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Air Mobility Command:

Voluntary Intermodal Sealift Agreement, Civil Reserve Air Fleet, and Defense Transportation System Reengineering

An Oral History

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Guide to Contents

Part One: Role of the Dual-Hatted Judge Advocate General/Staff Judge Advocate

The Customer

Dr. Matthews: General Regan, what is the role of the Chief Counsel, and how can he best serve the CINC [commander in chief]?

Gen Regan: The primary client is clearly the CINC, but in my view, he is also legal advisor and counselor to the CINC's staff and to the component commands. I told the component commanders that they were my clients and that I was there to assist them, as needed. The [US]TRANSCOM [United States Transportation Command] Chief Counsel should also assist the Services and OSD [Office of the Secretary of Defense], as needed. My office did a great deal of work for Ms. McHugh [Mary Lou McHugh, Assistant Under Secretary of Defense for Logistics (Transportation Policy)]. In one instance, the Deputy Commandant of the Marine Corps proposed seeking additional legal authority to terminate labor strikes in the transportation industry. The central question: Was something required to fill a gap in the Defense Production Act* or did we have sufficient legislation on the books? She asked us to research the answer. We determined that additional legislation was not needed.

Dr. Matthews: Give us another example of how you worked with OSD.

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*The Defense Production Act (DPA) of 1950 is the key authority for government and industry joint planning. The Executive Agent for the DPA is the Federal Emergency Management Agency, which has the power to prioritize domestic industrial effort and to allocate resources. Enacted in 1950 and reauthorized periodically thereafter, the DPA provides important legal protections for the Civil Reserve Air Fleet and Voluntary Intermodal Sealift Agreement programs. (SOURCE: Office of Chief Counsel, USTRANSCOM.)

Gen Regan: We wrote a legal opinion, working in conjunction with the OSD General Counsel's office, as to how we could fund the Denton Program.* The OSD Deputy Comptroller, in adopting our opinion, wrote: "I have a legal opinion that makes several key points about the issue. Based on these findings and the assurance that the enhanced program will generate efficiencies of hard cargo scheduling, load planning, and route planning, we do not object to your request to fund these Denton program support costs as part of transportation overhead."**

Going back to your question, Jim, I see the CINC as the primary client. I believed I could assist the CINC in his congressional testimony. When he went to the Hill to testify, he invited me to go along. Afterwards, I critiqued his delivery. I'd go down question by question, answer by answer, talk about what other witnesses had done, and then analyze each question and answer for him. Because of the office's expertise and the credibility it has established throughout the Department of Defense [DOD] and industry over the years, there's a large client base out there for the TRANSCOM Chief Counsel.

Mr. Cossaboom: Do you feel your legal staffs are sized right?

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*In the early 1980s, Senator Jeremiah A. Denton, Jr., (Republican-Alabama, 1980-1986) sponsored legislation that allowed the Department of Defense to transport humanitarian relief supplies donated by private aid organizations on a space available basis to countries around the world. This legislation--Title 10, US Code, Section 402--is commonly referred to as the Denton Amendment. Former Senator Denton is a retired Navy Rear Admiral and former Vietnam prisoner of war.

**Memorandum from Office of the Under Secretary of Defense, Deputy Comptroller (Program/Budget) to Deputy Assistant Secretary of Defense for Peacekeeping and Humanitarian Assistance, "Source of Funding for Third Party Support to U.S. Transportation Command (USTRANSCOM) on Denton Amendment Program Management," 10 Dec 1997.

Gen Regan: The AMC [Air Mobility Command] office has an excellent mix of generalists and specialists; there is depth in both financial and acquisition law, and Bill [William C.] Jones has worked the CRAF [Civil Reserve Air Fleet] contract for years. It is sized about right, although we probably should have one or two more people. I feel that the TRANSCOM office is grossly under capitalized, even with the continuity of very talented civilian attorneys and paralegals. We have excellent military attorneys, and we know they will rotate. The civilian attorneys work extremely hard, and they are extremely bright, but they have been one deep. Dwight [A.] Moore is superb in personnel and fiscal law, but the financial questions on the TWCF [Transportation Working Capital Fund] are terribly difficult and unrelenting. He needs back up. It's the same situation for Lary [W.] Mohl in acquisition law. I can write, ultimately, a good product that will stand up, but it takes me a couple of iterations. Lary Mohl can sit down at a computer and bang out, in one draft, the finished product. If he or Dwight ever leave TRANSCOM, I shudder to think what would happen to the office.

Dr. Matthews: Do you have any other concerns in regard to the TRANSCOM legal office?

Gen Regan: Yes. Since we can't control the issues that come through the door, we need to have a sufficient breadth and depth of talent so that we can tackle almost anything. For example, when a possible antitrust issue comes up, such as in the circumstances where one of us is sitting down and discussing prices with a group of contractors in the context of the EWG* [Executive Working Group], does that

*The Voluntary Intermodal Sealift Agreement EWG consists of representatives from government and the sealift industry, and is chaired by USTRANSCOM's Deputy Commander in Chief.

violate Sherman [Sherman Antitrust Act*]? Does that involve price-fixing? And, oh, by the way, a contracting officer who finds out that there's been a violation of antitrust law is under a legal obligation not to award the contract or to terminate it if, in fact, the violation is discovered. However, the Noerr-Pennington Doctrine** generally states that industry can get together as a group to make any request to the government, that they have a First Amendment right to do so, and it doesn't necessarily violate antitrust law. The government is the ultimate decision-making authority. So even if industry is asking for something that is ultimately anti-competitive, it is not necessarily a violation of the antitrust law. Well, how do you respond to all of that? We are adding two lawyers to the staff to work those issues, as well as a third to work operations and information technology issues.

Appraisal of the Dual Hat Arrangement

Dr. Matthews: Give us an appraisal of the dual hat arrangement of the AMC/TRANSCOM JAG [Judge Advocate General], pros and con.

Gen Regan: I don't think it could be any other way, as long as the CINC remains dual-hatted. Not just because of ethics advice, but because AMC has the majority of the TWCF-funded folks. MSC [Military Sealift Command] and MTMC [Military Traffic Management Command] combined are only a fraction of what's in AMC. There

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*Passed in 1890, the Sherman Antitrust Act was the first legislation enacted by Congress to curb monopolies that interfered with trade and reduced competition.

**The Noerr-Pennington Doctrine is named for two leading US Supreme Court decisions involving antitrust cases: Eastern Railroad President's Council v. Noerr Motor Freight, Inc., 365 U. S. 127 (1961) and United Mine Workers v. Pennington, 381 U.S. 657 (1965). The doctrine protects from antitrust challenges competitors who join their efforts to influence government decision-making. (SOURCE: Office of Chief Counsel, USTRANSCOM.)

have been no real conflicts. I think it works, although it is intellectually challenging and physically demanding.

As far as demands on time, the bigger problem for me was balancing my Chief Counsel/Staff Judge Advocate [SJA] responsibilities with some general officer responsibilities. I taught both the Group Commander's Course and SOS [Squadron Officer School] course. They like to have a *JAG* general officer there; since there are only three brigadiers to choose from, I wound up there quite frequently. The job put a premium on my time like none other I have had, including the Pacific Air Forces [PACAF] SJA job. I was able to manage only because I had first-rate deputies and staffs at both AMC and TRANSCOM my entire time at Scott [Air Force Base (AFB), Illinois]. In fact, one advantage of being a dual-hatted Air Force general officer JAG is the ability to work closely with the Air Force Judge Advocate General to help ensure the right person fills the TRANSCOM Air Force deputy JAG billet. Frankly, with this support, I was able to almost handpick Colonel Rich Harding [Air Force Colonel Richard C., Deputy Chief Counsel, USTRANSCOM]. I am not implying that we necessarily need Air Force expertise in that position. In fact, Rich did not have a background in the mobility business when he got here, nor any other part of the DTS [Defense Transportation System] for that matter. I had worked with him at Elmendorf [AFB, Alaska], and I was convinced that he was the best man for the job.

Mr. Cossaboom: What are the differences in providing legal services in the Joint environment versus the Service environment?

Gen Regan: The real advantage is someone who is dual-hatted can choose the chain of command in which to work through. So if it was easier to

go the Air Force way, I could raise it to the Air Staff through the Judge Advocate General. If what I really needed was a legislative solution, even if it was an AMC issue, I'd wear my TRANSCOM hat and send the legislation to the Joint Staff, who would then give it to OSD, and from there it would go through the OMB [Office of Management and Budget] process. I liked the joint business, because it gave me direct access or shorter access than what I would have had with a component hat. But they each have their own place. I liked the option of picking.

Dr. Matthews: Were your two hats ever in conflict with each other?

Gen Regan: Over three and a half years and a huge number of issues, I can think of only two instances. One had to do with an MOU [Memorandum of Understanding] on the CRAF program with the Department of Transportation. The issue was if a CRAF aircraft went down somewhere in Europe or in Asia, how long would it take the insurance companies under FAA [Federal Aviation Administration] contract to pay up? My experience has been if we get people on the scene, we can do what needs to be done much faster and more effectively. I was willing to commit DOD to provide claims support to the FAA. Ultimately, we would wind up paying those dollars out anyway. My chief of contract law on the AMC side said that was a FAA responsibility. The FAA has contracted for insurance agents, but they have their staffing limitations. They run a thin ship. We have assets called DOD claims personnel who are experienced at handling difficult claims in a foreign environment, and they are on the spot. We have the assets. Why not make use of them? One person on my AMC staff didn't agree, while my TRANSCOM staff said that the only way it can happen intelligently is to provide the kind of support to the FAA that will make the difference. Unfortunately, in the public's

mind, there will quickly be a blurring of lines and CRAF aircraft might be viewed as military aircraft. I voted with the TRANSCOM staff, but it was really not an AMC position versus a TRANSCOM position.

Dr. Matthews: *And the other one?*

Gen Regan: It dealt with "head of agency." We met with Ms. Druyun [Darleen A., Principal Deputy Assistant Secretary (Acquisition and Management)], who is the senior civilian in SAF/AQ [Assistant Secretary of the Air Force (Acquisition)], and she said that [US]CINCTRANS [Commander in Chief, USTRANSCOM] didn't need head of agency authority, that he could get whatever he needed with a Memorandum of Understanding with the components, and she offered to help us write it. That's what she told General Thompson [Army Lieutenant General Roger G., Jr., Deputy Commander in Chief (DCINC), USTRANSCOM, 1997-1999, Retired]. We came back and I tasked Colonel Harding with writing the MOU. My AMC experts were starting to go down the wrong path. They didn't understand my view on the issue, and I guess they were thinking, "Do we really want to do this?" I brought them all in and said that we really want to do this, that it needs to happen for the CINC, and that we're not going to do anything onerous or something that doesn't make sense. I wanted an MOU that was fair to everyone. I was not about to set myself up to have my TCJA [Office of the Chief Counsel, USTRANSCOM] self be forced to overrule my AMC Judge Advocate self.

Dr. Matthews: Past CINCs would take an AMC position as Commander and then take another one as CINCTRANS when the issue got to TRANSCOM.

Gen Regan: That was not my style. Interestingly, my predecessor handled it by having his deputy sign off at AMC, and then he would do the reversal at TRANSCOM.

