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The Use of Government-Owned Vehicles for the Comfort or Health and Welfare of Personnel in Deployed or Remote Locations

Major Thomas H. Dobbs[*]

I. Introduction: The Beginning of the Story

My interest in the topic of government-owned vehicles (GOVs)[1] began at Gwangju Air Base, Republic of Korea.[2] It was around 2300 hours of my first night in country, when my commander woke me up from a jet-lagged stupor. He wanted to know if it was "legal" to transport a bus full of Airmen in the morning to the base exchange at Kunsan Air Base to replenish toiletry and clothing items destroyed during some flooding in our "tent city." He also thought the Airmen needed to recharge their batteries at Kunsan's new gym and its other morale, welfare and recreational (MWR) facilities. I said, "Yes," and spent the rest of my deployment justifying the commander's decision to much of the Peninsula.

This article familiarizes judge advocates (JAs) with the proper use of GOVs for "life support" activities in a deployed or remote location. Life support activities, in the context of this discussion, consist of GOV transportation to those places that are "required for the comfort or health and welfare of the member."[3] Life support activities include things such as the chaplain's program, inter-installation athletic competitions, the base exchange/commissary, and MWR programs under certain circumstances.[4] The concepts discussed will help commanders improve mission performance by ensuring that their personnel obtain lawful transportation to morale enhancing life support activities. Of course, the basic rules and principles governing the use of GOVs are the same whether you are located at a large continental United States (CONUS) installation or at a small outpost in Iraq. The application of those rules to a particular set of facts and circumstances at a deployed or remote location, however, can often lead to more permissive results. A "no" at Fort Hood might be a "yes" at Camp Victory.[5] Moreover, several provisions within the rules specifically provide for uses of GOVs in a deployed or remote location that are not available at an adequately serviced CONUS installation.

This article begins by providing a brief overview of the statutory rule that GOVs may only be utilized for "official use."[6] The discussion explains the key role played by commanders when exercising their discretion in determining what qualifies as official use. The ensuing sections of the article then analyze the regulations that authorize GOVs to be used for life support activities. To facilitate the discussion, the article breaks down life support activities into two general categories of non-recreational and recreational. The bulk of the discussion analyzes when GOVs may be used for non-recreational and recreational life support activities. Next, the article explains how the Department of Defense (DOD) guidelines for the spending of appropriated funds (APF) on MWR impose certain constraints on the ways that GOVs can be used for life support activities. Practical steps will be discussed on how to provide GOV transportation for MWR activities without running afoul of these rules. Finally, the conclusion summarizes the main learning points through a brief discussion of the Gwangju Air Base scenario from the opening paragraph.

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[1] A GOV, also known as a nontactical vehicle (NTV), includes a vehicle designed and operated principally for highway transportation of property or passengers, but does not include a vehicle designed or used for military field training, combat, or tactical purposes. *See* U.S. DEP'T OF DEFENSE, REG. 4500.36-R, MANAGEMENT, ACQUISITION, AND USE OF MOTOR VEHICLES para. AP4.37 (16 Mar. 2007) [hereinafter DOD REG. 4500.36-R].

[2] Gwangju Air Base is a facility of the Republic of Korea Air Force and is located in the bottom southwest corner of the South Korean Peninsula.

[3] DOD REG. 4500.36-R, *supra* note 1, para. C2.5.4.2.

[4] *See id.* para. C5.7.1.

[5] Camp Victory, Baghdad, Iraq.

[6] *See* 31 U.S.C.S. § 1344(a)(1) (2007) ("Funds available to a Federal agency, by appropriation or otherwise, may be expended by the Federal agency for the maintenance, operation, or repair of any passenger carrier only to the extent that such carrier is used to provide transportation for official purposes").

II. The Rule: Official Use

The rule governing the use of GOVs is simple: the use of GOVs is restricted to "official purposes" only.[7] The correct application of the rule requires an understanding of the crucial role played by the commander in determining what is an official use.

A. The Commander's "Official Use Determination"

"The determination as to whether a particular use is for official purposes is a matter of administrative discretion to be exercised within applicable law and regulations."[8] In the military, commanders (installation level commanders or higher, depending on the use of the GOVs) determine what constitutes official use of motor vehicles.[9] "In making such a determination, consideration shall be given to all pertinent factors, including whether the transportation is: (1) essential to the successful completion of a DOD function, activity or operation, and (2) consistent with the purpose for which the motor vehicle was acquired."[10] GOVs may not be "provided by the Department of Defense for the purpose of conducting personal business or engaging in other activities of a personal nature by military or civilian personnel, members of their families, or others."[11]

Each military Service has enacted its own regulatory guidance for the use of GOVs.[12] In a few instances, this guidance is more restrictive[13] than the parameters prescribed by the *DOD Regulation 4500.36-R, Management, Acquisition, and Use of Motor Vehicles* (*DOD Reg. 4500.36-R*).[14] In general, however, each Service's regulation more or less adopts the DOD guidance without stricter limitations, though often with greater detail.[15] For example, the applicable Air Force Instruction provides a helpful four-part test to assist commanders in making an official use determination in those situations when the proposed use is not already expressly authorized by the regulation.[16] *Army Regulation 58-1*, on the other hand, generally

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[7] *See id*.; DOD REG. 4500.36-R, *supra* note 1, para. C2.5 (directing use of GOVs "shall be restricted to official purposes only"); Pub. Contracts and Prop. Mgmt., 41 C.F.R. § 102-34.220 (2005) ("using a motor vehicle to perform your agency's mission(s), as authorized by your agency").

[8] *See* DOD REG. 4500.36-R, *supra* note 1, para. C2.5.1.

[9] *See* U.S. DEP'T OF ARMY, REG. 58-1, MOTOR TRANSPORTATION-GENERAL: MANAGEMENT, ACQUISITION, AND USE OF MOTOR VEHICLES paras. 5-4(b) and 5-5(b) (10 Aug. 2004) [hereinafter AR 58-1]; U.S. DEP'T OF THE AIR FORCE, INSTR. 24-301, TRANSPORTATION: VEHICLE OPERATIONS para. 2.5 (1 Nov. 2001) [hereinafter AFI 24-301]; U.S. MARINE CORPS, ORDER P11240.106B, GARRISON MOBILE EQUIPMENT para. 2003.2.b. (5 Jan. 2000) [hereinafter MCO P11240.106B].

[10] DOD REG. 4500.36-R, *supra* note 1, para. C2.5.1. "When questions arise about the official use of a motor vehicle, they shall be resolved in favor of strict compliance with statutory provisions . . . ." *Id.* para. C2.5.

[11] *Id.* para. C2.5.3. *See, e.g.*, Aiu v. Dep't of Justice, No. 96-3289, 1996 U.S. App. LEXIS 27124 (Fed. Cir. Oct. 16, 1996) (holding unlawful to commute between work and law school in a GOV); Devine v. Nutt, 718 F.2d 1048 (Fed. Cir. 1983) (holding unlawful to use GOV while on patrol duty to drive by a residence to pick up beer and deliver to the command center); Miles v. Dep't of the Army, 55 M.S.P.R. 633, 1992 MSPB LEXIS 1652 (Nov. 27, 1992) (holding unlawful to drive a GOV into a restricted area for the purpose of killing a deer).

[12] *See* AR 58-1, *supra* note 9; AFI 24-301, *supra* note 9; U.S. DEP'T OF THE NAVY, SEC'Y OF THE NAVY, INSTR. 11240.8G, MANAGEMENT OF CIVIL ENGINEERING SUPPORT EQUIPMENT (CESE) IN NAVY (14 Sept. 1995) [hereinafter SECNAVINSTR 11240.8G]; MCO P11240.106B, *supra* note 9.

[13] "The Army reserves the right to make certain provisions of [GOV] use more restrictive than the current DOD policy. Unless specifically stated within that policy, or within this regulation, the current DOD policy will apply." AR 58-1, *supra* note 9, para. 2-3. See the discussion at page 7 for an example where the Air Force made its instruction more restrictive than *DOD Reg. 4500.36-R* by not authorizing a no-fare shuttle bus exception for "isolated sites."

[14] DOD REG. 4500.36-R, *supra* note 1.

[15] The Navy's *SECNAV Instr. 11240.8G*, in fact, simply adopted *DOD Reg. 4500.36-R* verbatim via incorporation. SECNAVINSTR 11240.8G, *supra* note 12.

[16] *Air Force Instruction 24-301*, paragraph 2.5 states:

> When guidance does not specifically fit a request for transportation support, commanders will use the following factors when making official use determinations:
>
> 2.5.1 Is the purpose of the trip official?
>
> 2.5.2 Does the request have the potential to create a perception that will reflect unfavorably on the Air Force or cause public criticism?
>
> 2.5.3 Will the request impact on mission requirements?
>
> 2.5.4 Is commercial or D[O]D scheduled transportation available? It is important to not that the Air Force does not provide transportation support that competes with commercial services.

takes a more hands-off approach and simply states that the use of GOVs "is restricted to official purposes only."[17] Additional important guidance for what constitutes official use of an Army GOV is found in the Secretary of the Army Travel Policy.[18]

1. Expressly Authorized Uses Are Non-Exclusive

Each Service regulation governing the use of GOVs includes a list of expressly authorized uses. When reading these Service regulations, it is important to remember that the lists of expressly authorized uses are not exclusive.[19] These lists are for guidance purposes only. Just because a use is not expressly authorized does not necessarily mean that it cannot be done. While the well-beaten track may be the safest path, the needs of the mission may require adventuring beyond the list of common uses. Nobody needs a lawyer to help them read a list, and rest assured, straightforward uses are not the ones a JA will be called upon to arbitrate. When faced with a situation where the official purpose of the proposed GOV use is unclear, the most important element to analyze is commander's intent.

2. Commander's Intent

The commander's intent for the use of the vehicle is critical to all GOV official use determinations. The law gives great deference to "administrative discretion" in determining what constitutes official use.[20] As a result, if a proposed use is not expressly authorized by service guidance, the practitioner must engage the commander with approval authority in order to obtain his command intent for the use of the vehicle. In turn, the commander must determine whether the proposed use is for the purpose of furthering the unit's mission.[21] This determination must be made on a case-by-case basis.[22] Once the commander makes a positive official use determination, the use is permissible as long as it is not prohibited by applicable laws, regulations, or policies.

The importance of commander's intent cannot be overemphasized. Inevitably in close-call situations, the difference between an authorized and an unlawful use of a GOV hinges on whether the government employee sought permission from the appropriate agency supervisor. Case law and Comptroller General opinions are full of examples where the government employee was sanctioned for failing to seek permission to use a GOV when the official nature of the use was unclear.[23] For that reason, it is imperative to seek the commander's permission to use a GOV for activities that are not expressly authorized by service regulations.[24]

AFI 24-301, *supra* note 9, para. 2.5.

[17] AR 58-1, *supra* note 9, para. 2-3.

[18] U.S. DEP'T OF ARMY, DIR. 2007-01, SEC'Y OF THE ARMY POLICY FOR TRAVEL BY DEPARTMENT OF THE ARMY OFFICIALS WITH SUPPLEMENTARY GUIDANCE FOR ARMY PERSONNEL IN THE NATIONAL CAPITAL REGION (25 Jan. 2007), *available at* http://www.apd.army.mil/pdffiles/ad2007_01.pdf. Unique among the Services, the Army Travel Policy expressly authorizes the use of GOVs to transport Army personnel who are not participating in the ceremony, to changes of command, promotions, retirements, and unit activations/deactivations. *Id.* para 14.e(2).

[19] AFI 24-301, *supra* note 9, para. 2.5 (discussing guidance that the U.S. Air Force gives commanders for determining whether proposed uses are for an official purpose when they are not expressly authorized).

[20] *See* DOD REG. 4500.36-R, *supra* note 1, para. C2.5.1; Fed. Bureau of Investigation, B-195073, 1979 U.S. Comp. Gen. LEXIS 1777, at *2 (Nov. 21, 1979) ("The control over the use of government vehicles is primarily a matter of administrative discretion to be exercised by the agency concerned within the framework of applicable laws.") (citation omitted); Fed. Energy Regulatory Comm'n, 71 Comp. Gen. 469, at *1 (1992) (Federal Energy Regulatory Commission's limited use of vehicle resources "to transport students to and from the Commission's headquarters to participate in educational programs [was] within the bounds of its administrative discretion to support civic, charitable, and similar community support activities.").

[21] *See* DOD REG. 4500.36-R, *supra* note 1, para. C2.5.

[22] Individual Mobilization Augmentee (IMA) Transportation Entitlements, Op. JAG, Air Force, No. 1996/57 (12 Apr. 1996) [hereinafter Op. JAG, Air Force, No. 1996/57] (opining the "determination is a matter of administrative discretion and must be made on a case-by-case basis").

[23] *See, e.g.*, Cent. Intelligence Agency, B-275365, 1996 U.S. Comp. Gen. LEXIS 625 (Dec. 17, 1996).

> [d]etermination that attendance at a funeral constitutes official business must be made by the agency head or a delegate authorized to make that determination. . . . "We would expect . . . that before an employee is authorized to travel to a funeral as the official agency representative, the matter would be reviewed and the authorization made at an appropriate level of the agency."

Id. at *6 (citation omitted).

[24] This recommendation also applies to those uses which are expressly authorized only with the approval of the appropriate level commander.

In making his decision, the commander must affirmatively determine that the use of the GOV is for an official purpose. This process is especially critical where the proposed activity could rationally be seen as serving both mission and non-mission related purposes. The best practice is to document the commander's intent in a detailed memorandum that explains why the particular facts and circumstances of the mission support a determination of official use. Drafting the commander's memorandum, of course, is where lawyers earn their pay. At least one excellent reason to memorialize the commander's official use determination is that the penalties for unlawfully using a GOV are stiff.

B. Penalties For Misuse

The ramifications for misusing GOVs include administrative, criminal, and financial penalties. A civilian employee who willfully uses or authorizes the use of a GOV "for other than official purposes shall be suspended from duty by the head of the department concerned, without compensation, for not less than one month and shall be suspended for a longer period or summarily removed from office if circumstances warrant."[25] Further, any person who knowingly misuses GOVs "may be subject to criminal prosecution and, upon conviction, to fines or imprisonment."[26] Military personnel who willfully use or authorize the use of a GOV for other than an official purpose can be disciplined under provisions of the Uniform Code of Military Justice.[27] If the misuse occurred during a temporary duty assignment, the misfeasor may also be held "responsible for any additional cost resulting from unauthorized use . . . ."[28] In short, it is well worth the effort to seek the commander's determination of official use and to thoroughly document his decision. This is especially true when the commander wants to use GOVs for transportation to life support activities. People tend to watch GOVs closely, and questions are sometimes raised when GOVs are used in a non-customary manner.

III. Life Support Activities

Government-owned vehicle transportation to life support activities consists of transportation to those places that are "required for the comfort or health and welfare of the member."[29] Many JAs have deployed overseas to an installation that is too small or new to have an adequate base/post exchange. Aspirin is about the extent of the available drug store goods. Military clothing sales is virtually nonexistent. The commissary consists of a candy and chips rack. Maybe the unit has a Protestant chaplain, but no priest to give Catholic mass. Because there is no barber shop, the troops either have long hair, or bad hair because they are cutting it themselves. Perhaps the unit's morale is sinking because everyone has been working seven-day weeks for the last month and there is nothing fun to do on base. A GOV bus could help your commander solve many of these problems by transporting his personnel to an established installation where these services are provided. Your commander also likes the idea for an MWR trip over the weekend, using a GOV bus. Of course, your commander wants all this transportation to be free to his troops, and he wants you, the JA, to make sure it's legal. A good place to start your legal review is the Code of Federal Regulations (C.F.R.).

A. Public Contracts and Property Management, 41 C.F.R. § 301-10.201 (1998): Definition of "Official Use"

The touchstone regulation that defines the meaning of official use of GOVs is 41 C.F.R. § 301-10.20*1*.[30] This regulation provides commanders tremendous flexibility and discretion when deciding how to utilize their GOVs, especially while on temporary duty or in a remote location. Section 301-10201, C.F.R., provides that GOVs may be used:

> Only for official purposes which include transportation:

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[25] Pub. Contracts and Prop. Mgmt., 41 C.F.R. § 109-6.450, para. (a) (1998); 31 U.S.C. § 1349 (1982); *see also* DOD REG. 4500.36-R, *supra* note 1, para. C1.3.1.1.

[26] 31 U.S.C. § 1349; *see also* United States v. Rose, 31 C.M.R. 726 (A.F.B.R. 1962) (convicting non-commissioned officer of wrongful appropriation for using government truck to transport his personal lumber).

[27] MANUAL FOR COURTS-MARTIAL, UNITED STATES (2002) [hereinafter MCM]. *Id.* pt. IV, ¶ 46c(2)(b) (citing as an example of wrongful appropriation under Article 121, "while driving a government vehicle on a mission to deliver supplies, withholding the vehicle from government service by deviating from the assigned route without authority, to visit a friend in a nearby town and later restore the vehicle to its lawful use"). A charge for failure to obey an order or regulation under Article 92 is another option. *Id.* pt. IV, ¶ 16; *see also* DOD REG. 4500.36-R, *supra* note 1, para. C1.3.1.1.

[28] Pub. Contracts and Prop. Mgmt., 41 C.F.R. § 301-10.202 (2006).

[29] DOD REG. 4500.36-R, *supra* note 1, para. C2.5.4.2.

[30] 41 C.F.R. § 301-10.201 (formerly 41 C.F.R. § 301-2.6(a) (1993)).

(a) Between places of official business;
(b) Between such places and places of temporary lodging when public transportation is unavailable or its use is impractical;
(c) Between either paragraphs (a) or (b) of this section and restaurants, drug stores, barber shops, places of worship, cleaning establishments, and similar places necessary for the *sustenance, comfort, or health* of the employee *to foster the continued efficient performance of Government business*; or
(d) As otherwise authorized by your agency under 31 U.S.C. § 1344.[31]

Subparagraph (c), 41 C.F.R. § 301-10.201 provides federal agencies with a very practical tool to keep its forces on temporary duty fed, healthy, clean cut, spiritually nurtured, and laundered. It potentially authorizes uses of a GOV on temporary and remote duty that would normally be considered of a personal nature, and thus unlawful.[32] The key trigger for the provisions of subparagraph (c) is that the proposed use, which is "necessary for the sustenance, comfort, or health" of the military member, should "foster the continued efficient performance of Government business."[33] It is worth noting that section 301-10.201 does not limit these life support activities to any minimum number of people, or particular size or type of GOV. Thus, at least pursuant to section 301-10.201, either a single military member or a group may potentially utilize a GOV for life support activities. Even more noteworthy is the generous interpretation that the Government Accountability Office (GAO) has given the language of subparagraph (c) in its opinion, *Federal Aviation Administration.*[34]

1. Federal Aviation Administration: Subparagraph (c)

In *Federal Aviation Administration*, the regional administrator in Alaska for the Federal Aviation Administration (FAA) asked for clarification on "whether it may permit employees on temporary duty [two weeks] at a remote duty location [Cold Bay, Alaska] where no other transportation is available to use government vehicles for transportation to and from *recreational* sites during their off-duty hours."[35] The regional administrator reported that Cold Bay was "a small, remote community" and that recreational activities were "limited to satellite television, hiking, hunting, fishing, the Cold Bay Federal Community Services Facility, chapel, Ceramics Club and a Rod and Gun Club."[36] In addition, no public transportation was available and private vehicles were not authorized.[37] The employees used FAA vehicles while performing official duties at Cold Bay, but these GOVs were generally not in use after duty hours.[38] The regional administrator concluded that using the FAA vehicles for travel to recreational sites after duty hours was necessary for the employees' health and welfare, but referred the issue to the GAO for guidance on whether the language of subparagraph (c) of 41 C.F.R. § 301-10.201 extended to recreational activities.[39]

The GAO responded in the affirmative. The Comptroller General opined that, "[w]ith reasonable limitations and safeguards, such use may be authorized under [*subparagraph (c) of 41 C.F.R. § 301-10.201*] of the Federal Travel Regulations that authorizes the use of government-furnished vehicles for transportation to 'places necessary for the sustenance, comfort, or health of the employee to foster continued efficient performance of Government business.'"[40] In reaching its opinion, the Comptroller General reasoned that limited use of GOVs for recreational purposes at Cold Bay, in light of the conditions there, was unobjectionable, "provided the policy contained adequate controls to prevent abuse and ensure accountability."[41] The opinion noted that the application of this provision is a matter "left to a reasonable degree of

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[31] *Id.* (emphasis added).

[32] *See* DOD REG. 4500.36-R, *supra* note 1, para. C2.5.4; Mattos v. Dep't of the Army, No. 93-3203, 1993 U.S. App. LEXIS 26551 (Fed. Cir. Oct. 8, 1993) (upholding thirty day suspension for taking GOV to McDonald's).

[33] *See* 41 C.F.R. § 301-10.201(c).

[34] Fed. Aviation Admin., B-254296, 1993 U.S. Comp. Gen. LEXIS 1134 (Nov. 23, 1993). This opinion is the only legal opinion/decision interpreting 41 C.F.R. § 301-2.6(a) (1993) which is now subparagraph (c) of 41 C.F.R. § 301-10.201.

[35] *Id.* at *1 (emphasis added).

[36] *Id.* at *2.

[37] *Id.*

[38] *Id.*

[39] *Id.* at *3 n.1.

[40] *Id.* at *1.

[41] *Id.* at *3.

agency discretion."[42] Boosted by the Comptroller General's expansive interpretation in *Federal Aviation Administration*, the ramifications of subparagraph (c) of 41 C.F.R. § 301-10.201 on the use of GOVs in the military for life support activities are significant.

2. The Ramifications of Subparagraph (c)

The ramifications of subparagraph (c) of 41 C.F.R. § 301-10.201 are two-fold. First, subparagraph (c) is the foundation for the DOD's use of GOVs for non-recreational life support activities for members on temporary duty.[43] Second, subparagraph (c), in conjunction with the liberal interpretation by the GAO in *Federal Aviation Administration*, authorizes the use of GOVs for *recreational* life support activities under limited circumstances.[44] This article now discusses each of these ramifications, beginning with GOV support for non-recreational life support activities.

B. Non-Recreational Life Support

1. Temporary Duty Personnel

Most military members who have traveled on temporary duty (TDY) orders that authorize a GOV are familiar with the effects of 41 C.F.R. § 301-10.201 regarding non-recreational life support activities. For example, when a military defense counsel travels to another installation to represent a criminal accused, he is frequently lodged off-base and given a GOV to get around. He uses the GOV to go to restaurants and to travel between the hotel and the installation. If he needs to go to the dry-cleaner, or get a haircut before trial, he drives there too. These otherwise-prohibited personal errands[45] qualify as official uses because they are necessary for the sustenance, comfort and health of the member and thereby "foster the continued efficient performance of Government business."[46] These uses are expressly authorized by *DOD Reg. 4500.36-R*, paragraph C2.5.4[47] and the implementing Service regulations.[48] The potential applications of 41 C.F.R. § 301-10.201, *DOD Reg. 4500.36*-R, and the service regulations stretch wider, however, than this familiar use of GOVs by personnel on temporary duty. One of those applications is the establishment of shuttle bus service to life support activities.

2. Shuttle Bus Service

An installation commander at a deployed or remote location can utilize GOVs for life support activities in a variety of ways to help foster the accomplishment of the mission. For example, *DOD Reg. 4500.36-R*, paragraph C.5.3.2 authorizes commanders in "isolated sites"[49] to use GOVs for a shuttle bus service to life support activities.[50] Paragraph C5.3.2 provides that, "[i]n isolated sites with limited support facilities where D[O]D personnel and dependents need additional [life] support

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[42] *Id.*

[43] *See* DOD REG. 4500.36-R, *supra* note 1, para. C2.5.4.2.

[44] Both of these principles have been extended by the DOD to apply to qualifying "remote" or "isolated" areas as well, which are for practical purposes almost always overseas. U.S. DEP'T OF ARMY, REG. 215-1, MILITARY MORALE, WELFARE, AND RECREATION PROGRAMS AND NONAPPROPRIATED FUND INSTRUMENTALITIES para. 5-4 (24 Oct. 2006) [hereinafter AR 215-1].

[45] *See* AR 58-1, *supra* note 9, para. 2-4(c) ("Government vehicles must not be used for transportation to or be parked at commissaries, post exchanges (including all concessions), bowling alleys, officer and noncommissioned officer clubs, or a nonappropriated fund activity unless personnel using the vehicles are on official Government business or temporary duty travel (TDY).").

[46] Pub. Contracts and Prop. Mgmt., 41 C.F.R. § 301-10.201(c) (2006). The need for an "official use" determination is satisfied by the military member's travel orders.

[47] *See* DOD REG. 4500.36-R, *supra* note 1, para. C2.5.4.2 (providing that "[w]hen public transportation is not available or its use is impractical, the use of D[O]D-owned or -controlled vehicles is authorized between places of business, lodging, eating establishments, places of worship, and similar places required for the comfort or health and welfare of the member.").

[48] *See* AR 58-1, *supra* note 9, para. 2-3(i)(3); AFI 24-301, *supra* note 9, para. 2.6.1; MCO P11240.106B, *supra* note 9, para. 2003.2.a.

[49] Nothing in *DOD Reg. 4500.36-R* limits "isolated sites" to only deployed or overseas locations. Isolated sites can be any qualifying installation that lacks on site life support services. *See* DOD REG. 4500.36-R, *supra* note 1, para. C5.3.

[50] *See id.* para. C5.3.2. Fare-free scheduled shuttle service is ordinarily restricted to transportation of personnel on or between installations between offices and work areas, and to enlisted personnel between troop billets and work areas. *Id.* paras. C5.3.1.1 and C5.3.1.2.

(medical, commissary, and religious) which directly affects health, morale and welfare of the family, shuttle bus service may be provided."[51] "Shuttle bus services are provided fare-free."[52]

This shuttle bus exception for isolated sites authorized by DOD does not apply equally across the military Services. On one end of the scale, the Army and the Navy adopt the exception virtually verbatim.[53] On the opposite end of the scale, the Marine Corps and the Air Force omit the language authorizing shuttle bus service to life support activities in isolated sites.[54] Instead, both the Marine Corps and the Air Force authorize more restricted alternatives. The Marine Corps authorizes a group transportation service[55] that can accomplish the same goal where the installation's isolated circumstances justify it, but an elevated approval authority and an involved application process are required.[56]

Air Force Instruction 24-301 (*AFI 24-301*), paragraph 9.7 expressly prohibits GOV shuttle bus service from traveling to "any recreational or shopping areas."[57] Unlike *DOD Reg. 4500.36-R*, no exception is authorized for Airmen at isolated sites. An exception does exist, however, for Airmen on "temporary duty." *Air Force Instruction 24-301*, paragraph 9.7.3 authorizes installation commanders to utilize "special shuttle bus services at installations to accommodate large numbers of TDY personnel and transient aircrews when the service would be the most cost effective and efficient support."[58] Furthermore, since an Air Force commander may authorize any TDY member to utilize a GOV to access life support services, such as food, lodging and on base non-appropriated fund activities,[59] the logical conclusion is that travel to these types of locations may also be authorized for groups of TDY personnel via a shuttle.[60]

The Air Force does authorize the establishment of no-fare "military mass transit service" in isolated areas. This consists of bus transportation of twelve or more passengers between military installations, including on-base domiciles, on-base shopping areas, and installation recreation activities if the traffic volume warrants.[61] The approval level for a mass transit service overseas, however, is the major command, and the information required to apply for such a system is thorough and potentially time-consuming.[62] These hurdles would likely render a mass transit service in a temporary deployed location much less practical than a shuttle bus service authorized by the installation commander.

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[51] *Id.* Shuttle bus service is defined as the transport of "groups of individuals on official business between offices on installations or between nearby installations . . . ." *Id.* para. C5.1.2.2.

[52] *Id.* para. C5.1.2.2.

[53] As noted in *supra* note 12, SECNAVINSTR 11240.8G simply incorporates verbatim *DOD Reg. 4500.36-R*. *Army Regulation 58-1*, para. 5-2(c) adopts the DOD exception, but adds the limitation that, "Such an isolated area must not be adequately served by regularly scheduled, timely, commercial mass transportation services." AR 58-1, *supra* note 9, para. 5-2.c.

[54] *See* MCO P11240.106B, *supra* note 9, para. 2006 (referring to shuttle bus service as "installation or activity bus service"). As a result, shuttle bus service to life support activities is not authorized for personnel *permanently* assigned to isolated sites.

[55] The group transportation service created by *MCO P11240.106B*, paragraph 2006, is an abbreviated hybrid of the mass transit service and shuttle bus service authorized by *DOD Reg. 4500.36-R*. *See* MCO P11240.106B, *supra* note 9, para. 2006.

[56] *See* MCO P11240.106B, *supra* note 9, para. 2005.1 (authorizing requests to CMC (LFS-2) to establish group bus service).

> The following considerations will determine the basis for approval of such services:
>
> a. Installation so located with respect to the source of manpower that some form of Government assistance is necessary to ensure adequate required transportation for personnel.
>
> b. In *overseas* commands where, due to the absence of adequate public or private transportation, local political situations, security, personal safety, or the geographic location of duty station, such transportation is essential to the effective conduct of Government business.

Id. para. 2006.2 (emphasis added).

[57] AFI 24-301, *supra* note 9, para. 9.7.1.1.

[58] *Id.* para. 9.7.3.

