer Legal Orientation Course (5F-F1).
17 August 1998-28 May 1999	47th Graduate Course (5-27-C22).
24-28 August	4th Military Justice Managers Course (5F-F31).
24 August-4 September	30th Operational Law Seminar (5F-F47).

September 1998

9-11 September	3d Procurement Fraud Course (5F-F101).
9-11 September	USAREUR Legal Assistance CLE (5F-F23E).
14-25 September	10th Criminal Law Advocacy Course (5F-F34).
14-18 September	USAREUR Administrative Law CLE (5F-F24E).

3. Civilian-Sponsored CLE Courses

1998

June

1 June	ICLE	Administrative Procedure Marriott North Central Hotel Atlanta, GA
5 June	ICLE	Jury Trial Seminar Marriott North Central Hotel Atlanta, GA

For further information on civilian courses in your area, please contact one of the institutions listed below:

AAJE: American Academy of Judicial Education
1613 15th Street, Suite C
Tuscaloosa, AL 35404
(205) 391-9055

ABA: American Bar Association
750 North Lake Shore Drive
Chicago, IL 60611
(312) 988-6200

AGACL: Association of Government Attorneys in Capital Litigation
Arizona Attorney General's Office
ATTN: Jan Dyer
1275 West Washington
Phoenix, AZ 85007
(602) 542-8552

ALIABA: American Law Institute-American Bar Association
Committee on Continuing Professional Education
4025 Chestnut Street
Philadelphia, PA 19104-3099
(800) CLE-NEWS or (215) 243-1600

ASLM: American Society of Law and Medicine
Boston University School of Law
765 Commonwealth Avenue
Boston, MA 02215
(617) 262-4990

CCEB: Continuing Education of the Bar
University of California Extension
2300 Shattuck Avenue
Berkeley, CA 94704
(510) 642-3973

CLA: Computer Law Association, Inc.
3028 Javier Road, Suite 500E
Fairfax, VA 22031
(703) 560-7747

CLESN: CLE Satellite Network
920 Spring Street
Springfield, IL 62704
(217) 525-0744
(800) 521-8662

ESI: Educational Services Institute
5201 Leesburg Pike, Suite 600
Falls Church, VA 22041-3202
(703) 379-2900

FBA: Federal Bar Association
1815 H Street, NW, Suite 408
Washington, DC 20006-3697
(202) 638-0252

FB: Florida Bar
650 Apalachee Parkway
Tallahassee, FL 32399-2300

GICLE: The Institute of Continuing Legal Education
P.O. Box 1885
Athens, GA 30603
(706) 369-5664

GII: Government Institutes, Inc.
966 Hungerford Drive, Suite 24
Rockville, MD 20850
(301) 251-9250

GWU: Government Contracts Program
The George Washington University National Law Center
2020 K Street, NW, Room 2107
Washington, DC 20052
(202) 994-5272

IICLE: Illinois Institute for CLE
2395 W. Jefferson Street
Springfield, IL 62702
(217) 787-2080

LRP: LRP Publications
1555 King Street, Suite 200
Alexandria, VA 22314
(703) 684-0510
(800) 727-1227

LSU: Louisiana State University
Center on Continuing Professional Development
Paul M. Herbert Law Center
Baton Rouge, LA 70803-1000
(504) 388-5837

MICLE: Institute of Continuing Legal Education
1020 Greene Street
Ann Arbor, MI 48109-1444
(313) 764-0533
(800) 922-6516

MLI: Medi-Legal Institute
15301 Ventura Boulevard, Suite 300
Sherman Oaks, CA 91403
(800) 443-0100

NCDA: National College of District Attorneys
University of Houston Law Center
4800 Calhoun Street
Houston, TX 77204-6380
(713) 747-NCDA

NITA: National Institute for Trial Advocacy
1507 Energy Park Drive
St. Paul, MN 55108
(612) 644-0323 in (MN and AK)
(800) 225-6482

NJC: National Judicial College
Judicial College Building
University of Nevada
Reno, NV 89557

NMTLA: New Mexico Trial Lawyers' Association
P.O. Box 301
Albuquerque, NM 87103
(505) 243-6003

PBI: Pennsylvania Bar Institute
104 South Street
P.O. Box 1027
Harrisburg, PA 17108-1027
(717) 233-5774
(800) 932-4637

PLI: Practicing Law Institute
810 Seventh Avenue
New York, NY 10019
(212) 765-5700

TBA: Tennessee Bar Association
3622 West End Avenue
Nashville, TN 37205
(615) 383-7421

TLS: Tulane Law School
Tulane University CLE
8200 Hampson Avenue, Suite 300
New Orleans, LA 70118
(504) 865-5900

UMLC: University of Miami Law Center
P.O. Box 248087
Coral Gables, FL 33124
(305) 284-4762

UT: The University of Texas School of Law
Office of Continuing Legal Education
727 East 26th Street
Austin, TX 78705-9968

VCLE: University of Virginia School of Law
Trial Advocacy Institute
P.O. Box 4468
Charlottesville, VA 22905.

4. Mandatory Continuing Legal Education Jurisdiction and Reporting Dates

Jurisdiction	Reporting Month
Alabama**	31 December annually
Arizona	15 September annually
Arkansas	30 June annually
California*	1 February annually
Colorado	Anytime within three-year period
Delaware	31 July biennially
Florida**	Assigned month triennially
Georgia	31 January annually
Idaho	Admission date triennially
Indiana	31 December annually
Iowa	1 March annually
Kansas	30 days after program
Kentucky	30 June annually
Louisiana**	31 January annually
Michigan	31 March annually
Minnesota	30 August triennially
Mississippi**	1 August annually
Missouri	31 July annually
Montana	1 March annually
Nevada	1 March annually
New Hampshire**	1 August annually
New Mexico	prior to 1 April annually
North Carolina**	28 February annually
North Dakota	31 July annually
Ohio*	31 January biennially
Oklahoma**	15 February annually
Oregon	Anniversary of date of birth—new admittees and reinstated members report after an initial one-year period; thereafter triennially
Pennsylvania**	30 days after program
Rhode Island	30 June annually
South Carolina**	15 January annually
Tennessee*	1 March annually
Texas	31 December annually
Utah	End of two-year compliance period
Vermont	15 July biennially
Virginia	30 June annually
Washington	31 January triennially
West Virginia	31 July annually
Wisconsin*	1 February annually
Wyoming	30 January annually

* Military Exempt

** Military Must Declare Exemption

For addresses and detailed information, see the February 1998 issue of *The Army Lawyer*.