The Law and the Defense Transportation System

Dr. Matthews: Step back and look at the body of laws for each of the different modes of transportation. Are there any observations you can give us, comparing and contrasting them? How do they differ? Are there peculiarities? Is there one area more difficult to work in than another?

Gen Regan: The sealift area is more difficult than the others. The primary piece of legislation was enacted shortly after the Wright brothers' first airplane flight,* and it's still on the books: Cargo Preference Act and the McCumber Amendment.** Also, the very nature of the various industries is quite different. Trucking requires minimum investment to get in. That industry is made up of combines, which don't really own the assets. For the sea mode, business trusts typically own the vessels. Then there are leaseholders, like General Electric, that lease airplanes to major airline companies. Each mode has its own personality! The complexity of the law relates to the nature of the operation itself.

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*17 December 1903.

**The Cargo Preference Act of 1904 directed that all supplies moving by sea for the US military had to be carried by US flag ships or ships owned by the US government except when rates charged by US ships were excessive or unreasonable. The McCumber Amendment, named for Senator Porter J. McCumber (Republican-North Dakota, 1899-1923) is the last sentence of the Cargo Preference Act and states "Charges made for the transportation of those supplies by those vessels may not be higher than the charges made for transporting like goods for private persons." Legislative history suggests the amendment was intended to place a ceiling on prices charged to the government. Since the 1904 Act limits competition for DOD cargo to US flag carriers, a price ceiling was considered necessary to protect DOD. (SOURCE: Office of Chief Counsel, USTRANSCOM; *U.S. Maritime Policy: History and Prospects*, by H. David Bess and Martin T. Farris, Praeger Publishers, 1981.)

Back to sealift. There's a group on the Hill that has a very close relationship with the sealift industry, which in turn works very closely with MARAD [Maritime Administration]. Then there's the Maritime Security Act.* Nowhere else in transportation law is there a statue setting up a specific compensation formula. We're always supposed to be fair and reasonable under the FAR [Federal Acquisition Regulations], but this statute sets forth additional guidelines.

Dr. Matthews: Do peculiarities exist in the other modes as well?

Gen Regan: Yes. On the one hand, the CAB [Civil Aviation Board] no longer exists, but the airlines use the accounting mechanisms that have been left in place from the CAB. And on the other hand, there is no common accounting system on sealift. When we sent in DOD auditors to make sure that we had data to compute our payments under this Maritime Security Act, we found no commonality for comparisons and computations. So, on the sealift side, the process is extremely painful. And I'm not saying the industry is holding back the data. Even with everyone working together, it's been a very large challenge. We've had to come up with bridging mechanisms. We might say, "We want to put these contracts into place, but we're really not ready yet with the final piece. Here's what we're going to do temporarily." In comparison, the CRAF process is very orderly and stable. We've been doing it basically

*Signed into law on 8 October 1996, the Maritime Security Act (MSA) required the Secretary of Transportation to establish a Maritime Security Program (MSP) with a fleet of US flag merchant ships to meet national defense and other security requirements, and maintain a US presence in international commercial shipping. The MSP, funded by the Department of Transportation, provides $2.1 million per ship, for up to 47 ships, through fiscal year 2005. The MSP also requires each selected vessel to be entered into the Voluntary Intermodal Sealift Agreement. In this way, MSP helps guarantee availability of merchant marines to man government surge sealift ships. (SOURCE: Memorandum, LTG Hubert G. Smith, DCINC, USTRANSCOM, to Director, Joint Staff, et al., 21 Nov 96.)

the same way for years.

Dr. Matthews: And on the land transport side?

Gen Regan: Occasionally, we get a tough issue on the truck or rail side, but apart from the household goods business, the land side is pretty straightforward. The questions are repetitive. They tend to get recycled. For example, we are asked whether MTMC can lease its rail cars. And the answer is, yes, there is statutory authority for doing so. Actually, there is a tactical advantage in our leasing of rail cars because, like our surge sealift ships, they will breakout more reliably during war if they have been "exercised" rather than simply mothballed, sitting on a siding somewhere.

Dr. Matthews: Have we leased any of MTMC's special utility cars to industry?

Gen Regan: Not yet. The issue is, I believe, how long would the company need them. Could a company live with the return of those leased cars to the government in the event of a contingency? Actually, the law sets out how the Secretary of the Army would disburse those funds. When the funds come in for the rental of the cars, there's a specific statute that states that the Secretary concerned will make predetermined disbursements of the money. But they haven't done it yet because of some practical problems, not legal problems. A couple of years ago, the thought was that we couldn't do it. I didn't agree with that. We found a way to do it.

Dr. Matthews: The rail cars are used for surge. We bought them because we can't get them from the civilian industry in the numbers we require, and they have to be near the units that we have to deploy.

Gen Regan: Yes. If one of those rail cars is off in Montana, and we need it at Fort Hood, Texas, how are we going to get it there?

Dr. Matthews: Would the money from the lease go to the TWCF? Would it help our other customers with rates?

Gen Regan: I think the Army would get a piece and I think MTMC would get a piece. So, there is a potential for some of it coming back to TWCF.

Mr. Cossaboom: Leasing on the air side is quite common. Delta [Airlines] requested use of C-5s to haul replacement engines for Delta worldwide.

Gen Regan: There is a statute allowing the Secretary of Defense to make available government assets. We charge them the full rate. They have to sign a hold-harmless agreement. Generally speaking, there has to be a public interest determination. You must also be able to say the resources are not available through any other means. That's how we were able to fly Keiko the whale* from Oregon to Iceland. And, occasionally, we do airplane leasing when the manufacturer wants to fly it to an air show and agrees to pay our costs and hold us harmless and indemnify the rest of it. We are helping the US economic base by trying to get sales outside of our own military purchases. At my retirement dinner, they did a Carnak** routine: "The answer is 173 large packages." The question was, "If the C-17 had not been available, how would FedEx [Federal Express] have shipped Keiko?" There was really no way for commercial aircraft to load that animal. So, it was

*In September 1998, a C-17 aircrew from the 437th Airlift Wing, Charleston Air Force Base, South Carolina, flew Keiko, the Orca killer whale and star of the movie *Free Willy*, on a 8,630-mile, 10-hour nonstop flight from the Oregon Coast Aquarium at Newport, Oregon, to his new home at Iceland's Vestmannaeyjar Island. The operation was called Keiko Lift.

**The Mighty Carnak was a mind reader played by Johnny Carson on "The Tonight Show." He would hold up a sealed envelope, announce the answer, and then open the envelope and read the question.

good PR [public relations] for the Air Force and the Department of Defense. Additionally, it was good PR for Boeing; it might help the US economic base by helping to sell C-17s for commercial use. I will digress again. I find our hold-harmless agreement for the operation interesting, from both an historical and a legal perspective. It was so broad that if anything had happened on that flight, we probably could have held the Foundation* liable. As you know, we had a nose wheel, front trunnion collar break, and technically, the hold-harmless was sufficiently broad to require the Foundation to pay for that damage. I got some anxious phone calls from the Air Force's secretariat and others asking if we were going to make them pay. My answer was, "No. The killer whale did not cause the problem." The mission was a wonderful opportunity to show off the capabilities of the C-17. It was a great goodwill gesture for the Icelandic people and the people who cared about "Free Willy." That's a lot of people.

Mr. Cossaboom: Sending them the bill would have defeated the entire intent.

Gen Regan: Absolutely. When my staff wrote the hold-harmless agreement, we, as lawyers, were trying to cover everything. I'd rather have the coverage and be able to say, "Not interested," than find out that we came up short. So, we actually do leasing from time to time.

Mr. Cossaboom: Compare the two industries in regard to our use of foreign flags.

Gen Regan: Use of foreign aircraft to transport large numbers of military members is very difficult because, by law, the CARB [Commercial Aviation Review Board] will have to go out and inspect those airlines. And not everyone is keen on letting DOD inspectors in. We do charter foreign air for cargo on a small percentage basis.

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*The Free Willy Keiko Foundation, established in 1994, paid approximately $370,000 to move Keiko from Oregon to Iceland.

Nonetheless, this is done on a routine basis in circumstances where there's an issue of cargo at Port A having to go to Port B, and either there is no existing US service or we can't get a charter service there in time to meet the required delivery date. My own view is that in a future contingency, we will have to use foreign air charters for cargo and passengers because our allies will say, "Here is our contribution to the contingency." Evolving mechanisms will allow us to do that.

Mr. Cossaboom: On the sea side?

Gen Regan: Where there's regular liner service, the amount of foreign carriage is very, very small. And on a percentage basis, foreign flag business for MSC charters is not large either. The liner service industry watches us very closely and responds with great heat to the CINC if they think the system is not being worked in the way they expect it to be. But certainly compared to air, the sea side uses more foreign lift.

Dr. Matthews: Is there any law that stands out that you'd really like to change?

Gen Regan: I'd like to change McCumber. It's unwieldy. It was written when there was no such thing as intermodal transportation. I think there's a better way. And that's not a comment on the pending litigation. If I were working with a blank slate, without regard to the litigation, I would probably say, "Let's make all that we do relevant to today. Let's make all of what we do sensible. Let's try to get a good result for the Department of Defense without hamstringing everyone else." It creates problems when we have to adapt to an act that is nearly a hundred years old. It's really hard to do.

Dr. Matthews: What is the pending litigation you mention?

Gen Regan: We have an eighteen million-dollar claim against Sea-Land. They charged us a rate during Desert Shield/Storm for conglomeration cargo--which is known as "cargo NOS," or "cargo not otherwise specified"--that was much higher than another rate they had published. There is no evidence that any cargo moved at this rate. But the ASBCA [Armed Services Board of Contract Appeal] held that the government should have been able to take advantage of the lower rate under the McCumber Amendment to the Cargo Preference Act. The litigation is about the past.

In my mind, the real issue is the future and "ocean shipping reform." Let me give you an example. The government is shipping cargo back from an exercise. We have cargo onboard Company A's ship that we're moving at a NOS rate. Company A has another customer in the last three days prior to sailing who wants to move cargo with Company A, but he can get a better rate from Company B. Consequently, the other customer goes back to Company A and negotiates a rate lower than the one offered to the government. If there's no government cargo on board, Company A may not have a problem. If there's government cargo on board, and this new rate is lower than the rate offered the government, Company A must, under the McCumber Amendment, give the government that same rate. Industry's view is "Can't the government find a way under McCumber to let us 'top off,' because it ultimately benefits the government when factored into the overall rate structure." To continue on with industry's argument, the more profitable they are, the better off it is for the United States, and the US military certainly wants an economically strong US flag fleet in the interest of national defense. In general, the law needs to be more flexible for the benefit of both industry and government. Initially industry, or at least Sea-Land, did not want to go to Congress and modify the McCumber Amendment, in

fear it would open up the whole issue of cargo preference. We may need to do that.

Part Two: Voluntary Intermodal Sealift Agreement

The JAG's Role in VISA

Dr. Matthews: Just pretend that you're explaining VISA [Voluntary Intermodal Sealift Agreement] to a novice who doesn't know anything about it. How would you describe it?