[59] *Id.* para. 2.6.1.

[60] As a result, Air Force shuttle bus service to life support activities is not authorized for personnel permanently assigned to isolated sites.

[61] *Id.* paras. 9.3, 9.4.

[62] *Id.*

3. Flexibility to Meet the Mission

The traditional GOV for TDY personnel, and the shuttle bus service for isolated installations, are only examples of the ways that GOVs can be used to provide mission-enhancing life support activities. Most potential uses for GOVs are not enumerated in the regulations. Fortunately, the rules controlling GOVs are designed to be flexible, giving commanders wide discretion in determining what is an official use. The following are two "real world" examples of what can be done when a commander sees a mission need for GOVs. Though not drawn from a deployed or remote setting, these examples concern the creative use of GOVs for non-recreational life support activities.

a. Overseas House-Hunting with the Housing Office

The fiscal principles guiding the use of GOVs are meant to be sufficiently flexible to give commanders the tools they need to meet the needs of the mission. Where not otherwise prohibited, and where the facts and circumstances justify it, a commander's official use determination can authorize a novel use of GOVs for life support needs. For example, in 1994 the Air Force commander at an overseas air base wanted its housing office to be able to assist newly arrived military members by transporting them to potential rental properties in the local communities.[63] As justification, the command cited "foreign traffic laws, language barriers, and in some cases, delayed delivery of POVs [privately-owned vehicles] as potential obstacles to a member's smooth transition at overseas duty assignments."[64]

In response to the commander's query, a legal opinion from the office of The Judge Advocate General of the Air Force (AFJAG) opined that, "Sustaining morale and situating members quickly to perform their military duties are legitimate official ends served by such transportation. Therefore, the provision of such service, especially under the circumstances you describe at overseas locations, constitutes 'public business' when provided by the Housing Manager's office."[65] The substance of this opinion regarding house-hunting overseas was later incorporated into *AFI 24-301*, thus shifting this once-novel use of a GOV into the list of those that are expressly authorized.[66]

b. GOVs for Reserve Individual Mobilization Augmentees (IMAs)

In another example of a novel use of a GOV, an installation commander wanted to authorize Air Force Reserve IMAs to use GOVs for travel to/from temporary quarters while performing inactive duty training (IDT).[67] The commander was of the opinion that he could not authorize such a use unless the IMAs were considered to be in TDY status. In response to the commander's query on this issue, the office of the AFJTAG opined that an IMA is not in TDY status, but that the ultimate issue did not rest solely upon the duty status of the IMA. "Instead, this determination must be made on a case-by-case basis after an examination of the relevant facts and circumstances . . . [and] an IMA's duty status is just one of many factors to consider."[68] The AFTJAG reasoned that, "based on the specific circumstances of a particular IDT, use of a GOV may be authorized for IMAs, notwithstanding the fact they are not in a TDY status."[69] The opinion further reasoned that the IMA's use of the GOV to travel to temporary quarters did not violate the prohibition against using a GOV to travel from one's residence to their place of employment, "because these temporary quarters are not the type of 'residence' contemplated by the statute."[70]

Our discussion now shifts to the use of GOVs for recreational life support. As can be anticipated, the necessity for a well-reasoned official use determination by the commander is just as critical, if not more so, in the context of transportation to recreational activities.

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[63] Use of Government Vehicles (GOVs) for House Hunting Purposes in Overseas Locations, Op. JAG, Air Force, No. 1994/87 (2 Dec. 1994).

[64] *Id.*

[65] *Id.* The opinion further opined that *individual* members are not authorized the personal assignment of a GOV for the purpose of house hunting because they are not performing "public business." *Id.*

[66] *See* AFI 24-301, *supra* note 9, para. 2.6.20.

[67] Op. JAG, Air Force, No. 1996/57, *supra* note 22.

[68] *Id.*

[69] *Id.*

[70] *Id.* Pursuant to 31 U.S.C. § 1344(a)(1), "transporting any individual . . . between such individual's residence and such individual's place of employment is not transportation for an official purpose," and is prohibited. 31 U.S.C. § 1344(a)(1) (2000).

C. Recreational Life Support

In order for government employees to be able to use GOVs for recreational life support activities pursuant to 41 C.F.R. § 301-10.201, the proposed activity must qualify as an official use. To do that, the isolated nature of the remote or temporary duty location must combine with a sufficient lack of available recreational resources. In addition, there must be adequate controls in place to ensure accountability.[71] At a minimum, these controls require that the appropriate level supervisor determine that the proposed recreational use rises to the level of an official use. Most practitioners will not need to begin their field analysis, however, with 41 C.F.R. § 301-10.201. Their first step will be to examine the implementing guidance provided in the DOD motor vehicle regulation.

1. Department of Defense Reg. 4500 36-R: Authorized MWR

Department of Defense Reg. 4500.36-R[72] implements the provisions of 41 C.F.R. § 301-10.201, but reshapes the limitations on GOV recreational transport in a way that reflects the military's emphasis on unit morale. Similar to subparagraph (c) of 41 C.F.R. § 301-10.201, *DOD Reg. 4500.36-R* expressly authorizes a member on temporary duty to use a GOV "between places of business, lodging, eating establishments, places of worship, and similar places required for the comfort or health and welfare of the member."[73] Unlike the FAA in *Federal Aviation Administration*, however, the drafters of *DOD Reg. 4500.36-R* were careful not to use the term, "recreation," in describing activities that are suitable for GOV support.[74] Instead, *DOD Reg. 4500.36-R* uses the broad terms "welfare" and "Military Community Activities" to describe recreation-like activities.[75] Paragraph C2.5.5 states that "[t]ransportation support of *groups* may be provided for authorized activities such as installation-sponsored athletic teams, Military Community Activities,[76] and Chaplain's programs when the installation commander determines that *failure* to provide such service would have an adverse effect on morale"[77] [hereinafter the "Morale Requirement"]. In other words, while *DOD Reg. 4500.36-R* does not authorize the use of GOVs for purely recreational purposes, GOV transport for recreational uses is permissible for deployed personnel when done within the context of commander-authorized Military Community Activities.[78] But not just any Military Community Activities activity will fit within the exception. Only in those situations where the installation commander determines that "failure to provide such service would have an adverse effect on morale," i.e., the Morale Requirement, may a non-reimbursable GOV be used for MWR.[79]

By choosing to structure the authorization to use of GOVs for recreation in this restrictive fashion, *DOD Reg. 4500.36-R* creates the "adequate controls to prevent abuse and ensure accountability" that are discussed in *Federal Aviation Administration.*[80] When on temporary duty, only official Military Community Activities will be eligible for use of nonreimbursable GOVs to travel to recreational activities. As a prerequisite for their use, the installation commander must affirmatively determine that a failure to provide such service would have an adverse effect on morale. Furthermore, because

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[71] *See* Fed. Aviation Admin., B-254296, 1993 U.S. Comp. Gen. LEXIS 1134, at *3 (Nov. 23, 1993).

[72] DOD REG. 4500.36-R, *supra* note 1.

[73] *Id.* para. C2.5.4.2.

[74] In fact, *DOD Reg. 4500.36-R*'s immediate predecessor expressly prohibited GOV support for "recreational" uses by personnel on temporary duty. It stated that, "[u]sing either a DOD-owned or leased vehicle for transportation to or from entertainment or recreational facilities is prohibited." *See* U.S. DEP'T OF DEFENSE, REG. 4500.36-R, MANAGEMENT, ACQUISITION, AND USE OF MOTOR VEHICLES para.C2.5.4.2 (29 Mar.1994) [hereinafter 1994 version of DOD REG. 4500.36-R]. This former prohibition on recreational use, however, was somewhat misleading. In its effect, the 1994 version of *DOD Reg. 4500.36-R was* not much different than the plain meaning of subparagraph (c) of 41 C.F.R. § 301-10.201, and the current version of *DOD Reg. 4500.36-R*, because it carved out a large exception to the prohibition of recreational uses under the umbrella of MWR.

[75] DOD REG. 4500.36-R, *supra* note 1, para. C.5.7 (Military Community Activities), para. C.2.5.4.2 (welfare).

[76] "Military Community Activities" is the new buzzword for the old term, "Morale, Welfare, and Recreation (MWR)." Of the regulations discussed in this article, only *DOD Reg. 4500.36-R* has incorporated its usage, and so both terms are referenced in this article and can be viewed as substantively interchangeable.

[77] *Id.* para. C2.5.5 (emphasis added).

[78] This reflects the special importance that the military places on morale and its relationship to the accomplishment of the mission. "The Department of Defense recognizes that MWR programs are vital to mission accomplishment and form an integral part of the non-pay compensation system." U.S. DEP'T OF DEFENSE, DIR. 1015.2, MILITARY MORALE, WELFARE, AND RECREATION (MWR) para. 4.2 (June 14, 1995).

[79] In essence, this is the DOD way of saying that, in order to qualify as an "official use," the recreational purpose must be necessary for the "sustenance, comfort, or health of the employee to foster the continued efficient performance of Government business." Pub. Contracts and Prop. Mgmt., 41 C.F.R. § 301-10.201(c) (2006).

[80] *See* Fed. Aviation Admin., B-254296, 1993 U.S. Comp. Gen. LEXIS 1134, at *3 (Nov. 23, 1993).

the use of GOVs under these circumstances qualifies as an official use, the GOV support to Military Community Activities must be on a non-fee basis to military members.[81] If these conditions are not met, then the Military Community Activities trip would be compelled to hire either commercial transportation using nonappropriated funds or GOVs on a reimbursable basis if commercial transportation is not available.[82]

The Morale Requirement makes good sense because it empowers commanders to use GOVs to accomplish the needs of the mission, while maintaining the controls and accountability required by the applicable statutes and regulations. Unfortunately, however, the disjointed way that the recently superseded 1994 version of *DOD Reg. 4500.36-R* was drafted caused some unnecessary confusion over when the Morale Requirement must be applied. As a result, the four military Services each applied the Morale Requirement in a different and sometimes incorrect manner in their respective motor vehicle regulations. While the new 2007 version of *DOD Reg. 4500.36-R* has eliminated the ambiguity and clearly applies the Morale Requirement to regardless of duty status, the Service regulations have not yet been updated.

2. Applicability of the Morale Requirement

The 1994 version of *DOD Reg. 4500.36-R* contained unclear provisions regarding the applicability of the Morale Requirement. At first glance, the 1994 version appeared to grant greater latitude to personnel on permanent duty status than to those on temporary duty. In other words, the language of the 1994 version made it appear that the Morale Requirement did not apply to personnel on permanent duty status. Paragraph C5.8 of the 1994 version of *DOD Reg. 4500.36-R* authorized no-fare, non-reimbursable GOV bus support for MWR tours and trips for those on *permanent* duty status,[83] just as paragraph C2.5.5 of the current *DOD Reg. 4500.36-R* does for personnel on temporary duty.[84] Unlike paragraph C2.5.5 in the current *DOD Reg. 4500.36-R*, however, the only limitations paragraph C5.8 of the 1994 version of *DOD Reg. 4500.36-R* placed on MWR bus support to personnel on permanent duty status was that it be nonreimbursable, approved by the installation commander, [85] and provided only when it could be done "without detriment to the DOD mission."[86] There was no mention of the Morale Requirement found in paragraph C2.5.5, i.e., that the installation commander must affirmatively determine that failure to provide such service would have an adverse effect on morale.[87] This ambiguity in the 1994 version raised the question of whether the Morale Requirement applied to members on both permanent and temporary duty status, or just those on temporary duty.

As a result of this confusion, the military Services each responded differently to the imprecise and seemingly counter-intuitive guidance provided by the 1994 version of *DOD Reg. 4500.36-R*. Furthermore, none of the Services' motor vehicle regulations have been updated to reflect the new 2007 version of *DOD Reg. 4500.36-R.* Therefore, the treatment of the applicability of the Morale Requirement across the four Services remains inconsistent. Despite the current state of flux, and draftsmanship faults of the 1994 version of *DOD Reg. 4500.36-R*, however, in this author's opinion, the Army got it right. The Army expressly applies the Morale Requirement to no-fare MWR trips and tours[88] for members on both temporary and permanent duty status.[89] This is important, because if the Morale Requirement was dispensed with for personnel on permanent duty status, it would be difficult for the DOD to lawfully justify a recreational MWR trip as an official use. To satisfy the conditions of subparagraph (c) of 41 C.F.R. § 301-10.201, a commander must determine that the use of GOVs for no-fare MWR is an official use. The Morale Requirement triggers such a determination by the commander.[90] It also focuses

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[81] DOD REG. 4500.36-R, *supra* note 1, para. C5.7.1. In addition, a GOV may only be used "after mission requirements have been met." *Id.*

[82] AFI 24-301, *supra* note 9, para. 9.8.1.2 (authorizing that GOV "[t]ransportation may be provided to MWR/NAF category C revenue generating organizations" on a *reimbursable* basis).

[83] 1994 version of DOD REG. 4500.36-R, *supra* note 74, para. C5.8. This is in addition to paragraph C2.5.4.2's authorization to use no-fare GOVs for MWR trips and tours for personnel on temporary duty. DOD REG. 4500.36-R, *supra* note 1, para. C2.5.4.2.

[84] DOD REG. 4500.36-R, *supra* note 1, para. C2.5.5.

[85] 1994 version of DOD REG. 4500.36-R, *supra* note 74, para. C5.8.1.

[86] *Id.* para. C5.8.

[87] *See* DOD REG. 4500.36-R, *supra* note 1, para. C2.5.5.

[88] The Service regulations still use the MWR terminology, rather than the new Military Community Activities term.

[89] "Transportation may be provided to support authorized . . . morale, welfare, and recreation groups . . . when it has been determined by the commander that failure to provide such service would have an adverse effect on moral of service members, family members and DOD civilians." AR 58-1, *supra* note 9, paras. 2-3(e).

[90] Pub. Contracts and Prop. Mgmt., 41 C.F.R. § 301-10.201(c) (1998). The only other way to logically approach the issue would be to conclude that DOD made a blanket official use determination for all no-fare MWR trips for members on permanent duty status. However, to predetermine that all such MWR

the commander's official use determination on the specific facts and circumstances that make the use of a GOV for a MWR activity necessary to "foster the continued efficient performance of Government business."[91]

The Marines also got it right, but not as succinctly. *Marine Corps Order P11240.106B*, paragraph 2003.2.b expressly imposes the Morale Requirement on all uses of GOVs to transport personnel to MWR activities, whether on permanent or temporary duty.[92] Paragraph 2003 does not, however, include the DOD-imposed condition that the use must be fare-free.[93] Instead, the fare-free condition is provided in paragraph 2006.3.a.7.[94] Thus, these two paragraphs must be read together in order to understand how to properly authorize the use of GOVs for MWR activities.[95]

The Air Force, on the other hand, fails to mention the Morale Requirement *anywhere* in its instructions concerning the use of no-fare GOVs for MWR.[96] Just because *AFI 24-301* failed to include the Morale Requirement does not mean the DOD provision does not apply. Even in a deployed location where non-appropriated fund [NAF] and commercial transportation are not available, the Air Force commander must still determine that failure to provide such no-fare service would have an adverse effect on morale.

The Air Force does, however, impose a different requirement that is severely limiting. *Air Force Instruction 24-301* requires that, "[w]hen available, NAF and/or commercial transportation sources *will* be used."[97] Practically speaking, this requirement to use NAF and\or commercial transportation sources eliminates the use of no-fare GOVs in virtually all situations other than deployments and the most remote of CONUS locations.[98] Air Force installations located where NAF or commercial transportation are available for MWR trips cannot take advantage of no-fare GOV transport for MWR.

3. Individual Recreation

An interesting question arises whether the use of GOVs for recreational activities is restricted to authorized Military Community Activities for "groups," or whether individuals may also use GOVs for this purpose. The Comptroller General's opinion in *Federal Aviation Administration* clearly illustrates that 41 C.F.R. § 301-10.201 permits a single individual to use a GOV for recreational purposes where the appropriate supervisor determines that the remoteness of the location justifies it.[99] On the other hand, *DOD Reg. 4500.36-R*, paragraph C2.5.5 expressly references transportation for groups on temporary duty, and paragraph *C5.7* refers to motor vehicle support of authorized Military Community Activities programs.[100] Once again, the answer to this question depends on what military Service owns the GOV.

The Army and the Air Force both expressly authorize individuals who are on temporary duty to use GOVs for limited recreational activities. The Army regulation does so with a negative construction, i.e. by defining what a Soldier cannot do. *Army Reg. 58-1*, paragraph 2-3(i)(3) states that, "[u]sing a NTV to travel to or from *commercial* entertainment facilities (that

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trips no matter where located or what the circumstances rise to the level of an official use, would be a huge stretch. Rather, it makes more sense to conclude that the Morale Requirement applies to members regardless of duty status. Further, it would seem nonsensical to impose more stringent requirements for temporary duty personnel, whose needs and circumstances most justify the no-fare MWR service.

[91] *See* Pub. Contracts and Prop. Mgmt., 41 C.F.R. § 301-10.201(c) (2006).

[92] *See* MCO P11240.106B, *supra* note 9, para. 2003.2.b. ("Installation commanders may authorize group transportation support for authorized activities such as athletics, welfare, recreation, morale, and chaplains' programs if failure to provide such service would have an adverse effect on the morale of service members, and such transportation is available without detriment to the installation's mission.").

[93] *Id.*

[94] *Id.* para. 2006(3)(a)(7).

[95] Some further disjointedness is injected by the seemingly inconsistent language in paragraph 2006 regarding whether GOV support to MWR trips should be reimbursable. Paragraph 2006.3. refers to "reimbursable bus service" for MWR support services, while language in paragraph 2006.3.a states that transportation for MWR "recreational tours and trips" is restricted to a "non-reimbursable basis." *See id.* para. 2006.3. The author suspects that this seemingly contradictory language refers to the difference between GOV support to revenue-producing MWR organizations versus non-self-supporting ones. The distinction between Category A, B and C sponsored activities is discussed more fully at pages 12 through 15.

[96] *See* AFI 24-301, *supra* note 9. Paragraph 9.8.1.1.5 authorizes "[b]ase sponsored tours and trips when operated on a nonprofit basis . . . only after mission requirements have been met." *Id.* para. 9.8.1.1.5.

[97] *Id.* para. 9.8 (emphasis added).

[98] In a deployed location, this requirement is less likely to be an obstacle as adequate NAF and commercial transportation will probably not be available.

[99] *See* Fed. Aviation Admin., B-254296, 1993 U.S. Comp. Gen. LEXIS 1134, at *3 (Nov. 23, 1993).

[100] *See* DOD REG. 4500.36-R, *supra* note 1, paras. C2.5.5 and C2.5.7.

is professional sports, concerts, and so forth) is not authorized."[101] Because only "commercial" entertainment facilities are prohibited, non-commercial entertainment facilities, such as parks, rivers, and museums, are authorized. Further, the Army regulation makes no distinction between on or off-base facilities. In other words, as long as the recreational activity is not commercial, it is not prohibited by virtue of being off-base.

The Air Force, on the other hand, allows Airmen on temporary duty to use a GOV to get to any "on-base non-appropriated fund activity," such as a golf course and gun club, regardless of its revenue-generating nature.[102] Use of Air Force GOVs to travel to any other type of entertainment or recreational facilities, however, is expressly prohibited.[103] In short, unlike the Army, commercial-type recreation on-base is authorized by the Air Force, but *off-base* recreation for individuals is entirely prohibited.[104]

The Navy and Marine regulations do not contain any specific guidance regarding individuals (as opposed to groups on authorized MWR trips) using GOVs to travel to recreational facilities.[105] Thus, the legal parameters of the Navy and Marine regulations coincide with the parameters of *DOD Reg. 4500.36-R*. As a result, they are at least as broad as the Army and Air Force regulations, and potentially more.[106] However, the lack of an express authorization for individuals on temporary duty to use a GOV for recreational activity creates an ambiguity with undesirable ramifications. Without an express authorization in the regulations, prudence requires a commander's official use determination for each and every instance where an individual wants to travel to a recreational activity. Any Sailor or Marine who fails to obtain a commander's authorization is running the risk that, if exposed to scrutiny, his use of the GOV could be deemed unlawful. On the positive side, the lack of express guidance means that installation commanders have greater discretion in the types of recreational uses that they can authorize for individuals.[107] Though no legal authority has addressed this point, the extent of the commander's discretion is logically defined by the parameters of subparagraph (c) of 41 C.F.R. § 301-10.201.

D. Limitations on Appropriated Fund Support to MWR

So far, our discussion has centered on 41 C.F.R. § 301-10.201, *DOD Reg. 4500.36-R*, and the four service regulations that control the use of GOVs. In a nutshell, these regulations describe what constitutes official use of a GOV. Often, these regulations will be the only sources a legal practitioner need refer to when helping their commander make an official use determination. However, issues involving GOV support to MWR[108] programs require an additional step of analysis.

The last piece of the puzzle concerns the regulations that control appropriated fund (APF) support to MWR programs. Because GOVs are essentially appropriated funds on wheels, the funding guidelines found in *DOD Instruction 1015.10, Programs for Military Morale, Welfare, and Recreation (MWR)* (*DODI 1015.10*),[109] significantly affect how commanders can use GOVs for MWR programs. The use of a GOV to support a particular MWR activity must conform with the APF funding guidelines of *DODI 1015.10*. Thus, even though *DOD Reg. 4500.36-R* permits fare-free GOV transportation for MWR, fare-free transportation will not be authorized unless such use also complies with *DODI 1015.10*.

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[101] *See* AR 58-1, *supra* note 9, para. 2-3(i)(3) (emphasis added).

[102] *See* AFI 24-301, *supra* note 9, para. 2.6.1.3 (providing a GOV may be used "[b]etween places of business or lodging and installation bowling centers, officer and noncommissioned officer clubs, gymnasiums or any on-base non-appropriated fund activity (i.e., golf courses, rod & gun clubs, etc.) facilities required for the comfort or health of the member").

[103] *Id.* As discussed at pages 7 through 8 this restriction applies to individuals and not to commander authorized MWR trips for groups.

[104] Even on base, *AFI 24-301*, para. 2.6.1.3, still requires that the activity must be necessary "for the comfort or health of the member." *Id.* para. 2.6.1.3.

[105] *SECNAVINSTR 11240.8G* adopts verbatim *DOD Reg. 4500.36-R*, and *MCO P11240.106B* does not contain any provisions on the subject. *See* SECNAVINSTR 11240.8G, *supra* note 12; MCO P11240.106B, *supra* note 9.

[106] When read together, the outside parameters of the Army and Air Force regulations encompass an individual using a GOV for any on-base non-appropriated fund activity, and for any off-base non-commercial activity.

[107] The lists of expressly authorized uses are not exclusive. See the discussion at pages 4 through 5.

[108] MWR is used here rather than Military Community Activities because *DODI 1015.10* still uses the MWR terminology.

[109] *See* U.S. DEP'T OF DEFENSE, INSTR. 1015.10, PROGRAMS FOR MILITARY MORALE, WELFARE, AND RECREATION (MWR) para. 4.2 (Nov. 1995) [hereinafter DODI 1015.10].

Department of Defense Instr. 1015.10 divides MWR programs into three main categories: A, B, and C.[110] In general, the amount of APF that can be spent on an MWR program is determined by the category that a particular program falls under. Category A programs are labeled "mission sustaining" and are considered "most essential in meeting the organizational objectives of the Military Services."[111] As a result, Category A programs, such as physical fitness centers and installation parks, "are entitled to the highest degree of APF support, and virtually all expenses should be supported with APFs."[112] Category B programs are "community support programs,"[113] such as outdoor recreation programs and automotive crafts, that have a "limited ability to generate NAF revenues, and are therefore entitled to a substantial level of APF support."[114] Category C activities are revenue generating programs, such as officers' clubs and golf courses, that "have the highest abilities to generate NAF revenues."[115] As a result, APF support to Category C programs should be "limited."[116] The impact of these three categories on the use of GOVs for MWR essentially boils down to this: nonreimbursable GOV support to Category A and B programs is generally permissible, while nonreimbursable GOV support to Category C programs is not.

1. Category C Activities: "Limited" APF Support

The regulatory constraints of *DODI 1015.10* primarily affect the use of GOVs for Category C programs, because Category C activities are authorized only limited APF support. Therefore, the expenditure of more than limited APF resources, including GOVs, on Category C activities is unlawful.[117] The key question is how much support is limited APF support? Fortunately, the answer to this question, at least in the context of GOVs, is reasonably specific.

Pursuant to *DODI 1015.10*, encl. 6, paragraph 3.c, limited APF support consists of the use of GOVs for Executive Control and Essential Command Supervision (ECECS).[118] The ECECS is defined as "[t]hose managerial staff functions and positions located above the direct program managerial and operational level of individual MWR programs that support planning, organizing, directing, coordinating, and controlling the overall operations of MWR programs."[119] In other words, GOVs may only be used to support managerial oversight of Category C activities. "Other [support] than to assist in ECECS" is specifically prohibited by paragraph 3.c.(2) of enclosure 6.[120] Consequently, the general rule is that GOV support for Category C activities is restricted to ECECS.[121] Moreover, the recently updated *DOD Reg. 4500.36-R* also reflects this same guidance, stating that "[s]taff members of Categories A, B, and C [activities] . . . engaged in direct administrative support of th[e]se activities may be provided transportation services."[122]

Because nonreimbursable GOV support for Category C activities is restricted to ECECS, no-fare GOV transport may not be used for Category C programs/activities.[123] Since MWR (a.k.a. Military Community Activities) trips and tours are often operated through Category C programs, this restriction can present a problem for commanders wanting to use no-fare GOVs

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[110] A table listing the various activities that fall under each category is found at *DODI 1015.10*, encl. 4. *Id.*

[111] *Id.* para. 4.3.1.

[112] *Id.* encl. E7, para. E7.1.4.1 ("APF funding for Category A is a minimum of 85 percent of total expenditures.").

[113] *Id.* para. 4.3.2.

[114] *Id.* encl. E7, para. E7.1.4.2 ("Category B . . . APF funding is a minimum of 65 percent of the total expenditures.").

[115] *Id.* encl. E7, para. E7.1.4.3.

[116] *Id.*

[117] Most recreational MWR trips at a CONUS installation are operated as revenue-generating Category C activities. An example would be a weekend bus trip to a local snow ski resort, where each traveler is charged a fare.

[118] *Id.* encl. 6, para. 3.c.

[119] *Id.* encl. 2, para. E2.1.13. "ECECS consists of program, fiscal, logistical, and other managerial functions that are required to ensure oversight." *Id.*

[120] *Id.* encl. 6, para. 3.c.(2). Only the use of GOVs on a "reimbursable lease" basis is authorized for other than ECECS. *Id.*

[121] This same restriction is also reflected in the Service's regulations. *See* AR 215-1, *supra* note 44, tbl. D-1, para. 5-1(c) and app. D.5(a); U.S. DEP'T OF THE AIR FORCE, INSTR. 65-106, FINANCIAL MANAGEMENT: APPROPRIATED FUND SUPPORT OF MORALE, WELFARE, AND RECREATION (MWR) AND NONAPPROPRIATED FUND INSTRUMENTALITIES (NAFIS) att. 2, para. 5 (11 Apr. 2006) [hereinafter AFI 65-106].

[122] *See* DOD REG. 4500.36-R, *supra* note 1, para. C2.5.12; *see also id.* para. C5.7.1.2.

[123] *Department of Defense Reg. 4500.36-R*, paragraph C5.7 limits motor vehicle support of Category C activities to "the performance of executive control and essential command supervision." *See* DOD REG. 4500.36-R, para. C5.7. Similarly, *AR 58-1*, paragraph 5-5(a) provides that bus service is limited to "some limited support of Category C MWR activities." *See* AR 58-1, *supra* note 9, para. 5-5(a). *Army Reg. 215-1*, paragraph 5-1(a) provides that direct APF support "is generally limited to Categories A and B MWR programs."

for MWR. Fortunately for commanders at deployed or remote locations, special provisions in the rules enable MWR activities to comply with the restrictions created by *DODI 1015.10*, if they are carefully planned and organized. Basically, two options exist to ensure that no-fare GOV transportation for MWR will not run afoul of the APF funding guidelines of *DODI 1015.10*. First, a special exception found in *DODI 1015.10*, paragraph 4.3.3, authorizes certain installations in designated "remote and isolated" locations to provide Category C programs with the same APF support as Category B programs.[124] Second, if the remote and isolated exception does not apply to an installation, the commander can organize the MWR trip or tour so that it is not operated by a Category C program.

2. When a C is a B: Designated Remote or Isolated Locations

Category C programs at designated MWR remote and isolated locations may receive the same type of APF support as Category B programs.[125] The rationale behind this exception to the general rule is that Category C programs at remote and isolated locations are not able to successfully operate revenue-generating programs "due to extenuating circumstances."[126] Consequently, these disadvantaged programs need the additional APF funding in order to provide their services to the installation. On its face, this remote and isolated exception solves the practical limitations involving the use of no-fare GOVs for Category C programs.[127] Since remote and isolated Category C programs receive the same APF support as Category B programs,[128] no-fare GOVs can lawfully be used to transport personnel on MWR trips operated by Category C programs at designated remote and isolated locations.[129]

The potential problem with this exception is that the process to become approved as a remote and isolated MWR location is extensive.[130] Merely being deployed to the "middle of nowhere" does not automatically qualify your installation. The good news is that many overseas installations are already officially designated as remote and isolated for the purposes of this exception.[131] If, however, you are deployed to an installation that has not been officially designated remote and isolated pursuant to *DODI 1015.10*, paragraph 4.3.3, then your short-term option is limited to organizing an MWR trip or tour so that it is not operated by a Category C program.