Current Materials of Interest

1. Web Sites of Interest to Judge Advocates

The January 1998 issue of *The Army Lawyer* contained a list of contract and fiscal law websites. Here is an updated and expanded version of that list.

Content	Address
A	
ABA LawLink Legal Research Jumpstation	http://www.abanet.org/lawlink/home.html
ABA Network	http://www.abanet.org/
ABA Public Contract Law Section (Agency Level Bid Protests)	http://www.abanet.org/contract/federal/bidpro/agen_bid.html
Acquisition Reform	http://tecnet0.jcte.jcs.mil:9000/ht-docs/teinfo/acqreform.html
Acquisition Reform Network	http://www.arnet.gov
ACQWeb - Office of Undersecretary of Defense for Acquisition & Technology	http://www.acq.osd.mil
Agency for International Development	http://www.info.usaid.gov
Air Force Acquisition Reform	http://www.safaq.hq.af
Air Force FAR Supplement	http://www.hq.af.mil/SAFAQ/contracting/far/affars/html
Air Force Home Page	http://www.af.mil/
Air Force Materiel Command Web Page	http://www.afmc.wpafb.af.mil
Air Force Publications	http://farsite.hill.af.mil/vfaf-farl.htm
Air Force Site, FAR, DFARS, Fed. Reg.	http://farsite.hill.af.mil
AMC Command Counsel News Letter	http://www.amc.army.mil/amc/command_counsel/
AMC Command Counsel News Letter (Text Only)	http://www.amc.army.mil/amc/command_counsel_text
AMC –HQ Home Page	http://www.amc.army.mil
Army Acquisition Website	http://acqnet.sarda.army.mil/
Army Home Page	http://www.dtic.mil/armylink
Army Financial Management Home Page	http://www.asafm.army.mil/homepg.htm
ASBCA Home Page	http://www.law.gwu.edu/burns
C	
CAGE Code Assignment Also Search/Contractor Registration (CCR)	http://www.disc.dla.mil
Code of Federal Regulations	http://www.access.gpo.gov/nara/cfr/cfr-table-search.html
Coast Guard Home Page	http://www.dot.gov/dotinfo/uscg
Commerce Business Daily (CBD)	http://cbdnet.access.gpo.gov/index.html
Comptroller General Decisions	http://www.gao.gov/decisions/decison.htm
Congress on the Net-Legislative Info	http://thomas.loc.gov/
Congressional Record via GPO Access	http://www.access.gpo.gov/su_docs/aces/aces150.html
Contingency Contracting	http://www.afmc.wpafb.af.mil/organizations/HQ-AFMC/PK/pko/contingk.htm
Contract Pricing Guides (address)	http://www.gsa.gov/staff/v/guides/instructions.htm
Contract Pricing Reference Guides	http://www.gsa.gov/staff/v/guides/volumes.htm

Cost Accounting Standards	http://www.fedmarket.com/cas/casindex.html
D	
DCAA Web Page	http://www.dtic.mil/dcaa *Before you can access this site, must register at http://www.gov-con.com
DCAA - Electronic Audit Reports	http://www.abm.rda.hq.navy.mil/branch11.html
Debarred List	http://www.arnet.gov/epls/
Defense Acquisition Deskbook	http://www.deskbook.osd.mil
Defense Acquisition University	http://www.acq.osd.mil/dau/
Defense Contracting Regulations	http://www.dtic.mil/contracts
Defense Procurement	http://www.acq.osd.mil/dp/
Defense Tech. Info. Ctr. Home Page (use jumper Defenselink and other sites)	http://www.dtic.mil
Department of Justice (jumpers to other Federal Agencies and Criminal Justice)	http://www.usdoj.gov
Department of Veterans Affairs Web Page	http://www.va.gov
DFARS Web Page (Searchable)	http://www.dtic.mil/dfars
DFAS	http://www.dfas.mil/
DIOR Home Page - Procurement Coding Manual/FIPS/CIN	http://web1.whs.osd.mil/dior-home.htm
DOD Claimant Program Number (procurement Coding Manual)	http://web1.whs.osd.mil/dior-home.htm
DOD Contracting Regulations	http://www.dtic.mil/contracts
DOD Home Page	http://www.dtic.mil/defenselink
DOD Instructions and Directives	http://web7.whs.osd.mil/corres.htm
DOD SOCO Web Page	http://www.dtic.mil/defenselink/dodgc/defense_ethics
DOL Wage Determinations	http://www.ceals.usace.army.mil/netahtml/srvc.html
F	
FAC (Federal Register Pages only)	http://www.gsa.gov:80/far/FAC/FACs.html
FAR (GSA)	http://www.arnet.gov/far/
Federal Acquisition Jumpstation	http://procure.msfc.nasa.gov/fed-proc/home.html
Federal Acquisition Virtual Library (FAR/DFARS, CBD, Debarred list, SIC)	http://159.142.1.210/References/References.html
Federal Employees	http://www.fedweek.com
Federal Register	http://law.house.gov/7.htm
Federal Web Locator	http://www.law.vill.edu//Fed-Agency/fedwebloc.html
FFRDC - Federally Funded R&D Centers	http://web1.whs.osd.mil/dior-home.htm
Financial Management Regulations	http://www.dtic.mil/comptroller/fmr/
Financial Operations (Jumpsites)	http://www.asafm.army.mil
FMS Website	http://www.fms.treas.gov/c570.html
G	
GAO Documents Online Order	http://gao.gov/cgi-bin/ordtab.pl
GAO Home Page	http://www.gao.gov
GAO Comptroller General Decisions (Allows Westlaw/Lexis like searches)	http:/www.access.gpo.gov/su_docs/aces/aces170.shtml?desc017.html