Gen Regan: VISA's origin is based on a statute that establishes an emergency preparedness program. VISA is the fulfillment of that program. VISA is a means for industry to obtain an orderly activation in contingencies. Part of that includes wartime rates for wartime commitments. In other words, industry will get a good rate for their vessels if they are needed in wartime and the program is activated. In the meantime, they will be given the opportunity for priority bidding on peacetime business. However, the VISA program is not a guarantee of peacetime business. With CRAF, as you know, there is a guarantee of some business, but the rates industry can charge are essentially fixed during both peace and war.

Dr. Matthews: And what is the VISA "program"?

Gen Regan: It's a sealift program designed to get us a wartime commitment of vessels. In exchange, we give the industry the opportunity to bid on peacetime business. To come to the dance, to be a VISA participant, you have to own, operate, and control vessels; and you have to commit them to the third stage, the final stage of VISA, to include fifty percent of the company's US flag fleet and all vessels

receiving the Maritime Security Program* subsidy from MARAD. If it wants the best chance to get peacetime business, the company has to commit to Stages One and Two of the VISA program, which means its ships are more likely to be activated, and to be activated earlier. As an example, a VISA participant may commit fifteen percent of its US flag fleet to Stage One, forty percent to Stage Two, and a total of fifty percent to Stage Three. The VISA program also defines the base rate for Stage Three in that the statute provides that revenue will not be less than like charges for similar services that the contractor performs. There is also a premium incentive for coming early, and then there's a premium in Stage Two, which is not as high as the premium in Stage One. There's no premium in Stage Three, although the rates are still very favorable. Industry's major rate concern has been: "If you activate me, how long will it take me to recapture my business? I need to be compensated for that loss of business. My competitors will eat me alive, and my customers will go elsewhere." However, now we have some relevant experience with the UPS [United Parcel Service] strike in August 1997. Ten months after the strike, UPS' business was back to ninety-seven percent of what it was prior to the strike.

Dr. Matthews: You have a three-year perspective on the VISA process. What was your role in the Executive Working Group? Were you a consultant? Were you a member?

Gen Regan: I was a member on the government side of the Executive Working Group. My role was somewhat different from anyone else's, because I was the only attorney from either side on the EWG. I could offer comments like anyone else, as to whether something made sense or not, but I also clearly served as legal counsel. I kept

*See footnote on page 9.

us on the straight and narrow legally. I might say, "We are starting to run afoul of the ground rules. The EWG does not decide contracting issues." Industry participants allowed me to be their "counselor" as well. I think I had credibility with them. They knew I was not simply trying to impose the government position. They knew I was there to try to put the program together in a way that made sense for everybody. I was there to view the issues from everybody's perspective and interests, and to try to make sure that the government, certainly my primary client, was treating industry fairly and reasonably, and that industry was treating us correctly.

Dr. Matthews: Give me an example of an area you found particularly difficult.

Gen Regan: With some of the issues, frankly, I just didn't have the perspective for an initial understanding, like the importance of containers. For a container-operating firm, this is their life's blood. Containers, in many ways, are more critical than the vessel. If we take their containers in a contingency, and our people set them up as hootches or offices or whatever, it could kill that company. We spent a fair amount of time trying to figure out when we should declare a container lost, as well as how much to compensate the owner once loss is declared. I subsequently came to realize that if we export from the West Coast one-third of what we import, for every container you send to Asia, you're getting three containers coming back. So, we have this huge surplus of containers on the West Coast. I needed to quickly obtain that type of knowledge, which I definitely didn't have when I joined the VISA EWG.

Dr. Matthews: I would imagine the fact that only two USTRANSCOM JAGs served as legal counsel to the EWG, first General Hemingway [Air Force Brigadier General Thomas L., 1991-1996, Retired] and then later you, benefited the VISA process greatly.

Gen Regan: Most certainly. General Hemingway, my predecessor, occupied the seat for almost five years, and I was in the seat almost three and a half years. As a result, the VISA EWG had exceptional flag officer longevity and continuity. In contrast, the TCJ5 [Director, Plans and Programs, USTRANSCOM] went from Admiral Clark [Navy Rear Admiral Vernon E., TCJ5, 1991-1993] to Admiral Cross [Navy Rear Admiral William V., TCJ5, 1993-1995] to Admiral Chaplin [Navy Rear Admiral Robert C., 1995-1996] to Admiral Naughton [Navy Rear Admiral Richard J., 1996-1998] and then to Admiral Kloeppel [Navy Reserve Rear Admiral Daniel L., 1998-1999], and now we have Admiral Fahy [Navy Rear Admiral Edward J., 1999-present]. I once commented to my successor [Air Force Colonel (Brigadier General select) James W. Swanson] that "if VISA gets put together in the way I think we're about ready to finalize it, you may wonder what kept me so busy." By my estimate, I spent about 30 percent of my overall time on sealift issues.

Dr. Matthews: I've always wanted to discuss the next issue with our JAG: our relationship with NDTA [National Defense Transportation Association]. Are there land mines that we need to be aware of, to be careful of, in our relationship with them? Our ever-expanding relationship, I should add.

Gen Regan: There are a couple of issues. One is that we are taking the position that the VISA EWG is not subject to the FACA [Federal Advisory Committee Act], which would require proceedings to be open to the public, with an agenda in advance, and minutes afterward. In fact, we do put out minutes afterward.

Mr. Cossaboom: Á la Mrs. Clinton in the health care business?*

Gen Regan: Yes. People will sometimes say that the VISA EWG is a decision-making body, but the EWG is meant to be a forum for the exchange of ideas. It is an idea exchange mechanism. More than once during EWG deliberations, I have had to put up my hand and say, "Stop. You have to understand that except for things that are unique to the EWG itself, its jurisdiction does not include making government policy." Furthermore we, the government, do not pick who in industry is on the EWG. That is up to the chair of the sealift committee, Mr. Jim Henry [James L., President, Transportation Institute]. Only he can appoint industry members as he sees fit.

Dr. Matthews: Is there any thing else that has been of concern to you?

Gen Regan: We must guard against using the NDTA exclusively for our contacts with industry and as our sole facilitator between government and industry. It does wonderful work. It's a great organization. NDTA provides tremendous opportunity for contacts across the entire transportation industry, but we're not going to it exclusively. We're going to do what's in the best interest of the government. Our business is not to support the NDTA. Our job is to get the government's business done in the most effective and most efficient way possible. That's what our aim should be; and it is.

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*In early 1993, Mrs. Clinton held meetings to draft a national health plan, one of President Clinton's campaign promises. Mrs. Clinton wanted to invite a select group of non-government advisors to assist, but under FACA such meetings are either open to the public or restricted to government employees.

VISA: Building a Government/Industry Consensus

Dr. Matthews: Some at TRANSCOM felt our commercial VISA partners wanted quite a bit more than fair and reasonable compensation.

Gen Regan: The sealift industry came to us with a study that said, "If you really want to make us whole, you have to give us a four-to-one premium over the basic peacetime rate." It assumed an extremely long recovery period and excessive undercutting by competitors. It also assumed that customers, when they heard that the company was a VISA participant, would not want to do business with that company in peacetime. There's another problem. The Maritime Security Act specifically provides that you don't pay for lost business opportunities unless it is part of the program. To get into the program, you would need to work some waivers under the Federal Acquisition Regulations. So, on the one hand, you don't pay for lost business opportunities; but on the other hand, you can pay for contractor risk. Sorting through all of that was interesting. I think the people in industry hoped that they would get somewhere in the area of two-to-one.

Dr. Matthews: But they asked for four-to-one?

Gen Regan: It wound up nowhere near that. The models that we used were more realistic than theirs. Our intent--and I think this needs to be stressed in terms of the history of the program--was never to cover each and every risk to the contractor. The government accepts some level of risk, and contractors assume certain risks in their commercial contracts. It could well be that if there is a major contingency that requires the implementation of Stage Three, we might be the only game in town. Nobody else may be sailing. Lloyds of London syndicate rates may be so high on insurance that

nobody can sail except those who get "free" insurance from the United States government. What the arrangement will actually look like in the end will depend on the terms of a contingency. I have argued long and hard that there is a great advantage to having an advance commitment of US flag carriers that are crewed by people who have an identity with our government and share our values. Having those people on line for contingencies is worth a great deal to TRANSCOM, the nation, and me.

Dr. Matthews: Contracting officers who were around during Desert Shield/Desert Storm in the sealift arena might say, "You know, we had ships on the market. We could get them. We got great rates for them, so don't worry about it."

Gen Regan: The problem is the game has changed. There is not a lot of excess capacity, and commercial commitments have changed. There are no shipping company volunteers on the US or foreign flag fleets. When we get the signed agreements--the DCC [Drytime Contingency Contract] for charters and the VCC [VISA Contingency Contract] for liner service--we will have people on the hook today for rates that we've been able to establish in advance. Is it more expensive than peacetime? The answer is, "Yes," and it should be more expensive than peacetime. A, it's worth it to us to have these people on the hook; and B, the contractor is facing substantial risk by making this kind of advance commitment to the program. That's VISA in a nutshell.

Dr. Matthews: Tell us about the rate-based methodology.

Gen Regan: It was developed by a sub-group of the EWG. My desire was to move everybody, government and business, to the maximum extent possible, to this rate-based methodology. It's fair to all. It meets the intent of the statute. It produces good results for

industry, and it's definite. I'd like to get that kind of certainty and regularity across the board so that we'll look more like the CRAF program as we strive for greater commonality in cost and revenue data.

Dr. Matthews: What major changes did you see in the EWG process in your three and a half years on the committee?

Gen Regan: The increasing need to focus on the wartime compensation issue.

Dr. Matthews: What's ahead?

Gen Regan: Once we solved the wartime compensation piece, the process seemed to get easier; the other issues were not anywhere as complex or as critical to the industry. The peacetime contract is always going to be a challenge to keep simple and straightforward. Who gets what percentage and how we make multiple awards on a route, those kinds of things, will be tough, but not like the contingency rate issue.

Otherwise, the EWG now has the right mix of people. The framework is there for a very successful, ongoing dialogue. The USC-03 [Universal Service Contract-03] and the next VCC and DCC will proceed, I think, in a much more orderly fashion, unless there's some sense on the part of industry that the compensation is inadequate. Additionally, there is the exception to competitive contracting, issued by the Navy Acquisition Authority, which has language that presumes rates will come down. I am not convinced that is correct. They may well go up.

Dr. Matthews: Were there any surprises over those three and a half years?

Gen Regan: I know industry was concerned about how an activation could put their enterprise at risk. Still, it always surprised me that industry

was initially focused more on the wartime than the peacetime piece of the VISA arrangement. If I had been representing industry, I would have looked at the world situation and said, "Get me, quickly, contingency contracts that are fair in their outline. If we have to fill in some blanks in an urgent situation, we will, but let's focus on the peacetime contract because that's what I'm doing each and every day."

Dr. Matthews: Did you see improvement in teamwork throughout the process?