3. Non-Category C Option

If you are not located at a designated remote and isolated MWR installation, non-reimbursable GOV support may only be provided to Category A and B MWR activities, not Category C.[132] Therefore, an installation commander who wants to use non-reimbursable, no-fare GOV transportation for a MWR trip must organize the activity under a Category A or B program. Examples of MWR programs that could sponsor a qualifying MWR trip include "Shipboard, Company, and/or

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[124] *See* DODI 1015.10, *supra* note 109, para. 4.3.3.

[125] *See id. See also* AR 215-1, *supra* note 44, para. 5-4; AFI 65-106, *supra* note 121, para. 2.1.3.

[126] DODI 1015.10, *supra* note 109, at encl. 5, para. E5.2.

[127] An example of a Category C program that can take advantage of this exception to sponsor MWR activities utilizing no-fare GOV support is Military Clubs (officer and enlisted). *See* AR 215-1, *supra* note 44, fig. 3-1; AFI 65-106, *supra* note 121, fig. 2.1.

[128] "Category B [programs] . . . are therefore entitled to a substantial level of APF support. . . . a minimum of 65% of the total expenditures." *See* DOD REG. 1015.10, *supra* note 109, para. E7.1.4.2.

[129] The table at *AFI 65-106*, attachment 2, paragraph 5.a(2), clearly illustrates this point by creating a separate designation for "Category C Remote and Isolated (C R&I)" that expressly authorizes GOV support for C R&I. *See* AFI 65-106, *supra* note 121, att. 2, para. 5.a(2). Remember, an important caveat to any non-reimbursable GOV support to either Category A, B, or C programs is that the GOV's use may not be "related to revenue generating." *Id.*

[130] DOD REG. 1015.10, *supra* note 109, encl. 5, para. E5.3.1. "The major factors in evaluating potential candidates for remote and isolated status are the installation's financial capability, performance, and degree of assistance provided by major commands and the Military Service." *Id.* Other extenuating circumstances considered that may seriously hinder operation of the installation's Category C programs include: special security conditions, significant currency fluctuation, extreme climatic or environmental conditions, significant temporary increase or decrease in personnel, short tour locations; geographic separation, and significant cultural differences. *Id.* The Service regulations have incorporated these same criteria. *See* AR 215-1, *supra* note 44, para. 5-4; AFI 65-106, *supra* note 120, paras. 3.1 and 3.2.

[131] The Service regulations include lists of their respective designated remote and isolated installations. *See* AR 215-1, *supra* note 44, tbl. 5-2; AFI 65-106, *supra* note 121, fig. 3.1. To obtain a current list, though, will require a Service-specific inquiry.

[132] See the discussion on APF support to Category C programs at pages 13 through 14.

Unit Level Programs," a Category A program,[133] and "Directed Outdoor Recreation," a Category B program.[134] The key is that the MWR trip be operated so that it is not related in any way with revenue-generating programs.

In a deployed location, the MWR programs are often managed by a small number of people in a single office. This should not, however, pose a problem for non-reimbursable GOV support to MWR. No restriction prevents the collocating of different category MWR activities.[135] Prudence dictates, though, that the MWR "hats" be kept distinct through the keeping of separate operational and management records for each category of program. Records that clearly show the nature of the program/activity that received the non-reimbursable GOV support is important for the justification of the use of the GOVs. The benefits derived from taking the time to do it right are worth the effort.

IV. Conclusion: The Rest of the Story

The introduction to this article cited a particular example where Airmen newly deployed to Gwangju Air Base, Republic of Korea, needed basic life support. The "tent city" had been flooded by heavy September rains, damaging uniforms and personal items. Airmen had been working non-stop for two weeks to raise camp while executing flight operations, and morale was wearing thin. At the time, Gwangju Air Base had the proverbial "chips-and-candy-rack" exchange and no military clothing sales. The MWR facilities consisted of a minimal gym and a combined military club. The city of Gwangju was not accustomed to an American presence, and a segment of the local population, sometimes throwing stones and bottles, protested outside the gate on almost a daily basis. The commander wanted his Airmen to have access to basic life support goods. He also wanted to do something for their morale. To meet these goals, bus transportation using no-fare GOVs was established between Gwangju Air Base and Kunsan Air Base.[136] Every Saturday for the duration of the deployment, Airmen were transported to Kunsan Air Base to use its new gymnasium, shop at the base exchange, and take advantage of the many MWR facilities (including a first-rate community center with Internet café).[137]

To establish fare-free GOV transportation to Kunsan Air Base, the first step in the process was to conduct an official use determination. To accomplish this, the commander determined that the transportation required for the "comfort or health and welfare" of his Airmen.[138] He also determined that "failure to provide such service would have an adverse effect on morale."[139] The second step was to verify that the use of the GOV bus on Saturdays would not interfere with other mission needs.[140] The third step was to ensure that the proposed use was not otherwise prohibited by any applicable statutes or regulations. In our scenario, no regulations prohibited the proposed use of GOVs, and in fact, our circumstances fit nicely under expressly authorized uses. Because the purpose of the trip was to support both non-recreational and recreational life support activities for the entire unit, the transportation was doubly authorized as a no-fare shuttle bus service for TDY Airmen,[141] and as a no-fare MWR trip.[142]

Finally, the MWR manager at Gwangju Air Base complied with the guidelines of *DODI 1015.10* for APF funding of MWR programs. He accomplished this two separate ways, both of which were independently sufficient to satisfy the

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[133] DODI 1015.10, *supra* note 109, encl. 4, para. E4.1.7. Defined as "[s]upport and activities that maintain mission readiness, improve unit teamwork, and create esprit de corps." *Id.*

[134] *See id.* encl. 4, para. E4.2.3. Defined as "[p]rograms that provide instruction and structured outdoor recreational activities (archery, hunting, fishing, rappelling, hiking, backpacking, bicycling, mountain biking, boating, canoeing, camping jamborees, water and snow skiing, etc.)." *Id.*

[135] Examples of Category C activities frequently collocated in Categories A and B facilities include recreation equipment rental operations, snack bars, and other resale activities. *See* AFI 65-106, *supra* note 121, fig. 2.2.

[136] Kunsan Air Base was the closest military facility with adequate base exchange and MWR facilities. The original idea was to go to Osan Air Base which had a huge base exchange, but guidance from the 7th Air Force legal office advised that it was not justifiable to drive a longer distance than was necessary to accomplish the commander's intent.

[137] The Air Expeditionary Group at Gwangju Air Base was a geographically detached unit of Kunsan Air Base.

[138] DOD REG. 4500.36-R, *supra* note 1, para. C.2.5.4.2. See the discussions of subparagraph (c) of 41 C.F.R. § 301-10.201 at pages 4 through 6, and of *DOD Reg. 4500.36-R* at pages 9 through 11.

[139] See the discussion of the "Morale Requirement" at pages 9 through 11.

[140] *See* DOD REG. 4500.36-R, *supra* note 1, para. C5.7.1.6 (Support to Military Community Activity programs can be made available "only after mission requirements have been met."). And because we were the Air Force, it was also verified that NAF and/or commercial transportation was not reasonably available. *See* AFI 24-301, *supra* note 9, para. 9.8.

[141] See the discussion of the no-fare shuttle bus service at page 6 through 7.

[142] See the discussion of the no-fare MWR trips at pages 12 through 14.

restrictions imposed by *DODI 1015.10*. First, the MWR manager operated the trip using no-fare GOV buses that were unrelated to any revenue-generating Category C programs. He kept the records for the trip to Kunsan Air Base separate from the Category C trips.[143] Because non-revenue-generating Category A and B programs may lawfully utilize GOV transportation support, the use of GOVs to travel to Kunsan Air Base was consistent with *DODI 1015.10*.[144] Second, the MWR manager also benefited from the fact that Gwangju Air Base was already officially designated as an isolated and remote MWR installation.[145] Therefore, Gwangju Air Base's Category C programs were equivalent to a Category B for APF funding purposes.[146] As a result, all categories of MWR programs at Gwangju Air Base were lawfully eligible for a variety of GOV support under *DODI 1015.10*, as long as the support was not related to revenue-generating activities.[147]

A written legal opinion memorialized the commander's official use determination. The motor vehicle management community gave some pushback because the trip to Kunsan Air Base was not an everyday use of GOVs that they were accustomed to seeing.[148] But in the end, the Airmen lawfully obtained access to the services they needed.

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[143] Category C trips included a revenue-generating MWR trip to Seoul, and a sports fishing trip to a nearby port.

[144] See the discussion of the non-Category C option at page 13.

[145] *See* AFI 65-106, *supra* note 121, fig. 3.1. Kunsan Air Base is officially designated as an isolated and remote MWR installation, and Gwangju Air Base was, at that time, a geographically detached unit of Kunsan Air Base.

[146] See the discussion of remote and isolated MWR installations at pages 13 through 14. The remote and isolated MWR designation was not required to conduct the trip, as long as the trip was operated through a Category A or B program.

[147] While the fact that Gwangju Air Base qualified as an isolated and remote MWR installation negated the need to operate the trip under the auspices of a Category A or B program, the MWR manager operated the trip separately from the Category C programs anyway because it took little effort to do so, and it was the way he felt comfortable doing it. DODI 1015.10, *supra* note 109, para. C5.7.

[148] Motor vehicle management personnel tend to be conservative stewards of the GOVs under their care, and rightfully so. There simply are not enough GOV assets available to meet every need, and this shortage is exacerbated in an overseas environment. No one has their private vehicle in a deployment, and everyone has somewhere they need (or want) to go. Responsible husbandry of resources, however, does not require circumscribing a commander's lawful discretion in the use of GOVs.

TJAGLCS Practice Notes

Faculty, The Judge Advocate General's Legal Center & School

Training Developments Practice Note

Judge Advocate Staff Officers Course (JATSOC) Staff Skills Training for the Contemporary Operational Environment

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I. Introduction

The Commander of The Judge Advocate General's Legal Center and School (TJAGLCS), on behalf of The Judge Advocate General (TJAG), announced at the October 2006 World Wide Continuing Legal Education (WWCLE) Conference, that Active Army and Reserve Component company grade Judge Advocates (JAs) would receive Distributed Learning (DL) staff officer training to replace the Combined Arms and Services Staff School (CAS3) course. In the fall of 2007, the Training Developments Directorate (TDD) at TJAGLCS will launch the Judge Advocate Tactical Staff Officer Course (JATSOC), an online DL course that will serve as the replacement for CAS3. This Note will review the historical underpinnings of Army company grade staff officer training and then provide a detailed explanation of JATSOC.

Until May 2004, the U.S. Army required all officers to attend the resident CAS3 at Fort Leavenworth, Kansas.[1] Each branch, including the Judge Advocate General (JAG) Corps, mandated CAS3 attendance either before or immediately following completion of their respective officer advanced course. Judge advocates were required to complete CAS3 before attending the Judge Advocate Officer Graduate Course.[2] Due to budget constraints, the Secretary of the Army shortened CAS3 from nine to six, then to five weeks, exempted one year group, and finally discontinued the course altogether after the graduation of Class 04-04 on 19 May 2004.[3] After the decision to discontinue the course, the Commanding General, U.S. Army Combined Arms Center (CAC) and Fort Leavenworth announced that branch education institutions would integrate the CAS3 curriculum into their Captain's Career Course (CCC).[4] The goal of this modified CCC was to integrate the company grade staff officer skill set taught at CAS3 into the branch-specific Officer Education System (OES).

The CAC exempted the JAG Corps and the Army Medical Department from the requirement to integrate CAS3 into their OES.[5] However, in September 2006, TJAG considered the increasing responsibilities placed on deploying JAs in the

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[1] News Release, U.S. Army, Army Public Affairs, *Combined Arms and Services Staff School (CAS3) to Merge with Officer Advanced Course*, Apr. 12, 2004, http://www4.army.mil/ocpa/read.php?story_id_key=5839 [hereinafter CAS3 News Release] (approving the Army's plan to merge the CAS3 curriculum into the Officer Advanced Course).

[2] Lieutenant Colonel Mike Ryan, *Creating Legal Pentatheletes: An Argument in Favor of an Operations Training Course for Judge Advocates (JAs)*, ARMY LAW., Apr. 2007, at 20.

[3] Gary Sheftick, *CAS3 to Merge with Officer Advance Course*, ARMY NEWS SERV., Apr. 13, 2004.

[4] *See* CAS3 News Release, *supra* note 1.

[5] HEADQUARTERS, COMBINED ARMS CENTER (CAC) OPERATIONS ORDER 04-176A, OES CAPTAIN'S CAREER COURSE (CCC) REDESIGN (24 June 2004).

contemporary operational environment and determined that company grade JAs should receive training in certain non-legal subjects essential for staff work, such as Army organization and doctrine, joint operations, and, most importantly, the Military Decision Making Process (MDMP). The TDD were tasked to develop a distributed learning (formerly distance learning) familiarization course in lieu of CAS3 that would train all judge advocate captains in basic staff officer skills and prepare them to support an Army at war. This resulted in the JATSOC online course.

II. The Judge Advocate Tactical Staff Officer Course

The JATSOC will encompass eight subcourses and total approximately eighteen and one half hours of online instruction. The JATSOC will be mandatory for all JAs with forty-eight months or fewer of service. These JAs will be automatically enrolled when the program is launched. Judge Advocate Officer Basic Course officers will be automatically enrolled upon graduation. All enrolled personnel will have a twenty-four-month completion suspense requirement. Only the most extraordinary of circumstances may apply for waivers. Judge advocates with more than forty-eight months of service, and all other JAG Corps personnel, may also take the course. Those JAs not automatically enrolled will simply logon to the new JAG University (JAGU) and register for the JATSOC.[6] After eighteen months of enrollment, an officer who has not completed the course will receive an automatic email reminder from JAGU. If the officer has not completed the course after twenty-one months, the officer and his supervisor will receive an email reminder from JAGU indicating that JATSOC must be completed within ninety days.

III. Judge Advocate Tactical Staff Officer Course Content

The JATSOC will contain, in sequence, the following subcourses:

Army Symbology (1.5 hours)—An introduction to Army graphics and the associated acronyms, concepts and vocabulary. After this lesson, JAs will know how to read task organization slides and will understand what Assembly Areas, Forward Arming and Refueling Points, Main Supply Routes, and Traffic Control Post are.

Army Organization (3 hours)—An introduction to the six warfighting functions, as well as the structure, mission, and employment of the BCT, the division, and the corps. Also covers command and support relationships, such as OPCON and TACON, and introduces staff organization.

Staff Structure & Officer Roles in Tactical Units (2 hours)—An overview of basic staff structure and staff officer roles in a BCT. Judge advocates will begin to learn about their roles as special and personal staff officers.

Army Doctrine (3 hours)—An explanation of the fundamentals of Army doctrine and the role of doctrine in operations at the BCT and battalion level. Judge advocates will begin to learn how to use their specialized knowledge and skills to assist commanders and staffs to solve tactical problems.

Fundamentals of Joint Operations (2 hours)—A review of basic background information on the environment in which a Joint Task Force (JTF) conducts operations, as well as the formation and organization of a JTF headquarters. This lesson will also cover legal support to joint operations.

Military Decision Making Process (MDMP) (4 hours)—An explanation of the MDMP in which JAs will begin to learn how to fully participate in and add value to the BCT plans process.

Intelligence Preparation of the Battlefield (IPB) (Stability) (1 hour)—A review of the IPB process, as modified in the context of Stability Operations. This lesson will focus on a JA's contribution to the planning and conduct of irregular warfare and peace operations.

Military Briefings (2 hours)—An introduction to the various types of military briefings. This lesson will also cover formats and characteristics of effective briefings.

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[6] The user will log on with Army Knowledge Online credentials at: https://jag.learn.army.mil, to access JAGU on the Blackboard Academic Suite. There will be instructions on JATSOC enrollment.

The MDMP subcourse is especially critical, given the consistent deployments of JAs within the contemporary operational environment. In CAS3, all students received extensive hands on instruction in MDMP. Judge advocates no longer receive the benefit of small group CAS3 interaction with peers from all branches. Therefore, in addition to the JATSOC, staff judge advocates should require their junior officers to participate early and often in battalion and brigade level MDMP sessions.

IV. The Way Ahead

The JATSOC is being designed to allow JAG Corps personnel to become familiar with the tactical staff officer skills previously taught in CAS3. An online course cannot replicate a resident, multi-branch, CAS3 classroom environment; but JATSOC will provide JAs with a diverse curriculum encompassing all of the basic staff officer skills necessary for mission success. Because it is a new concept, TDD expects the JATSOC to evolve over time. Staff judge advocates can further promote the purposes of the JATSOC by integrating its concepts into their officer professional development sessions. We also encourage suggestions from the field as to how we might improve the JATSOC to ensure it meets the needs of JAs and the Soldiers, staffs and commanders they serve.

Creating Legal Pentatheletes: An Argument in Favor of an Operations Training Course for Judge Advocates (JAs)[1]

Lieutenant Colonel Mike Ryan[2]

"Critical thinking, professionally grounded in the controlled application of violence, yet exposed to a broad array of expertise not normally considered part of traditional military functions will help create [officers with] a capacity to rapidly shift cognitively to a new environment."[3]

Introduction

In its annual posture statement, the Army's senior leadership explains several of the key concepts that will shape the future of the organization. With regard to leader training, the most recent Army posture statement provides the following:

> We recognize that intellectual change precedes physical change. For this reason, we are developing qualities in our leaders, our people, and our forces to enable them to respond effectively to what they will face. We describe the leaders we are creating as "pentathletes," whose versatility and athleticism – qualities that reflect the essence of our Army – will enable them to learn and adapt in ambiguous situations in a constantly evolving environment.[4]

Echoing this sentiment, the Judge Advocate General (JAG) of the U.S. Army recently stated the following in a corps-wide e-mail message appropriately entitled, "JAG Corps Pentatheletes:"

> Our personnel must be adaptive and capable of rapidly transitioning between complex tasks with relative ease. . . . We must:
>
> - Encourage and reward innovative problem-solving.
> - Stay abreast of current events and always be situationally aware.
> - Know foreign cultures and languages.
> - Understand the cultural context in which US Forces operate.
> - Anticipate and articulate the second- and third-order effects of military operations and decisions.
> - Actively assist commanders in positively influencing public opinion - both at home and abroad.[5]

To maximize the considerable legal and analytical skills judge advocates bring to the fight—to make them true pentatheletes—they must understand the operational context. Important legal issues are nested in every aspect of modern operations; however, these issues are rarely self-evident. Given the demands placed on judge advocates in today's operational environment, the contemporary operational lawyer needs to know more than the black letter law. To be a full-fledged member of the operational team, judge advocates must understand and speak the language of operations—they must be able to present ideas, arguments, and insights in a way that makes sense to commanders and operators. Judge advocates can only do this if they have the right training at the right time in their careers.

This article argues that judge advocates need additional training to help them be more effective battle staff officers, and in turn, more effective operational lawyers. It examines the current Judge Advocate General's Corps (JAGC) training system and suggests possible revisions. This article asserts that, if implemented early enough in judge advocates' careers, the

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[1] The author wishes to thank the following individuals whose input and insight contributed significantly to this article: Mr. David Graham, Mr. Pat O'Hare, Colonel Pete Cullen, Lieutenant Colonel Holly Cook, Lieutenant Colonel Ian Corey, Lieutenant Colonel Pat Huston, Major Carlos Santiago, Major Pete Hayden, and Major Brad Sutera.

[2] At the time this note was written, the author was Director, Future Concepts Directorate, The Judge Advocate General's Legal Center and School (TJAGLCS), Charlottesville, Virginia. Lieutenant Colonel Ryan is currently serving as the Staff Judge Advocate, 10th Mountain Division (Light Infantry).

[3] Major General Peter Chiarelli & Major Patrick Michaelis, *Winning the Peace: The Requirements for Full-Spectrum Operations*, MIL. REV., July-Aug. 2005.

[4] U.S. DEP'T OF ARMY, 2006 POSTURE STATEMENT ii (Executive Summary) (2006), *available at* http://www.army.mil/aps/06/03_ExecSum.html.

[5] Major General Scott C. Black, *JAG Corps Pentatheletes*, TJAG SENDS, A MONTHLY MESSAGE FROM THE JUDGE ADVOCATE GENERAL, vol. 37, no. 5 (Feb. 2006).

changes outlined here would contribute significantly to judge advocates' professional development and help them develop the knowledge, skills, and expertise necessary to be the kind of multi-faceted, full-spectrum leaders contemplated by the term pentathelete.[6]

The Army JAGC: Making a Great Team Even Better

The Army JAGC is an incredibly talented team. No matter what the challenge or how difficult the circumstances, Army judge advocates always excel. It is important, therefore, to note that this article is not an indictment of the JAGC or JAGC training. Indeed, the JAGC is an exceedingly professional organization made up of bright, talented, dedicated Soldiers. Along these same lines, it should be noted that the training currently provided to judge advocates is consistently outstanding. The officers selected to serve on the faculty of The Judge Advocate General's Legal Center and School (TJAGLCS) are uniformly superb, and the instruction they provide remains the "gold standard" for military legal training worldwide.

The Corps' positive attributes notwithstanding, the hallmark of every great team is a constant desire to improve. To that end, the time has come for the JAGC to eschew what many see as a legacy approach to judge advocate training and adopt a judge advocate training model that better prepares our officers for the realities of the contemporary operational environment. While learning the nuances of military law is critically important, our officers also need to receive more extensive training in basic staff skills, the operations process, and other key areas that will enable them to perform more effectively in operational assignments.[7]

Where the JAGC Needs to Improve and Why

Ask most judge advocates about the first time they took part in a training exercise, entered a tactical operations center (TOC), or participated in the Military Decision Making Process (MDMP)—a planning and decision-making methodology used Army-wide during training and operations—with an operational unit. When recalling this experience, few will recount being confident. Indeed, most will remember feeling a certain amount of apprehension and intimidation.

For a wide-ranging view of this topic, review any of the various publications produced by the Center for Law and Military Operations (CLAMO) or chat with any judge advocate who has served as an observer/controller (O/C) at a combat training center (CTC). In doing so, you will find that the experts—the individuals with the most first-hand experience observing and analyzing judge advocates in operational settings—uniformly agree that while virtually every judge advocate is highly competent in the substantive areas of military law, most could use improvement in *non-legal* subjects: specifically, operations and the operations process, MDMP, weapons and equipment capabilities, and targeting.[8] Indeed, the number one observation of judge advocate O/Cs during a recent conference hosted by CLAMO was that judge advocates need more extensive training in the operations process, battle staff skills, and the warfighting functions.[9]

To its credit, TJAGLCS's cadre and faculty have attempted to bridge this training gap. For example, TJAGLCS faculty recently began instructing new judge advocates during the Judge Advocate Officer Basic Course (JAOBC) on the orders process and basic troop leading procedures. At the end of JAOBC, the International and Operational Law Department

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[6] The arguments and opinions presented in this article are based on an analysis of current JAGC training programs, After Action Reviews from combat and contingency operations, interviews with judge advocates with recent combat experience, and interviews with current and former judge advocate Observer/Controllers (O/Cs) at the Joint Readiness Training Center (JRTC). The opinions contained herein are also based on the author's service in operational billets, including two years as the Senior Operational Law O/C at the JRTC and a recent deployment to Iraq in support of Operation Iraqi Freedom III.

[7] *See* U.S. DEP'T OF ARMY, FIELD MANUAL 5-0, ARMY PLANNING AND ORDERS PRODUCTION ch. 1 (Jan. 2005) (listing the components of the operations process as "plan, prepare, execute, and assess"). Emerging doctrine adheres to this notion; specifically, the final draft of *Field Manual Interim 5-0.1, The Operations Process*, states that: "the operations process is the major command and control activities performed during operations: planning, preparing, execution, and continuous assessment." U.S. DEP'T OF ARMY, FIELD MANUAL INTERIM 5-0.1, THE OPERATIONS PROCESS (5 Oct. 2005).

[8] *See generally* CENTER FOR LAW & MILITARY OPERATIONS, THE JUDGE ADVOCATE GENERAL'S LEGAL CENTER & SCHOOL, LEGAL LESSONS LEARNED FROM AFGHANISTAN AND IRAQ, VOL. I, MAJOR COMBAT OPERATIONS (11 SEPTEMBER 2001- MAY 2003) (Aug. 2004); CENTER FOR LAW & MILITARY OPERATIONS, THE JUDGE ADVOCATE GENERAL'S LEGAL CENTER & SCHOOL, LEGAL LESSONS LEARNED FROM AFGHANISTAN AND IRAQ, VOL. II, FULL SPECTRUM OPERATIONS (1 MAY 2003 - 30 JUNE 2004) (Sept. 2005).

[9] Memorandum, Director, The Center for Law and Military Operations (CLAMO), to Director, TJAGLCS, subject: Initial After Action Review, 2006 CLAMO Observer/Controller (O/C) Conference (7 Dec. 2006).

conducts a commander's update briefing exercise and includes seminar instruction on division organization and operations. Similarly, the JAGC senior leadership has directed that beginning in late 2006, judge advocates will attend the Basic Officer Leader Course (BOLC) alongside officers from other branches. While these innovations unquestionably represent steps in the right direction, today's judge advocate needs more. For the foreseeable future, operational deployments will be the norm for judge advocates. Once deployed, they will be expected (regardless of experience, time in service, or commissioning source) to participate as members of their unit's planning cells and battle staff. Unfortunately, the current JAGC professional education model does not fully prepare judge advocates for all of these challenges. A look at the current judge advocate training and education process is illustrative.

The JAGC Training and Education Model

Most judge advocates enter the Army as direct commissionees without the benefit of any prior military service.[10] During their initial entry training—JAOBC—they spend approximately two weeks at Fort Lee, Virginia, followed by ten weeks at TJAGLCS, in Charlottesville, Virginia. During the Fort Lee phase, students complete the necessary in-processing tasks, purchase uniforms, and begin to learn the basics of Army life.[11] Students also undergo a variety of elementary leadership and Soldier skills training classes.

The Charlottesville phase of JAOBC consists primarily of academic instruction at TJAGLCS. During this phase, JAs receive 110 hours of criminal law instruction, 104 hours of Administrative and Civil Law instruction, 48 hours of International and Operational Law instruction, and 28 hours of Contract and Fiscal Law instruction.[12] Beginning in 2006, after completing their training in Charlottesville, judge advocates will attend BOLC, which is discussed later in this article.

During the initial phase of their careers, most judge advocates return to TJAGLCS from time to time for "short courses" that focus on specific areas of military legal practice. These classes generally consist of classroom and seminar instruction provided by TJAGLCS faculty or other subject matter experts. Sometime between their eighth and tenth year of service, judge advocates attend the Judge Advocate Officer Graduate Course.[13] The Graduate Course consists almost exclusively of substantive military legal instruction at TJAGLCS. Graduates of the course receive a Master of Laws, or LL.M., in Military Law.

One thing noticeably absent from the current JAGC training model is the Combined Arms and Services Staff School (CAS3). In the past, junior Army officers, including judge advocates, attended CAS3 prior to their advanced course (in the case of judge advocates, prior to the Graduate Course). The Combined Arms and Services Staff School focused on basic battle staff skills and taught students the various planning tools, techniques, and methodologies used in operational units. A significant portion of CAS3 was devoted to the MDMP. Learning and actually practicing the MDMP helped judge advocates begin to understand staff roles and responsibilities. It also helped further their understanding of the operations process.

An added benefit of CAS3 was the opportunity for students to attend the course alongside officers from other branches. This opportunity was especially beneficial for less experienced Army officers, as it provided them with a chance to learn about the roles, missions, and areas of expertise of the other branches and to see how the various components of an operational unit staff work together during operations. Unfortunately, CAS3 was discontinued as a "stand alone" course in April 2004. The topics covered during CAS3 have since been added to, or were already taught in, the captains' career courses provided by other Army branches.

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[10] Telephone Interview with Lieutenant Colonel Ray Jackson, Judge Advocate Recruiting Office, Office of The Judge Advocate General, in Washington, D.C. (Dec. 15, 2005).

[11] While in Charlottesville, JAOBC students also participate in student-led physical training (PT), performed to Army standards, three days per week. Additionally, those students competing for Airborne and Air-Assault school slots volunteer for a more intense PT program, which, for the Air-Assault candidates, includes a number of cadre-led road marches.

[12] THE JUDGE ADVOCATE GENERAL'S SCHOOL, PROGRAM OF INSTR. 5-27-C20: JUDGE ADVOCATE OFFICER BASIC COURSE—PHASE II, JANUARY TO APRIL 2005 (Mar. 2005) (maintained by Associate Dean, TJAGLCS).

[13] OFFICE OF THE JUDGE ADVOCATE GENERAL, JAG PUB. 1-1, JAGC PERSONNEL AND ACTIVITY DIRECTORY AND PERSONNEL POLICIES, 2005-2006 app. (Nov. 2005).

Recognizing the importance of CAS3 for judge advocates, the JAGC has developed a distance learning program designed to teach officers some of the subjects formerly covered during the course.[14] This initiative is an important first step in improving the existing judge advocate education model, and it will undoubtedly go a long way toward improving the baseline operational knowledge of most judge advocates. The following question—upon which reasonable minds may disagree—remains: is a distance learning program adequate to solve the problems identified in this article? If not, can and should the JAGC do more to make judge advocates better battle staff officers? A closer look at the judge advocate training and education process may help to frame the debate.