General Services administration	http://gsa.gov
GovBot Database of Government Web sites	http://www.business.gov
GovCon - Contract Glossary	http://www.govcon.com/information/gcterms.html
Gov't Information Locator Services Index U.S. Army Publications	http://www-usappc.hoffman.army.mil/gils/gils.html
GSA Legal Web Page	http://www.legal.gsa.gov
J	
Joint Publications	http://www.dtic.mil/doctrine
Joint Travel Regulations (JTR)	http://www.dtic.mil/perdiem/jtr.html
Justice Department	http://www.usdoj.gov
L	
Laws, Regulations, Executive Orders, & Policy	http://159.142.1.210/References/References.html#policy, etc
Library (jumpers to various contract law sites - FAR/FAC/DFARS/AFARS)	http://acqnet.sarda.army.mil/library/default.htm
Library of Congress Web Page	http://lcweb.loc.gov
M	
Marine Corps Home Page	http://www.usmc.mil
N	
NAF Financial (MWR)	http://www.asafm.army.mil/fo/naf/naf.htm
National Performance Review Library	http://www.npr.gov/library/index.html
NAVSUP Home Page	http://www.navsup.navy.mil/NAVSUP/home.htm
Navy Acquisition Reform	http://www.acq-ref.navy.mil/
Navy Home Page	http://www.navy.mil
O	
OGC Contract Law Division	http://www.ogc.doc.gov/OGC/CLD.HTML
OGE Ethics Advisory Opinions	http://fedbbs.access.gpo.gov/libs/oge_opin.html
OGE Web Page (Ethics training materials and opinions)	http://www.access.gpo.gov/usoge
Office of Acquisition Policy	http://www.gsa.gov/staff/ap.htm
Office of Deputy ASA (Financial Ops) Information on ADA violations/NAF Links/Army Pubs/Various other sites	http://www.asafm.army.mil/financial.htm
Office of General Counsel – U.S. Department of Commerce	http://www.ogc.doc.gov/OGC/CLD.HTML
Office of Management and Budget (OMB)	http://www.access.gpo.gov/su_docs/budget/index/html
Office of Management and Budget Circulars	http://www.whitehouse.gov/WH/EOP/omb/html
OFPP (Guidelines for Oral Presentations)	http://www.doe.gov/html/procure/oral.html
OFPP (Best Practices Guides)	http://www.arnet.gov/BestP/BestP.html
Operational Contracting Home Page	http://www.afmc.wpafb.af.mil/organizations/HQ-AFMC/PK/pko/index.htm
P	
Policy Works - Per Diem Tables	http://www.policyworks.gov/org/main/mt/homepage/mtt/perdiem/perd97.htm
Producer Price Index	http://www.bis.gov/ppihome.htm
Purchase Card Program	http://purchasecard.dfas.mil

S	
SBA Government Contracting Home Page	http://www.sbaonline.sba.gov/GC/
Service Contract Act Directory of Occupations	http://www.dol.gov//dol/esa/public/regs/compliance/whd/wage/main.htm
SIC	http://spider.osha.gov/oshstats/sicser.html
T	
Taxes/Insurance	http://www.payroll-taxes.com
Taxpayers Against Fraud – False Claims Act Legal Center	http://www.taf.org
U	
U.S. Agency for International Development	http://www.info.usaid.gov/
U.S. Court of Appeals for the Federal Ciruit	http://www.fedcir.gov
U.S. Congress on the Net-Legislative Info	http://thomas.loc.gov/
U.S. Code	http://law.house.gov/usc.htm
W	
White House	http://www.whitehouse.gov

2. TJAGSA Materials Available through the Defense Technical Information Center

Each year The Judge Advocate General's School, U.S. Army (TJAGSA), publishes deskbooks and materials to support resident course instruction. Much of this material is useful to judge advocates and government civilian attorneys who are unable to attend courses in their practice areas, and TJAGSA receives many requests each year for these materials. Because the distribution of these materials is not in its mission, TJAGSA does not have the resources to provide these publications.

To provide another avenue of availability, some of this material is available through the Defense Technical Information Center (DTIC). An office may obtain this material in two ways. The first is through the installation library. Most libraries are DTIC users and would be happy to identify and order requested material. If the library is not registered with the DTIC, the requesting person's office/organization may register for the DTIC's services.

If only unclassified information is required, simply call the DTIC Registration Branch and register over the phone at (703) 767-8273. If access to classified information is needed, then a registration form must be obtained, completed, and sent to the Defense Technical Information Center, 8725 John J. Kingman Road, Suite 0944, Fort Belvoir, Virginia 22060-6218; telephone (commercial) (703) 767-9087, (DSN) 427-9087, toll-free 1-800-225-DTIC, menu selection 6, option 1; fax (commercial) (703) 767-8228; fax (DSN) 426-8228; or e-mail to reghelp@dtic.mil.

If there is a recurring need for information on a particular subject, the requesting person may want to subscribe to the Current Awareness Bibliography Service, a profile-based product, which will alert the requestor, on a biweekly basis, to the documents that have been entered into the Technical Reports Database which meet his profile parameters. This bibliography is available electronically via e-mail at no cost or in hard copy at an annual cost of $25 per profile.