Gen Regan: The EWG is a very complex and dynamic enterprise, using the word "enterprise" in a generic sense. You have to understand that the "industry" is not monolithic, nor is the government. A small carrier may not have the same interests as the large carrier. The mix also includes the Maritime Administration, which doesn't necessarily see eye to eye with TRANSCOM on every issue. MARAD has multiple functions. It wants to ensure a solid readiness program; and as the advocate for the maritime industry, it wants to ensure that our nation maintains a robust US flag fleet. Then, of course, there are the TRANSCOM component command dynamics. One component, MSC, may not necessarily reach the same conclusions as MTMC; and neither may necessarily agree one hundred percent with TRANSCOM. Ultimately, we all have worked in good spirit to meet everyone's needs. It was, in general, a cooperative venture.

Dr. Matthews: Give me an anecdote to illustrate that good spirit.

Gen Regan: Let me tell you about a conversation I had with Mr. Jess Søderberg, the CEO [Chief Executive Officer] of A.P. Møller, which is the parent company of Maersk Lines. He was to meet with the CINC, Admiral Fahy, and me in D.C. [Washington, D.C.]. There was some bad weather coming in, and we had a contingency

that arose, so the boss and Admiral Fahy couldn't make it. I got a room in the Pentagon and sat down with all these folks from Maersk for about an hour. Mr. Søderberg said that during Desert Shield/Desert Storm, Maersk transported some critical cargo for free because it was the right thing to do and added, "Now, I'm not going to sit here and tell you that this is the way we're going to run our operation, because we have to make a profit to stay in business. But we also recognize why it is so important that Maersk be a VISA participant when it takes over Sea-Land's VISA obligations. We recognize that the United States is serving us all by maintaining stability in the world. There's no other power on the face of the globe that contributes to world order more than the United States." I believe he was a hundred percent sincere. And that attitude is prevalent throughout the industry. They look at the big picture for the benefit of all concerned.

Part Three: Globalization and Readiness Programs

Dr. Matthews: Does the basic VISA document need to be updated?

Gen Regan: Yes, and we need to change the methodology for making changes to it. Any change, theoretically, requires that we go to the Department of Defense, the Department of Transportation [DOT], and to the Department of Justice, who then goes to the Federal Trade Commission. Only at that point, after everybody agrees, can we make a change to the basic VISA document. It's very cumbersome. I suggested we go to all three agencies and ask, "What would you like to have us come to you with before we make a change? When it comes to priorities for the order of peacetime business, give us the flexibility to make the changes without having a major review." We can't risk having the

agreement expire while we coordinate a word change. There are many parts of the document that don't raise, for instance, anti-competitive issues requiring some kind of approval for antitrust immunity. We ought to be able to change those parts easily.

Dr. Matthews: You want more DOD and DOT authorities granted to their representatives, CINCTRANS, and the Maritime Administrator?

Gen Regan: Yes. The VISA document could contain a provision similar to the following: "Any changes to paragraphs one, eight, and ten require approval of Department of Justice and Department of Defense. For two, three, four, five, six, seven, and nine, those can be changed with delegated authority from SECDEF [Secretary of Defense] down to CINCTRANS" and "from SECTRANS [Secretary of Transportation] down to the Maritime Administrator." The overarching VISA program today lacks that kind of flexibility.

Dr. Matthews: And that's one of the key roles for the future of the working group?

Gen Regan: I think that's the key issue for the EWG, for the government, and for the individual members, yes.

Dr. Matthews: What else is still on their plate?

Gen Regan: They're going to need to update the VCC and the peacetime contract as well. They need to sit down with PM&O [Pacific Micronesia and Orient Lines] and dig into the question of shipments out of Hawaii to Kwajalein. PM&O is an American-owned company, but they're foreign flag. They believe they are providing a good service to the Marianas Islands. They have said to me that if we ever allow US-owned, but foreign flag, to come into VISA, they would be first to sign up. The whole of the VISA

program today is tied to the ongoing health of the US flag fleet. If cargo preference stays as it is, if the subsidies stay about where they are, then there'll be an attractive motivation to keep ships within the US flag fleet. But if something happens to the subsidies, or if something happens to cargo preference, then we're going to have to restructure VISA, perhaps to accommodate companies like PM&O.

Mr. Cossaboom: Are globalization of transportation, internationalization of transportation, buy-outs, and mergers also variables?

Gen Regan: They are, but they relate to the subsidy itself, too. Our subsidies for US flag vessels operated by APL [American President Lines] and Maersk/Sea-Land combinations are ultimately benefiting Singapore-owned firms and Danish-owned firms. That's really what we have in both. Is there still value in that? The CINC believes so, and I believe so, too. However, even the fact that there is some value here may not be enough to convince some future Congress on subsidies and cargo preference. I hope this is sufficient, but if it's not, then we're going to have to be very innovative.

Dr. Matthews: Globalization presents a different set of challenges.

Gen Regan: Yes. The question is whether or not national security is adversely impacted by a merger. Here's the hard case. What if something happens in the South China Sea or off the coast of Taiwan, and we get into it with mainland China, and our VISA partner has substantial ties with the Singapore government, which supports the view of the mainland Chinese in this situation? Of course, this is only hypothetical because, while Singapore is heavily ethnic Chinese, they also are responsible friends of the United States. The consensus view is that people, in business and in government,

recognize that contracts are contracts, they are to be honored, and that even in this extreme case, Singapore would not impede activation of VISA. But globalization poses complex issues that we will continue to sort through.

Mr. Cossaboom: And it is an air issue, too.

Gen Regan: Absolutely. The Brits are pushing the State Department for greater access to the US market through an open skies agreement, which has implications for US domestic as well as international competition. At the same time, the Department of Transportation and the FAA are saying that they are concerned that the major airlines, particularly at their [airport] hubs, exercise an extraordinary degree of control as to who gets what gates and ground services, to the point that they are concerned that major carriers are keeping new entrants out of some markets. The Secretary of Transportation has a statute which provides that even if there is no violation of the antitrust laws--that is, the Sherman and Clayton statutes* have not been violated--and if he determines that an airline is involved in a practice that has an anti-competitive impact, then he can order an end to that practice. DOT hasn't used it yet, but I think they will in the future. My point is that the State Department, the Department of Transportation, and the Brits don't understand why the Brits can't compete for some of the GSA [General Services Administration] business DOD employees generate. They ask, "Why do we have to comply with 'Fly

*Congress enacted the Clayton Antitrust Act in 1914 in order to strengthen and clarify the Sherman Antitrust Act. See footnote on page 4.

America'* when it's not even charter business?"

Mr. Cossaboom: It's because of the CRAF program.

Gen Regan: Nobody else has a CRAF program. People need to understand how globalization, especially through the growth of airline alliances, plays out for CRAF and readiness and, most importantly, our national security. Alliances are the current growth medium of the air industry. An example is the Star Alliance, which has numerous members--including United, Lufthansa, Air Canada, and All Nippon Airways--just to name a few. Soon, it might just be "join or die." As you know, the current limit on foreign ownership in a US airline is 25 percent. Some think it should be increased to 49 percent. TRANSCOM will have to weigh in to help determine how much should be allowed in US airlines as it relates to CRAF. The Department of Defense is taking the view that 25 percent is the max. At this time, we are not interested in raising the percentage, but the two cabinet agencies have their own agendas: a competitive agenda on the part of DOT and an open skies agenda on the part of DOS [Department of State]. And then when you look at what's going on in the sealift side, you see there are many challenges out there for TRANSCOM when it comes to mergers and globalization.

Dr. Matthews: Can we assign a percentage on the sealift side to define what's American flag and what isn't?

Gen Regan: The statutes already tell us what's American-owned and what is not. Under one set of rules, all directors must be American. Under

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*The "Fly America Act" refers to the provisions enacted by section 5 of the International Air Transportation Fair Competitive Practices Act of 1974 which prohibits expenditure of appropriated funds for air services performed by non-US air carriers unless US air carrier service is not available. (SOURCE: Point Paper, MAC/TR, "New Contract Airlift Law," 24 November 1986.)

another set, you have to have a majority of US citizens on the board of directors. A minority who might be foreign cannot call a quorum to do business in the absence of the American majority. NOL [Neptune Orient Line] is one-third Singapore government and two-thirds Singapore citizens, so NOL is one hundred percent Singapore.

Dr. Matthews: How did you work through the APL-NOL merger to the benefit of VISA?

Gen Regan: What APL wanted was for APL to be a VISA participant on the basis it was to be the operator of nine vessels. But APL-NOL placed the vessels into a trust, and the trust "bareboat-chartered" the ships to a firm called American Ship Management, or ASM. ASM would time-charter the vessels to APL, Inc., an American firm. There were nine vessels at issue. ASM maintained that the time charter would be suspended in the event of a Stage Three activation, but for Stages One and Two, APL would participate. The problem is, as I mentioned to you earlier, to get to the dance, to get into the VISA program, requires a commitment to Stage Three. Each VISA member must have at least one vessel to commit to Stage Three. ASM said that it had nine vessels, and APL said that it had nine vessels as well. Both companies believed that they should be able to come to the VISA dance with the same nine vessels. You can't do it. You either have eighteen or nine. In this case, nine was nine. The question that had to be asked was, when it came to Stage Three, who was making a commitment? The answer was that the only one left making a commitment was ASM, American Ship Management, because the time-charter stated that if you have a Stage Three activation, APL would be out of the picture. For Stages One and Two, they wouldn't go back to ASM because the company time-chartered their vessels to APL.

Another problem was they didn't want to do a joint venture. This was new ground for us, so we had to square what they were doing on their commercial side with the basic provisions of VISA.

Dr. Matthews: What happened?

Gen Regan: The CEO of, then, APL, Mr. Tim [Timothy J.] Rhein, called up General Kross [Air Force General Walter, USCINCTRANS, 1996-1998, Retired] and said "My in-house counsel has looked at it, my outside counsel has looked at it, and the Maritime Administration has looked at it; we have a letter from the Maritime Administrator saying, 'We recommend that APL be a VISA participant.' We think this meets the test. Everyone has blessed it except for the TRANSCOM JAG."

Dr. Matthews: General Regan was the only thing standing between Tim Rhein and the $800 million merger.

Gen Regan: Right. So the CINC, not surprisingly, called me in, and I went through the facts and law with him, arguing that this was a double computation. APL and ASM each wanted credit for the same nine vessels in Stage Three. Fifty percent of each company's US flag fleet capacity had to be enrolled in Stage Three, the minimum price to be a VISA participant. APL had nothing to give Stage Three; therefore, it could not be a VISA participant based on those vessels. In fairness, these issues hadn't been wholly vetted before, and from APL's perspective, the government had the same benefits it had before the merger. But the essential facts and participants had changed.

Dr. Matthews: So, when do we get to the pizza party mentioned at your retirement ceremony?

Gen Regan: Sometimes my solution for cracking tough nuts is to sit people down in an informal setting at my house. I buy the beer. I was actually going to buy the pizza. It turned out everybody chipped in. Plus the CINC used a papal allusion, saying, "I sure hope you get white smoke coming out of your chimney."* So I fed everybody--we had representatives from MARAD, APL, TCJ5, and my office--and we sat down, ate, drank, and discussed the problem. My TRANSCOM staff did a wonderful job of synopsizing and setting forth what we thought the requirements would be. APL, at that time, said, "Okay, we'll keep a ship in the program, but we'll put it up in berth. Then we'll take it out of berth if there's activation." Subsequently, APL made a business decision to operate a number of US flag vessels and commit their capacity to the program. So, we never got down to what the parameters of being "on berth" should be.