Identifying Gaps in JA Training and Education

Presently, a judge advocate's military education, up to and including the Graduate Course, does not include detailed instruction in critical battle staff skills, the operations process, the Army's organizational structure, or the Army's basic battle tactics and strategy. The distance learning initiative notwithstanding, the first chance most judge advocates will have to learn these areas in any detail may well come when they attend Intermediate Level Education (ILE)—a milestone they will not normally reach until they have completed at least one assignment *after* the Graduate Course. While on this topic, it is worth noting that ILE is not a primer on staff skills and operations for new Army officers. To the contrary, ILE is designed to prepare officers for staff assignments at the brigade level and above.

As a practical matter, this delay in education means that the average judge advocate will serve between ten and twelve years on active duty and likely will complete a number of operational assignments *before* he receives any formal, hands-on training in the concepts, terminology, and systems that are the mainstays of life in an operational unit. While most judge advocates will have had a certain amount of on-the-job training on these subjects by this point in their careers (and upon implementation of the distance learning program they will have been exposed to some of these concepts via their computers), the situation still invites the following question: Is this educational gap preventing operational judge advocates from achieving their full potential?

Given the training model discussed above, judge advocates may well arrive at their first operational assignment without a sufficient understanding of how the Army really works in an operational setting. While judge advocates are eager to serve and to work hard, many will simply be unacquainted with unit capabilities and the various command posts, boards, centers, and cells within their headquarters. Some judge advocates will have never prepared a staff estimate, given a staff briefing, or participated in the targeting process. Others will have never written or reviewed an operations order or one of its annexes. Unfortunately, most will not fully understand operational terms, operational graphics, or the basic tenets of tactics and strategy. These judge advocates will have never participated in mission analysis, deliberate planning, or the MDMP. They will have a limited understanding of the roles and missions of the various branches of the Army, and they will not know the kinds of operations the Army conducts as a matter of doctrine.[15] Most, if not all, operational unit judge advocates will be called on at some point to provide expert advice on the use of force, rules of engagement (ROE), and complex targeting issues. While these questions are virtually guaranteed, the JAGC training model does not currently address the capabilities and limitations of the weapons, ordnance, and delivery platforms regularly employed by the Army and the joint force.

The Timing Problem

As noted, the first in-depth, hands-on training that a judge advocate will receive in battle staff-related topics, will probably come during ILE. Given that most judge advocates attend ILE as senior majors, this training arguably comes too late. A high percentage of judge advocate assignments in the operational Army[16] are performed by captains. As a result, the

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[14] The Training Developments Directorate at TJAGLCS is currently developing a distance learning course called the Judge Advocate Tactical Staff Officer Course (JATSOC). The JATSOC subcourses will include: Combined Arms Defense and Offense, Map Symbology, MDMP, Intelligence Preparation of the Battlefield Overview, Joint Operations, Military Briefings, Army Organizations, and Staff Roles and Coordination.

[15] Army doctrine currently recognizes four types of operations: offense, defense, stability, and support. *See* U.S. DEP'T OF ARMY, FIELD MANUAL 3-0, OPERATIONS pt. 3, chs. 7-10 (June 2001). The new *FM 3-0*, due to be released in 2007, lists the Army operations as offense, defense, stability, and civil support.

[16] The terms "operational Army" and "operational force" refer to those organizations within the Army that provide essential landpower capabilities to combatant commanders. The operational Army is distinguished from the "institutional Army," which includes those units and organizations that exist to support the accomplishment of the Army's Title 10 functions. These functions include accessions, training, doctrine development, human resource management, medical support, civil infrastructure support, acquisition, and procurement. *See* U.S. DEP'T OF ARMY, FIELD MANUAL 1, THE ARMY ch. 2 (June 2005).

average judge advocate can reasonably expect to serve in an operational unit early in his career—often as soon as the first or second assignment. Given the Army's commitments in the Global War on Terror (GWOT), a junior judge advocate's first operational assignment may very well include a lengthy deployment to a combat or contingency operation.

Solving the Problem Sooner Rather Than Later

Critics who see no need for the type of training advocated by this article will probably maintain that the JAGC has served the Army exceedingly well for 230 years without non-legal training and that it will continue to do so in the future. Others may argue that the JAGC mission is to provide legal services to the Army and that this can best be accomplished by focusing judge advocate training exclusively on the core legal disciplines.[17] While both of these viewpoints have some merit, they are, to a certain extent, rooted in the past. These viewpoints do not provide sufficient grounding for judge advocates to meet the myriad challenges they will face in the twenty-first century.

The Army is at war and in the midst of the most dramatic period of change in its history. While it is decisively engaged in the GWOT and homeland security, new and elusive threats from non-state entities, and other missions across the full spectrum of military operations, the Army is simultaneously transforming its force structure to a brigade-focused, modular design.[18] The implications of these two events are staggering and well beyond the scope of this article; however, two salient points for the JAGC merit discussion. First, the U.S. Army is engaged in a protracted war in which the mission profiles and the complexities of the battle space are incredibly unique. Because a non-linear, non-contiguous battlefield and complex, decentralized operations will be the norm for the foreseeable future, today's judge advocate cannot expect to spend his time in "the rear" focused solely on the core legal disciplines. Indeed, events have shown that there is no "rear" when facing an asymmetric threat.[19] Additionally, the modern operational judge advocate is a key member of the battle staff whose input is essential during the planning and conduct of operations. In order to fully contribute, judge advocates must understand the concepts, processes, and lexicon used by the operational force. This knowledge should be gained during a judge advocate's formal education, not left to happenstance or developed in an ad hoc manner on the job.

Second, in keeping with the Army's new modular design and its brigade-centric focus, future operations may require a battalion or brigade task force to operate in a semi-autonomous manner for an extended period, often without the luxury of a "parent division" in close proximity. As a part of the Army transformation process, the JAGC has permanently assigned operational legal teams, consisting of judge advocates and paralegal soldiers, to brigade-level staffs for conventional forces and to battalion-level staffs in Special Forces groups. As a result, operational judge advocates must be prepared to participate in the planning and assessment of sophisticated operations at lower levels of command. Similarly, they must arrive at their units ready to provide timely advice on critical decisions, without needing to seek information or guidance from higher headquarters. Without the necessary staff skills and the proper background and training in the essential elements of operations, judge advocates may be less effective, especially in an isolated environment in which decisions will be time sensitive and "reachback" is limited.

What About BOLC?

In considering the dilemma discussed thus far, many will suggest that the judge advocate training problem will be solved when judge advocates attend BOLC. The BOLC is a six-week training course soon to be implemented Army-wide, which is designed to train new Army officers in basic combat and leadership skills. The course will focus primarily on small unit leadership and platoon level operations. At first glance, this suggestion appears valid, and certainly, as of this writing, the Corps' leadership has committed to participation in BOLC.[20]

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[17] U.S. DEPT. OF THE ARMY, FIELD MANUAL 27-100, LEGAL SUPPORT TO OPERATIONS ch. 5 (1 Mar. 2000) (indentifying the JAGC's core legal disciplines as Administrative Law, Civil Law, Military Justice, International Law, Legal Assistance, and Claims).

[18] *See* U.S. Army, The Army's Modular Forces, http://www.army.mil/modularforces/ (last visited May 25, 2006).

[19] At this writing, nineteen JAGC personnel have been wounded in action in Iraq and Afghanistan, and, sadly, five have been killed in action. These figures illustrate that in modern operations, JAGC Soldiers are more likely to find themselves in harm's way than ever before. *See* The Judge Advocate General's Corps, In Memoriam, https://www.jagcnet.army.mil/JAGCNETINTRANET/JAGCSTRA.NSF/(JAGCNetDocID)/IN+MEMORIAM?OpenDocument (last visited May 25, 2006) ("Honoring JAGC Regiment Members who died in a combat zone while answering their call to service").

[20] The author has been one of the members of the Corps' planning team working the issue of JAGC participation in BOLC since July 2004. Judge advocates began attending BOLC in February 2007.

Unfortunately, BOLC is not the antidote to the problems outlined in this article. While BOLC will make judge advocates better officers and more confident leaders, it is not designed to teach battle staff skills or the essentials of the operations process. According to the U.S. Army Infantry School, the proponent for the course, BOLC is designed to "[e]nsure each lieutenant graduates with the skills [necessary] to lead a platoon [that] will close with and destroy the enemy."[21] In addition, each student will be developed into leaders who "[a]re familiar . . . with squad and platoon dismounted battle drills and command selected collective tasks."[22] These are laudable goals, and this type of training is long overdue for judge advocates, but the course will not necessarily prepare judge advocates to serve specifically as members of an operational unit's battle staff.

Additionally, the inclusion of BOLC in the Corps' education model may have certain unintended consequences. Specifically, the Fort Lee phase of JAOBC has been shortened to make time for BOLC and certain pre-BOLC training, and some of the operations-oriented training classes that judge advocates formerly received at Fort Lee are no longer provided.

Some Possible Solutions

The JAGC could conceivably solve many of the problems outlined in this article by modifying its existing educational model. Using a new educational construct, JAGC training should include an introduction to Army organizations and capabilities, a primer on staff skills, a discussion of key components of the operations process, and some hands-on experience with the MDMP.

Training could take place at TJAGLCS, the Corps' Regimental home, and should occur as early as practicable in a judge advocate's career. With a few notable exceptions, the proposed training could be taught by judge advocates. There are, and will continue to be, numerous judge advocates with operational, practical, and academic experience who are either assigned to TJAGLCS or otherwise available. Considering that this proposed course probably would be taught no more than three times per year, it makes sense to leverage the knowledge and expertise found within the JAGC.[23] When an area is not within the capabilities of the JAGC (intelligence preparation of the battlefield, for example), a subject matter expert could be brought in to teach that block of instruction and provide the necessary perspective and insight.

The training contemplated under this new educational construct would not be designed to make judge advocates operations experts. Rather, it would fully familiarize judge advocates with the key terms, concepts, and methodologies they will encounter in the operational force. Figure 1 shows a list of proposed training topics. If these topics were addressed in the time frame suggested, the course could be taught in the same amount of time as an existing TJAGLCS short course (i.e., four to five days). The list of topics is not all inclusive, and seminar discussions and practical exercises could be incorporated to enhance the learning experience. Three possible courses of action (COA) for this training are outlined below.

COA #1: Extend the Length of the Basic Course

A first option is to extend the length of JAOBC by one week. The advantages of this COA are that students are already located at TJAGLCS; they are settled into the quarters and facilities; and they are accustomed to the academic routine. Because this training would occur after JAOBC, this option would not impact the existing JAOBC academic program of instruction. Additionally, it precludes students from having to leave Charlottesville, report to their units, and later return to TJAGLCS for the additional training in a costly temporary duty (TDY) status. Critics of this COA note that at this point in their careers, judge advocates have little understanding of the Army; therefore, they lack the requisite "context" for a detailed study of the operations process and the other topics advocated by this article. In response, one could assert that judge advocates are smart, capable, well-educated people. If approached correctly, there is no reason they could not benefit from this training and begin to form a solid base of understanding in this area.

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[21] 1st Battalion, 11th Infantry Regiment, Basic Officer Leader Course II (BOLC II), Commander's Vision, https://www.infantry.army.mil/BOLC/content02_Vision.htm (last visited May 25, 2006).

[22] *Id.*

[23] Additional duties are rarely popular; however, they are a necessary and time-honored aspect of service as an Army officer. It is also important to remember that the Army sends its officers to school with the anticipation of obtaining a return on its investment. Officers who are graduates of ILE, and other forms of "higher education" provided by the Army, have an obligation to share their knowledge and experience with their fellow Soldiers.

COA #2: Create a Stand-Alone Course

A second option is to create a stand-alone short course not unlike those already taught by the various academic departments at TJAGLCS. The primary advantage of this COA is flexibility. Specifically, officers could leave the basic course, attend BOLC, report to their assignments, and when practicable, return for the operations training course that best fits their schedules. Likewise, the course could accommodate officers at various points in their judge advocate careers and officers from sister services.

The principle disadvantage of this option is that it would be expensive. Generally, TDY trips to short courses are funded by the judge advocates' parent unit. More importantly, this COA would not ensure that every new judge advocate is adequately trained on these important topics at the time when he requires the instruction the most—early in his judge advocate career. Also, if this training were organized as a stand-alone short course, it would have to compete for time, space, and resources with the other short courses already on the TJAGLCS academic calendar.

COA #3: "Salami Slice" Current Basic Course Curriculum

A third option would entail reviewing the current JAOBC curriculum, deleting selected subjects presently taught to basic course students, and using the time saved to teach the topics proposed in figure 1. The primary advantage of this option would be that it would not involve lengthening Phase II of JAOBC, and it would not require judge advocates to return to TJAGLCS in a TDY status. The major disadvantage of this COA is that it would mean the elimination of certain blocks of instruction currently deemed essential to a judge advocate's professional education.

Conclusion

In these critical times with so much at stake, the JAGC must ensure its officers are experts in military law, capable of effectively functioning as members of an operational unit's battle staff. The outstanding legal training provided as a part of the current Corps' education model satisfies this first requirement, but the JAGC must transform other aspects of this model to address the second requirement. The suggestions offered in this article offer one view on how to begin to accomplish these goals. With the right training, future judge advocates can enter operational assignments with confidence and continue to improve the already stellar reputation of the Army JAGC.

Proposed Judge Advocate Operations Training Course (JAOTC)

Day 1: How The Army is Organized
Army/Joint Force Overview
The Army's Mission
Branches of the Army – Missions and Capabilities
Distribution of Army Forces Worldwide
Operational Force Overview
Echelons Above Division – Organizations, Stationing, and Capabilities
Divisions – Organization, Stationing, and Capabilities
Brigade Combat Team and Support Brigade Overview
Day 2: Battle Staff Organization and Operations
Staff Organization, Roles, and Responsibilities
Coordinating Staff, Special Staff, and Personal Staff
Staff Planning Tools, Procedures, and Methods for Synchronization
Types of Orders (Warning Orders, Fragmentary Orders, Operation Orders, and Order Annexes)
Briefing Types and Briefing Techniques
Overview of Operational Terms and Graphics
Intro to IPB
Intro to the MDMP
Day 3: How the Army Fights
Operations Overview: Offense, Defense, Stability, and Support
Battlefield Organization: Decisive, Shaping, and Sustaining Operations
Doctrinal Warfighting Functions
The Operations Process: Plan, Prepare, Execute, and Assess
Command Post Operations (Tactical Operations Center, Tactical Action Center, etc.)
The Targeting/Combat Synchronization Process (Lethal and Non-Lethal)
Briefing Practical Exercise
Day 4: What the Army Uses to Fight and CPX – Planning PE
Major Army Weapons Systems
Joint Force Weapons Systems
Major Army Communications Systems
Culminating Practical Exercise (Mission Planning)

Fig. 1

A View from the Bench

Keys to a Successful Direct Examination

Lieutenant Colonel Robert M. Twiss[1]
Military Judge, 4th Judicial Circuit
U.S. Army Trial Judiciary, Fort Lewis, Washington

"[A] criminal trial is not a game, or a sport. '[T]he very nature of a trial [i]s a search for truth.'"[2]

Most experienced criminal trial attorneys are familiar with this quote from the Supreme Court in *Nix v. Whiteside*.[3] A criminal trial is the acting out of a screen play written by counsel and there should be no surprises at trial. The success of the screenplay is dependent upon the quality of the script, which is counsels' direct examination.

The primary key to a successful direct examination is preparation, preparation, preparation. Part of this key is preparing closing argument prior to the opening of trial. Direct examination does not just happen. It must be planned, after counsel determines the objectives to be accomplished through each witness.

This article will suggest that courtroom control, preparation of witnesses, use of exhibits, and posing open-ended, non-leading questions are the keys to a successful direct examination. The article will conclude by positing that early preparation of a successful closing argument is the key to a successful examination.

Control of the Courtroom

Everything you do, from the time you walk into the courtroom to the time you walk out, should demonstrate that you are in complete control of the courtroom. Direct examination is the focal point of your control of the courtroom, and if accomplished smoothly and effectively, demonstrates to the members that you are in charge.

Both civilian juries and military courts with members look for someone to guide them through the trial, someone upon whom they can rely to show them the way. Members of the court will develop trust and confidence in the attorney whom they perceive as being in charge. Trust and confidence in counsel will make the members more receptive to your presentation of the case. Everything that you do in the presence of the jury should be directed towards that end.

Preparation

Where does direct examination begin? Does direct examination begin at the podium, after you have called the witness to the stand? Or, on the morning of the witness's testimony when you conduct your last minute preparation of the witness? Or, at some point after the opening statement? Or, a day or two before trial begins?

Direct Examination Begins with Your Preparation of Your Closing Argument in the Case

Closing argument drives direct examination. Closing argument is not simply the after-the-fact result of the presentation of direct examination. Your closing argument should be prepared well in advance of trial in order to know what evidence

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[1] The author holds the civilian position of Chief, Narcotics and Violent Crime and Chief, Anti-Terrorism and National Security, Office of the U.S. Attorney, Eastern District of California, Sacramento, California.

[2] Mathews v. United States, 485 U.S. 58, 72 (1988) (White, J., dissenting) (quoting Nix v. Whiteside, 475 U.S. 157, 166 (1986)).

[3] Nix v. Whiteside, 475 U.S. 157, 166 (1986).

you have to present during the trial. Government counsel must ensure that they have presented convincing evidence on all elements of the offenses. Defense counsel have to know how to attack the government's evidence on each of the elements, and how to present the defense case. You have to make sure that you have presented evidence to support all of the things that you want to say at closing.[4]

Take the Other Side of the Case

You must take the other side of your case and attack it to identify your weak points. Having discovered the holes in your case, you must identify the evidence necessary to fill those holes. Government counsel must at least outline the defense closing argument, and then the government's rebuttal to the defense closing.[5] The government rebuttal argument should be prepared before the first witness is called in the government's case in chief. Likewise, defense counsel has to prepare the government's closing argument and rebuttal argument in order to know what the defense closing should say. To the extent possible, defense counsel should try to keep out evidence upon which the government will need to rely for its closing and rebuttal, and should try to eliminate key aspects of the government's rebuttal argument.

Interview All of the Witnesses in the Case

You should personally interview each witness in the case. It is not enough to rely upon the police reports and memoranda of interview. For government counsel, it is helpful to interview the victim and any key witnesses before preferring the charges, so you can ensure that you have the evidence to actually prove the offenses beyond a reasonable doubt.

It is important for you to know what is *not* in the police report because frequently what is not in the report is critical. Police reports and memoranda of interview[6] normally contain those facts or other statements which support the police officer's view of the case. Police reports generally do not include information which does not support the reporting officer's view of the case.[7]

For example, what does the length of the memorandum of interview tell you? It tells you not only what the witness said during the interview, but it also might tell you that there was a lot said which is not contained in the memorandum. If the interview took two hours, and the memorandum is only one page long, then a lot happened during the interview which is not contained in the memorandum.[8] You need to know what happened in the rest of the interview. Usually whatever happened during the rest of the interview will undercut the statements contained in the memorandum. Did the witness volunteer the statement without coaxing and prodding, or was it like pulling teeth to get the witness's statement? Did the witness deny the facts the first five times through the story, and finally give in just to end the interview? Did the officer or agent provide all

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[4] The suggestion that you prepare the closing argument before beginning the case does not necessarily mean that you should write out the full text of the argument in advance of trial. It does mean, however, that counsel should at least outline the closing argument and ensure that all elements of the offense have been addressed, or all aspects of the defense have been addressed. In some cases, it is appropriate to prepare a trial brief summarizing the nature of the charges, the law pertaining to the offense, and a summary of the expected testimony. The preparation of the trial brief is a form of writing the screenplay for the trial, and will necessarily include a summary of what you expect to prove at trial and argue at the close of the evidence.

[5] Government counsel should prepare summation and rebuttal at the same time in order to have the most efficient structure to the overall closing argument. It is necessary for you to know what arguments to make in closing, and which arguments to hold back until rebuttal. Government counsel should "canalize" the defense during the government's summation by forcing the defense to make those arguments during defense closing which government counsel can forcefully destroy during rebuttal. Defense counsel must learn to avoid the land mines planted by the government, and neutralize the Government's rebuttal argument.

[6] Federal law enforcement officers from virtually all federal agencies will prepare a written report of any interview undertaken in the investigation or any action they take in an investigation. These written reports of interviews generally are referred to as "memoranda of interview." They may be reported on a particular agency form and known within that agency by the name and number of the form, i.e. a Drug Enforcement Administration (DEA) Six because DEA memorandums of interview are reported on DEA Form 6, or a Federal Bureau of Investigations (FBI) 302 because FBI memoranda of interview are reported on FBI Form 302. Other agencies have their own forms and form numbers for these reports.

[7] In the author's personal experience covering over thirty-three years, police reports and memoranda of interview generally are written from the perspective of proving the officer's view of the case and rarely contain information which rebuts the officer's view of the case.

[8] In the author's experience, police reports and memoranda by law enforcement officers summarizing a witness interview frequently cover only the high points of the interview, and only those points which support the agent's view of the case. If the witness denied that he did something five times, and finally admitted that he did do it, generally the memorandum will not reflect that he denied the act five times before admitting it. The trial attorney needs to know this information, however, because it goes to the witness's credibility, as well as the likelihood that the witness will recant the statement at trial. If it was like pulling teeth to get the witness to say something and the witness finally gave in after a lengthy period, counsel should not be surprised if the witness changes his statement at trial.

the facts, and the witness simply agree to them? You need to know what the witness actually will say in court and you need to be able to assess the willingness of the members to accept the witness's testimony. The only way that you can make that assessment is to personally interview each witness. You also might want to review the Criminal Investigation Command (CID) agent's notes of the interview to see if the memorandum report accurately tracks the agent's notes as she/he made them during the interview.

Cross Examine All of Your Witnesses

You should thoroughly cross examine your own witnesses in advance of the trial as part of their preparation. The most aggressive and rigorous cross examination of your witness should take place in the privacy of your office. Only by conducting your own cross examination can you make an assessment of what is going to happen to the witnesses on cross examination. You need to ensure that the testimony of each witness will achieve the objective for which the witness is called. It may be that the damage done to your case on cross examination of your own witness outweighs the benefit of calling the witness. Those witnesses should not be called at trial.

A Trial Is Three Dimensional

Other than experienced trial lawyers, people generally look at a trial in two dimensions, length and breadth. In other words, they do not distinguish between the quantity and quality of the evidence. They treat all evidence the same. They look at whether there is some evidence on each element of the offense. Non-trial lawyers sometimes consider the elements of the offense to have been proven if there is *some* testimony or other evidence on each element.

Criminal trials are three dimensional, however. The third dimension is depth, as not all witnesses are equal. The object of calling witnesses is to prove facts going to an element of the offense, or as a predicate to a defense. In order to be effective, the members must accept and believe the proffered testimony. In some instances, due to motive, bias, or opportunity to see and hear the event in issue, the testimony of one witness will be more persuasive than the testimony of multiple witness who testify to a different version of events. Sometimes the testimony of a witness is inherently incredible. It is necessary to evaluate all these factors in order to determine what the available witnesses will actually prove to the members at trial.

Just because there is testimony from one or more witnesses which would prove the element of the offense if the members believed the witness does not necessarily mean that the members *will* believe the witness. If the members or judge sitting alone do not accept and believe the testimony of the witness on any particular element of the offense, then the offense will not be proven. You have to evaluate whether the finder of fact is likely to accept the testimony of the witnesses. You can make that assessment only by personally interviewing the witnesses.

Identify the Objectives for Each Witness

You have to determine what you want to achieve through the presentation of testimony, and which witnesses best accomplish those objectives. You should not necessarily present all the witnesses that the officer or agent identify, or in the case of the defendant, which the defendant or defense investigator identify. Nor should you necessarily present all of the prospective testimony which is outlined in the police reports and/or memoranda of interview. Just because something is in the police report or the investigative file does not necessarily mean that it should find its way into trial.

You should present only those witnesses who support and advance your case. You should limit the testimony of those witnesses to the points which achieve the objective that you want to accomplish. You must identify what you want to accomplish, accomplish it, and then get out. Do not allow a witness's effectiveness to be diminished by getting bogged down in minutia.

In a drug case, there may be 100 photographs depicting a clandestine laboratory, the equipment in the lab, and the chemicals being used. Assuming that it is appropriate to admit all 100 photos into evidence, it does not follow that you should have your witness testify about all, or even most, of them. Do not put the members to sleep by having a witness testify about multiple photos showing the same piece of evidence from five different angles unless it is necessary. The members will see all the photos when they deliberate, and counsel can choose to emphasize as many of them as appropriate during closing. After laying the foundation and authenticating the exhibits, move them into evidence. After they are in evidence, have the witness testify about those photos which are really important.

Identify All of the Exhibits You Will Introduce and How to Track Them

It is relatively easy to keep track of your evidence if you have a trial with ten exhibits. They might all be authenticated by the same witness or by a small number of witnesses. If you have 1,000 exhibits totaling 10,000 pages, and fifty to 100 witnesses, then keeping track of your exhibits and who should authenticate them is a much more difficult task.

In either event, you must identify who will authenticate each exhibit, which witnesses are necessary to lay the foundation to establish relevance, and which order to present the exhibits. You should prepare an exhibit list which identifies the exhibit by number and description and which witness will authenticate it. It also is helpful to have a column on the exhibit list where you can note when each exhibit is admitted into evidence so that you can tell at any given time which exhibits have been admitted and which have not.

One convenient way of keeping track of exhibits in large document cases is to assign a witness number to each witness who will authenticate exhibits, and then number each exhibit which that witness will authenticate with an exhibit number which begins with the witness's number. For example, Jane Doe is witness number 35 and John Smith is witness number 52. The ten exhibits which Jane Doe will authenticate are numbered 3501 through 3510. Likewise, the fifteen exhibits which John Smith will authenticate are numbered 5201 through 5215.

In this fashion, it is easy to ensure that all of the exhibits to be authenticated by any given witness have been authenticated by that witness by simply reviewing the exhibit list before the witness leaves the witness stand. You also should ensure that authenticating all those exhibits is included in the outline of questions for that witness. It is fairly easy to block and copy the list of exhibits into the witness outline if all the exhibits for that witness are grouped together.

Military judges are accustomed to having government exhibits numbered Prosecution Exhibit (PE) 1, PE 2, etc., and defense exhibits numbered Defense Exhibit (DE) A, DE B, DE C, etc. If you have a large document case and want to deviate from this traditional exhibit numbering system, you will need to discuss the concept with the military judge in advance of trial. Most judges simply are looking for the most effective method of tracking exhibits, and likely will be receptive to reasonable alternatives.

Prepare Outline of Witness Examination

You should prepare some form of outline for the direct examination of each witness. There is no single best format and you should choose whatever format works best for you. There are two objectives to keep in mind: the first is preparing you to do the direct examination and providing you with a tool to assist during the actual questioning at trial; the second is preparing the witness for the direct examination. Every witness is different. In some instances, it may be necessary to make a more detailed outline in order to help prepare the witness before they testify at trial.

Some very skilled trial attorneys, with decades of trial experience and dozens of jury trials under their belt, continue to write out in advance every single question which they intend to ask every witness at trial. If that is what works best for you, then that is what you should do.

Other very experienced trial attorneys prefer to prepare witness summaries of the subject matter they wish to cover rather than a formal list of questions. There are two principal reasons why some counsel may prefer outlines or summaries to actual questions. The first is the amount of time it takes to write out all of the questions in advance, many of which add nothing to the ability of the trial attorney to formulate the questions at trial, or to the ability of the witness to answer the questions at trial.

A second and related reason would be to retain a certain degree of spontaneity during the direct examination at trial. To the extent possible, direct examination should be a conversation between the witness and the court members, with the trial attorney asking the questions for the members. The more formal the witness outline and the more the witness goes through the questions, the more rehearsed the testimony may appear at trial. Smooth flowing testimony is good; testimony which gives the appearance of being "canned" is not.

You should choose the combination of outline, summary, and actual questions that works best for you under the circumstances. You may prepare summaries or outlines for seventy-five percent of the witnesses at any given trial, and very detailed questions for the remaining twenty-five percent of the witnesses at that trial. As a general rule, less-experienced trial attorneys should prepare more detailed questions and outlines. Once you are comfortable with formulating non-leading questions on your feet in the courtroom, then you may consider making the outlines less detailed.

Prepare Each Witness for Their Testimony

Interviewing a witness and preparing a witness are two entirely different things. The objective of interviewing the witness is to find out what the witness knows, how much the witness is guessing, and how the witness will respond to cross examination. The objective of preparing the witness is to get the witness ready to walk into the courtroom to present the testimony.

Testifying in court is inherently a stressful situation for everyone. Most witnesses will testify only once in their life. You should do everything possible to reduce the stress which the witness is experiencing. It is important for the witnesses to know what to expect and how they should act.

Witnesses frequently do not even know where to go once they walk through the courtroom door, and as a result will feel alone and alienated. You should not underestimate the apprehension of witnesses to testify in public. Many witnesses are fearful about testifying because of what they have seen on television. Most witness testimony is much more mundane than what they see on *Law and Order* and similar shows. You should put the witness's mind at ease.