Prices for the reports fall into one of the following four categories, depending on the number of pages: $6, $11, $41, and $121. The majority of documents cost either $6 or $11. Lawyers, however, who need specific documents for a case may obtain them at no cost.

For the products and services requested, one may pay either by establishing a DTIC deposit account with the National Technical Information Service (NTIS) or by using a VISA, MasterCard, or American Express credit card. Information on establishing an NTIS credit card will be included in the user packet.

There is also a DTIC Home Page at http://www.dtic.mil to browse through the listing of citations to unclassified/unlimited documents that have been entered into the Technical Reports Database within the last eleven years to get a better idea of the type of information that is available. The complete collection includes limited and classified documents as well, but those are not available on the Web.

Those who wish to receive more information about the DTIC or have any questions should call the Product and Services Branch at (703)767-9087, (DSN) 427-8267, or toll-free 1-800-225-DTIC, menu selection 6, option 1; or send an e-mail to bcorders@dtic.mil.

Contract Law

AD A301096	Government Contract Law Deskbook, vol. 1, JA-501-1-95 (631 pgs).
AD A301095	Government Contract Law Deskbook, vol. 2, JA-501-2-95 (503 pgs).
AD A265777	Fiscal Law Course Deskbook, JA-506-93 (471 pgs).

Legal Assistance

AD A341841	Soldiers' and Sailors' Civil Relief Act Guide, JA-260-98 (224 pgs).
AD A333321	Real Property Guide—Legal Assistance, JA-261-93 (180 pgs).
AD A326002	Wills Guide, JA-262-97 (150 pgs).
AD A308640	Family Law Guide, JA 263-96 (544 pgs).
AD A283734	Consumer Law Guide, JA 265-94 (613 pgs).
AD A323770	Uniformed Services Worldwide Legal Assistance Directory, JA-267-97 (60 pgs).
*AD A332897	Tax Information Series, JA 269-97 (116 pgs).
AD A329216	Legal Assistance Office Administration Guide, JA 271-97 (206 pgs).
AD A276984	Deployment Guide, JA-272-94 (452 pgs).
AD A313675	Uniformed Services Former Spouses' Protection Act, JA 274-96 (144 pgs).
AD A326316	Model Income Tax Assistance Guide, JA 275-97 (106 pgs).
AD A282033	Preventive Law, JA-276-94 (221 pgs).

Administrative and Civil Law

AD A328397	Defensive Federal Litigation, JA-200-97 (658 pgs).
AD A327379	Military Personnel Law, JA 215-97 (174 pgs).
AD A255346	Reports of Survey and Line of Duty Determinations, JA-231-92 (90 pgs).
AD A301061	Environmental Law Deskbook, JA-234-95 (268 pgs).
AD A338817	Government Information Practices, JA-235-98 (326 pgs).
AD A325989	Federal Tort Claims Act, JA 241-97 (136 pgs).
AD A332865	AR 15-6 Investigations, JA-281-97 (40 pgs).

Labor Law

AD A323692	The Law of Federal Employment, JA-210-97 (290 pgs).
AD A336235	The Law of Federal Labor-Management Relations, JA-211-98 (320 pgs).

Developments, Doctrine, and Literature

AD A332958	Military Citation, Sixth Edition, JAGS-DD-97 (31 pgs).

Criminal Law

AD A302672	Unauthorized Absences Programmed Text, JA-301-95 (80 pgs).
AD A274407	Trial Counsel and Defense Counsel Handbook, JA-310-95 (390 pgs).
AD A302312	Senior Officer Legal Orientation, JA-320-95 (297 pgs).
AD A302445	Nonjudicial Punishment, JA-330-93 (40 pgs).
AD A302674	Crimes and Defenses Deskbook, JA-337-94 (297 pgs).
AD A274413	United States Attorney Prosecutions, JA-338-93 (194 pgs).

International and Operational Law

AD A284967	Operational Law Handbook, JA-422-95 (458 pgs).

Reserve Affairs

AD B136361	Reserve Component JAGC Personnel Policies Handbook, JAGS-GRA-89-1 (188 pgs).

The following United States Army Criminal Investigation Division Command publication is also available through the DTIC:

AD A145966	Criminal Investigations, Violation of the U.S.C. in Economic Crime Investigations, USACIDC Pam 195-8 (250 pgs).

* Indicates new publication or revised edition.

3. Regulations and Pamphlets

a. The following provides information on how to obtain Manuals for Courts-Martial, DA Pamphlets, Army Regulations, Field Manuals, and Training Circulars.

(1) The United States Army Publications Distribution Center (USAPDC) at St. Louis, Missouri, stocks and distributes Department of the Army publications and blank forms that have Army-wide use. Contact the USAPDC at the following address:

Commander
U.S. Army Publications
Distribution Center
1655 Woodson Road
St. Louis, MO 63114-6181
Telephone (314) 263-7305, ext. 268

(2) Units must have publications accounts to use any part of the publications distribution system. The following extract from *Department of the Army Regulation 25-30, The Army Integrated Publishing and Printing Program*, paragraph 12-7c (28 February 1989), is provided to assist Active, Reserve, and National Guard units.

b. The units below are authorized [to have] publications accounts with the USAPDC.

(1) *Active Army*.

(a) *Units organized under a Personnel and Administrative Center (PAC)*. A PAC that supports battalion-size units will request a consolidated publications account for the entire battalion except when subordinate units in the battalion are geographically remote. To establish an account, the PAC will forward a DA Form 12-R (Request for Establishment of a Publications Account) and supporting DA 12-series forms through their Deputy Chief of Staff for Information Management (DCSIM) or DOIM (Director of Information Management), as appropriate, to the St. Louis USAPDC, 1655 Woodson Road, St. Louis, MO 63114-6181. The PAC will manage all accounts established for the battalion it supports. (Instructions for the use of DA 12-series forms and a reproducible copy of the forms appear in *DA Pam 25-33, The Standard Army Publications (STARPUBS) Revision of the DA 12-Series Forms, Usage and Procedures (1 June 1988)*.