The APL matter established a precedent. MARAD had rejected an earlier merger with CP [Canadian Pacific] and Lykes [Line Limited] on the grounds of too much Canadian control over the American company. So, APL was the second one out of the blocks, and they were trying to find a way to make that happen. It was just the wrong way, initially, with the double computation of the same nine vessels. So, eventually, APL agreed to keep at least one vessel in the program. They made a commitment of fifty percent of vessel capacity to Stage Three, and we allowed them to use the vessels that they time-chartered from ASM for Stages One and Two. Once you get into the program, you are a VISA participant. Once you're a VISA participant, you have nine vessels

*Once the College of Cardinals elects a pope, the votes are burned. The resulting white smoke coming from a chimney at the Vatican indicates to the waiting faithful outside that a new leader of the Catholic Church has been chosen.

for Stages One and Two. ASM chose not to use those to bid on peacetime business, which allowed APL to use them to enhance its standing for peacetime business because APL has made a commitment to Stages One and Two. The fact that General Kross had earlier called Tim Rhein and told him, "I think you're going to have to make some kind of commitment to Stage Three," and APL's willingness to work with us, certainly helped to facilitate the resolution of the issue over pizza and beer.

Part Four: Air Mobility

Civil Reserve Air Fleet

Dr. Matthews: Let's talk war-risk insurance, air versus sea.

Gen Regan: To the airlift industry this is a very, very sensitive issue. It's important for sealift, but it isn't a burning issue for them.

Dr. Matthews: How do you explain the difference in attitudes?

Gen Regan: A combination of factors. It's their individual histories. It's the nature of the industries today. It's in the capabilities they bring to the table. It's the individuals who have been attracted to the industry. It's statutory.

Mr. Cossaboom: The problem, of course, is on the air side.

Gen Regan: I testified a couple of years ago before the Aviation Subcommittee of the House Transportation Committee. We, at one time, had been reauthorized for war-risk insurance for five years, but later laws overturned the earlier five-year reauthorization and resulted in a one-year reauthorization, with some extensions. Since August of

1999, we have been without statutory authorization for war-risk insurance.

Mr. Cossaboom: Again.

Gen Regan: Yes, it's not the first time, but it is the longest that we've been without. It's the wrong signal to send to industry. Our claims experience has been extremely favorable. We save billions by not having large numbers of aircraft just standing by. We have a National Airlift Policy that limits the amount of organic assets we can have. As a matter of policy, we rely on civilian enterprise to provide the necessary supplement. Everybody loves the aviation insurance program. We just can't get it reenacted as a result of other issues, issues other than aviation war-risk insurance. It's tied up with the reauthorization of the FAA and landing rights at Ronald Reagan National Airport [Washington, D.C.]. There's a bit of a contest for aviation funds and what they can be used for. My view is that if we ever got into a contingency and we needed it, we would have it immediately, except if Congress was on an extended recess. What do we do in a national contingency requiring a major CRAF presence if there are major increases in insurance cost and if Congress is out of town? The answer is that we would probably ask Congress to come back.

Mr. Cossaboom: Is there some reason that we shouldn't go after war-risk insurance for a longer period of time? Twenty-five years? Fifty years? Is there a reason not to go for legislation?

Gen Regan: I pursued that. I argued for a standing reauthorization, but Congress wanted to look at it every five years. I don't think we could have gotten it past the subcommittees' staffs.

Dr. Matthews: How about CRAF incentives? What are the legal issues in, say, City Pairs?*

Gen Regan: It comes down to the government's needs versus the industry's needs. Industry would love to make some major changes in City Pairs. In fact, some in industry would like to do away with City Pairs altogether and just have government employees fight for seats on the plane at the full-fare ticket rate. Well, we're a big consumer, and we're going to take care of the American taxpayer. We're going to use our weight in the marketplace. We're going to protect our interests. At the same time, there are people in the industry who would love not to have to sell us a government ticket if they didn't want to. They don't want to have to book the last seat on their airplane at the government rate because they think there's somebody who's going to pay them a last-minute booking at full price. In my judgement, we are going to continue to tie peacetime business and City Pairs fares to wartime commitment.

*GSA City Pairs program is a price-and-service contractual arrangement with CRAF carriers providing inexpensive seats for individual government travelers on over 5,000 domestic and international commercial air routes. In this way, CRAF carriers are guaranteed peacetime business for their wartime commitment to the CRAF program.

Dr. Matthews: What is the importance of the Montreal Provisions* to CRAF?

Gen Regan: The new Montreal provisions, which I think will be adopted in the next two years, are going to get rid of any limitations on liability. The whole Warsaw thing will be out the door.

Mr. Cossaboom: We need to watch what's going on in Montreal?

Gen Regan: At one time, the Department of State, at the Assistant Secretary of State level, went before the Senate Foreign Relations Committee and told them what a wonderful thing it was that they were taking DOD out of the coverage of Warsaw. Under Warsaw, we have the right to contract for a different liability level, which we have done in the CRAF contract. The value of Warsaw, and the value of Montreal as it replaces Warsaw, is that we have the right to sue in our own country. We do not want to deprive our people of that ability if the accident occurs in Europe or in Asia. We just want to make sure that we have protected all our rights, ones that we've either bargained for or gotten into law for our military people. Apparently, the State Department had been working on the new

*The 1929 Warsaw Convention governing an air carrier's liability to passengers injured or killed in an accident occurring on an international flight limits recoveries to between $10,000 and $75,000 per passenger. Because DOD charter aircraft are considered subject to the Convention, AMC requires carriers to waive the Warsaw limit and agree to pay up to a higher amount specified in the contract. In 1998 the Senate considered ratifying Montreal Protocol Number 4, an amendment to the Warsaw Convention. Among other provisions, this amendment would raise slightly the dollar amounts of the air carriers' liability. During the course of the ratification process, the State Department mistakenly informed the Senate that DOD charter aircraft were not subject to the Warsaw Convention. With OSD permission, TCJA worked with the State Department to fix the erroneous Senate testimony. In May 1999, the United States signed the Montreal Convention as a replacement to the Warsaw Convention and its various amendments, including Protocol Number 4, and to remove the liability limits. In an effort to avoid problems similar to those with Protocol Number 4, in January 2000, TCJA unilaterally drafted and submitted DOD's written position on the new Convention. The State Department agreed with TCJA's position and has had TCJA review the various submission documents to ensure their accuracy. As of publication of this oral history, the Senate has not ratified the Convention. (SOURCE: Office of Chief Counsel, USTRANSCOM.)

provisions for three years, and they came out and testified accordingly. The problem was two-fold: DOD was never consulted on this change, and the change was not helpful. We had to put the genie back in the bottle. It worked very well, as it turned out. Congress sided with us, and State was very apologetic. They figured it was just a good idea, but they hadn't gone down to the next level of detail. We need to continue to monitor Montreal to be sure it does not disadvantage our charters.

Aircraft Safety

Mr. Cossaboom: What should be the CARB's role in air safety and especially in regard to Tower Air.*

Gen Regan: The real charter of the CARB is to look at safety. There is a sincere desire at the top positions of Tower to make Tower a first-class airline. Clearly, there are problems with regard to their service. They have come before the CARB more often than most. And it's uncomfortable for everybody because they bring something very special to the DTS. They have 747s that they will make available to us for carrying passengers that really don't exist elsewhere. So, Tower is a valuable member of the CRAF. They are a safe airline today. They just need to get their act together service-wise.

Mr. Cossaboom: Do we have a problem between DOD and FAA standards?

Gen Regan: The answer is two-fold. There are different standards, yes, and, in fact, a related issue came before the CARB recently. An airline said to the CARB, "I want you to know that when your people

*Tower Air, while readily fixing maintenance problems found in numerous CARB inspections, did not institute procedures to prevent the problems from recurring. Since this interview, conducted in January 2000, Tower Air has gone out of business.

came out and audited us, they found no regulatory violations." However, the CARB letter to them cited a dozen violations. The response from the head of the airline was, "But there are no FAA regs that were broken." We said, "We're not interested in FAA regs. You have to follow our regs." So, there is that disconnect, because some of our requirements in the safety area are not found in the FAA arena. It might also appear to some that the government does not speak with one voice, like in the case of ValuJet.* After their Florida accident, they were put in immediate, temporary non-use by the CARB, yet the Secretary of Transportation was saying at the time that they were a perfectly safe airline, and that he would fly them. Of course, within thirty days, DOT's view changed. But it is understandable why some may ask, "Why is it that DOD can determine that an airline is not safe, and yet, the FAA is not intervening?" Frankly, I'd view that as more of a problem for the FAA than for us. We'll make our safety-based decision, and we will act on that decision. We'll make the call as we see it, and the chips will fall where they may. In my view, Congress told us that it wanted us to go past the FAA requirements. If they wanted us to only meet the FAA standards, they would've told us to accept whatever the FAA tells us, and that would have been the end of the story. So, it's clear to me that Congress intended something more, and I think we're doing a good job of it.

*On 11 May 1996, ValuJet Flight 592 crashed in the Everglades National Park, Florida, killing all 110 people on board. Federal investigators determined that oxygen canisters, improperly prepared for shipment, had ignited in the cargo hold. The resulting fire quickly spread throughout the cabin and cockpit.

Mr. Cossaboom: AMC has had some regrettable aircraft accidents and a lot of legal fallout from some of them, starting with the German "mid-air" off Africa.* What did we learn from that?

Gen Regan: Some in Congress concluded that DOD should form a NTSB [National Transportation Safety Board]-like organization, independent of the military to investigate military accidents. I think that's dangerous. No one cares more about finding out what happened in an accident than we who wear the uniform. No one cares more than we do about saving the lives of our troops. No one cares more than we do about providing answers to the next of kin. I can't see this "NTSB" ever being capable of investigating the multiplicity of our systems: F-18s, A-6s, F-14s, F-16s, F-15s, A-10s, C-141s, C-17s, etc. We have experts in all those systems capable of conducting accident investigations. What we've learned from that "mid-air" is we can work with foreign militaries and local governments in very difficult circumstances and come to a successful resolution.

Dr. Matthews: You mentioned notification of next of kin.

Gen Regan: We also need to work on how we notify next of kin in this CNN [Cable News Network], internet world. I investigated an AWACS [Airborne Warning and Control System] crash when I was the PACAF Staff Judge Advocate. It was on the radio in ten minutes. Back to the C-141 accident. A crewmember's spouse called McGuire [AFB, New Jersey] to ask if the aircraft would be arriving as scheduled. The young man answering the phone knew it was overdue and knew that we had lost radar contact but he didn't know what happened to it. He didn't want to worry her so

*On 13 September 1997, a C-141, assigned to the 305th Air Mobility Wing, McGuire AFB, New Jersey, disappeared after colliding with a German military TU-154 transport off the coast of Namibia. There were no survivors.

he told her that he was looking at the board and it was still scheduled to come in at X hour. While this was literally true, she viewed that as a lie. What has changed is that we not only have to be technically competent and smart and dedicated to the truth, which we all are, but we also have to be sensitive to families and more adept at dealing with the media and compressed time frames.