Explaining the physical environment to the witness helps the witness feel at home once they walk into the courtroom. Explaining the procedure to the witness further helps to reduce the stress. Explain to the witness that although the questions are coming from counsel at the podium, the witness actually is speaking to the members, and that it is important that the members hear and understand the testimony. Explain to the witness that they must speak in complete sentences even though the witness knows that counsel already knows the answer to the question, because the members do not. Explain to the witness that the members of the court have not read all the police reports and the witness's prior statements, and that the members are hearing the witness's story for the first time.

For most witnesses, the most stressful period of their testimony is in the first few sentences. Witnesses frequently think that they have to memorize their entire testimony, and then recite it without any breaks as a monologue without your assistance. Make sure the witness knows that you will be guiding them through the direct examination and they do not have to recite their entire testimony in response to the first question. Go over the testimony with every witness to ensure that they each know what to expect and you know what they will say. The witness has to know exactly what you are asking of the witness at each stage of the examination. It also is important for the witness to know what you are not asking.

Sometimes it is not entirely clear from the witness's pre-trial statement how much of the statement comes from the witness's personal knowledge and how much is the witness's conclusion, guesses, or conjecture. It is critically important for you to determine what the witness knows and what the witness is guessing.

You must avoid setting your witnesses up for failure by asking the witness about things which are beyond the witness's personal knowledge. You do not want your witness's effectiveness to be diminished on cross examination by admitting that he actually did not have personal knowledge about what they testified to on direct examination. You have to tell the witness that you are not going to ask questions about those things which are beyond the witness's personal knowledge, and that the witness should limit his or her testimony to that which they know, and not include things about which they are guessing.

Length of Preparation

The general rule of thumb used by many experienced trial attorneys is that it takes about three hours of witness preparation time for each one hour of expected testimony. If the witness is particularly difficult, either due to a language problem or an intelligence problem, or the witness is not willing to focus on the subject matter of the testimony, then the amount of preparation time might increase. If the witness is a professional law enforcement officer, who has testified several times, then the amount of preparation time will be less than a lay witness, but probably not less than two hours of preparation for every hour of testimony in court.

You cannot make any assumptions that a witness will know what to do or how to act, even if your witness is a professional law enforcement officer. An officer or agent with several years of experience may not have testified in court before. Even if the officer has testified several times, it still is necessary to spend some time with the officer to prepare his or her testimony.

Prepare a Trial Notebook

Prepare a trial notebook with outlines of your opening statement and closing argument, summaries of witness testimony, outlines of witness examinations, witness and exhibits lists, trial brief, jury instructions, copies of cases which you know you will have to argue during trial to support your position on the admissibility of evidence, and similar items.

Have as many notebooks as you want, but bring only one to the podium with you while examining a witness. Remember, you want to convey to the members that you are in complete control of the courtroom and that your position is the position which the members should adopt. Demonstrating that you have everything that needs to be known about the trial in that single three inch wide notebook which you bring to the podium helps to convey that message.

It may be that your actual trial notebook fills several volumes of three ring-binders. What you want to do in that instance is switch the contents of your courtroom trial notebook every day to ensure that everything you are likely to need during that day of trial is in the single notebook which you bring to the podium. The longer and more complex the trial, the more the court members will be impressed by the fact that you have everything that needs to be known in that single notebook.

Be Careful of the Message you Convey

Do not send an unintended subliminal message with your trial notebooks and related material. You want to demonstrate that you are open, have nothing to hide, and invite scrutiny by the members. You want the members to be able to see you, and either your case agent or your defendant, depending upon whether you are trial counsel or defense counsel.[9]

If you have a dozen three-ring binders as your trial notebook, do not line them up side by side in front of you on counsel table. If you do, you will be sending a subliminal message to the jury that you and your client are hidden away in your fortress, with a very formidable barrier between you and the members. The message conveyed is that the defendant is hiding from both the witnesses and the members, and by implication, the truth. That is not the message you want to convey with the physical environment which you construct for yourself in the courtroom. The same rule applies to counsel for the United States.

Trial Presentation

Elicit from the witnesses, in clear and logical progression, their observations and activities so that the trier of fact understands, accepts, and remembers the testimony. Identify what you want to accomplish from each witness. Tailor your questions to quickly get to what you want the witness to focus on. Get in, get what you need, and then get out. Lay a foundation for the admission of physical or demonstrative evidence. Be focused. Do not waste time on extraneous things which do not establish what you are trying to prove.

Directing v. Leading

It is important to distinguish between permissible questions which direct your witness to the points on which you want the witness to focus, and impermissible "leading" questions which suggest the answer. Generally speaking, directing is good, and leading is bad. Not all leading questions are impermissible in direct examination, however, and there are times when they should be used.

It is important to distinguish between introductory matters and matters of substance. Most courts will allow (and encourage) you to use leading questions about introductory matters about which there is no dispute. This often saves time and focuses the witness on the substantive matters which will follow.

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[9] In civilian courts, the case agent almost always will sit at government counsel table with the prosecutor. In military courts, it is not as common for the case agent to sit at counsel table with the trial counsel. Regardless of who is sitting at counsel table with you, do not create an appearance of hiding in your fortress. While on this issue, however, if you are the trial counsel having your case agent sit at the table next to you is very helpful. Defense counsel has the defendant to provide feedback throughout trial. Why shouldn't government counsel also have someone to help keep track of witnesses, exhibits, and testimony? Perhaps trial counsel should ask the military judge for permission to have the case agent sit at counsel table during the trial if it is not already the practice in your jurisdiction.

When you call a police officer to the witness stand, you will need to introduce the officer to the members and explain why that witness is about to testify. You could say, "How are you employed?" To which the witness will say any one of a number of things, such as, "I am a military police officer," or, "I am a Soldier," after which you will ask a series of questions to establish his or her duty assignment on the date in question.

Or, you could simply say, "You are a military police officer assigned to the 1st Military Police Company, 716th Military Police Battalion at Ft. Riley, Kansas?" The witness will say, "Yes," and you have completed your introduction.

You then want the witness to testify about the events at issue. You could say, "Do you remember the events of 1 June 2004?" Hopefully the witness will say, "Yes," and then you can ask a series of follow-up questions to set the scene.

Unfortunately, in a not insignificant number of cases, the witness will say, "No," or "Can I refresh my recollection with my report?" or any one of a number of other undesirable answers. When you ask the follow-up question of, "What happened on that day?" the witness then goes into an extended discussion about everything he or she did from the beginning of the shift until encountering the accused. This is not the way you want to begin your direct examination.

What you can say to avoid this is, "Drawing your attention to Sunday, 1 June 2004, at approximately 1800, what contact if any did you have with the accused, Private John Doe?" "Where did that contact take place?" "How did that contact take place." In a few short questions, you have brought the witness to the exact time and place about which you want the witness to testify, and have prevented the witness from going through a litany of everything he or she did on the day in question before confronting the accused.

Paint a Word Picture of the Physical Environment

Every time you introduce a new event, it is necessary to paint a picture for the members to be able to visualize the transaction which you are about to describe. You want the members to be able to put themselves on the scene and visualize in their own minds exactly what happened as the witness relates the story. If the members cannot see the picture in their mind's eye, it is very difficult to assimilate the testimony about what happened.

With each new event, you want to address all the issues which might have had any impact whatsoever on the ability of the witness to hear, see, or otherwise witness what happened. Ask the witness to describe the physical environment. Was the area urban or rural? Was it daylight or dark? Was it raining? How light was it? Was it light because of sunlight or because of street lights or other artificial lighting? Were there any visual obstructions which would impede the ability of the witness to see what happened? Were there any noises or other distractions which would have impacted upon the ability of the witness to hear what happened? If the event involved contact with a police officer, was the officer in uniform or plain clothes? Was the police car involved a marked patrol unit or an undercover car? Only after carefully painting a picture for the members, allowing them to see the same thing as the witness who was on the scene, should you elicit the substantive testimony about what happened. The members have to be able to see the scene the same way as the witness saw the scene in order to fully understand and accept the witness's testimony.

If the issue involves a statement of the accused, run through all of the factors which rebut an allegation that the statement was coerced or involuntary in any way. Was the accused free to go? Was the accused handcuffed? Was the accused drunk? Did the accused appear to be under the influence of drugs or medication? Did the accused appear to be tired? Did the accused speak English, or was there an interpreter in the accused's native language? Was the accused allowed to take rest breaks and use the bathroom facility? Was the accused provided something to drink, and if the interview took place over several hours, was the accused offered something to eat?

Primacy and Recency

It is important that the members hear, understand, accept, and remember the testimony which you present during direct examination. It is important to begin the testimony of each witness with a strength of that witness's testimony to grab the attention of the members. You do not want the members to wonder why the witness is on the witness stand. Likewise, you need to finish each witness on a strong point which you want the members to remember. As a result, a chronological recitation of facts by each witness is not necessarily the most effective. When the members go back to deliberate, you want to have advocates among the members who will remind the other members that "witness so-and-so established that."

The "rule of threes" is a good way to proceed. If the members hear something three times, they are more likely to remember it.

Generally, it is better to work from the general to the specific. Have the witness give an overview when you introduce any new subject. After the witness gives an overall summary of the event, go back and break the transaction down into its component parts. Not only does the more detailed questioning provide more specific information to the members, it also repeats and reinforces the general overview the witness just provided. For example:

Q. Do you know Defendant X? Yes.
Q. How long have you known him. *Since 1990.*
Q. Would you describe your relationship as business or social? *Both.*
Q. Drawing your attention to the period between January 1, 1996 and June 30, 1997—please describe the nature of your business relationship with X.
A: *He was my drug supplier; I received 10 pounds of methamphetamine a week from him.*

Q. OK, now let's go back and break that down into little bites [and go back through the whole thing in detail].

Form of Question

On direct examination, use non-leading, open-ended questions to allow the witnesses to tell the story instead of the lawyer. You want the members to hear the story from the witness on the witness stand, not from the lawyer's questions. As much as possible, you want the testimony to be a conversation between the witness and the members. The members want to hear the testimony directly from the witness, and do not like having a witness simply agreeing with the lawyer.

Virtually every question on direct examination should start with the words, "Who," "What," "When," "Where," or "How." It is almost impossible to ask an impermissibly leading question if you formulate the question to begin with one of these words. As a general rule, never use the word "why" to begin a question, with the limited exception of when the witness's state of mind is in issue and you want to elicit why the witness did something. A "why" question may cause you to lose control of the witness, and with it, lose control of the courtroom. A "why" question on direct examination frequently will elicit impermissible and unintended testimony, which you then will have to clean up.

Consider the following questions to a Department of Defense parts inspector testifying in a defense procurement fraud case involving substitution of surplus repair parts in place of newly manufactured repair parts:

Q. Have you ever been the Quality Assurance Representative (QAR) or Quality Assurance Specialist (QAS) assigned to [. . .], Inc.?
Q. What period of time?
Q. When did you leave?
Q. Where are you now?
Q. Who replaced you?
Q. How often did you go to the [. . .] manufacturing facility?
Q. What is a Certificate of Compliance (C of C)?
Q. How many contracts did you supervise at [. . .] at any given time?
Q. What percentage of these contracts involved originally manufactured parts?[10]

Short direct questions lead the witness to the exact topic of discussion, and allow the witness to explain this portion of the industry in his own words, telling a story from the mouth of the witness rather than from counsel.

Focus, or "Keep your eye on the Ball"

Be as brief as possible, but take all the time you need. You want to get in, accomplish your objective, and then get out. Do not fail to cover the point, however, in your attempt to be brief. It is more than just getting testimony into the record in order to support closing argument. You want the members to hear, accept, believe, and remember the testimony.

[10] United States v. Aerometals, Inc., No. CR S-03-220 MCE (E.D. Cal. 2003) (acquitting defendant of defense procurement fraud after jury trial). These questions were asked by counsel for the United States.

Organize logically. Usually chronologically is best, but sometimes order of importance is more important; i.e., start with a recent event, describe what happened, and then work back to explain why.

Use simple language. Police officers are taught certain ways of speaking and writing in their introductory police training. When describing a vehicle stop, do not have the witness testify, "I activated the overhead visual signal, effectuated a vehicle interdiction and instructed the driver to dismount the vehicle." Instead, have the officer testify, "I stopped the car."[11] Likewise, make sure that the witness does not testify, "I activated the door fastening mechanism," when what he did was turn the door knob.

For instance, the following is a quote from a law enforcement report in a defense procurement fraud case: "About 1000 hrs, 14 May 01, Special Agent [Smith] effectuated follow-on coordination with Mr. [Jones] regarding DCMA Quality Assurance Representative (QAR) oversight and inspection process used on contracts pertaining to [XYZ], Inc."[12]

Translation: The special agent called Mr. Smith on the telephone to talk about the procedure for accepting parts on a contract.

Another actual quote from the same case: "About 1500, 11 Jun 01, Special Agent [Smith] coordinated with Mr. [Jones] regarding the use of surplus parts on contracts issued by TAPC." Translation: Special Agent Smith called Mr. Jones on the telephone to talk about surplus parts.[13]

Have your witnesses testify using plain English. A witness loses a lot of credibility by talking about "effectuating coordination" when it would have been much simpler and clearer to simply say "I called him on the telephone." The court members will wonder why the witness felt the need to embellish the language so much. Is the witness trying to make the transaction appear more important, or more incriminating, than it actually was? Anything which causes the fact finder to wonder about your witness's motive rather than the significance of the evidence is a bad thing, and you want to avoid it.

Use of Physical Evidence

Use pictures or other props whenever possible. Some people learn by listening, and some people learn by seeing. Most likely your panel of members will have some visual learners and some who learn by hearing. You need to communicate with each court member, using his or her greatest strength, to help them hear, see, and understand the evidence.

Photographs are excellent for demonstrating the physical environment of the scene where an event took place, or for conveying some other message visually. The proximity and relationship of an outbuilding to the principal residence can be demonstrated in seconds through the use of a photo, whereas describing the physical environment would take several pages of trial testimony, and the court still might not fully appreciate what you are trying to demonstrate.[14]

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[11] This allows you to transition into the follow up question, "How did you do that?" The officer can then take you step by step through each action that culminated in the driver exiting the stopped vehicle. "I turned on the lights, and waited for the driver to pull his car over to the side of the road. After the driver stopped his car, I pulled in behind him and approached the driver's side of the car. I asked the driver for his driver's license and vehicle registration." Counsel then asks about the driver's license, and transitions to a question for which the response is, "When he was unable to produce a driver's license, I asked the driver to step out of the vehicle."

[12] *Id.* This quotation was taken from an Army CID form entitled, "Agent's Investigative Report." The report pertained to an interview which an Army CID agent had conducted in an investigation of a defense contractor for suspected defense procurement fraud. The report pertained to a telephone call which the agent had placed to an employee of the Defense Logistics Agency (DLA) to ask a question about the oversight and inspection procedures used by QAR employed by DLA. A QAR is responsible for inspecting parts manufactured under a contract with the Defense Department to ensure that the parts conform to the contract specifications before the parts are accepted on behalf of the United States.

[13] *Id.*

[14] United States v. Cannon, 264 F.3d 875 (9th Cir. 2001). The district court granted defendant Cannon's motion to suppress approximately 400 marijuana plants found during a search of an attached converted garage on the defendant's property. United States v. Cannon, 104 F. Supp. 2d 1214 (E.D. Cal. 2000). The search warrant authorized a search of the residence, the garage, all outbuildings and the curtilage of the residence. The district court found that a building which once had been a garage had been converted into a rental apartment, and therefore was outside the scope of the search warrant.

The status of the garage as a rental apartment was not discovered until after the agents made entry to what appeared to be either an attached garage or attached outbuilding. The outbuilding was inside the privacy fence surrounding the residence and was attached to the residence building by a wooden deck. The outbuilding was only ten to fifteen feet from the back door of the residence.

On appeal, the United States wanted to demonstrate clearly to the U.S. Court of Appeals that the building at issue was attached to the residence and an integral part of the residential complex, and therefore within the scope of the search warrant. United States v. Cannon, 264 F.3d 875 (9th Cir. 2001). The

For example, in a drug kingpin conspiracy trial, the United States had to demonstrate the relationship between several co-conspirators, and also that the defendant was a leader and organizer of the enterprise. A photo of the drug kingpin surrounded by three of his lieutenants at the beach holding up a ten foot long towel made into the image of a $100 bill demonstrated not only the relationship between the co-conspirators, but also that the defendant was in it for the money. That one photograph summarized the entire case.[15]

Sometimes you do not have the actual drugs which are the subject of a drug trafficking prosecution, or the knife or gun used in an assault case, to show to the court members. In that case, you may be able to introduce a representative exhibit which looks just like the item at issue so that the court can get a visual picture of the object. By seeing the representative exhibit, the court members can get a clear picture in their mind of the object in question.

What if you had a drug trafficking trial in which several witnesses were testifying that they purchased a quantity of drugs from the defendant, but you did not have any actual drugs which were recovered either from the witnesses or the defendant? When asked to describe the size, shape, color, and consistency of the drugs, the witnesses would form their hands in the shape of a baseball to describe the size and shape. Counsel then would have to recite into the record that the witness had formed his hands in the size and shape of a baseball.[16]

To assist the members in gauging the amount of drugs, in addition to the witnesses' demonstration with their hands, counsel for the United States could use a regulation size major league baseball as a demonstrative exhibit to assist the witness to establish the size and shape of the drugs which he received from the defendant. When the witness described the size and shape of the drugs, he would be shown the baseball and asked how the size and shape of the drugs in question compared to the size and shape of the baseball.[17] By using the baseball to represent the drugs, the jury would be able to clearly focus upon the quantity of drugs which were purchased. Because the baseball would be admitted into evidence, the baseball would go into the jury deliberation room with the other evidence for the jury to examine and consider.

A secondary advantage of repetitively using a demonstrative exhibit such as the baseball is that the court members will begin to anticipate the appearance of the exhibit, which is a good thing. As witness after witness testifies, the jury begins to recognize when the foundation has been laid to identify the quantity of drugs, and begin to anticipate the presentation of the baseball to the witnesses. The jury sub-consciously begins to affiliate itself with the counsel who is using the exhibit, concentrating upon the foundation and then looking for the baseball to be produced for the witness.[18] Getting the court members to associate with your view of the case is a good thing.

United States incorporated a photograph into the text of its brief on appeal, showing the rear of the residence, the location of the attached building and that it was attached to the residence, and the distance relationship between the primary residence and the converted garage.

At the oral argument, the presiding judge commented that the photograph which was incorporated into the government's brief (rather than enclosed as an exhibit in the government's supplemental excerpts of record) was the most effective use of a photograph that the appellate panel had ever seen on appeal.

[15] United States v. Jingles, No. 01-10703, 2003 WL 2008158 (9th Cir. 2003) (showing that several cooperating co-defendant witnesses were close personal associates of defendant Jingles, and emphasizing that the purpose of their association was to generate money from drug trafficking, so that they could then enjoy the good life with the proceeds of that drug trafficking).

[16] United States v. Jackson, No. 04-10154, 2005 WL 3134103 (9th Cir. 2005). Decision of the United States Court of Appeals for the Ninth Circuit affirming the conviction, but remanding to the U.S. District Court for the Eastern District of California for re-sentencing.

At trial in the district court, the United States presented approximately twenty-one witnesses who were in custody serving sentences in either federal or state prison. Each came to trial wearing the orange jumpsuit uniform of a prisoner, and were shackled around their waist connecting their handcuffs and leg irons. The prisoners had very limited range of motion with their hands. Jackson was convicted of conspiracy to distribute methamphetamine and related charges. The district court found that he had distributed over 1000 pounds of methamphetamine and sentenced him to imprisonment for five life terms plus 240 years.

The witnesses were asked to describe the appearance of the methamphetamine which they received from Jackson. The witnesses then were asked to demonstrate with their hands the size and shape of the methamphetamine which they received. Because of the restrictions on their hand movements by the handcuffs and shackles, the jury could not see the size and shape of the description the witnesses were demonstrating with their hands. As a result, counsel for the United States had to recite for the record (and for the jury) something like, "Let the record reflect that the witness has formed his hands into the size and shape of a baseball," to which defense counsel would then stipulate.

Counsel for the United States then used an actual baseball, which the jury could see at all times, to demonstrate clearly to the jury the size and shape of the methamphetamine which the witnesses received from Jackson. Counsel for the United States would ask the witness, "Mr. Witness, how did the size and shape of the methamphetamine which you received from the defendant compare with Government exhibit 52, a regulation size and shape major league baseball, which you have in front of you in the witness box?" The witness then would respond, "Exactly the same size and shape as the baseball."

[17] *Id.*

[18] *Id.* As witness after witness in the Jackson trial was presented with the baseball as a point of comparison, it became apparent that the jurors would anticipate when in the questioning that the baseball would be presented to the witness. It also became apparent that the jurors had accepted the baseball as part of their frame of analysis, as if it were their baseball. As a result, the jurors almost become part of the examination process along with the proponent of

If you introduce photographs, documents, or other physical evidence through a witness on the stand, do not circulate those exhibits to the court members while your witness is testifying. If the exhibit is important enough that you want the members to see the exhibit immediately, most likely the members also will find the exhibit important and will study it when it reaches them. The time during which a member is examining the exhibit is time that the member is not paying attention to what your witness is saying on the witness stand. You will completely lose each member during a portion of your witness's testimony.

If you must circulate the exhibit while the witness is on the stand, ask the judge for a short break in place (still on the record) for the members to examine the exhibit, and then resume the witness's testimony after all the members have seen the exhibit. Another way to publish the exhibit to the members is to display it on an overhead projector or computer projection onto a screen and have the witness describe the exhibit while the members are looking at it all at the same time. In that fashion, all of the members' attention is directed to the exhibit at the same time, as well as to your witness's testimony describing the exhibit. It makes a much more powerful presentation of both the oral testimony and the physical exhibit.

Neutralizing Adverse Information

What do you do if there is some information about your witness which might tend to impact upon his or her credibility, or could be used by the opposition to discredit the witness?

You bring the adverse information out yourself during direct examination. Do not ever leave any significant issue which might discredit your witness in the eyes of the members to be introduced for the first time and exploited by the other side. Get the information out yourself, deal with it, and neutralize it as a discrediting factor.

When and how do you do that? You have your witness testify about the events for which you called the witness to the stand. After the witness has laid out the bulk of the testimony, but before the end of the witness's direct exam, ask the witness about the potentially discrediting issue. You do not want to ask the discrediting question until the witness has testified about enough of the events for which you called him/her so that the members can see the picture you are trying to paint, and hopefully have accepted it.

At the same time, you do not want the discrediting issue to be your final questions for the witness on direct. You cannot ever transition from your direct to the other side's cross examination on a point which adversely affects the members' perception of your witness. With each witness you present, you must start strong and finish strong. The discrediting issue has to be raised and addressed somewhere in the middle, so that you have an opportunity to rehabilitate your witness before you turn him over for cross examination.

What you want the members to do is to process the potentially discrediting information and satisfy themselves that it does not make any difference to them before you pass the witness to the other side. In that fashion, when the other side pounds on the issue on cross examination, and the other side *will* pound on the issue, the members will discount the attack on the witness because they already will have evaluated the weakness and accepted the witness's testimony. While the witness is being attacked on cross examination you want the members to go through the thought process, "So what if the witness is an ax murderer and is getting a sentence reduction in return for his testimony in this case, that does not mean that he did not see the drug transaction as he described in his direct examination."

You do not want to lead with the discrediting information or introduce it before you have accomplished what you are trying to accomplish through the witness. If you introduce the discrediting information too early, the members will recoil from the witness and either not listen or not accept the direct examination.

You need to set the hook deeply in the minds of the members before you introduce the adverse information. You do not want the members to be thinking as you present the witness's testimony, "My gosh, this guy is an ax murderer testifying to save himself. I could not possibly believe anything he has to say."

What do you do if there is something immediately apparent from the physical appearance of the witness as soon as he takes the witness stand which has the potential to distract the members from the testimony which you are presenting through the witness? In that case, you have to deal with the issue immediately and get it out of the way before you begin to present

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the demonstrative exhibit. Everyone can relate to a baseball. Hopefully the jurors are unable to relate to a quarter pound, half pound, or pound of methamphetamine without substituting something from their world to understand the quantity of controlled substances.

the substance of the testimony. If you do not, the members will not be listening to the testimony which you need to have them hear, accept, and remember because they are wondering about whatever it is about the witness's appearance which has drawn their attention.

What if you have a series of in-custody witnesses who will be testifying in orange jail jump-suits, while wearing handcuffs and leg irons with chains linking the leg irons and handcuffs so that the witness can move his hands no more than an inch or so? The obvious appearance of the witnesses' attire is going to cause the members to wonder what is going on with a witness that requires him to be chained and handcuffed in court. Until you answer that question for the members, no one will be listening to what your witness says. Get it out of the way immediately.

Q. Mr. Smith, I notice that you are dressed fairly unusually today. (A little humor shows counsel's personality, which is a good thing). Where do you currently reside?
A. *I live in the SHU.*
Q. SHU stands for Segregated Housing Unit?
A. *Yes.*
Q. Where is the SHU located?
A. [Disciplinary Barracks, Leavenworth Prison, Pelican Bay State Prison, whatever]
Q. Why are you at Pelican Bay?
A. *187.*
Q. 187 is the Penal Code section for murder?
A. *Yes.*
Q. What is your sentence for your murder conviction?
A. *Twenty-five years to life.*

You now have explained why this witness, and the next two dozen witnesses, will be wearing orange jumpsuits and chains. The members no longer will be shocked at the witnesses' appearance and will not waste any of their attention on the issue. It does introduce right up front that your witness is a murderer, or drug trafficker, or whatever, but it is necessary in this case in order to keep the members' attention on the testimony. At the end of trial, you will explain that the witnesses are lowlifes, crooks, murderers, and drug traffickers, but they are the lowlifes, crooks, murderers, and drug traffickers that the other side chose to associate with in their every day activities, so that any adverse implication from the witnesses' status should impact the other side, not yours.

Actual Language of Event

Have the witnesses testify using the actual language of the event about which they are testifying. The testimony will lose a lot in translation if you attempt to substitute everyday business language for what the parties actually said and did. If the witnesses are gang bangers and street thugs, do not try to paint them as choirboys. They are what they are. It is not absolutely critical that the members immediately understand everything that was said as the witness is telling the story. It is more important that the members hear exactly what was said and in the language in which it was said, not a watered down interpretation of what was said. The members will hear the testimony at least two more times during your direct examination and will fully understand before you pass the witness for cross examination.

If the parties used slang, street talk, code, half-sentences, etc., when they did the deal, have the witness use the same slang, street talk, code and half-sentences during the first run through of the testimony. Then have the witness go through after each sentence of his or her testimony and explain the meaning of each slang word which was used, i.e., homies, blow, rock, ice, waste, 187, 420, or whatever, so that the witness is translating for the members after each sentence of testimony in which slang and street language is used. Then, and only then, have the witness repeat the testimony using everyday, normal language. By this time, the members have heard the testimony three times. They have heard it in the original version and they have heard it in language which they understand. They are going to remember the testimony. Whether they believe it depends upon how well it is corroborated by third party sources.

When you are having the witness explain or interpret words which might not be in common usage, do not say to the witness, "Mr. Smith, the members may not know what [whatever] means. Please explain it to them." Depending upon how commonly understood the term is which you are having the witness explain to the members, the members may think that you are inferring that they are not very bright. You do not ever want to convey to the members that you do not think they are smart enough to understand anything which you understand. One or more of the members will hold it against you for the rest of the trial.

Instead, say something like, "Just for the record, Mr. Smith, please explain what you mean when you said 'he fronted me an 8 ball.'"[19] In that manner, you will have the witness explain the unusual term to any one of the members who did not understand it the first time, but in a manner which provides the member some cover. It isn't the members who did not understand the witness. The explanation is simply for those appellate judges in Washington who are not as "in touch" as the members of the court. It will go down much more smoothly with the court members whom you are trying to convince.

Order of Witnesses

The order in which you call witnesses on direct is extremely important. You want to tell the story in the most logical sequence, but you also must accommodate the strengths and weaknesses of your witnesses. It is necessary to balance these two objectives.

Always start with a strong witness and end your case with a strong witness. Do not put a number of weak witnesses back-to-back anywhere in the sequence of witnesses. Alternate strong and weak witnesses in the middle of your case.

Remember, everything you do is designed to seize control of the courtroom and to demonstrate to the members (and the judge) that you are in control. When you present your first witness, the opposition is going to try to seize momentum of the case and control of the courtroom from you through cross examination of that first witness. Your opponent will try to knock you off track and seize initiative and control. You need to have a lead-off witness who is bulletproof.

If you have a witness on direct examination for thirty minutes, and the opposition then has the witness on cross examination for two hours, generally that is bad for you unless the cross examination is incompetent and simply reinforces the direct examination several times over. Your opponent will have seized the initiative from you, and with it, seized control of the courtroom. You cannot lead with this witness even if that witness's testimony otherwise would be in chronological order. You do not want to lead off with a witness which the opposition can exploit on cross examination and use the cross examination to seize control.

Similarly, you also need to have your last witness be bulletproof. The last witness is your "closer." When you rest your case and pass it to the other side, whether you are the government or the defense, you want the members to be thinking, "OK, we are ready to vote. This is a no-brainer. We do not need to hear the rest of the case." You do not want any lingering doubt in the members' mind because the opposition scored points on your last witness during cross examination.