(b) *Units not organized under a PAC*. Units that are detachment size and above may have a publications account. To establish an account, these units will submit a DA Form 12-R and supporting DA Form 12-99 forms through their DCSIM or DOIM, as appropriate, to the St. Louis USAPDC, 1655 Woodson Road, St. Louis, MO 63114-6181.

(c) *Staff sections of Field Operating Agencies (FOAs), Major Commands (MACOMs), installations, and combat divisions*. These staff sections may establish a single account for each major staff element. To establish an account, these units will follow the procedure in (b) above.

(2) *Army Reserve National Guard (ARNG) units that are company size to State adjutants general*. To establish an account, these units will submit a DA Form 12-R and supporting DA Form 12-99 through their State adjutants general to the St. Louis USAPDC, 1655 Woodson Road, St. Louis, MO 63114-6181.

(3) *United States Army Reserve (USAR) units that are company size and above and staff sections from division level and above*. To establish an account, these units will submit a DA Form 12-R and supporting DA Form 12-99 forms through their supporting installation and CONUSA to the St. Louis USAPDC, 1655 Woodson Road, St. Louis, MO 63114-6181.

(4) *Reserve Officer Training Corps (ROTC) Elements*. To establish an account, ROTC regions will submit a DA Form 12-R and supporting DA Form 12-99 forms through their supporting installation and Training and Doctrine Command (TRADOC) DCSIM to the St. Louis USAPDC, 1655 Woodson Road, St. Louis, MO 63114-6181. Senior and junior ROTC units will submit a DA Form 12-R and supporting DA 12-series forms through their supporting installation, regional headquarters, and TRADOC DCSIM to the St. Louis USAPDC, 1655 Woodson Road, St. Louis, MO 63114-6181.

Units not described above also may be authorized accounts. To establish accounts, these units must send their requests through their DCSIM or DOIM, as appropriate, to Commander, USAPPC, ATTN: ASQZ-LM, Alexandria, VA 22331-0302.

c. Specific instructions for establishing initial distribution requirements appear in *DA Pam 25-33*.

If your unit does not have a copy of DA Pam 25-33, you may request one by calling the St. Louis USAPDC at (314) 263-7305, extension 268.

(1) Units that have established initial distribution requirements will receive copies of new, revised, and changed publications as soon as they are printed.

(2) Units that require publications that are not on their initial distribution list can requisition publications using the Defense Data Network (DDN), the Telephone Order Publications System (TOPS), the World Wide Web (WWW), or the Bulletin Board Services (BBS).

(3) Civilians can obtain DA Pams through the National Technical Information Service (NTIS), 5285 Port Royal Road, Springfield, VA 22161. You may reach this office at (703) 487-4684 or 1-800-553-6487.

(4) Air Force, Navy, and Marine Corps judge advocates can request up to ten copies of DA Pamphlets by writing to USAPDC, 1655 Woodson Road, St. Louis, MO 63114-6181.

4. The Legal Automation Army-Wide System Bulletin Board Service

a. The Legal Automation Army-Wide System (LAAWS) operates an electronic on-line information service (often referred to as a BBS, Bulletin Board Service) primarily dedicated to serving the Army legal community, while also providing Department of Defense (DOD) wide access. Whether you have Army access or DOD-wide access, all users will be able to download the TJAGSA publications that are available on the LAAWS BBS.

b. Access to the LAAWS BBS:

(1) Access to the LAAWS On-Line Information Service (OIS) is currently restricted to the following individuals (who can sign on by dialing commercial (703) 806-5772 or DSN 656-5772 or by using the Internet Protocol address 160.147.194.11 or Domain Names jagc.army.mil):

(a) Active Army, Reserve, or National Guard (NG) judge advocates,

(b) Active, Reserve, or NG Army Legal Administrators and enlisted personnel (MOS 71D);

(c) Civilian attorneys employed by the Department of the Army,

(d) Civilian legal support staff employed by the Army Judge Advocate General's Corps;

(e) Attorneys (military or civilian) employed by certain supported DOD agencies (e.g., DLA, CHAMPUS, DISA, Headquarters Services Washington),

(f) All DOD personnel dealing with military legal issues;

(g) Individuals with approved, written exceptions to the access policy.

(2) Requests for exceptions to the access policy should be submitted to:

LAAWS Project Office
ATTN: Sysop
9016 Black Rd., Ste. 102
Fort Belvoir, VA 22060

c. Telecommunications setups are as follows:

(1) The telecommunications configuration for terminal mode is: 1200 to 28,800 baud; parity none; 8 bits; 1 stop bit; full duplex; Xon/Xoff supported; VT100/102 or ANSI terminal emulation. Terminal mode is a text mode which is seen in any communications application other than World Group Manager.

(2) The telecommunications configuration for Worl d Group Manager is:

Modem setup: 1200 to 28,800 baud
(9600 or more recommended)

Novell LAN setup: Server = LAAWSBBS
(Available in NCR only)

TELNET setup: Host = 134.11.74.3
(PC must have Internet capability)

(3) The telecommunications for TELNET/Internet access for users not using World Group Manager is:

IP Address = 160.147.194.11

Host Name = jagc.army.mil

After signing on, the system greets the user with an opening menu. Users need only choose menu options to access and download desired publications. The system will require new users to answer a series of questions which are required for daily use and statistics of the LAAWS OIS. Once users have completed the initial questionnaire, they are required to answer one of two questionnaires to upgrade their access levels. There is one for attorneys and one for legal support staff. Once these questionnaires are fully completed, the user's access is immediately increased. *The Army Lawyer* will publish information on new publications and materials as they become available through the LAAWS OIS.

d. Instructions for Downloading Files from the LAAWS OIS.