Mr. Cossaboom: Did you not also work a modification to the AFI [Air Force Instruction] on investigations to try to shorten it a little bit?

Gen Regan: Yes. I started to rewrite it at PACAF and continued to work it at AMC. I wanted to simplify and shorten the investigation procedure when the accident caused no deaths, did not destroy an entire aircraft, would not produce litigation or disciplinary action, and there was no substantial public interest in the accident. I especially wanted to do away with the requirement to conduct interviews with witnesses and prepare a complete report.

Originally, General Rutherford [Air Force General Robert L., USCINCTRANS, 1994-1996, Retired] wanted me to go even farther in revamping investigative procedures. Some of the rules made little sense. If an engine is lost because of a bird strike, it's a Class A.* It's crazy to invest so much time and effort investigating a bird strike. But the answer, as provided to the Judge Advocate General by OSD, was, "We think the American public wants us to do an investigation whenever it's over a million dollars." The fall

*Class A is defined as a mishap resulting in one or more of the following: cost of one million dollars or more; a fatality or permanent total disability; or destruction of an Air Force aircraft. (SOURCE: AFI 91-204, "Safety Investigations and Reports.")

back position was the simplified AFI 51-503* provisions now in effect.

Aircraft Security and Military Justice

Dr. Matthews: Why was it important to resist disclosing the information on Phoenix Ravens** to the US Embassy in Kenya and the Kenyans?

Gen Regan: The issue was *any* disclosure to a foreign government. We regard our aircraft as United States sovereign territory. We must maintain our sovereignty in the operation of a global mobility system. Suppose we have cargo onboard our aircraft for Country A, but we have to touch down in Country B because of an emergency. Country B says, "We want to come onboard to see what you have. You know, we aren't good friends with Country A and things are deteriorating. We hope you don't have anything for Country A, because if you do we're going to seize it. What do you have going into Country A?" We can't get into disclosing the cargo that we have onboard. We can't submit to quarantine. It's an issue of sovereignty for us. We need to maintain the flexibility.

Dr. Matthews: Our embassy initially wanted us to tell the Kenyans exactly what weapons we were bringing into their country.

Gen Regan: For practical reasons, we were willing to tell them that our people had weapons, although we would not go beyond that. Colonel Lane [Air Force Colonel Lawrence R. "Rocky," Chief, Force Protection, USTRANSCOM] was willing to do so in case there happened to be a fire fight in the area of the airplane; and if the Kenyans saw one of our people with a weapon, they wouldn't

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*"Aircraft, Missile, Nuclear, and Space Accident Investigations."

**Phoenix Ravens are US Air Force Security Forces personnel specially trained in the protection of aircrews and aircraft that transit potential threat areas.

immediately conclude it was a bad guy. They would understand that US forces were there as well. The State Department has been very helpful. As far as I can tell, it is now a dead issue. They understand our support to our embassies is vital and that detailed announcements of the level of weaponry is bad law and bad force protection policy. In my opinion, it would be better to abandon the mission than to give up our sovereignty.

Dr. Matthews: Do you have other concerns related to sovereignty and security?

Gen Regan: Yes. I worry that we are going to set up a flow into Country A. The flow will go through Countries B and C, and our adversaries will try to use legal processes in B and C to tie us up. The Philippines used to have what is known as a pre-judgement writ of attachment: "I have a civil suit against you. You might leave. I want to make sure that if I win my case, I'm going to get the money I'm entitled to. How do I do that? I take your car, your clothes, your TV. I grab them and hold them to satisfy the final judgement." The Philippines argued, "Well, these people are in the military. They may walk out of here tomorrow. We don't have any control. Judge, would you please..." And we always resisted. At least on base, we were able to do that. How about phony criminal charges in which maybe the judge and the prosecutor are honest but witnesses make false statements against our people? That would be "legal terrorism." If our crews face the loss of their personal assets and are threatened with incarceration in a Third World jail, we might not be able to perform our mission. My successor must continue to work the issue of maximum protection for our people so that we're the ones who decide what legal processes ought to be applied to our people, and we are the ones who ultimately decide if our people have violated rules of behavior.

Mr. Cossaboom: The misuse of government computers has been an ongoing problem.

Gen Regan: Yes, and at Scott more than some other places. The wing commander did an audit of people who were hitting pornographic sites on government computers. The investigators cut off the list of those to be investigated at the top ten. A lot of actions resulted, but no courts-martial. The top one on the list was a colonel select in AMC who was redlined. That's not a formal punishment, but it's a hefty penalty nonetheless. I think that we have the right attitude. We'd rather educate than punish in those cases. We have the capability throughout AMC to figure out exactly who is watching what on their computers. It makes absolutely no sense to put a career on the line over something like this.

Mr. Cossaboom: Pilots wearing skirts?

Gen Regan: A female officer joined a church that interprets a biblical passage as requiring women to wear feminine items of clothing and not wear the things a man would wear, i.e., pants, which translates both to "nomex" fly suits and BDUs [Battle Dress Uniforms]. There hasn't been a final decision on the part of the Air Staff. I can tell you my own personal view, though. I cannot see the Air Force approving skirts for flying F-15 or C-17 aircraft. I don't think there's any reason in this case to make an accommodation.

Mr. Cossaboom: You have a safety issue, number one.

Gen Regan: Yes, and it's also a morale issue and a uniformity issue. We can make religious accommodations if there's a small item that you can put on your uniform or a small skullcap that doesn't interfere with the wearing of the uniform. A skirt on a pilot is not in this category.

Mr. Cossaboom: Environmental law, specifically shrimp at Travis [AFB, California] and housing noise at Andrews [AFB, Maryland]. Anything really unusual there?

Gen Regan: In my Air Force experience, half of the violations that we get come from hazardous waste. And half of those violations come from administrative errors. So the net result is that if you can cut out all hazardous waste incidents, you'd reduce everything by half. Fortunately, AMC doesn't get many. And seldom do they involve deliberate intent. Instead, it's like at Travis where we are trying to extend the Aero Club's runway without having realized that doing so might threaten the California brine shrimp.

Mr. Cossaboom: Andrews and the Redskins [Washington Redskins, professional football team].

Gen Regan: About eight miles from the base, they were building a stadium in the backyard of a housing area for Andrews families. We wanted noise and light abatement. As it turned out, the Redskins never applied for a zoning variance. They applied in the "residential" category and the local government changed "residential" to include stadiums, which is just crazy. How many places are going to change from "residential" to "residential-with-stadiums"? As I remember the issue, the Maryland constitution prohibits the enactment of any law that has, as its primary purpose, the benefit of a single individual or entity. And while that law had been challenged unsuccessfully by another plaintiff, I was prepared to try to go into court and challenge them on that ground. The Redskins ultimately proved to be good neighbors and undertook mitigation efforts.

Part Five: Reengineering the DTS

USTRANSCOM's Partnership with DLA

Dr. Matthews: Why partner with DLA [Defense Logistics Agency]?

Gen Regan: Greater synergy, increased efficiencies, and end-to-end logistics. If we were able to establish some templates for success when it came to the onward flow of goods inside a regional CINC's area, and if we could work out relationships with the regional CINC that allowed for mentoring or setting up some sort of construct with them, I think parts of intheater distribution would come to TRANSCOM. That would be the impetus for a different relationship with DLA. You have to do the CINC-to-CINC, end-to-end relationship first, and as that evolves, ask whether it makes sense to have DLA as part of TRANSCOM. Maybe you don't have it as an agency. Maybe you could call it a command.

Dr. Matthews: CINCLOG [Commander in Chief, Logistics Command]?

Gen Regan: Or maybe it becomes a sub-unified [command]. We have sub-unifieds inside a CINCdom: United States Forces Korea, United States Forces Japan, Alaska Command. I'm not as adverse to the idea as was General Kross, who might have objected simply on the grounds that commercial industry had not done it. I think the impetus for a formal, structured union between TRANSCOM and DLA may come from our relationship within CINCdoms as to onward distribution in the theaters of operation.

Dr. Matthews: Do you have any words of caution for us as we move into this new partnership with DLA, and as we launch into end-to-end supply chain management?

Gen Regan: I have one overarching concern. TRANSCOM needs to have visibility over the movement of goods end-to-end. Are there things moving that we don't even know about that hurts us on cargo preference? We really need some visibility over ship and air flow scheduled by regional CINCs. We need to know when a contractor like Brown & Root is scheduling aircraft into the supported CINC's AOR [area of responsibility].

Dr. Matthews: Are there any legal problems you see in our relationship with DLA?

Gen Regan: No, not really. We've had more issues with GSA, especially those dealing with City Pairs fares and reservist travel. We proposed to GSA that reservists be allowed to take advantage of City Pairs fares. They responded to the effect that "Even though we can contract for the District of Columbia government, we lack specific statutory authorization here since reservists on IDT [Inactive Duty Travel] are not paid by the government, and it's not official travel. Therefore, we can't even lift up a pencil to do anything for you with regard to changing the CFR [Code of Federal Regulations]. We don't even want to talk about it, because it's not official." We then asked, "Well, how about if there was a statute that made it official?" The answer: "We're opposed to that, because all of these CRAF carriers don't really want to extend access to government fares." GSA waded in at the wrong level with the CRAF carriers. They probably had some lower-level representative saying, "We want out of this GSA City Pairs program. We certainly don't want it to be expanded." But someone in Congress picked up on the issue, and despite GSA's objection, there is now in federal law an expanded access to government fares for certain categories of reservists.

Dr. Matthews: OSD doesn't mind us working directly with DLA?

Gen Regan: Not that I know of; nor with GSA or FAA or, of course, MARAD. Mary Lou McHugh only has six people, including herself, in her office. And there's only one lawyer on the OSD staff who specializes in transportation and logistics. If it's going to get done, it is likely going to be up to TRANSCOM to at least lay the groundwork.

Acquisition Reform

Dr. Matthews: How has acquisition reform--the Federal Acquisition Reform Act, the Federal Acquisition Streamlining Act, and the Information Technology Management Reform Act--benefited TRANSCOM?

Gen Regan: I'll cite one immediate benefit: TRANSCOM now has a CIO [Chief Information Officer]. Additionally, we have been working very hard to make contracts simpler. The sealift industry did not want to be subject to the Truth in Negotiations Act because of the certifications required. More than that, they did not want to keep a whole new set of books--even though we would pay for it--because of the cost accounting standards. In the spirit of reform, we agreed to the following: in the case of VCC and the acquisition of container shipping, it's a commercial item; and if you go under FAR Part 12 today as a commercial item acquisition, it's a simplified acquisition, and neither the Truth in Negotiations Act nor the cost accounting standards apply. That's an example of what simplicity in acquisition can do for us. We met the needs of industry, and our needs as well, with a simplified approach that eliminated some onerous requirements.

Dr. Matthews: What should the command's role be in the acquisition arena? Where should we go from here?