The structure of your direct examination of each individual witness will follow the same rules. Start strong, emphasize the substance of the testimony in the middle, and close strong. If there are weak areas, bury them in the middle. Do not expose your witness to unnecessary risk of impeachment. Do not ask your witness to over-extend and give testimony in areas which are outside his actual knowledge. If there is adverse or impeachable information, raise it during direct, but after the witness has already made a strong presentation to the members. End strong. Do not transition on your weakness and play to your opponent's strength.

Corroboration of Witnesses

To the extent possible, always corroborate your witnesses' testimony with third party testimony and documents. Just because a witness says something does not mean that the members will believe it, particularly if your witnesses are inherently unlikeable. A fact of life is that members are more likely to believe a likeable witness than an unlikeable witness. They also are more likely to follow the lead of a counsel who they find to be likeable, than a counsel that they find to be unlikeable.

If you have unlikeable witnesses, or witnesses who are clearly impeachable because of bias or prejudice, or are getting a sentence reduction in return for their testimony, it is extremely important to give the members a reason to believe the witness. The members are much more likely to believe a witness who testified that he went to a particular city, stayed in a hotel, and conducted a transaction with someone if you can corroborate the testimony by introducing documentary evidence which supports the testimony. Corroboration could include copies of the boarding passes from the airline, the rental car receipt at the destination, the rental car clerk who testifies that he demanded a picture identification card and verified that the name on the identification and the name on the contract were the same, and the face on the card and the face in the room were the

[19] An "8 ball" is one eighth of an ounce of methamphetamine or cocaine, or approximately 3.5 grams. An 8 ball is a common quantity of drugs for purchase on the streets by low-level drug dealers.

same, and a copy of the hotel receipt in the witness's name. Having the testimony of third parties who also were at the transaction is very helpful, particularly if the witnesses did not know each other or have an opportunity to fabricate the story.

Re-Direct Examination

Do whatever re-direct examination which is necessary to clarify any points which are not clear at the close of cross examination, but no more. You do not need to do re-direct examination just because the other side did re-cross examination. It is not a matter of who got the last word. Re-direct just gives the other side another opportunity to do re-cross examination. In addition, passing on the opportunity to do re-direct signals to the members that you are confident that nothing happened in the re-cross which is of any importance. Your confidence is likely to be accepted by the members as assurance that cross examination was ineffective. Continual re-direct examination sends the opposite signal, that you feel that cross examination was effective. Rarely do more than two rounds of direct and re-direct examination add to your case.

Conclusion

A criminal trial is not a series of disjointed events. Everything fits together, beginning with closing argument, then back to opening statement, and then through the presentation of direct examination of your witnesses and your physical and documentary evidence. Closing argument is the cornerstone for direct examination, and must be prepared well in advance of trial. The closing argument is the blueprint for the presentation of the entire case, and determines which witnesses should be called and what testimony should be elicited from them. In addition to preparation, preparation, and preparation, the key to successful direct examination is the successful preparation of the closing argument prior to the beginning of the trial.

A View from the Bench

Rehabilitative Potential and Retention Evidence

Lieutenant Colonel Roger E. Nell
Military Judge, 2nd Judicial Circuit
U.S. Army Trial Judiciary, Fort Stewart, Georgia

"[O]ur military appellate courts are not very enamored with R.C.M. 1001(b)(5). Counsel must ask themselves, 'Is it worth it?'"[1]

Rehabilitative potential and retention evidence continues to be a source of great frustration for counsel. What testimony can be admitted? Who can admit it? Can the defense get away with more than the government? Can witnesses say that they do or do not want the accused back in the unit? Does rehabilitative potential testimony even make a difference?

Consider the following:

> This case presents a classic example of trial counsel interjecting an appellate issue into a case for no good reason. The prosecution's documentary evidence on sentencing consisted of a stipulation of fact that described the offenses in detail, a personal data sheet, three enlisted performance reports that evidenced limited potential, four letters of counseling, two letters of admonition, three letters of reprimand, and a record of nonjudicial punishment, all of which pertained to disciplinary infractions by the appellant over a 16-month period leading up to her court-martial. Instead of resting on this wealth of derogatory documentary evidence, the trial counsel, with apparently little understanding of the rules regarding opinion evidence, chose to call . . . the appellant's commander, to testify about the appellant's performance and rehabilitative potential.[2]

With that in mind, let's start with the basics.

Who is the proponent of rehabilitative potential evidence? The short answer is—the government. Rule for Courts-Martial (RCM) 1001(b)(5) is within the category of government sentencing evidence.[3] The defense, however, is allowed to introduce "retention evidence."[4] While not technically "rehabilitative potential" evidence, the subject matter can be virtually indistinguishable.

What Foundation Must Be Laid?

The proponent should demonstrate that the witness possesses

> sufficient information and knowledge about the accused to offer a rationally-based opinion that is helpful to the sentencing authority. Relevant information and knowledge include, but are not limited to, information and knowledge about the accused's character, performance of duty, moral fiber, determination to be rehabilitated, and nature and severity of the offense or offenses.[5]

The same holds for defense retention evidence.[6] The witness's knowledge and information must be specific to the accused and not to Soldiers in general.[7] And, importantly, a witness's opinion cannot principally be based upon the severity or nature of the charges.[8]

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[1] United States v. Bish, 54 M.J. 860, 863 n.1 (A.F. Ct. Crim. App. 2001) (citing Major Lawrence M. Cuculic, TJAGSA Practice Notes, Criminal Law Notes, United States v. Aurich*: The Scope of Rehabilitative Potential Opinion Questions*, ARMY LAW., Dec. 1990, at 33. *See also* Major Lauren K. Hemperley, *Looking Beyond the Verdict: An Examination of Prosecution Sentencing Evidence*, 39 A.F. L. REV. 185, 197-205 (1996)).

[2] *Bish*, 54 M.J. at 861-62.

[3] MANUAL FOR COURTS-MARTIAL, UNITED STATES, R.C.M. 1001(b)(5) (2005) [hereinafter MCM].

[4] *Id.* R.C.M. 1001(c); United States v. Griggs, 61 M.J. 410 (2005).

[5] MCM, *supra* note 3, R.C.M. 1001(b)(5)(B).

[6] *Griggs*, 61 M.J. at 410.

[7] MCM, *supra* note 3, R.C.M. 1001(b)(5)(C).

[8] *Id.*

What Is "sufficient information and knowledge"?

"Sufficient information and knowledge" is not much. A recent case suggests that to meet the "sufficient information and knowledge" standard, a witness need only have observed the accused and have spoken to the accused's immediate supervisors.[9] Slightly more developed, a witness should testify to the length of time he knew the accused, how often they interacted, the context of the interaction, and that the witness reviewed the accused's personal information file.[10] Of course, from a practical standpoint, the greater the proponent can demonstrate the witness's knowledge of the accused, the more weight the sentencing authority is likely to give the witness's opinion. A barebones foundation that a company commander saw an accused five days a week during physical training (PT) and three times a week in the motor pool and received reports from his squad leader is arguably far less persuasive.

Suggested foundational questions:

Who are you?
How long have you been in the Army?
What supervisory positions have you held?
How long have you been in supervisory positions?
How many Soldiers have you supervised in your career?
What is your current assignment?
How long have you been in this assignment?
How many Soldiers have you supervised in this assignment?
How many Soldiers do you currently supervise?
Is the accused one of those Soldiers?
How long have you supervised the accused?
Did you supervise him in any previous assignments?
How often do you see the accused?
In what context?

Do you see him at PT? How many times a week? For how long?
Do you see him during the rest of the duty day?
Do you see him during training, such as at the range or other classroom training?
Do you see him in field exercises?
Do you see him in operational missions?

Have you reviewed his training records?
Have you reviewed his personnel file?
Have you reviewed other records?
Have you received reports from others, superiors, subordinates, peers about the accused?
From all of that information and personal contact, do you know of the accused's character in general?
Do you know of his performance of duty?
Do you know of his moral fiber?
Do you know about his determination to be rehabilitated?
Are you aware of the nature and severity of the offense(s) for which the accused has been found guilty?

Now, bear in mind that the proper answer to the majority of these questions should only be "yes" or "no". Specific instances of conduct cannot be elicited.

From time to time, the government will attempt to introduce expert testimony regarding an accused's rehabilitative potential, typically in child sexual abuse cases. Counsel must, of course, comply with Military Rule of Evidence (MRE) 702,[11] but special attention must be paid to RCM 1001(b)(5)(C).[12] The expert's opinion must be based on information about the accused specifically. The expert cannot give an opinion based on general research.[13]

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[9] United States v. Lewis, 2003 CCA LEXIS 59, at *2, *4 (A.F. Ct. Crim. App. 2003).

[10] *Id.*

[11] MCM, *supra* note 3, MIL. R. EVID. 702.

[12] *Id.* R.C.M. 1001(b)(5)(C).

[13] *See* United States v. McElhaney, 54 M.J. 120, 133-34 (2000).

What Evidence Can Be Admitted?

For the government, admissible evidence consists of opinions regarding an accused's rehabilitative potential.[14] Rehabilitative potential evidence "refers to the accused's potential to be restored, through vocational, correctional, or therapeutic training or other corrective measures to a useful and constructive place in society."[15] Note that it is evidence of an accused's potential to be restored in *society*, not in the Army. Also note that it is a person's potential to be restored through *training or other corrective measures*, not just through the accused's own, innate potential (although that certainly is a large part). Further, the witness may testify as to the "magnitude or quality" of that potential.[16]

Well, what does that actually sound like at trial? About like this:

> Q: Based on all of that (the foundational questions above), have you formed an opinion about the accused's potential to be rehabilitated?
> A: *Yes.* (Nothing more than "Yes" or "No").
> Q: What is your opinion?
> A: "*In my opinion, the accused has _____ (good, no, some, little, great, zero, much, etc.) potential for rehabilitation.*"[17]

Not very "sexy," riveting or effective, is it? It is at this stage counsel typically draw the judge's ire because they have not adequately prepared the witness to limit his answer to what is allowed.

If counsel intends to introduce this type of testimony, trial counsel must explain to the witness during pretrial preparation what responses are and are not permitted. On more than one occasion, a military judge has interrupted an examination at the point of the ultimate question and has asked the witness: "Tell me, Sergeant Smith, what has counsel just asked you?" Invariably, the witness replies, "Whether the accused should remain in the Army, your honor." Of course, we all know the government cannot elicit a response whether the accused should be punitively discharged.[18] So at this point, most judges will stop the line of questioning and suggest that counsel move on.

For the defense, evidence of mitigation may be presented.[19] Generally, matters in mitigation are those that tend to lessen the punishment or that support clemency.[20] They include "particular acts of good conduct or bravery and evidence of the reputation or record of the accused in the service for efficiency, fidelity, subordination, temperance, courage, or *any other trait that is desirable* in a servicemember."[21]

Unlike the government, the defense can introduce evidence that others are willing to continue to serve with the accused.[22] This may seem unfair. The government cannot have a witness testify, "He should get a bad conduct discharge," or anything that can remotely be construed as saying that, but the defense can have a witness testify, "I'd serve with him again." This apparent imbalance has been addressed by the appellate courts. "[I]f an accused 'opens the door' by bringing witnesses before the court who testify that they want him or her back in the unit, the Government is permitted to prove that that is not a consensus view of the command."[23]

Also, on cross-examination trial counsel is permitted to inquire "into relevant and specific instances of conduct."[24] This cross-examination is similar to cross-examination under MRE 405(a)[25] and should be similarly analyzed. Counsel are limited to asking the

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[14] MCM, *supra* note 3, R.C.M. 1001(b)(5)(A).

[15] *Id.* R.C.M. 1001(b)(5).

[16] *Id.* R.C.M. 1001(b)(5)(D).

[17] United States v. Bish, 54 M.J. 860, 863 (A.F. Ct. Crim. App. 2001).

[18] United States v. Griggs, 61 M.J. 402, 408 (2005) (citing United States v. Ohrt, 28 M.J. 301, 304 (C.M.A. 1989)).

[19] MCM, *supra* note 3, R.C.M. 1001(c)(1).

[20] *Id.* R.C.M. 1001(c)(1)(B).

[21] *Id.* (emphasis added).

[22] *Id.*

[23] *Griggs*, 61 M.J. at 410 (quoting United States v. Aurich, 31 M.J. 95, 96-97 (C.M.A. 1990)).

[24] MCM, *supra* note 3, R.C.M. 1001(b)(5)(E); *see* United States v. Hoyt, 2000 CCA LEXIS 180, at *6 (A.F. Ct. Crim. App. July 5, 2000).

[25] MCM, *supra* note 3, MIL. R. EVID. 405(a).

witness “have you heard” or “do you know” about a specific instance of conduct in order to test the witness’s opinion. Extrinsic evidence is not permitted. Certainly, though, trial counsel must have a good faith basis for asking the question.

So, before going down this road, a trial counsel must ask: “Will rehabilitative potential add anything to my case beyond what I already have?” A defense counsel must ask: “If I introduce retention evidence, what bad things can the trial counsel bring out on cross-examination or rebuttal evidence?” Then both counsel should should ask themselves, “Is it worth it?”

Book Reviews

GRANT AND SHERMAN: THE FRIENDSHIP THAT WON THE CIVIL WAR[1]

REVIEWED BY MAJOR OLGA M. ANDERSON[2]

We can learn from history how past generations thought and acted, how they responded to the demands of their time and how they solved their problems. We can learn by analogy, not by example, for our circumstances will always be different than theirs were. The main thing history can teach us is that human actions have consequences and that certain choices, once made, cannot be undone. They foreclose the possibility of making other choices and thus they determine future events.[3]

I. Introduction

"In *Grant and Sherman: The Friendship that Won the Civil War*, Charles Bracelen Flood effectively retells the remarkable story of these two men and their relationship during the Civil War."[4] From the battles of Fort Donelson, Shiloh, Vicksburg, and Chattanooga through Sherman's March to the Sea and Grant's offenses at the Wilderness, Spotsylvania, and Petersburg, Flood illustrates the impact that Grant and Sherman's friendship had on the Union war effort.[5] While a Civil War historian might find Flood's descriptions of military strategy and tactics lacking, the casual reader can easily follow Flood's battlefield descriptions. Flood also weaves in numerous excerpts from Grant and Sherman's personal correspondence. These letters further illustrate that the "partnership between these two leaders was unique . . . [and their] way to victory . . . was built on the mutual trust that their friendship inspired."[6] Both Flood's thesis regarding the importance of human dynamics, and his descriptions of Grant and Sherman, provide leadership and legal lessons applicable to today's brigade judge advocate (BJA).

II. Leadership Lessons for the BJA

A. "Delegation is not abdicating responsibility; it is escalating it exponentially."[7]

For the majority of the Civil War, Sherman, even when holding a command position, served in a subordinate capacity to Grant.[8] Sherman excelled under Grant's leadership style. Grant did not micromanage Sherman. Instead, Grant issued Sherman broad guidance and then allowed him to develop his own plans on how to best implement that guidance.[9] Additionally, Grant delegated to Sherman sufficient authority to execute each plan.[10] For example, in 1864, Grant's guidance to Sherman "was to go for Joe Johnston" while Grant "was to go for Lee."[11] Sherman developed a bold plan to march

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[1] CHARLES BRACELEN FLOOD, GRANT AND SHERMAN: THE FRIENDSHIP THAT WON THE CIVIL WAR (2005).

[2] U.S. Army. Written while assigned as a Student, 55th Judge Advocate Officer Graduate Course, The Judge Advocate General's Legal Center and School (TJAGLCS), U.S. Army, Charlottesville, Virginia.

[3] GERDA LERNER, WHY HISTORY MATTERS: LIFE AND THOUGHT 205 (Oxford University Press 1998) (1997).

[4] Ethan S. Rafuse, Book Review, CIVIL WAR NEWS, http://www.civilwarnews.com/reviews/bookreviews.cfm?ID=833 (last visited June 20, 2007) (reviewing CHARLES BRACELEN FLOOD, GRANT AND SHERMAN: THE FRIENDSHIP THAT WON THE CIVIL WAR (2005)).

[5] FLOOD, *supra* note 1.

[6] *Id.* at 6.

[7] BIL HOLTON, LEADERSHIP LESSONS OF ULYSSES S. GRANT: TIPS, TACTICS AND STRATEGIES FOR LEADERS AND MANAGERS 45 (2000).

[8] FLOOD, *supra* note 1, at 285. Sherman refused to accept any command that might cause friction in his relationship with Grant. *Id.*

[9] *Id.* at 231.

[10] *Id.*

[11] *Id.*

through the South.[12] Despite Grant's initial reservations with parts of Sherman's plan, he ultimately agreed with and supported it.[13]

In addition to delegating necessary authority, Grant also provided support when Sherman's plans failed to yield the desired results.[14] In late 1864, Sherman drafted a set of overly lenient terms of surrender.[15] Although Grant had received orders to assume command of Sherman's unit, he did not.[16] Instead, Grant issued Sherman new, clear, concise guidance in private and allowed Sherman to renegotiate the terms of surrender.[17] The combination of Grant's leadership style and friendship gave Sherman the confidence to accomplish this difficult task.

Like Grant, BJAs must develop their own leadership style. After transformation, BJAs find themselves placed in a leadership position similar to that of a staff judge advocate (SJA), but on a smaller scale. Not only must BJAs provide legal services to the brigade combat team (BCT), but they must also develop junior judge advocates (JAs) and paralegals. Brigade judge advocates must learn to delegate both responsibility and authority in order to handle the numerous legal issues in a BCT. Furthermore, BJAs must expect and accept that mistakes will occur. The BJA who accepts responsibility for his subordinate's mistakes, who takes appropriate corrective measures to fix such mistakes, and who provides training to prevent future mistakes, will foster a positive work environment. Like Sherman, subordinates repay that style of leadership by being loyal, accepting greater responsibilities, and striving to overcome the most difficult of challenges.

B. Remain Objective. Don't Go Native

Contrary to Flood's thesis that Grant and Sherman's friendship contributed to the Union's success, the Battle of Chattanooga illustrates how their relationship, at points, endangered Union forces.[18] By the Battle of Chattanooga, Grant's personal fondness for Sherman was obvious to Grant's staff. While Grant was typically businesslike with his subordinates, Grant's staff noted that when Grant "talked to Sherman, he was 'free, affectionate, and good humored.'"[19] This noticeable affection for Sherman may have contributed to Grant's "uncharacteristic hesitation" when he "indecisively delayed a major attack"[20] during the battle to give "Sherman the chance to win the day."[21] Sherman's forces were unable to take their objective[22] and countless Soldiers were either captured or killed.[23] When Grant finally allowed another Commander to attack, the Union forces prevailed.[24] In this battle, Grant's friendship with Sherman appeared to cause Grant to lose his objectivity to the detriment of the overall mission.

Like Grant, BJAs may find that personal attachments to the BCT can impair their objectivity. The BJA may be tempted to "go native." After transformation, the BCT, not the office of the staff judge advocate (OSJA), is responsible for providing

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[12] *Id.* at 238-39. Sherman's vision pushed the outer limits of Grant's guidance. *Id.*

[13] *Id.* at 263, 267. Sherman knew that he needed Grant's approval and support to win political approval for his plan. *Id.* at 265.

[14] *Id.* at 336.

[15] *Id.* at 335-38. The terms were signed shortly after Lincoln's assassination when the government was in a state of heightened concern. *Id.* Some political figures "denounced Sherman as a traitor" for the lenient terms he offered. *Id.* at 339.

[16] *Id.* at 340.

[17] *Id.* at 345.

[18] *See generally id.* at 209-20.

[19] *Id.* at 208 (quoting WILLIAM S. MCFEELY, GRANT: A BIOGRAPHY 118 (1981) (quoting O.O. Howard, *Grant at Chattanooga*, *in* MILITARY ORDER OF THE LOYAL LEGION OF THE UNITED STATES, NEW YORK COMMANDRY, PERSONAL RECOLLECTIONS OF THE WAR OF THE REBELLION 248 (1st series, New York 1891))).

[20] *Id.* at 209.

[21] *Id.* at 216.

[22] *Id.* at 214-16.

[23] *See generally id.* (stating that Sherman's men "came under withering fire" and five hundred men were captured).

[24] *Id.* at 217-19.

administrative and logistical support to the brigade legal team.[25] In other words, the BCT feeds, shelters, transports, evaluates, and provides camaraderie to the brigade legal team.[26] The brigade commander is the primary client. Situations may arise where the BCT and division have differing intents for a specific legal matter. The BJA may be tempted to advocate the BCT's position out of a sense of loyalty. However, the BJA should attempt to remain neutral and give consideration to the Division's viewpoint. Since the OSJA remains the legal advisor to the general court martial convening authority, the BJA who remains objective and understands the interests of both the brigade and division, will ultimately serve his client more effectively.

III. Legal Lessons for BJAs

A. Military Justice: Be Prepared to Serve Commanders in the Field

Maintaining good order and discipline is fundamental to the success of any military unit. When Grant first assumed command of the Twenty-first Illinois Brigade, he had "eleven days in which to turn [the] insubordinate mob into a unit."[27] Several of Grant's first orders highlight his emphasis on military justice. General Orders No. 5 prohibited fraternization between officers and Soldiers.[28] General Orders No. 8 required all personnel to behave as Soldiers when in camp and as gentlemen when outside the camp.[29] Soldiers who violated acceptable norms were punished swiftly.[30]

The importance of good order and discipline remains a constant between Grant's tenure in command and today's military.[31] Therefore, military justice remains a primary duty for BJAs. Commanders expect JAs to resolve military justice matters swiftly and with minimal impact on their units.[32] To accomplish this task, BJAs must be able to process military justice actions as far forward as Soldiers are deployed.[33] However, BJAs cannot ignore the plethora of legal issues likely to arise from rear provisional units.[34] The BCT paralegal noncommissioned officer in charge (NCOIC) and the BJA must develop an internal manning plan that effectively divides both talent and personnel between forward and rear units. By ensuring that military justice matters, from both forward and rear units, are resolved efficiently, the BJA allows commanders to focus on other critical aspects of their mission.[35]

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[25] *See generally* U.S. DEP'T OF ARMY, FIELD MANUAL 3-90.6, THE BRIGADE COMBAT TEAM paras. 2-28, 2-30, 2-32, & 2-36 (4 Aug. 2006) [hereinafter FM 3-90.6] (identifying the roles and responsibilities of specific members of the brigade combat team staff).

[26] *Id.*

[27] FLOOD, *supra* note 1, at 45.

[28] *Id.* at 63.

[29] *Id.* at 46.

[30] *Id.*

[31] *See generally* MANUAL FOR COURTS-MARTIAL, UNITED STATES pmbl., para. 3 (2005) (discussing the purpose of military law).

[32] *See generally* CENTER FOR MILITARY LAW AND OPERATIONS, THE JUDGE ADVOCATE GENERAL'S LEGAL CENTER AND SCHOOL, U.S. DEP'T OF ARMY, FORGED IN THE FIRE: LEGAL LESSONS LEARNED DURING MILITARY OPERATIONS 1994-2006, at 270 (1 Sept. 2006) [hereinafter FORGED IN THE FIRE] (discussing military justice in a deployed environment).

[33] *Id.*

[34] E-mail from Major Karin Tackaberry, Student, 55th Judge Advocate Officer Graduate Course, TJAGLCS, U.S. Army, Charlottesville, Virginia, to author (May 22, 2007, 19:45:20 EST) (on file with author) (discussing her experiences in military justice when the 82nd Airborne Division deployed in support of Operation Iraqi Freedom).

[35] *Id.*

B. Operational Law: In the Absence of Law, Understand Policy

Both Grant and Sherman realized that "military matters were intertwined with politics."[36] By 1864, the U.S. civilian population was growing tired of the war and the ever increasing number of casualties.[37] Politicians understood the potential impact of anti-war sentiments on the upcoming presidential election.[38] Therefore, some strategic military decisions required political approval.[39] To be effective commanders, Grant and Sherman had to be cognizant of not only the close fight, which was engaging the enemy on the battlefield, but also of the deep fight, which was garnering and maintaining public support. Grant and Sherman spent time on the close fight, by developing plans, observing battles, and directing reactions to the enemy's actions; and they spent time on the deep fight, by keeping abreast of news and current events.[40]

Operational law issues occasionally involve the implementation and interpretation of policy rather than the strict application of the law.[41] As a member of the commander's personal staff,[42] the BJA serves as a counselor to the commander and is subject to rules of professional responsibility.[43] To provide counsel on operational law issues, the BJA must first be able to spot the issue, which requires being integrated with the brigade staff. Next, the BJA must be able to make appropriate recommendations. As a counselor, the BJA should consider the second and third order effects of each potential recommendation.[44] Recommending appropriate and effective solutions requires the BJA to take time, like Grant and Sherman, to keep abreast of current events from the local, national, and international levels.

C. Administrative Law: Investigations and the Deployed BJA

By the time Sherman marched his unit through the South, from Atlanta to Savannah, most of his Soldiers were combat veterans.[45] Sherman used these Soldiers to wage "war upon everything in his path, [including] the countryside itself."[46] At times, their actions may have blurred the line between lawful foraging and illegal pillaging.[47] While Sherman did support some of his unit's destruction of civilian infrastructure, he also "drew a line" beyond which he considered conduct criminal. Some of the actions taken by his Soldiers became "the subject of endless argument and investigation."[48]

Similarly, BJAs must always be attuned to the conduct of Soldiers within the BCT and be prepared to provide the commander with an honest, candid recommendation of when to initiate an investigation. While it is true that "99.9 percent, [of Soldiers] serve with honor, there are a small number of individuals who sometimes choose the wrong path."[49] As the conflicts in Afghanistan and Iraq lengthen and individual Soldiers rotate through their second, third, or fourth combat tours,

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[36] FLOOD, *supra* note 1, at 61.

[37] *Id.* at 248.

[38] *Id*

[39] *Id.* at 265.

[40] *See generally id.* at 175-76, 262, 348 (discussing times during the course of the war where Sherman and Grant were observed reading the newspaper).

[41] *See generally*, FORGED IN THE FIRE, *supra* note 32, at 39-46 (discussing the application of policy in detainee operations).

[42] FM 3-90.6, *supra* note 25, para. 2-32.

[43] U.S. DEP'T OF ARMY, REG. 27-26, LEGAL SERVICES: RULES OF PROFESSIONAL CONDUCT FOR LAWYERS (1 May 1992) (defining the role of a counselor as, "a lawyer shall exercise independent professional judgment and render candid advice. In rendering advice, a lawyer may refer not only to law but to other considerations such as moral, economic, social, and political factors, that may be relevant to the client's situation, but not in conflict with the law." *Id.* Rule 2.1 at 17).

[44] *See generally* FM 30-90.6, *supra* note 25, para. 1-13 (recognizing that "[m]ost countries view US national will as its strategic center of gravity.").

[45] FLOOD, *supra* note 1, at 268.

[46] *Id.* at 264.

[47] *Id.* at 269-72.

[48] *Id.*

[49] *See* Video Teleconference Interview by Bryan Whitman with Brigadier General Donald Campbell, Chief of Staff, Multi-National Corps—Iraq, in Baghdad (June 2, 2006) [hereinafter Campbell Interview] (transcript available at http://www.defenselink.mil/transcripts/transcript.aspx?transcriptid=6).

the potential for misconduct appears to increase.[50] Complete, thorough, and timely investigations serve as a shield to protect the majority of Soldiers who do the right thing and as a potential sword against the minority of Soldiers who commit misconduct. Brigade judge advocates should help foster a command climate that accepts investigations as a means of bringing transparency to the unit's activities. The BJA must be willing to question reports that appear inaccurate or implausible.[51] Finally, the BJA must maintain high standards so investigations, which can number one a day at the brigade level, are thorough enough to withstand scrutiny from superior commands, the media, and other JAs who may use the investigation as the basis for future adverse action.

D. Legal Assistance: Meaningful Work for the Deployed BJA

At times, it may be easy to forget that Soldiers, before they joined the military, while they are in the military, and after they retire, are members of a family other than the military.[52] Flood devotes several passages to portraying both Grant and Sherman as devoted husbands and fathers.[53] Both men had a son who was a frequent visitor to their respective front line headquarters.[54] Both leaders valued correspondence with their wives.[55] Family support provided each leader an additional measure of strength to confront and overcome professional challenges.[56]

Similarly, in today's military, family members can keep Soldiers grounded. While family support can help Soldiers remain mission-focused, the existence of legal issues at home "often [has] a negative impact on a service member's performance of duty and morale, regardless of rank."[57] Therefore, BJAs must provide accessible, responsive legal assistance to deployed Soldiers.[58]

IV. Conclusion

Understanding "history is a combat multiplier."[59] Flood illustrates that there is more to military history than strategy and tactics. Flood focuses on the impact that human dynamics and personal relationships can have on the battlefield. Amidst the other leadership and legal lessons in Flood's work, the basic premise of Grant and Sherman's friendship reminds the reader of the importance of friends and mentors. Having experienced the value of their friendship, both Grant and Sherman "knew that the other made him more than what he was before they met."[60] Therefore, at its core, this work reminds BJAs of the importance of developing a friend or mentor who will help them develop as a Soldier and lawyer.

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[50] *See generally id.* (identifying ongoing investigations into local national deaths in the villages of Haditha, Hamandiyah, and Ishaqi, Iraq).

[51] *See generally* Paul Von Zielbauer, *The Reach of War; Lawyers on Haditha Panel Peer into Fog of War*, N.Y. TIMES, May 16, 2007, at A1 (discussing the Article 32 hearing for Marine lawyer charged with dereliction of duty for failing to ensure the unit conducted an investigation into the deaths of twenty-four civilians in Iraq). This may include recommending initiation of investigations based on allegations raised by local nationals. *See* Campbell Interview, *supra* note 49.