(1) Terminal Users

(a) Log onto the OIS using Procomm Plus, Enable, or some other communications application with the com-

munications configuration outlined in paragraph c1 or c3.

(b) If you have never downloaded before, you will need the file decompression utility program that the LAAWS OIS uses to facilitate rapid transfer over the phone lines. This program is known as PKUNZIP. To download it onto your hard drive take the following actions:

(1) From the Main (Top) menu, choose "L" for File Libraries. Press Enter.

(2) Choose "S" to select a library. Hit Enter.

(3) Type "NEWUSERS" to select the NEWUSERS file library. Press Enter.

(4) Choose "F" to find the file you are looking for. Press Enter.

(5) Choose "F" to sort by file name. Press Enter.

(6) Press Enter to start at the beginning of the list, and Enter again to search the current (NEWUSER) library.

(7) Scroll down the list until the file you want to download is highlighted (in this case PKZ110.EXE) or press the letter to the left of the file name. If your file is not on the screen, press Control and N together and release them to see the next screen.

(8) Once your file is highlighted, press Control and D together to download the highlighted file.

(9) You will be given a chance to choose the download protocol. If you are using a 2400 - 4800 baud modem, choose option "1". If you are using a 9600 baud or faster modem, you may choose "Z" for ZMODEM. Your software may not have ZMODEM available to it. If not, you can use YMODEM. If no other options work for you, XMODEM is your last hope.

(10) The next step will depend on your software. If you are using a DOS version of Procomm, you will hit the "Page Down" key, then select the protocol again, followed by a file name. Other software varies.

(11) Once you have completed all the necessary steps to download, your computer and the BBS take over until the file is on your hard disk. Once the transfer is complete, the software will let you know in its own special way.

(2) Client Server Users.

(a) Log onto the BBS.

(b) Click on the "Files" button.

(c) Click on the button with the picture of the diskettes and a magnifying glass.

(d) You will get a screen to set up the options by which you may scan the file libraries.

(e) Press the "Clear" button.

(f) Scroll down the list of libraries until you see the NEWUSERS library.

(g) Click in the box next to the NEWUSERS library. An "X" should appear.

(h) Click on the "List Files" button.

(i) When the list of files appears, highlight the file you are looking for (in this case PKZ110.EXE).

(j) Click on the "Download" button.

(k) Choose the directory you want the file to be transferred to by clicking on it in the window with the list of directories (this works the same as any other Windows application). Then select "Download Now."

(l) From here your computer takes over.

(m) You can continue working in World Group while the file downloads.

(3) Follow the above list of directions to download any files from the OIS, substituting the appropriate file name where applicable.

e. To use the decompression program, you will have to decompress, or "explode," the program itself. To accomplish this, boot-up into DOS and change into the directory where you downloaded PKZ110.EXE. Then type PKZ110. The PKUNZIP utility will then execute, converting its files to usable format. When it has completed this process, your hard drive will have the usable, exploded version of the PKUNZIP utility program, as well as all of the compression or decompression utilities used by the LAAWS OIS. You will need to move or copy these files into the DOS directory if you want to use them anywhere outside of the directory you are currently in (unless that happens to be the DOS directory or root directory). Once you have decompressed the PKZ110 file, you can use PKUNZIP by typing PKUNZIP <filename> at the C:\> prompt.

5. TJAGSA Publications Available Through the LAAWS BBS

The following is a current list of TJAGSA publications available for downloading from the LAAWS BBS (note that the date UPLOADED is the month and year the file was made available on the BBS; publication date is available within each publication):

FILE NAME	UPLOADED	DESCRIPTION
3MJM.EXE	January 1998	3d Criminal Law Military Justice Managers Deskbook.
4ETHICS.EXE	January 1998	4th Ethics Counselors Workshop, October 1997.
8CLAC.EXE	September 1997	8th Criminal Law Advocacy Course Deskbook, September 1997.
21IND.EXE	January 1998	21st Criminal Law New Developments Deskbook.
22ALMI.EXE	March 1998	22d Administrative Law for Military Installations, March 1998.
46GC.EXE	January 1998	46th Graduate Course Criminal Law Deskbook.
51FLR.EXE	January 1998	51st Federal Labor Relations Deskbook, November 1997.
96-TAX.EXE	March 1997	1996 AF All States Income Tax Guide
97CLE-1.PPT	July 1997	Powerpoint (vers. 4.0) slide templates, July 1997.
97CLE-2.PPT	July 1997	Powerpoint (vers. 4.0) slide templates, July 1997.
97CLE-3.PPT	July 1997	Powerpoint (vers. 4.0) slide templates, July 1997.
97CLE-4.PPT	July 1997	Powerpoint (vers. 4.0) slide templates, July 1997.
97CLE-5.PPT	July 1997	Powerpoint (vers. 4.0) slide templates, July 1997.
97JAOACA.EXE	September 1997	1997 Judge Advocate Officer Advanced Course, August 1997.
97JAOACB.EXE	September 1997	1997 Judge Advocate Officer Advanced Course, August 1997.
97JAOACC.EXE	September 1997	1997 Judge Advocate Officer Advanced Course, August 1997.
98JAOACA.EXE	March 1998	1998 JA Officer Advanced Course, Contract Law, January 1998.
98JAOACB.EXE	March 1998	1998 JA Officer Advanced Course, International and Operational Law, January 1998.
98JAOACC.EXE	March 1998	1998 JA Officer Advanced Course, Criminal Law, January 1998.
98JAOACD.EXE	March 1998	1998 JA Officer Advanced Course, Administrative and Civil Law, January, 1998.
137_CAC.ZIP	November 1996	Contract Attorneys 1996 Course Deskbook, August 1996.
145BC.EXE	January 1998	145th Basic Course Criminal Law Deskbook.
ADCNSCS.EXE	March 1997	Criminal law, National Security Crimes, February 1997.