Gen Regan: That commercial item determination--the one I just discussed with regard to acquisition reform benefits and adopted by General Montero [Army Major General Mario "Monty" F., Jr., Commander, MTMC, 1997-1999] for the VCC--was not universally supported by his staff at MTMC. Legal and acquisition staffs are often conservative by nature: that which is new is suspect. We are, again, here to provide appropriate legal support to component commands, as required. Some folks in the MTMC legal and acquisition communities argued that VISA contracts, because they contained incentives, naturally fell under a different section [of the FAR], not FAR Part 12. So, we structured them differently and didn't call them incentives. My point is, if we had had acquisition authority at TRANSCOM, complete acquisition authority, that issue wouldn't have come up because the head of agency, the CINC, would have declared that it was still FAR Part 12, and then ordered us to go do it. There's plenty of room to maneuver in the Federal Acquisition Regulations. You can use them as a baseline, or you can use them as a boundary. I use them as a baseline. I can work within them because there's a lot of flexibility. We have not yet had an issue where the CINC did not get his way because he lacked head of agency status, or the authority that a head of agency has.

Dr. Matthews: Do you think it will happen at some point?

Gen Regan: There is a fundamental disconnect when the TRANSCOM charter gives the CINC responsibility for the procurement of common-user transportation, but except through Air Force channels in his AMC hat, he doesn't have acquisition authority. The seam is visible, for instance, when the Army tells MTMC that it has full and open competition under VISA because anyone can be a VISA member as long as they are US flag, while the Navy tells MSC it needs a

J&A [Justification and Approval], an exception to competition in contracting, because it is not full and open competition. At a minimum, we do not look very unified to industry. The CINC is not now in a position where he can direct an acquisition decision on the part of the components. He can certainly jawbone. He can say that this is his strategic intent and this is what he thinks ought to be happening. But theoretically, even if a component commander wanted to support the CINC, it is possible the Service acquisition chain would tell him no. I would predict that within five years, there will be an issue where the CINC won't get what he believes he needs to perform his mission. When that happens, then TRANSCOM will be going back to OSD with a request for head of agency authorities. And in my view, it is inevitable that the CINC will get it, because if the CINC needs it, he should have it.

Dr. Matthews: Is it also a wartime effectiveness issue as well as a peacetime efficiency issue?

Gen Regan: Yes, if the CINC has one arm tied behind his back in his relationship with industry, it could become a readiness issue. It could be something as simple as a cost issue or a difference of opinion that leads one TCC [Transportation Component Command] to say it can't approve that modification to the contingency contract on whatever grounds. One component says yes, and the other says no. I certainly don't want industry to ever conclude that the CINC can't get his components to support him.

Dr. Matthews: DOD launched its revolution in business affairs that seeks to incorporate industry's best business practices into logistics acquisition and management. What has been TRANSCOM's most important and useful contributions to this revolution?

Gen Regan: We, TRANSCOM and AMC, are unique in terms of our relationship with the civilian provider. More than anyone else I know of in the Department of Defense, we have routinely tried to understand the industries that we work with. We try to understand their problems. We try to have them understand our needs. And we work with them in a collegial way, whether it's me sitting down with Ed Driscoll* to work insurance and indemnity issues one-on-one or the entire TRANSCOM staff supporting the EWG. So, our major contribution is two-fold. We are the lead, in my judgement, for the DOD in outsourcing activities. That's our daily business. And second, TRANSCOM sets the standard for working relationships with the business community, in both peace and war. As you know, we brought out a couple of titans from the business community, FedEx and Sea-Land, to sit down with SECDEF. So I think Cohen [William S. "Bill," Secretary of Defense, January 1997-January 2001] views us in the same way. Our real problem is the disconnect: TRANSCOM doesn't have acquisition authority and if it did, it still wouldn't have the flexibility comparable to that of a CEO in industry. We can't as easily make the decisions to go ahead and fund, for example, major sums of money for information technology.

*Mr. Edward J. Driscoll was president of the National Air Carriers Association from 1967 to 2000.

Contracting Oversight at USTRANSCOM

Dr. Matthews: The DCINC [Lieutenant General Hubert G. Smith, DCINC, USTRANSCOM, 1995-1997, Retired] tasked you to develop procedures for oversight of TRANSCOM's contracting efforts. Why?

Gen Regan: When I came on the job at TRANSCOM and AMC, I thought to myself that I welcomed being charged with providing legal advice on acquisition, but I have an AMC office that keeps me pretty busy, and I have a TRANSCOM office that keeps me busy. I put them together, and I had a full legal plate. So, for me to oversee acquisition, which isn't really legal in nature, didn't make a lot of sense. I decided, after my first thirty days on the job, that I should not have this responsibility for oversight of the acquisition function, and that it would be much better placed in the logistics function or the Business Center, or some combination thereof. I stated that conclusion to General Smith. He said, "Well, in any event, I need more visibility over the contracting process. I'd like to have contracts that are above a certain amount come before a contracts review board where the whole staff meets and discuss them." So my effort to spin off the contracting function led me to be the lead in establishing the contracting board.

Dr. Matthews: How involved were the DCINCs?

Gen Regan: I was surprised a bit, I guess, at the level of interest both Generals Smith and Thompson gave to the contracting issue. They would ask questions like, "Okay, you have a contract to do such and such, but is that the best way to do this job?" And "When are you going to be through?" And "Isn't there some way someone on the staff could pick up part of the job so we can lower the costs of the

contract?" And "Can't you cut down on the number of people under the contract to save money?" They were really using it as an oversight mechanism. So I set up the Contract Review Board and the JA acquisition people migrated to J4 [Logistics Directorate, USTRANSCOM] along with the acquisition function. Anyway, I believe that my decision to recommend transfer of the acquisition responsibilities and billets was the right one.

Household Goods

Dr. Matthews: Please outline for us the legal issues inherent in our efforts to improve movement of household goods.

Gen Regan: [Laughter] Let me give you a feeling for the rancor surrounding this issue with an anecdote. General Montero received a fax on Navy League stationary stating that the Navy League was opposed to MTMC's household goods reengineering effort; this was one hundred and eighty degrees from the truth. It just so happened that a lobbyist for the household goods industry had a spouse working for the Navy League. Soon, MTMC received another fax, *on MTMC stationery*, claiming that "MTMC civilian employees are unalterably opposed to the MTMC reengineering effort," which was of course, absurd. That same fax went out to Congress; it was up on the Hill! This time, however, General Montero had installed an identity-ring on the MTMC fax machine so he would know the source. It had come from the company where the lobbyist served as CEO and where the spouse had worked since leaving employment at the Navy League. After General Montero testified before Congress on MTMC's household goods reengineering effort, the *Washington Post* interviewed him. During the interview, he named the individual he believed had sent out the faxes: "I'm not sure I'll ever be able to prove who sent them out,

but my suspicion is X and his spouse because I'm from Missouri, and in Missouri we say 'if it walks and talks like a duck, it's a duck.'" There were some threats of lawsuits, but they turned out to be nothing more than threats.

Dr. Matthews: General Kross, in his oral history,* had very little good to say about the industry.

Gen Regan: General Kross extended an open hand to industry. He said, "Tell me your problems. I'll work it." He felt that every time he reached out to them, they slapped his hand. Finally, one of the major organization heads, after having come out to Scott for a steak dinner with General Kross and me, publicly said something that really bothered General Kross. At the direction of the CINC, I called the head of this organization and "wire brushed" him. I said, "Every time we extend the olive branch, you misrepresent us." He understood what I was saying. I haven't heard back from him.

Dr. Matthews: How did we fare overall in household goods litigation?

Gen Regan: We won every piece of litigation involving the household goods reengineering effort by MTMC, save one: the original amount of small business set-aside. The GAO [General Accounting Office] decision was that it was inadequate and we should do more. MTMC went back and reengineered it. They satisfied GAO. There is a wide variety of talent and background in the industry, in which about 85 percent of the moves are done by the "Big Seven," which is really now the "Big Six" since Mayflower and United have merged. The industry is different than others we deal with, in

General Walter Kross, Commander in Chief, United States Transportation Command, and Commander, Air Mobility Command: An Oral History, Government Printing Office, Scott Air Force Base, Illinois, October 1999.

part because it has a lot of "Mom and Pop" operations as local agents. There are also "bottom feeders." The good folks will probably tell you they would like them out of the industry. The real question is how. If you go to a FAR-based contract, it's often an all lose or all win, all or nothing proposition. If you lose, then you're out. Other parts of the household goods industry that might involve associated contracts like storage contracts are competitively sourced; but not the movement of goods. So, even FAR-based acquisition is not unknown to the household goods industry.

Dr. Matthews: What were some of the other issues you had to work through?

Gen Regan: One of them had to do with prevailing wage payments and whether or not the Service Contract Act applied. One guy who protested said, "MTMC states clearly, but without any authority, that the Service Contract Act does not apply, and I don't know how to bid this thing." The protest came in, and GAO went over to the Department of Labor and asked if they thought the Service Contract Act applies. My own view was that it did not. The Department of Labor said, not surprisingly, that they thought it did apply. So MTMC said, "If GAO tells us it is going to apply, then it's going to apply." The same person, whose complaint resulted in the ruling of applicability, then protested when MTMC amended the solicitation to conform to the GAO's opinion.

Dr. Matthews: In hindsight, what would you have done differently to reengineer household goods?

Gen Regan: If I had known when I first came to this job that it would take this long, I probably would have recommended to the CINC that we go ahead with a modified version: don't do the FAR-based vehicle, see if we can get rid of the bottom feeders, get an 800 number, get

payment for inconvenience claims, and reengineer to the FAR vehicle separately. All the indications were that it would be right around the corner and that we ought to go all the way. But it was so much more difficult than expected because we were, in reality, changing the nature of an industry. DOD is the major customer of the household goods industry. It's fascinating to see the scope and depth of household goods moves in the Department of Defense.

Dr. Matthews: Are we on the right track?

Gen Regan: MTMC is on the right track with a FAR-based vehicle so that we can contract with this industry like all the others. Everyone must meet minimum standards. I think the household goods industry, for the most part, would like to join us in improving the process. But what I didn't understand, where I think the industry went wrong--just like I'm still surprised at the sealift industry for focusing more on the contingency contract than the peacetime contract--was in focusing almost exclusively on the MTMC program instead of the broader "relo" [relocation] program. At Hunter Army Air Field [Georgia], household goods is just a part of a package which offers real estate rentals and sales, spousal job information, and the rest of it. Only a miniscule percentage of all the people who moved under that program took advantage of the relocation services. One of industry's major fears was that they would be nickeled and dimed by the "relo" people who would hold the contracts and then try to make their profit on the backs of the moving industry. If you have a "relo" program out there and the "relo" people are supporting the MTMC reengineering effort, doesn't it make sense for the household goods industry to try to figure out some way to work with the government and bring this to a successful conclusion through the MTMC program, as opposed to the Hunter program where they are using "relos"? It may

simply be that the industry is too fractured in terms of the local agents to try to make much sense of it.

Transportation Working Capital Fund and the Goldwater-Nichols Act[*]

Dr. Matthews: What do you think of the TWCF?