[52] *See generally*, FLOOD, *supra* note 1, at 275, 277 (discussing the importance of family).

[53] *Id.* at 47, 49, 60, 82, 163, 181 (noting times Grant's son Fred visited his father to gain a greater understanding of Grant's role in the military); *id.* at 192, 197-201 (discussing Sherman's son William, who visited his father near the front lines, and was made an honorary sergeant of the Thirteenth Infantry battalion before his untimely death).

[54] *Id.*

[55] HOLTON, *supra* note 7, at 58 (stating that for Grant, "no pressure of official duties was ever permitted to interrupt" his correspondence with his wife) (quoting HORACE PORTER, CAMPAIGNING WITH GENERAL GRANT (1991)).

[56] *See generally* FLOOD, *supra* note 1 (referencing numerous letters between Ulysses S. Grant and Julia Grant; and between William Tecumseh Sherman and Ellen Sherman).

[57] FORGED IN THE FIRE, *supra* note 32, at 249.

[58] *Id.*

[59] *10th Mountain Division* (Military Channel television broadcast Sept. 1, 2006) (quoting Major General Lloyd J. Austin, Commanding General, 10th Mountain Division (Light Infantry), Fort Drum, New York).

[60] FLOOD, *supra* note 1, at 402.

JAMES MADISON AND THE STRUGGLE FOR THE BILL OF RIGHTS[1]

REVIEWED BY LIEUTENANT COMMANDER DAVID M. GONZALEZ[2]

A bill of rights is what the people are entitled to against every government on earth, general or particular, & what no just government should refuse or rest on inference.[3]

Author of the Bill of Rights. Father of the Constitution. Leader of a young nation. Constitutional scholar[4] Richard Labunski's incisive work, *James Madison and the Struggle for the Bill of Rights* (*Bill of Rights*), provides insight into Madison's central role in the introduction and ratification of the Bill of Rights. The timing of this authoritative work could not be better. There are some representatives of the people that seek to deprive citizens of their right of political expression through legislative fiat.[5] Many citizens are willing to relinquish this right of political expression in order to punish those that desecrate our national symbol – the American flag.[6] Calls abound for a constitutional amendment to limit flag burning.[7] These calls have not fallen on deaf ears.[8] *Bill of Rights* is requisite reading for those that would freely cede their constitutional rights.

In his introduction, Labunski immediately establishes his thesis.[9] He posits that Madison "played a central role [in] the most important events that shaped the nation's founding period . . . ."[10] While the author does not explicitly state a purpose for writing *Bill of Rights*, his intent is apparent. The book's theme evinces an endeavor to elevate Madison's status among the founding fathers.[11] Labunski focuses on three pivotal events: the Constitutional Convention, the Virginia ratifying convention, and the First Congress.[12]

Labunski achieves his goal of establishing Madison as a central figure at each of these events. Much of Madison's role as both an antagonist and proponent of a bill of rights has been lost—until now. Through expansive use of primary sources such as letters and congressional records, Labunski draws the reader into an era in which Madison was near the top of America's political spectrum.[13] The author's ability to vividly recreate seminal events in history bring these episodic moments to life. *Bill of Rights* is highly readable and thought provoking. With few exceptions, the book is a fair rendition of Madison's role in events germane to the Bill of Rights.

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[1] RICHARD LABUNSKI, JAMES MADISON AND THE STRUGGLE FOR THE BILL OF RIGHTS (2006).

[2] U.S. Navy. Written while assigned as a student, 55th Judge Advocate Officer Graduate Course, The Judge Advocate General's Legal Center and School, U.S. Army, Charlottesville, Virginia.

[3] LABUNSKI, *supra* note 1, at 104 (quoting from a letter from Thomas Jefferson to James Madison (Dec. 20, 1878), *in* THE PAPERS OF JAMES MADISON 10:337 (Robert R. Rutland ed., Univ. Press of Virginia, 1962)).

[4] Richard Labunski Home Page, http://www.richardlabunski.com/labunski/Author.htm (last visited June 13, 2007) (listing Richard Labunski's numerous books and articles on the Constitution).

[5] *See, e.g.*, Flag Protection Act of 1989, Pub. L. No. 101-131, 103 Stat. 777 (1989), *invalidated by* United States v. Eichman, 496 U.S. 310 (1990) (holding prosecution for burning a U.S. flag inconsistent with the First Amendment); TEX. PENAL CODE ANN. § 42.09(a)(3) (1989), *invalidated by* Texas v. Johnson, 491 U.S. 397 (1989) (holding conviction of protester for burning a flag of the United States inconsistent with the First Amendment).

[6] USATODAY.com, http://www.usatoday.com/news/washington/2006-06-26-poll-results_x.htm (last visited June 13, 2007) (listing Gallup poll results showing support for a constitutional amendment to make it illegal to burn the American flag).

[7] *See id.*

[8] "In the 109th Congress, three 'flag protection' amendments have been introduced." JOHN R. LUCKEY, CONGRESSIONAL RESEARCH SERVICE, FLAG PROTECTION: A BRIEF HISTORY AND SUMMARY OF RECENT SUPREME COURT DECISIONS AND PROPOSED CONSTITUTIONAL AMENDMENT 4 (May 19, 2005).

[9] *See* LABUNSKI, *supra* note 1, at 2.

[10] *Id.*

[11] *See id.*

[12] *Id.*

[13] *See* JOSEPH J. ELLIS, FOUNDING BROTHERS: THE REVOLUTIONARY GENERATION 53 (2002).

The organization of *Bill of Rights* befits Labunski's portrayal of Madison as an early antagonist and subsequent proponent of a bill of rights. By organizing the book in chronological order, the reader can easily follow Madison's vacillating position on the necessity of a bill of rights. Additionally, the organization helps to convey one of the author's boldest opinions, specifically, Labunski opines that Madison "genuinely supported amendments."[14] His decision to articulate this opinion near the end of the book enables him to engender much needed support for this position.[15] Though splendid, the book's organization could be improved through an earlier analysis of issues prior to the Constitutional Convention.

Labunski's decision to limit the scope of *Bill of Rights* assumes too much knowledge on the part of the reader. By beginning his analysis at the Constitutional Convention, Labunski misses an opportunity to articulate Madison's role in calling for a convention.[16] There are many readers with insufficient knowledge of Madison's activities prior to the Constitutional Convention. Such a discussion would provide insight into Madison's staunch advocacy of the Constitution. For instance, as a member of the Continental Congress, Madison "organized . . . delegates from different states to discuss national economic problems."[17] His experiences in the Continental Congress gave rise to his view regarding the inadequacies of the Articles of Confederation.[18] Failure to analyze this aspect of Madison's life results in a missed opportunity to more fully articulate his role in shaping America. Despite this minor critique, the limitation of coverage does not considerably detract from the overall cogency of the book. Instead, *Bill of Rights*' in-depth coverage of critical events during the nation's founding period is a definite strength.

A further strength of *Bill of Rights* is Labunski's ability to bring seminal events to life. By providing vivid detail of events, the author elevates the book's readability. For instance, when discussing the Constitutional Convention, Labunski digresses from the discourse concerning a bill of rights by stating:

> James Madison did not sit with the others during the debates. Day after day, for six to seven hours, Madison sat at the front of the room with his back mostly turned to Washington . . . . Madison wanted future generations . . . to know why the framers had written the Constitution the way they did.[19]

Labunski uses descriptions of such events throughout *Bill of Rights*. This tactic accomplishes two things. First, it allows the reader to visualize the events being analyzed. Second, at times, there is an obvious nexus between the detail provided and the outcome of key events. An example is the depiction of conditions the delegates endured during the convention: "The convention was emotionally and physically draining for the delegates. Despite the summer heat, the windows had to be closed because the noise of carriage wheels and horseshoes hammering against the cobblestone . . . made it difficult for delegates to hear each other."[20]

This vivid detail supports Labunski's assertion that "[f]atigue was certainly a factor"[21] in the delegate's refusal to countenance extended discussion on the necessity of a bill of rights.[22] While such detail is part of the book's strength, the author overuses this method. For example, the numerous discussions of Madison's bodily functions quickly reach the point of diminishing returns.[23] While initially entertaining, repeated discussion of this issue is devoid of value.

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[14] LABUNSKI, *supra* note 1, at 194. Though the author opines that Madison was a genuine proponent of a bill of rights, there is ample historical evidence to suggest that this support was premised on political expediency. *See* discussion *infra* p. 50.

[15] LABUNSKI, *supra* note 1, at 194.

[16] *See* ELLIS, *supra* note 13, at 52.

[17] ROBERT K. WRIGHT, SOLDIER-STATESMEN OF THE CONSTITUTION 163 (1987).

[18] *See* ELLIS, *supra* note 13, at 52.

[19] LABUNSKI, *supra* note 1, at 5.

[20] *Id.* at 3.

[21] *Id.* at 9.

[22] *See id.*

[23] *See* PublishersWeekly.com, http://reviews.publishersweekly.com/bd.aspx?isbn=0195181050&pub=pw (last visited Sept. 17, 2006) (book review); *see also* LABUNSKI, *supra* note 1, at 22, 31, 96-97, 244.

Despite this shortcoming, Labunski succeeds in establishing Madison as a central figure of the nation's founding period. He elevates Madison's status among the founding fathers by using a three-pronged approach. First, he discusses Madison's opposition to a bill of rights at the Constitutional Convention. Second, Labunski examines Madison's defense of the Constitution, focusing specifically on issues germane to Virginia's ratifying convention. Finally, he examines Madison's role in introducing the Bill of Rights during the First Congress.

The opening chapter provides an overview of the Constitutional Convention and the first discourse regarding the necessity of a bill of rights.[24] It is in this section that the author first establishes Madison's role in shaping the nation. Labunski observes that Madison was "largely responsible for persuading [George Washington] to attend [the convention]."[25] Washington's significance cannot be overstated. Madison understood that Washington's presence would encourage the attendance of "other political figures whose presence . . . would turn out to be crucial."[26] Without Washington, the gathering in Philadelphia might not have occurred.[27]

Labunski aptly begins his review of the discourse concerning a bill of rights at the Constitutional Convention by observing Madison's behavior during a debate:

> Five days before the convention adjourned, [George] Mason[28] said he "wished the plan had been prefaced with a Bill of Rights . . . It would give great quiet to the people." And, Mason added, "with the aid of the State declarations [of rights], a bill might be prepared in a few hours.[29]

In response to Mason's call for an enumerated bill of rights, a debate ensued.[30] Labunski notes that "Madison remained silent"[31] during the ongoing debate. The decision to focus on Madison's silence to establish his view regarding a bill of rights is a great technique. Labunski tacitly alerts readers that Madison opposed a bill of rights.[32] Yet, by using this strategy, he forces readers to discern Madison's position on their own.

Madison's silence, standing alone, fails to establish his core belief that a bill of rights was unnecessary. The failure to provide additional detail germane to Madison's antagonism toward a bill of rights understates his opposition. There is ample evidence to establish Madison as more than a silent objector.[33] If anything, he was quite vocal and arguably led the opposition.[34] At the Constitutional Convention, "Madison was absolutely opposed to adding some additional time in order to craft a bill of rights."[35] Instead, "[h]e insisted that the document . . . made ample provision for the rights of the people."[36] Additional detail such as this would provide readers with a better understanding of Madison's adamant opposition to a bill of rights.

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[24] *See* LABUNSKI, *supra* note 1, at 8-10.

[25] *Id.* at 7.

[26] *Id.*

[27] *See id.*

[28] "One of [Mason's] greatest achievements was his part in writing a declaration of rights that was approved by the Virginia constitutional convention in 1776 . . . . Mason's elegant language . . . later influenced other states as they wrote their own bills of rights." *Id.* at 8.

[29] *Id.* at 9.

[30] *See id.*

[31] *Id.*

[32] *See id.*

[33] *See* CHARLES A. CERAMI, YOUNG PATRIOTS: THE REMARKABLE STORY OF TWO MEN, THEIR IMPOSSIBLE PLAN, AND THE REVOLUTION THAT CREATED THE CONSTITUTION 228 (2005).

[34] *See id.*

[35] *Id.*

[36] *Id.*

Labunski continues his analysis of Madison's role during the nation's founding period by examining his actions after the Constitutional Convention. Each event he examines directly relates to the key role Madison played during the nation's founding period. *Bill of Rights* superbly articulates Madison's status as a central figure at the Virginia ratifying convention.[37] Further, the book demonstrates that Madison was indispensable to the nation's very survival.[38] Labunski supports these propositions in two ways. First, he analyzes the importance of Madison's campaign to become a delegate to Virginia's ratifying convention. Second, he explains the central role Madison played as a delegate to the convention.

Leading political figures implored Madison to do all he could to become a delegate to Virginia's ratifying convention.[39] For example:

> [Governor] Randolph [of Virginia] wrote to [Madison] just after the first of the year: "You must come in [to Orange County]. Some people in Orange are opposed to your politicks [sic]. Your election to the convention, is, I believe, sure; but I beg you not to hazard it by being absent at the time [of the election]."[40]

In the end, Madison won the election by decisively defeating the Anti-Federalist candidates.[41] As evidenced by Governor Randolph's concern, Madison's election victory was a critical point in history. Without Madison as a delegate to Virginia's ratifying convention, things might be very different in North America.[42] Indeed, if Madison would have lost his bid to become a delegate to the convention, Virginia's decision to ratify the Constitution might never have come to fruition. *Bill of Rights* cogently demonstrates the importance of Madison's victory to supporters of both the Constitution and a bill of rights.

During the debates at Virginia's ratifying convention, Madison played a central role in support of the Constitution.[43] Though "supported by eloquent and respected Federalists,[44] . . . the greatest burden of answering [Patrick] Henry's broad charges [against the Constitution] and the detailed criticisms of George Mason and others[45] [fell] on [Madison's] shoulders."[46] *Bill of Rights* demonstrates the importance of Madison's superior debate skills.[47] Madison's ability to persuade others was essential to countering the arguments of opponents to the Constitution.[48] For example, "Madison challenged Henry's argument that the nation was at peace and capable of prosperity . . . ."[49]

> I wish sincerely, Sir, this were true. If this be their happy situation, why has every State acknowledged the contrary? Why were deputies from all the States sent to the General Convention? Why have complaints of national and international distresses been echoed and re-echoed throughout the Continent? Why has our General Government been so shamefully disgraced, and our Constitution [the Articles of Confederation] violated?[50]

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[37] *See* LABUNSKI, *supra* note 1, at 95.

[38] *See id.* at 27-28.

[39] *See id.* at 43-46.

[40] *Id.* at 45.

[41] *See id.* at 47.

[42] *See id.* at 1-2.

[43] *See id.* at 84.

[44] Madison was "supported by . . . Federalists such as [Governor Edmund] Randolph and [George] Nicholas . . . ." *Id.*

[45] Another well known opponent of the Constitution was James Monroe. *See id.* at 20.

[46] *Id.* at 84.

[47] *See id.* at 90.

[48] *See id.*

[49] *Id.*

[50] *Id.*

Madison was able to rebut many of the arguments against the Constitution. However, "[t]he absence of a bill of rights was . . . a factor in the ratification fight."[51] In order to convince Virginia's delegates to ratify the Constitution, Madison had to promise to introduce a bill of rights in the First Congress.[52]

The importance of Madison's role at this juncture was immense. If the arguments of Patrick Henry and other Anti-Federalists went unchallenged, it is possible that Virginia would not have ratified the Constitution. Virginia's decision to ratify the Constitution was critical. "If Virginia failed to ratify [the Constitution], . . . no Virginians would be eligible for office . . . , not even George Washington."[53] Without Washington as the President, the nation might have died in infancy.[54]

Labunski's examination of Madison's campaign for Congress focuses closely on his "conversion"[55] from opponent to proponent of a bill rights. As Labunski demonstrates through use of *Federalist Papers* 38, 44, and 48,[56] "Madison had written disparagingly about a bill of rights for several years."[57] Labunski asserts that Madison's conversion was premised on his wish for stability in the new government.[58] An enumerated bill of rights would silence many critics and perhaps stymie calls for a second convention.[59] This is certainly a logical interpretation of facts. However, the same cannot be said regarding the author's analysis of Madison's motivation to support a bill of rights in the First Congress.

The weakest part of *Bill of Rights* is Labunski's analysis of the impetus that led Madison to support a bill of rights in the First Congress.[60] The author makes the following assertion:

> It is hard to believe that political expediency, keeping his word to local constituents, or a wish to assuage the concerns of those who remained opposed to the [Constitution] would be enough to motivate [Madison]. . . . Only a genuine conviction that such rights were necessary could have generated [Madison's] passion and commitment . . . .[61]

Labunski's analysis is flawed for several reasons. First, there is abundant evidence that Madison's conversion was premised on political expediency. This point is established by Congressman John Page.[62] Congressman Page "argued . . . that if Congress did not act, the people and their legislatures would think seriously about petitioning for a second convention."[63] Madison certainly wanted to avoid a second convention.[64] Madison believed that the changes that were likely to be proposed at a second convention "would drastically alter the relative power of the states and the new federal government. Foreign nations would be hesitant to lend money during a period of such instability, and the danger that some states would form regional confederacies would be increased."[65] Next, the view that Madison's support for a bill of rights

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[51] CERAMI, *supra* note 33, at 268.

[52] *See id.*

[53] *See* LABUNSKI, *supra* note 1, at 28.

[54] *See id.* at 28, 117.

[55] *Id.* at 161.

[56] *See* THE FEDERALIST NOS. 38, 44, 48 (James Madison).

[57] *See* LABUNSKI, *supra* note 1, at 62.

[58] *See id.* at 161-62.

[59] *See id.* at 198, 230, 240, 243, 253.

[60] *See Editorial Review*, PUBLISHERS WKLY., *reprinted at* Amazon.com, http://www.amazon.com/exec/obidos/ASIN/0195181050/bookstorenow600-20 (last visited June 27, 2007) (book review).

[61] LABUNSKI, *supra* note 1, at 194.

[62] *See id.* at 207.

[63] *Id.*

[64] *See id.* at 55, 108, 129-30, 198, 230.

[65] *Id*. at 55 (citation omitted).

was occasioned by a campaign promise has merit. It is entirely logical to conclude that Madison's support for a bill of rights was premised on a campaign promise.

Finally, there is ample evidence that Madison introduced a bill of rights to assuage the concerns of citizens opposed to the Constitution. Madison's statement in the First Congress supports this proposition.[66] Madison stated: "Citizens who remained actively opposed to the new government . . . could create many problems . . . if they believed their concerns about a bill of rights were not taken seriously."[67] Madison was likely referring to the possibility that citizens would demand a second convention.

Despite this minute criticism, the author provides a generally well-reasoned and factual recitation of events surrounding the Bill of Rights. Labunski's analysis of the struggles surrounding the Bill of Rights should give pause to those that would freely cede their constitutional rights. An easy, yet scholarly read, Labunski succeeded in elevating Madison's stature among the founding fathers. *Bill of Rights* is not for readers seeking a comprehensive analysis of the many facets of Madison's political life. Those interested in such an expansive analysis should look beyond this work. However, *Bill of Rights* is highly recommended for readers interested in the genesis of the Bill of Rights.

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[66] *See id.* at 196.

[67] *Id.*

CLE News

1. Resident Course Quotas

a. Attendance at resident continuing legal education (CLE) courses at The Judge Advocate General's Legal Center and School, U.S. Army (TJAGLCS), 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, attendance is prohibited.

b. Active duty service members and civilian employees must obtain reservations through their directorates training office. Reservists or ARNG must obtain reservations through their unit training offices or, if they are non-unit reservists, through the U.S. Army Personnel Center (ARPERCOM), ATTN: ARPC-OPB, 1 Reserve Way, St. Louis, MO 63132-5200.

c. Questions regarding courses should be directed first through the local ATRRS Quota Manager or the ATRRS School Manager, Academic Department at 1 (800) 552-3978, extension 3307.

d. The ATTRS Individual Student Record is available on-line. To verify a confirmed reservation, log into your individual AKO account and follow these instructions:

> Go to Self Service, My Education. Scroll to Globe Icon (not the AARTS Transcript Services). Go to ATTRS On-line, Student Menu, Individual Training Record. The training record with reservations and completions will be visible.
>
> If you do not see a particular entry for a course that you are registered for or have completed, see your local ATTRS Quota Manager or Training Coordinator for an update or correction.

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

2. TJAGLCS CLE Course Schedule (June 2007 - October 2008) (http://www.jagcnet.army.mil/JAGCNETINTERNET/HOMEPAGES/AC/TJAGSAWEB.NSF/Main?OpenFrameset (click on Courses, Course Schedule))

ATTRS. No.	Course Title	Dates
	GENERAL	
5-27-C22	56th Judge Advocate Officer Graduate Course	13 Aug 07 – 22 May 08
5-27-C22	57th Judge Advocate Officer Graduate Course	11 Aug 08 – 22 May 09
5-27-C20	173d JA Officer Basic Course	1 – 13 Jul 07 (BOLC III) Ft. Lee
		13 Jul – 26 Sep 07 (BOLC III) TJAGSA **(Tentative)**
5-27-C20 (Ph 2)	174th JAOBC/BOLC III	9-Nov 07 – 6-Feb 08
5-27-C20 (Ph 2)	175th JAOBC/BOLC III	22 Feb – 7 May 08
5-27-C20 (Ph 2)	176th JAOBC/BOLC III	18 Jul – 1 Oct 08
5F-F70	38th Methods of Instruction Course	26 – 27 Jul 07
5F-F1	198th Senior Officers Legal Orientation Course	10 – 14 Sep 07
5F-F1	199th Senior Officers Legal Orientation Course	22 – 26 Oct 07
5F-F1	200th Senior Officers Legal Orientation Course	28 Jan – 1 Feb 08
5F-F1	201st Senior Officers Legal Orientation Course	24 – 28 Mar 08
5F-F1	202d Senior Officers Legal Orientation Course	9 – 13 Jun 08
5F-F1	203d Senior Officers Legal Orientation Course	8 – 12 Sep 08

5F-F3	14th RC General Officer Legal Orientation Course	13 – 15 Feb 08
5F-F52	38th Staff Judge Advocate Course	2 – 6 Jun 08
5F-F52S	11th SJA Team Leadership Course	2 – 4 Jun 08
5F-F55	2008 JAOAC (Phase II)	7 – 18 Jan 08
5F-JAG	2007 JAG Annual CLE Conference	1 – 5 Oct 07
JARC-181	2007 JA Professional Recruiting Seminar	16 – 20 Jul 07
JARC-181	2008 JA Professional Recruiting Conference	15 – 18 Jul 08

NCO ACADEMY COURSES		
600-BNCOC	2d BNCOC Common Core	4 – 25 Jan 08
600-BNCOC	3d BNCOC Common Core	10 – 28 Mar 08
600-BNCOC	4th BNCOC Common Core	8 – 29 May 08
600-BNCOC	5th BNCOC Common Core	4 – 22 Aug 08
512-27D30 (Ph 2)	5th Paralegal Specialist BNCOC	11 Jun – 13 Jul 07
512-27D30 (Ph 2)	6th Paralegal Specialist BNCOC	13 Aug – 14 Sep 07
512-27D30 (Ph 2)	1st Paralegal Specialist BNCOC	2 Nov – 7 Dec 07
512-27D30 (Ph 2)	2d Paralegal Specialist BNCOC	29 Jan – 29 Feb 08
512-27D30 (Ph 2)	3d Paralegal Specialist BNCOC	2 Apr – 2 May 08
512-27D30 (Ph 2)	4th Paralegal Specialist BNCOC	3 Jun – 3 Jul 08
512-27D30 (Ph 2)	5th Paralegal Specialist BNCOC	26 Aug – 26 Sep 08
512-27D40 (Ph 2)	3d Paralegal Specialist ANCOC	11 Jun – 13 Jul 07
512-27D40 (Ph 2)	4th Paralegal Specialist ANCOC	13 Aug – 14 Sep 07
512-27D40 (Ph 2)	1st Paralegal Specialist ANCOC	2 Nov – 7 Dec 07
512-27D40 (Ph 2)	2d Paralegal Specialist ANCOC	29 Jan – 29 Feb 08
512-27D40 (Ph 2)	3d Paralegal Specialist ANCOC	2 Apr – 2 May 08
512-27D40 (Ph 2)	4th Paralegal Specialist ANCOC	3 Jun – 3 Jul 08
512-27D40 (Ph 2)	5th Paralegal Specialist ANCOC	26 Aug – 26 Sep 08
WARRANT OFFICER COURSES		
7A-270A2	8th JA Warrant Officer Advanced Course	9 Jul – 3 Aug 07
7A-270A2	9th JA Warrant Officer Advanced Course	7 Jul – 1 Aug 08
7A-270A0	15th JA Warrant Officer Basic Course	27 May – 20 Jun 08
7A-270A1	19th Legal Administrators Course	31 Mar – 4 Apr 08
7A270A3	2008 Senior Warrant Officer Symposium	4 – 8 Feb 08
ENLISTED COURSES		
512-27D/20/30	19th Law for Paralegal Course	24 – 28 Mar 08
512-27DC5	24th Court Reporter Course	30 Jul – 28 Sep 07

512-27DC5	25th Court Reporter Course	28 Jan – 28 Mar 08
512-27DC5	26th Court Reporter Course	21 Apr – 20 Jun 08
512-27DC5	27th Court Reporter Course	28 Jul – 26 Sep 08
512-27DC6	8th Court Reporting Symposium	29 Oct – 2 Nov 07
512-27DC7	3d Redictation Course	7 – 18 Jan 08
512-27DC7	4th Redictation Course	31 Mar – 11 Apr 08
512-27D-CLNCO	10th BCT NCOIC Course	16 – 20 Jun 08
512-27DCSP	17th Senior Paralegal Course	16 – 20 Jun 08
5F-F58	2008 BCT Symposium	4 – 8 Feb 08
ADMINISTRATIVE AND CIVIL LAW		
5F-F21	6th Advanced Law of Federal Employment Course	17 – 19 Oct 07
5F-F22	61st Law of Federal Employment Course	15 – 19 Oct 07
5F-F23	61st Legal Assistance Course	29 Oct – 2 Nov 07
5F-F23	62d Legal Assistance Course	5 – 9 May 08
5F-F29	25th Federal Litigation Course	6 – 10 Aug 07
5F-F202	6th Ethics Counselors Course	14 – 18 Apr 08
5F-F23E	2007 USAREUR Legal Assistance CLE	5 – 8 Nov 07
5F-F24	32d Administrative Law for Installations Course	17 – 21 Mar 08
5F-F24E	2007 USAREUR Administrative Law CLE	17 – 21 Sep 07
5F-F24E	2008 USAREUR Administrative Law CLE	15 – 19 Sep 08
5F-F26E	2007 USAREUR Claims Course	15 – 19 Oct 07
5F-F28	2007 Income Tax Law Course	10 – 14 Dec 07
5F-F28E	7th USAREUR Income Tax CLE	3 – 7 Dec 2007
5F-28H	8th Hawaii Income Tax CLE	14 – 18 Jan 08
5F-F28P	8th PACOM Income Tax CLE	7 – 11 Jan 08
5F-F29	26th Federal Litigation Course	6 – 10 Aug 08
CONTRACT AND FISCAL LAW		
5F-F10	158th Contract Attorneys Course	23 Jul – 3 Aug 07
5F-F10	159th Contract Attorneys Course	3 – 11 Mar 08
5F-F10	160th Contract Attorneys Course	23 Jul – 1 Aug 08
5F-F101	8th Procurement Fraud Course	26 – 30 May 08

5F-F103	8th Advanced Contract Law Course	7 – 11 Apr 08
5F-F11	2007 Government Contract Law Symposium	4 – 7 Dec 07
5F-F12	77th Fiscal Law Course	22 – 26 Oct 07
5F-F12	78th Fiscal Law Course	28 Apr – 2 May 08
5F-F13	4th Operational Contracting	12 – 14 Mar 08
5F-F14	26th Comptrollers Accreditation Fiscal Law Course	15 – 18 Jan 08
5F-F15E	2008 USAREUR Contract Law CLE	12 – 15 Feb 08
8F-DL12	2d Distance Learning Fiscal Law Course	4 – 8 Feb 08

CRIMINAL LAW		
5F-F31	13th Military Justice Managers Course	15 – 19 Oct 07
5F-F33	51st Military Judge Course	21 Apr – 9 May 08
5F-F34	28th Criminal Law Advocacy Course	10 – 21 Sep 07
5F-F34	29th Criminal Law Advocacy Course	4 – 15 Feb 08
5F-F34	30th Criminal Law Advocacy Course	8 – 19 Sep 08
5F-F35	31st Criminal Law New Developments Course	5 – 9 Nov 07
5F-F35E	2008 USAREUR Criminal Law CLE	15 – 18 Jan 08
INTERNATIONAL AND OPERATIONAL LAW		
5F-F41	3d Intelligence Law Course	25 – 29 Jun 07
5F-F41	4th Intelligence Law Course	23 – 27 Jun 08
5F-F43	3d Advanced Intelligence Law Course	27 – 29 Jun 07
5F-F42	88th Law of War Course	9 – 13 Jul 07
5F-F42	89th Law of War Course	28 Jan – 1 Feb 08
5F-F42	90th Law of War Course	7 – 11 Jul 08
5F-F43	4th Advanced Intelligence Law Course	25 – 27 Jun 08
5F-F44	2d Legal Issues Across the Information Operations Spectrum	16 – 20 Jul 07
5F-F44	3d Legal Issues Across the IO Spectrum	14 – 18 Jul 08
5F-F45	7th Domestic Operational Law Course	29 Oct – 2 Nov 07
5F-F47	48th Operational Law Course	30 Jul – 10 Aug 07
5F-F47	49th Operational Law Course	25 Feb – 7 Mar 08
5F-F47	50th Operational Law Course	28 Jul – 8 Aug 08
5F-F47E	2008 USAREUR Operational Law CLE	28 Apr – 2 May 08

3. Naval Justice School and FY 2008 Course Schedule

Please contact Jerry Gallant, Registrar, Naval Justice School, 360 Elliot Street, Newport, RI 02841 at (401) 841-3807, extension 131, for information about the courses.