ALAW.ZIP	June 1990	*The Army Lawyer*/ *Military Law Review* Database ENABLE 2.15. Updated through the 1989 *The Army Lawyer* Index. It includes a menu system and an explanatory memorandum, ARLAWMEM.WPF.
BULLETIN.ZIP	May 1997	Current list of educational television programs maintained in the video information library at TJAGSA and actual class instructions presented at the school (in Word 6.0, May 1997).
CLAC.EXE	March 1997	Criminal Law Advocacy Course Deskbook, April 1997.
CACVOL1.EXE	July 1997	Contract Attorneys Course, July 1997.
CACVOL2.EXE	July 1997	Contract Attorneys Course, July 1997.
EVIDENCE.EXE	March 1997	Criminal Law, 45th Grad Crs Advanced Evidence, March 1997.
FLC_96.ZIP	November 1996	1996 Fiscal Law Course Deskbook, November 1996.
FSO201.ZIP	October 1992	Update of FSO Automation Program. Download to hard only source disk, unzip to floppy, then A:INSTALLA or B:INSTALLB.
JA200.EXE	January 1998	Defensive Federal Litigation, August 1997.
JA210.EXE	January 1998	Law of Federal Employment, May 1997.
JA211.EXE	January 1998	Law of Federal Labor-Management Relations, January 1998.
JA215.EXE	January 1998	Military Personnel Law Deskbook, June 1997.
JA221.EXE	September 1996	Law of Military Installations (LOMI), September 1996.
JA230.EXE	January 1998	Morale, Welfare, Recreation Operations, August 1996.
JA231.ZIP	January 1996	Reports of Survey and Line of Duty Determinations—Programmed Instruction, September 1992 in ASCII text.
JA234.ZIP	January 1996	Environmental Law Deskbook, September 1995.
JA235.EXE	March 1998	Government Information Practices, March 1998.
JA241.EXE	May 1998	Federal Tort Claims Act, April 1998.
JA250.EXE	January 1998	Readings in Hospital Law, January 1997.
JA260.EXE	April 1998	Soldiers' and Sailors' Civil Relief Act Guide, April 1998.
JA261.EXE	January 1998	Real Property Guide, December 1997.
JA262.EXE	January 1998	Legal Assistance Wills Guide, June 1997.
JA263.ZIP	October 1996	Family Law Guide, May 1996.
JA265A.ZIP	January 1996	Legal Assistance Consumer Law Guide—Part I, June 1994.
JA265B.ZIP	January 1996	Legal Assistance Consumer Law Guide—Part II, June 1994.
JA267.EXE	April 1997	Uniformed Services Worldwide Legal Assistance Office Directory, April 1997.

JA269.DOC	March 1998	1997 Tax Information Series (Word 97).
JA269(1).DOC	March 1998	1997 Tax Information Series (Word 6).
JA271.EXE	January 1998	Legal Assistance Office Administration Guide, August 1997.
JA272.ZIP	January 1996	Legal Assistance Deployment Guide, February 1994.
JA274.ZIP	August 1996	Uniformed Services Former Spouses' Protection Act Outline and References, June 1996.
JA275.EXE	January 1998	Model Income Tax Assistance Guide, June 1997.
JA276.ZIP	January 1996	Preventive Law Series, June 1994.
JA281.EXE	January 1998	AR 15-6 Investigations, December 1997.
JA280P1.EXE	March 1998	Administrative & Civil Law Basic Course Handbook, LOMI, March 1998.
JA280P2.EXE	March 1998	Administrative & Civil Law Basic Course Handbook, Claims, March 1998.
JA280P3.EXE	March 1998	Administrative & Civil Law Basic Course Handbook, Personnel Law, March 1998.
JA280P4.EXE	March 1998	Administrative & Civil Law Basic Course Handbook, Legal Assistance, March 1998.
JA280P5.EXE	March 1998	Administrative & Civil Law Basic Course Handbook, Reference, March 1998.
JA285V1.EXE	March 1998	Senior Officers Legal Orientation Deskbook (Core Subjects), March 1998.
JA285V2.EXE	March 1998	Senior Officers Legal Orientation Deskbook (Elective Subjects), March 1998.
JA301.ZIP	January 1996	Unauthorized Absence Programmed Text, August 1995.
JA310.ZIP	January 1996	Trial Counsel and Defense Counsel Handbook, May 1996.
JA320.ZIP	January 1996	Senior Officer's Legal Orientation Text, November 1995.
JA330.ZIP	January 1996	Nonjudicial Punishment Programmed Text, August 1995.
JA337.ZIP	January 1996	Crimes and Defenses Deskbook, July 1994.
JAGBKPT1.ASC	January 1996	JAG Book, Part 1, November 1994.
JAGBKPT2.ASC	January 1996	JAG Book, Part 2, November 1994.
JAGBKPT3.ASC	January 1996	JAG Book, Part 3, November 1994.
JAGBKPT4.ASC	January 1996	JAG Book, Part 4, November 1994.
NEW DEV.EXE	March 1997	Criminal Law New Developments Course Deskbook, November 1996.
OPLAW97.EXE	May 1997	Operational Law Handbook 1997.
RCGOLO.EXE	January 1998	Reserve Component General Officer Legal Orientation Course, January 1998.
TAXBOOK1.EXE	March 1998	1997 Tax CLE, Part 1.
TAXBOOK2.EXE	January 1998	1997 Tax CLE, Part 2.

TAXBOOK3.EXE	January 1998	1997 Tax CLE, Part 3.
TAXBOOK4.EXE	January 1998	1997 Tax CLE, Part 4.
TJAG-145.DOC	January 1998	TJAGSA Correspondence Course Enrollment Application, October 1997.

Reserve and National Guard organizations without organic computer telecommunications capabilities and individual mobilization augmentees (IMA) having bona fide military needs for these publications may request computer diskettes containing the publications listed above from the appropriate proponent academic division (Administrative and Civil Law; Criminal Law; Contract Law; International and Operational Law; or Developments, Doctrine, and Literature) at The Judge Advocate General's School, Charlottesville, VA 22903-1781.

Requests must be accompanied by one 5 1/4 inch or 3 1/2 inch blank, formatted diskette for each file. Additionally, requests from IMAs must contain a statement verifying the need for the requested publications (purposes related to their military practice of law).

Questions or suggestions on the availability of TJAGSA publications on the LAAWS BBS should be sent to The Judge Advocate General's School, Literature and Publications Office, ATTN: JAGS-DDL, Charlottesville, VA 22903-1781. For additional information concerning the LAAWS BBS, contact the System Operator, SSG James Stewart, Commercial (703) 806-5764, DSN 656-5764, or at the following address:

LAAWS Project Office
ATTN: LAAWS BBS SYSOPS
9016 Black Rd, Ste 102
Fort Belvoir, VA 22060-6208

6. *The Army Lawyer* on the LAAWS BBS

The Army Lawyer is available on the LAAWS BBS. You may access this monthly publication as follows:

a. To access the LAAWS BBS, follow the instructions above in paragraph 4. The following instructions are based on the Microsoft Windows environment.

(1) Access the LAAWS BBS "Main System Menu" window.

(2) Double click on "Files" button.

(3) At the "Files Libraries" window, click on the "File" button (the button with icon of 3" diskettes and magnifying glass).

(4) At the "Find Files" window, click on "Clear," then highlight "Army_Law" (an "X" appears in the box next to "Army_Law"). To see the files in the "Army_Law" library, click on "List Files."

(5) At the "File Listing" window, select one of the files by highlighting the file.

a. Files with an extension of "ZIP" require you to download additional "PK" application files to compress and decompress the subject file, the "ZIP" extension file, before you read it through your word processing application. To download the "PK" files, scroll down the file list to where you see the following:

PKUNZIP.EXE
PKZIP110.EXE
PKZIP.EXE
PKZIPFIX.EXE

b. For each of the "PK" files, execute your download task (follow the instructions on your screen and download each "PK" file into the same directory. *NOTE: All "PK"_files and "ZIP" extension files must reside in the same directory after downloading.* For example, if you intend to use a WordPerfect word processing software application, you can select "c:\wp60\wpdocs\ArmyLaw.art" and download all of the "PK" files and the "ZIP" file you have selected. You do not have to download the "PK" each time you download a "ZIP" file, but remember to maintain all "PK" files in one directory. You may reuse them for another downloading if you have them in the same directory.

(6) Click on "Download Now" and wait until the Download Manager icon disappears.

(7) Close out your session on the LAAWS BBS and go to the directory where you downloaded the file by going to the "c:\" prompt.

For example: c:\wp60\wpdocs
or C:\msoffice\winword

Remember: The "PK" files and the "ZIP" extension file(s) must be in the same directory!

(8) Type "dir/w/p" and your files will appear from that directory.

(9) Select a "ZIP" file (to be "unzipped") and type the following at the c:\ prompt:

PKUNZIP JUNE.ZIP

At this point, the system will explode the zipped files and they are ready to be retrieved through the Program Manager (your word processing application).

b. Go to the word processing application you are using

(WordPerfect, MicroSoft Word, Enable). Using the retrieval process, retrieve the document and convert it from ASCII Text (Standard) to the application of choice (WordPerfect, Microsoft Word, Enable).

c. Voila! There is the file for *The Army Lawyer*.

d. In paragraph 4 above, *Instructions for Downloading Files from the LAAWS OIS* (section d(1) and (2)), are the instructions for both Terminal Users (Procomm, Procomm Plus, Enable, or some other communications application) and Client Server Users (World Group Manager).

e. Direct written questions or suggestions about these instructions to The Judge Advocate General's School, Literature and Publications Office, ATTN: DDL, Mr. Charles J. Strong, Charlottesville, VA 22903-1781. For additional assistance, contact Mr. Strong, commercial (804) 972-6396, DSN 934-7115, extension 396, or e-mail stroncj@hqda.army.mil.

7. Articles

The following information may be useful to judge advocates:

Nathan J. Diament, *Foreign Relations and Our Domestic Constitution: Broadening the Discourse*, 30 CONN. L. REV. 911.

Gordon L. Vaughan, United States v. Scheffer*: A Review of the Opinion of the United States Supreme Court*, 31 POLYGRAPH 1.

8. TJAGSA Information Management Items

The Judge Advocate General's School, United States Army, continues to improve capabilities for faculty and staff. We have installed new projectors in the primary classrooms and pentiums in the computer learning center. We have also completed the transition to Win95 and Lotus Notes. We are now preparing to upgrade to Microsoft Office 97 throughout the school.

The TJAGSA faculty and staff are available through the MILNET and the Internet. Addresses for TJAGSA personnel are available by e-mail at jagsch@hqda.army.mil or by calling the Information Management Office.

Personnel desiring to call TJAGSA can dial via DSN 934-7115 or use our toll free number, 800-552-3978; the receptionist will connect you with the appropriate department or directorate. For additional information, please contact our Information Management Office at extension 378. Lieutenant Colonel Godwin.

9. The Army Law Library Service

With the closure and realignment of many Army installations, the Army Law Library Service (ALLS) has become the point of contact for redistribution of materials purchased by ALLS which are contained in law libraries on those installations. *The Army Lawyer* will continue to publish lists of law library materials made available as a result of base closures.

Law librarians having resources purchased by ALLS which are available for redistribution should contact Ms. Nelda Lull, JAGS-DDL, The Judge Advocate General's School, United States Army, 600 Massie Road, Charlottesville, VA 22903-1781. Telephone numbers are DSN: 934-7115, ext. 394, commercial: (804) 972-6394, or facsimile: (804) 972-6386.