Naval Justice School Newport, RI		
CDP	**Course Title**	**Dates**
0257	Lawyer Course (030) Lawyer Course (040) Lawyer Course (010) Lawyer Course (020) Lawyer Course (030) Lawyer Course (040)	4 Jun – 3 Aug 07 13 Aug – 12 Oct 07 15 Oct – 14 Dec 07 22 Jan – 21 Mar 08 2 Jun – 1 Aug 08 4 Aug – 3 Oct 08
BOLT	BOLT (030) BOLT (030) BOLT (010) BOLT (010) BOLT (020) BOLT (020) BOLT (030) BOLT (030)	6 – 10 Aug 07 (USMC) 6 – 10 Aug 07 (NJS) 9 – 12 Oct 07 (USN) 9 – 12 Oct 07 USMC) 24 – 28 Mar 08 (USMC) 24 – 28 Mar 08 (USN 4 – 8 Aug 08 (USMC) 4 – 8 Aug 08 (USN)
961F	Coast Guard Judge Advocate Course (010)	9 – 12 Oct 07
900B	Reserve Lawyer Course (020) Reserve Lawyer Course (010) Reserve Lawyer Course (020)	10 – 14 Sep 07 10 – 14 Mar 08 22 – 26 Sep 08
850T	SJA/E-Law Course (020) SJA/E-Law Course (010) SJA/E-Law Course (020)	6 – 17 Aug 07 27 May – 6 Jun 08 4 – 15 Aug 08
786R	Advanced SJA/Ethics (010) Advanced SJA/Ethics (020)	24 – 28 Mar 08 (San Diego) 14 – 18 Apr (Norfolk)
850V	Law of Military Operations (010)	9 – 20 Jun 08
4044	Joint Operationals Law Training (010)	21 – 24 Jul 08
0258	Senior Officer (Fleet) (050) Senior Officer (Fleet) (060) Senior Officer (010) Senior Officer (020) Senior Officer (030) Senior Officer (040) Senior Officer (050) Senior Officer (060)	23 – 27 Jul 07 (New Port) 24 – 28 Sep 07 (New Port) 29 Oct – 2 Nov 07 (Newport) 7 – 11 Jan 08 (Newport) 10 – 14 Mar 08 (Newport) 5 – 9 May 08 (Newport) 21 – 25 08 (Newport) 22 – 26 Sep 08 (Newport)
4048	Estate Planning (010) Estate Planning (010)	23 – 27 Jul 07 21 – 25 Jul 08
961M	Effective Courtroom Communications (010) Effective Courtroom Communications (020)	29 Oct – 2 Nov 07 (Norfolk) 28 Jan – 1 Feb 08 (Bremerton)

748A	Law of Naval Operations (010) Law of Naval Operations (020)	3 – 7 Mar 08 15 – 19 Sep 08
7485	Litigating National Security (010)	29 Apr – 1 May 08 (Andrews AFB)
748B	Naval Legal Service Command Senior Officer Leadership (010) Naval Legal Service Command Senior Officer Leadership (010)	20 – 31 Aug 07 14 – 25 Jul 07
748K	USMC Trial Advocacy Training (010) USMC Trial Advocacy Training (020) USMC Trial Advocacy Training (030) USMC Trial Advocacy Training (040)	22 – 26 Oct 07 (Camp Lejeune) 12 – 16 May 08 (Okinawa) 19 – 23 May 08 (Pearl Harbor) 15 – 19 Sep 08 (San Diego)
2205	Defense Trial Enhancement (010)	4 – 8 Feb 08
3938	Computer Crimes (010)	19 – 23 May 08 (Newport)
961D	Military Law Update Workshop (Officer) (010) Military Law Update Workshop (Officer) (020)	TBD TBD
961J	Defending Complex Cases (010) Defending Complex Cases (010)	16 – 20 Jul 07 25 – 29 Aug 08
525N	Prosecuting Complex Cases (010) Prosecuting Complex Cases (010)	9 – 13 Jul 07 18 – 22 Aug 08
2622	Senior Officer (Fleet) (120) Senior Officer (Fleet) (130) Senior Officer (Fleet) (010) Senior Officer (Fleet) (020) Senior Officer (Fleet) (030) Senior Officer (Fleet) (040) Senior Officer (Fleet) (050) Senior Officer (Fleet) (060) Senior Officer (Fleet) (070) Senior Officer (Fleet) (080) Senior Officer (Fleet) (090) Senior Officer (Fleet) (100) Senior Officer (Fleet) (110)	9 – 13 Jul 07 (Pensacola) 27 – 31 Aug 07 (Pensacola) 5 – 9 Nov 07 (Pensacola) 14 – 18 Jan 08 (Pensacola) 14 Jan – 18 Feb 08 (Bahrain) 3 – 7 Mar 08 (Pensacola) 14 – 18 Apr 08 (Pensacola) 28 Apr – 2 May 08 (Naples, Italy) 9 – 13 Jun 08 (Pensacola) 16 – 20 Jun 08 (Quantico) 23 – 27 Jun 08 (Camp Lejeune) 14 – 18 Jul 08 (Pensacola) 11 – 15 Aug 08 (Pensacola)
961A (PACOM)	Continuing Legal Education (010) Continuing Legal Education (020)	4 – 5 Feb 08 (Yokosuka) 28 – 29 Apr 08 (Naples)
7878	Legal Assistance Paralegal Course (010)	31 Mar – 5 Apr 08
03RF	Legalman Accession Course (010) Legalman Accession Course (020) Legalman Accession Course (030)	1 Oct – 14 Dec 07 22 Jan – 4 Apr 08 9 Jun – 22 Aug 08
932V	Coast Guard Legal Technician Course (010)	8 – 19 Sep 08
846L	Senior Legalman Leadership Course (010) Senior Legalman Leadership Course (010)	18 – 22 Aug 08

049N	Reserve Legalman Course (Phase I) (010)	21 Apr – 2 May 08
056L	Reserve Legalman Course (Phase II) (010)	5 – 16 May 08
846M	Reserve Legalman Course (Phase III) (010)	19 – 30 May 08
5764	LN/Legal Specialist Mid-Career Course (010) LN/Legal Specialist Mid-Career Course (020)	15 – 26 Oct 07 5 – 16 May 08
961G	Military Law Update Workshop (Enlisted) (010) Military Law Update Workshop (Enlisted) (020)	TBD TBD
4040	Paralegal Research & Writing (030) Paralegal Research & Writing (010) Paralegal Research & Writing (020) Paralegal Research & Writing (030)	16 – 27 Jul 07 (San Diego) 21 Apr – 2 May 08 16 – 27 Jun 08 (Norfolk) 14 – 25 Jul 08 (San Diego)
4046	SJA Legalman (010) SJA Legalman (020)	25 Feb – 7 Mar 08 (San Diego) 12 – 23 May 08 (Norfolk)
Pending	Prosecution Trial Enhancement (010)	11 – 15 Feb 08
7487	Family Law/Consumer Law (010)	31 Mar – 4 Apr 08
627S	Senior Enlisted Leadership Course (Fleet) (150) Senior Enlisted Leadership Course (Fleet) (160) Senior Enlisted Leadership Course (Fleet) (170) Senior Enlisted Leadership Course (Fleet) (010) Senior Enlisted Leadership Course (Fleet) (020) Senior Enlisted Leadership Course (Fleet) (030) Senior Enlisted Leadership Course (Fleet) (040) Senior Enlisted Leadership Course (Fleet) (050) Senior Enlisted Leadership Course (Fleet) (060) Senior Enlisted Leadership Course (Fleet) (070) Senior Enlisted Leadership Course (Fleet) (080) Senior Enlisted Leadership Course (Fleet) (090) Senior Enlisted Leadership Course (Fleet) (100) Senior Enlisted Leadership Course (Fleet) (110) Senior Enlisted Leadership Course (Fleet) (120) Senior Enlisted Leadership Course (Fleet) (130) Senior Enlisted Leadership Course (Fleet) (140) Senior Enlisted Leadership Course (Fleet) (150) Senior Enlisted Leadership Course (Fleet) (160) Senior Enlisted Leadership Course (Fleet) (170)	17 – 19 Jul 07 (San Diego) 18 – 20 Jul 07 (Great Lakes) 15 – 17 Aug 07 (Norfolk) 5 – 7 Oct 07 (Norfolk) 6 – 8 Nov 08 (San Diego) 7 – 9 Jan 08 (Jacksonville) 14 – 16 Jan 08 (Bahrain) 4 – 6 Feb 08 (Yokosuka 11 – 13 Feb 08 (Okinawa 20 – 22 Feb 08 (Norfolk) 18 – 20 Mar 08 (San Diego) 31 Mar – 2 Apr 08 (Norfolk) 14 – 16 Apr 08 (Bremerton) 22 – 24 Apr 08 (San Diego) 28 – 30 Apr 08 (Naples) 19 – 21 May 08 (Norfolk) 8 – 10 Jul 08 (San Diego) 4 – 6 Aug 08 (Millington) 25 – 27 Aug 08 (Pendleton) 2 – 4 Sep 08 (Norfolk)

Naval Justice School Detachment Norfolk, VA		
0376	Legal Officer Course (070) Legal Officer Course (080) Legal Officer Course (010) Legal Officer Course (020) Legal Officer Course (030) Legal Officer Course (040) Legal Officer Course (050) Legal Officer Course (060)	23 Jul – 10 Aug 07 10 – 28 Sep 07 15 Oct – 2 Nov 07 26 Nov – 14 Dec 07 28 Jan – 15 Feb 08 10 – 28 Mar 08 28 Apr – 16 May 08 2 – 20 Jun 08

	Legal Officer Course (070) Legal Officer Course (080)	7 – 25 Jul 08 8 – 26 Sep 08
0379	Legal Clerk Course (070) Legal Clerk Course (080) Legal Clerk Course (010) Legal Clerk Course (020) Legal Clerk Course (030) Legal Clerk Course (040) Legal Clerk Course (050) Legal Clerk Course (060) Legal Clerk Course (070)	30 Jul – 10 Aug 07 10 – 21 Sep 07 22 Oct – 2 Nov 07 26 Nov – 7 Dec 07 4 – 15 Feb 08 10 – 21 Mar 08 21 Apr – 2 May 08 7 – 18 Jul 08 8 – 19 Sep 08
3760	Senior Officer Course (060) Senior Officer Course (070) Senior Officer Course (010) Senior Officer Course (020) Senior Officer Course (030) Senior Officer Course (040) Senior Officer Course (050) Senior Officer Course (060) Senior Officer Course (070)	16 – 20 Jul 07 (Great Lakes) 27 – 31 Aug 07 5 – 9 Nov 07 7 – 11 Jan 08 (Jacksonville) 25 – 29 Feb 08 7 – 11 Apr 08 23 – 27 Jun 08 4 – 8 Aug 08 (Millington) 25 – 29 Aug 08
4046	Military Justice Course for SJA/Convening Authority/Shipboard Legalman (020)	16 – 27 Jun 08

Naval Justice School Detachment San Diego, CA		
947H	Legal Officer Course (070) Legal Officer Course (080) Legal Officer Course (010) Legal Officer Course (020) Legal Officer Course (030) Legal Officer Course (040) Legal Officer Course (050) Legal Officer Course (060) Legal Officer Course (070) Legal Officer Course (080)	30 Jul – 17 Aug 07 10 – 28 Sep 07 1 – 19 Oct 07 26 Nov – 14 Dec 07 7 – 25 Jan 08 25 Feb – 14 Mar 08 5 – 23 May 08 9 – 27 Jun 08 28 Jul – 15 Aug 08 8 – 26 Sep 08

947J	Legal Clerk Course (080) Legal Clerk Course (010) Legal Clerk Course (020) Legal Clerk Course (030) Legal Clerk Course (040) Legal Clerk Course (050) Legal Clerk Course (060) Legal Clerk Course (070) Legal Clerk Course (080)	30 Jul – 10 Aug 07 15 – 26 Oct 07 26 Nov – 7 Dec 07 7 Jan – 18 Jan 08 31 Mar – 11 Apr 08 5 – 16 May 08 9 – 20 Jun 08 28 Jul – 8 Aug 08 8 – 18 Sep 08
3759	Senior Officer Course (070) Senior Officer Course (080) Senior Officer Course (010) Senior Officer Course (020) Senior Officer Course (030) Senior Officer Course (040) Senior Officer Course (050)	20 – 24 Aug 07 (San Diego) 27 – 31 Aug 07 (Pendleton) 29 Oct – 2 Nov 07 (San Diego) 4 – 8 Feb 08 (Yokosuka) 11 – 15 Feb 08 (Okinawa) 31 Mar – 4 Apr 08 (San Diego) 14 – 18 Apr 08 (Bremerton)

	Senior Officer Course (060) Senior Officer Course (070) Senior Officer Course (080)	28 Apr – 2 May 08 (San Diego) 2 – 6 Jun 08 (San Diego) 25 – 29 Aug 08 (Pendleton)
2205	CA Legal Assistance Course (010)	TBD
4046	Military Justice Course for Staff Judge Advocate/ Convening Authority/Shipboard Legalmen (010)	25 Feb – 7 Mar 08

4. Air Force Judge Advocate General School Fiscal Year 2008 Course Schedule

Please contact Jim Whitaker, Air Force Judge Advocate General School, 150 Chennault Circle, Maxwell AFB, AL 36112-5712, commercial telephone (334) 953-2802, DSN 493-2802, fax (334) 953-4445, for information about attending the listed courses.

Air Force Judge Advocate General School, Maxwell AFB, AL	
Course Title	**Dates**
Judge Advocate Staff Officer Course, Class 07-C	16 Jul – 14 Sep 07
Paralegal Craftsman Course, Class 07-04	7 Aug – 11 Sep 07
Paralegal Apprentice Course, Class 07-06	13 Aug – 25 Sep 07
Reserve Forces Judge Advocate Course, Class 07-B	27 – 31 Aug 07
Trial & Defense Advocacy Course, Class 07-B	17 – 28 Sep 07
Legal Aspects of Sexual Assault Workshop, Class 07-A	25 – 27 Sep 07
Judge Advocate Staff Officer Course, Class 08-A	9 Oct – 13 Dec 2007
Paralegal Apprentice Course, Class 08-01	10 Oct – 30 Nov 2007
Area Defense Counsel Orientation Course, Class 08-A	15 – 19 Oct 2007
Defense Paralegal Orientation Course, Class 08-A	15 – 19 Oct 2007
Paralegal Craftsman Course, Class 08-01	24 Oct – 7 Dec 2007
Advanced Environmental Law Course, Class 08-A (Off-Site Wash DC Location)	29 – 30 Oct 2007
Reserve Forces Judge Advocate Course, Class 08-A	3 – 4 Nov 2007
Deployed Fiscal Law & Contingency Contracting Course, Class 08-A	27 – 30 Nov 2007
Computer Legal Issues Course, Class 08-A	3 – 4 Dec 2007
Legal Aspects of Information Operations Law Course, Class 08-A	5 – 7 Dec 2007
Federal Employee Labor Law Course, Class 08-A	10 – 14 Dec 2007
Paralegal Apprentice Course, Class 08-02	3 Jan – 22 Feb 2008
Trial & Defense Advocacy Course, Class 08-A	7 – 18 Jan 2008
Air National Guard Annual Survey of the Law, Class 08-A & B (Off-Site)	25 – 26 Jan 2008

Air Force Reserve Annual Survey of the Law, Class 08-A & B (Off-Site)	25 – 26 Jan 2008
Military Justice Administration Course, Class 08-A	28 Jan – 1 Feb 2008
Legal & Administrative Investigations Course, Class 08-A	4 – 8 Feb 2008
Total Air Force Operations Law Course, Class 08-A	8 – 10 Feb 2008
Homeland Defense/Homeland Security Course, Class 08-A	11 – 14 Feb 2008
Judge Advocate Staff Officer Course, Class 08-B	19 Feb – 18 Apr 2008
Paralegal Apprentice Course, Class 08-03	25 Feb – 11 Apr 2008
Paralegal Craftsman Course, Class 08-02	3 Mar – 11 Apr 2008
Interservice Military Judges' Seminar,Class 08-A	1 – 4 Apr 2008
Senior Defense Counsel Course , Class 08-A	14 – 18 Apr 2008
Paralegal Apprentice Course, Class 08-04	15 Apr – 3 Jun 2008
Environmental Law Course , Class 08-A	21 – 25 Apr 2008
Area Defense Counsel Orientation Course, Class 08-B	21 – 25 Apr 2008
Defense Paralegal Orientation Course, Class 08-B	21 – 25 Apr 2008
Advanced Trial Advocacy Course, Class 08-A	29 Apr – 2 May 2008
Reserve Forces Judge Advocate Course, Class 08-A	3 – 4 May 2008
Advanced Labor & Employment Law Course, Class 08-A	5 – 9 May 2008
Operations Law Course, Class 08-A	12 – 22 May 2008
Negotiation and Appropriate Dispute Resolution Course, Class 08-A	19 – 23 May 2008
Environmental Law Update Course (DL), Class 08-A	28 – 30 May 2008
Reserve Forces Paralegal Course, Class 08-B	2 – 13 Jun 2008
Paralegal Apprentice Course, Class 08-05	4 Jun – 23 Jul 2008
Senior Reserve Forces Paralegal Course, Class 08-A	9 – 13 Jun 2008
Staff Judge Advocate Course, Class 08-A	16 – 27 Jun 2008
Law Office Management Course, Class 08-A	16 – 27 Jun 2008
Judge Advocate Staff Officer Course, Class 08-C	14 Jul – 12 Sep 2008
Paralegal Apprentice Course, Class 08-06	29 Jul – 16 Sep 2008
Paralegal Craftsman Course, Class 08-03	31 Jul – 11 Sep 2008
Trial & Defense Advocacy Course, Class 08-B	15 – 26 Sep 2008

5. Civilian-Sponsored CLE Courses

For addresses and detailed information, see the March 2007 issue of *The Army Lawyer*.

6. Phase I (Correspondence Phase), Deadline for RC-JAOAC 2008

The suspense for submission of all RC-JAOAC Phase I (Correspondence Phase) materials is ***NLT 2400, 1 November 2007***, for those judge advocates who desire to attend Phase II (Resident Phase) at TJAGLCS in January 2008. This requirement includes submission of all JA 151, Fundamentals of Military Writing, exercises.

This requirement is particularly critical for some officers. The 2008 JAOAC will be held in January 2008 and is a prerequisite for most judge advocate captains to be promoted to major.

A judge advocate who is required to retake any subcourse examinations or "re-do" any writing exercises must submit the examination or writing exercise to the Non-Resident Instruction Branch, TJAGLCS, for grading by the same deadline (1 November 2007). If the student receives notice of the need to re-do any examination or exercise after 1 October 2007, the notice will contain a suspense date for completion of the work.

Judge advocates who fail to complete Phase I correspondence courses and writing exercises by 1 November 2007 will not be cleared to attend the 2008 JAOAC. If you have not received written notification of completion of Phase I of JAOAC, you are not eligible to attend the resident phase.

If you have any additional questions regarding attendance at Phase II (Residence Phase) or completion of Phase I writing exercises, contact LTC Jeff Sexton, commercial telephone (434) 971-3357, or e-mail jeffrey.sexton@hqda.army.mil.

For system or help desk issues regarding JAOAC or any on-line or correspondence course material, please contact the Distance Learning Department at jagc.training@hqda.army.mil or commercial telephone (434) 971-3153.

7. 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	Period ends 31 December; confirmation required by 1 February if compliance required; if attorney is admitted in even-numbered year, period ends in even-numbered year, etc.
Florida**	Assigned month every three years
Georgia	31 January annually
Idaho	31 December, every third year, depending on year of admission
Indiana	31 December annually

Iowa	1 March annually
Kansas	Thirty days after program, hours must be completed in compliance period 1 July to June 30
Kentucky	10 August; completion required by 30 June
Louisiana**	31 January annually; credits must be earned by 31 December
Maine**	31 July annually
Minnesota	30 August annually
Mississippi**	15 August annually; 1 August to 31 July reporting period
Missouri	31 July annually; reporting year from 1 July to 30 June
Montana	1 April annually
Nevada	1 March annually
New Hampshire**	1 August annually; 1 July to 30 June reporting year
New Mexico	30 April annually; 1 January to 31 December reporting year
New York*	Every two years within thirty days after the attorney's birthday
North Carolina**	28 February annually
North Dakota	31 July annually for year ending 30 June
Ohio*	31 January biennially
Oklahoma**	15 February annually
Oregon	Period end 31 December; due 31 January
Pennsylvania**	Group 1: 30 April Group 2: 31 August Group 3: 31 December
Rhode Island	30 June annually
South Carolina**	1 January annually
Tennessee*	1 March annually

Texas	Minimum credits must be completed and reported by last day of birth month each year
Utah	31 January annually
Vermont	2 July annually
Virginia	31 October Completion Deadline; 15 December reporting deadline
Washington	31 January triennially
West Virginia	31 July biennially; reporting period ends 30 June
Wisconsin*	1 February biennially; period ends 31 December
Wyoming	30 January annually

* Military exempt (exemption must be declared with state).
**Must declare exemption.

1. The Judge Advocate General's School, U.S. Army (TJAGLCS) Materials Available Through The Defense Technical Information Center (DTIC).

Each year, TJAGLCS 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 TJAGLCS receives many requests each year for these materials. Because the distribution of these materials is not in its mission, TJAGLCS 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 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, DSN 427-8273. 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) 767-8273, (DSN) 427-8273, toll-free 1-800-225-DTIC, menu selection 2, 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 (CAB) Service. The CAB is 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.Contact DTIC at www.dtic.mil/dtic/current.html.

Prices for the reports fall into one of the following four categories, depending on the number of pages: $7, $12, $42, and $122. The DTIC also supplies reports in electronic formats. Prices may be subject to change at any time. 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 twenty-five 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)767-8267, (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 A469330	Contract Attorneys Course Deskbook Deskbook, Vol. I (Oct. 2006).
**AD A469263	Contract Attorneys Course Deskbook, Vol. II (Oct. 2006).
**AD A469266	76th Fiscal Law Course Deskbook, (Spring 2007).

Legal Assistance

AD A384333	Servicemembers Civil Relief Act Guide, JA-260 (2006).
AD A333321	Real Property Guide—Legal Assistance, JA-261 (1997).
AD A326002	Wills Guide, JA-262 (1997).
AD A346757	Family Law Guide, JA 263 (1998).
AD A384376	Consumer Law Deskbook, JA 265 (2004).
AD A372624	Legal Assistance Worldwide Directory, JA-267 (1999).

AD A360700 Tax Information Series, JA 269 (2002).

AD A350513 Uniformed Services Employment and Reemployment Rights Act (USAERRA), Vol. I, JA 270.

AD A350514 Uniformed Services Employment and Reemployment Rights Act (USAERRA), JA 270, Vol. II (1998).

AD A329216 Legal Assistance Office Administration Guide, JA 271 (1997).

AD A276984 Legal Assistance Deployment Guide, JA-272 (1994).

AD A452505 Uniformed Services Former Spouses' Protection Act, JA 274 (2005).

AD A326316 Model Income Tax Assistance Guide, JA 275 (2001).

AD A282033 Preventive Law, JA-276 (1994).

Administrative and Civil Law

AD A351829 Defensive Federal Litigation, JA-200 (2000).

AD A468478 Military Personnel Law, JA 215 (2006).

AD A255346 Financial Liability Investigations and Line of Duty Determinations, JA-231 (2005).

AD A452516 Environmental Law Deskbook, JA-234 (2000).

AD A377563 Federal Tort Claims Act, JA 241 (2000).

Labor Law

AD A360707 The Law of Federal Employment, JA-210 (2006).

AD A399975 The Law of Federal Labor-Management Relations, JA-211 (2001).

Criminal Law

AD A302672 Unauthorized Absences Programmed Text, JA-301 (2003).

AD A302674 Crimes and Defenses Deskbook, JA-337 (2005).

AD A274413 United States Attorney Prosecutions, JA-338 (1994).

International and Operational Law

**AD A469294 Operational Law Handbook, (2007).

* AD A469320 Law of War Documentary Supplement (2007).

* Indicates new publication or revised edition.
** Indicates new publication or revised edition pending inclusion in the DTIC database.
******* Indicates accession number not assigned.

2. The Legal Automation Army-Wide Systems XXI—JAGCNet

a. The Legal Automation Army-Wide Systems XXI (LAAWS XXI) operates a knowledge management and information service called JAGCNet primarily dedicated to servicing the Army legal community, but also provides for Department of Defense (DOD) access in some cases. Whether you have Army access or DOD-wide access, all users will be able to download TJAGSA publications that are available through the JAGCNet.

b. Access to the JAGCNet:

(1) Access to JAGCNet is restricted to registered users who have been approved by the LAAWS XXI Office and senior OTJAG staff:

(a) Active U.S. Army JAG Corps personnel;

(b) Reserve and National Guard U.S. Army JAG Corps personnel;

(c) Civilian employees (U.S. Army) JAG Corps personnel;

(d) FLEP students;

(e) Affiliated (U.S. Navy, U.S. Marine Corps, U.S. Air Force, U.S. Coast Guard) DOD personnel assigned to a branch of the JAG Corps; and, other personnel within the DOD legal community.

(2) Requests for exceptions to the access policy should be e-mailed to:

LAAWSXXI@jagc-smtp.army.mil

c. How to log on to JAGCNet:

(1) Using a Web browser (Internet Explorer 6 or higher recommended) go to the following site: http://jagcnet.army.mil.

(2) Follow the link that reads "Enter JAGCNet."

(3) If you already have a JAGCNet account, and know your user name and password, select "Enter" from the next menu, then enter your "User Name" and "Password" in the appropriate fields.

(4) If you have a JAGCNet account, *but do not know your user name and/or Internet password*, contact the LAAWS XXI HelpDesk at LAAWSXXI@jagc-smtp.army.mil.

(5) If you do not have a JAGCNet account, select "Register" from the JAGCNet Intranet menu.

(6) Follow the link "Request a New Account" at the bottom of the page, and fill out the registration form completely. Allow seventy-two hours for your request to process. Once your request is processed, you will receive an e-mail telling you that your request has been approved or denied.

(7) Once granted access to JAGCNet, follow step (c), above.

3. TJAGLCS Legal Technology Management Office (LTMO)

The TJAGLCS, U.S. Army, Charlottesville, Virginia continues to improve capabilities for faculty and staff. We have installed new computers throughout TJAGLCS, all of which are compatible with Microsoft Windows XP Professional and Microsoft Office 2003 Professional.

The TJAGLCS faculty and staff are available through the Internet. Addresses for TJAGLCS personnel are available by e-mail at jagsch@hqda.army.mil or by accessing the JAGC directory via JAGCNET. If you have any problems, please contact LTMO at (434) 971-3257. Phone numbers and e-mail addresses for TJAGLCS personnel are available on TJAGLCS Web page at http://www.jagcnet.army.mil/tjagsa. Click on "directory" for the listings.

For students who wish to access their office e-mail while attending TJAGLCS classes, please ensure that your office e-mail is available via the web. Please bring the address with you when attending classes at TJAGLCS. If your office does not have web accessible e-mail, forward your office e-mail to your AKO account. It is mandatory that you have an AKO account. You can sign up for an account at the Army Portal, http://www.jagcnet.army.mil/tjagsa. Click on "directory" for the listings.

Personnel desiring to call TJAGLCS can dial via DSN 521-7115 or, provided the telephone call is for official business only, use the toll free number, (800) 552-3978; the receptionist will connect you with the appropriate department or directorate. For additional information, please contact the LTMO at (434) 971-3264 or DSN 521-3264.

4. The Army Law Library Service

Per *Army Regulation 27-1*, paragraph 12-11, the Army Law Library Service (ALLS) must be notified before any redistribution of ALLS-purchased law library materials. Posting such a notification in the ALLS FORUM of JAGCNet satisfies this regulatory requirement as well as alerting other librarians that excess materials are available.

Point of contact is Mrs. Dottie Evans, The Judge Advocate General's School, U.S. Army, ATTN: CTR-MO, 600 Massie Road, Charlottesville, Virginia 22903-1781. Telephone DSN: 521-3369, commercial: (434) 971-3369, or e-mail at Dottie.Evans@hqda.army.mil.

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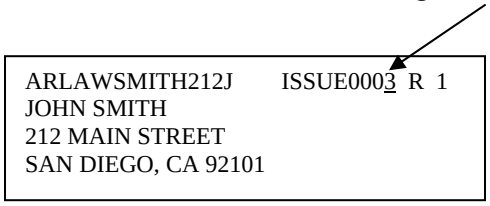

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