Gen Regan: We did a top-to-bottom scrub of the TWCF to decide whether or not it was still the way to fund our operation. We know there are some plusses to it: everything evens out, and it provides stability to DTS customers so that their budgets are programmed. But working the budget two years after the fact is crazy. No commercial company operates that way. If I were king for a day, the legal advisor to SECDEF, and he asked me what I thought about the TWCF, I would say, "You know, Boss, we really ought to give it a real close look to see if there's not some other way to provide a fair measure of stability in rates and a way to adjust to profit now, reduce costs now, and not have to wait years to see if our actions worked. Sir, maybe we could enact a supplemental, set up a fund from which we could add and subtract over the year. Boss, we need to replicate what's going on in industry."

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[*]The Goldwater-Nichols Department of Defense Reorganization Act of 1986 represents the US Armed Forces' most recent attempt to resolve organizational tensions in the command and control of military forces. The Act included eight objectives: "reorganize DOD and strengthen civilian authority; improve military advice given to civilian decision-makers; place 'clear responsibility' on the CINCs for accomplishing the missions of the unified commands; ensure that the CINCs' authority over their forces is commensurate with their responsibilities as CINCs; increase attention to strategy and contingency planning; encourage the more efficient use of defense resources; improve joint officer management policies; and enhance the effectiveness of both military operations and DOD management." (SOURCE: *Reorganizing the Joint Chiefs of Staff: The Goldwater-Nichols Act of 1986*, by Gordon Nathaniel Lederman, Greenwood Press, 1999.)

Dr. Matthews: Do you think Goldwater-Nichols has gone too far? And where didn't it go far enough?

Gen Regan: I don't think it has gone too far in any direction. I wish it went farther and said, "By the way, acquisition authority for the CINC." [Laughter] I don't know how, without taking more authority away from the Service Secretaries, that you could give the CINCs any greater role in the "organize, train, and equip" mission. Obviously, we have an IPL [Integrated Priority List] process where the CINCs get to weigh in. That's probably about right. The concern that I have is not so much with the legislation. The real issue is below the statutory level as we write JCS [Joint Chiefs of Staff] doctrine on logistics and ITV [intransit visibility] and so on. Under Goldwater-Nichols, the Secretary of Defense has to approve a change in OPCON [operational control]. Why not give it to the CINCs to work out? How do you build joint task forces, and what do you have the people in those JTFs [Joint Task Forces] do? And how should joint commands be organized? Every joint command doesn't have to be structured alike. In fact, [US]SOCOM [United States Special Operations Command] has acquisition authority.

Conclusion

Mr. Cossaboom: What issue was the toughest for you to work while you were the AMC JAG and why?

Dr. Matthews: Same question for TRANSCOM.

Gen Regan: For TRANSCOM, it was the head of agency issue, in terms of trying to sell it and not having any success from either the business or legal standpoint, and, in terms of the CINC's investment of capital, having briefed the Secretary of Defense, having high expectations, and then seeing it all unravel. Very disappointing.

Mr. Cossaboom: And for AMC?

Gen Regan: The Mobility Law Program. It has a legal survivor guide for AMC aircrews, a personal legal readiness guide, and all the briefings our people and their families would ever need in order to deploy. That program is a framework for getting lawyers, judge advocates, and paralegals up to speed on issues such as AEF [Air Expeditionary Force] and EAF [Expeditionary Air Force] deployments. The Mobility Law Program is a critical initiative that cannot be abandoned. It is a way to educate people and to train people with regard to personal legal rights and responsibilities, and with regard to official responsibilities. It has the potential for tremendous positive impact, not just for the Department of the Air Force, but also for the Department of Defense. It was tough for me, because I didn't get to see it locked completely into place. I am lucky in that my successor has made a commitment to follow through with it.

Dr. Matthews: You've already mentioned a few things you hope your successor continues to work and the challenges he's going to face. Are there any others you'd like to mention here?

Gen Regan: He may have to deal with head of agency, and he will have to deal with sovereignty issues. He'll also have to address the VCC, cargo preference, and more mergers on the sealift side. On the airlift side, he's going to have to work mergers, acquisitions, percent of ownership, and oversight of foreign air carriers. All those ducks are going to have to be in order.

Dr. Matthews: Do you have any sage advice for him?

Gen Regan: Some days I would take a long hot shower and purposely start my day not thinking about what I was going to do that day but instead think about issues. One of the questions I asked myself was, "What can I do today to strengthen the DTS?" Sometimes that answer was, "legislation" and other times "a phone call." Sometimes there was no answer. That's what I learned from an old commander of mine in the Philippines who got up every day and read his job description about taking care of the troops. Not that he forgot it, but it was just a reinforcement.

Dr. Matthews: What is your overall assessment of the positions you occupied at TRANSCOM and AMC?

Gen Regan: Taken together, they are a judge advocate's dream assignment. The only other legal job in DOD that might be more challenging intellectually is legal advisor for the Chairman [of the Joint Chiefs of Staff]. Learning the federal transportation statutes and regulations was a wonderful challenge for me, and a lot of fun. It was a privilege to serve as Chief Counsel for USTRANSCOM and as the Staff Judge Advocate for Air Mobility Command. I was fortunate to have stellar people to work with at MSC and MTMC legal offices and at AMC's base and numbered Air Forces offices. I was fortunate to have superb people in both my offices at Scott. The TRANSCOM DCINCs and staff, and the AMC vice

commanders and staff were great clients. I was fortunate to have worked for General Kross and General Robertson [Air Force General Charles T., Jr., USCINCTRANS, 1998-present]. They were more than the finest CINCs possible; they are two of the finest people you could ever meet in the course of a lifetime.

Biography

Brigadier General Gilbert J. Regan was the chief counsel, United States Transportation Command, and staff judge advocate, Headquarters Air Mobility Command, Scott Air Force [AFB], Illinois, from August 1996 to January 2000.

General Regan entered the Air Force in January 1970 and was commissioned through the Reserve Officer Training program in 1969. He had three assignments as a military judge; six staff judge advocate assignments; served as an appellate government counsel, special counsel to the Judge Advocate General, Headquarters U. S. Air Force, Washington, D. C.; and military assistant and special counsel to the General Counsel of the Air Force, Washington, D. C. Prior to coming to Scott AFB, General Regan was staff judge advocate for Headquarters Pacific Air Forces, Hickam AFB, Hawaii.

General Regan and his wife, Vangie, are the parents of two daughters, Bonnie and Kathleen, and two sons, Tom and Christopher.

EDUCATION:

1966 Bachelor of arts degree in economics, St. Michael's College, Winooksi, Vermont.
1969 Doctor of law degree, Harvard Law School, Cambridge, Massachusetts.
1985 National Security Management (correspondence) and the National Judicial College, Reno, Nevada.

ASSIGNMENTS:

1. January 1970-October 1972, assistant staff judge advocate, 313th Combat Support Group, Forbes AFB, Kansas.
2. November 1972-November 1974, military judge, Clark Air Base, Republic of the Philippines.
3. November 1974-November 1976, military judge, MacDill Air Force Base, Florida.
4. November 1976-July 1978, associate appellate government counsel, Appellate Government Counsel Division, Headquarters, U. S. Air Force, Washington, D. C.
5. July 1978-June 1981, special counsel to the Judge Advocate General, Headquarters, U. S. Air Force, Washington, D. C.
6. June 1981-June 1985, staff judge advocate, 836th Combat Support Group, Davis-Monthan AFB, Arizona.
7. July 1985-June 1987, military judge, Clark Air Base, Republic of the Philippines.
8. June 1987-June 1989, staff judge advocate, 13th Air Force, Republic of the Philippines.
9. July 1989-June 1991, military assistant and special counsel to the General Counsel of the Air Force, Washington, D. C.
10. July 1991-July 1993, staff judge advocate, 22nd Air Force, Travis AFB, California.
11. July 1993-July 1994, staff judge advocate, 15th Air Force, Travis AFB, California.
12. July 1994-July 1996, staff judge advocate, Headquarters Pacific Air Forces, Hickam AFB, Hawaii.

13. August 1996-January 2000 (retired), chief counsel, United States Transportation Command, and staff judge advocate, Headquarters Air Mobility Command, Scott AFB, Illinois.

MAJOR AWARDS AND DECORATIONS

Legion of Merit with oak leaf cluster
Meritorious Service Medal with two oak leaf clusters
Air Force Commendation Medal with oak leaf cluster

OTHER ACHIEVEMENTS

Tactical Air Command's Senior Attorney of the Year, 1984
Pacific Air Forces' Senior Attorney of the Year, 1988
Published several articles on military justice and the role of the military judge

EFFECTIVE DATES OF PROMOTION

Second Lieutenant	12 June 1969
First Lieutenant	n/a
Captain	15 January 1970
Major	1 July 1978
Lieutenant Colonel	1 January 1982
Colonel	1 May 1987
Brigadier General	1 October 1996

Glossary

AEF	Air Expeditionary Force
AFB	Air Force Base
AFI	Air Force Instruction
AMC	Air Mobility Command
AOR	Area of Responsibility
APL	American President Lines
ASBCA	Armed Services Board of Contract Appeal
ASM	American Ship Management
AWACS	Airborne Warning and Control System
BDU	Battle Dress Uniform
CAB	Civil Aviation Board
CARB	Commercial Aviation Review Board
CEO	Chief Executive Officer
CFR	Code of Federal Regulations
CINC	Commander in Chief
CINCLOG	Commander in Chief, Logistics Command
CIO	Chief Information Officer
CNN	Cable News Network
CP	Canadian Pacific
CRAF	Civil Reserve Air Fleet
DCC	Drytime Contingency Contract
DCINC	Deputy Commander in Chief
DLA	Defense Logistics Agency
DOD	Department of Defense
DOT	Department of Transportation
DOS	Department of State
DTS	Defense Transportation System
EAF	Expeditionary Air Force
FAA	Federal Aviation Administration
FACA	Federal Advisory Committee Act
FAR	Federal Acquisition Regulations
GAO	General Accounting Office
GSA	General Services Administration
IDT	Inactive Duty Travel
IPL	Integrated Priority List
ITV	Intransit Visibility

J&A	Justification and Approval
JAG	Judge Advocate General
JCS	Joint Chiefs of Staff
JTF	Joint Task Force
MARAD	Maritime Administration
MOU	Memorandum of Understanding
MSC	Military Sealift Command
MTMC	Military Traffic Management Command
NDTA	National Defense Transportation Association
NOL	Neptune Orient Line
NOS	Not Otherwise Specified
NTSB	National Transportation Safety Board
OMB	Office of Management and Budget
OPCON	Operational Control
OSD	Office of the Secretary of Defense
PACAF	Pacific Air Forces
PM&O	Pacific Micronesia and Orient Lines
SAF/AQ	Assistant Secretary of the Air Force (Acquisition)
SECDEF	Secretary of Defense
SECTRANS	Secretary of Transportation
SES	Senior Executive Service
SJA	Staff Judge Advocate
SOCOM	See USSOCOM
SOS	Squadron Officer School
TCC	Transportation Component Command
TCJA	Office of Chief Counsel, USTRANSCOM
TCJ5	Plans and Policy Directorate, USTRANSCOM
TWCF	Transportation Working Capital Fund
UPS	United Parcel Service
USC	Universal Service Contract
USSOCOM	United States Special Operations Command
USTRANSCOM	United States Transportation Command
VCC	VISA Contingency Contract
VISA	Voluntary Intermodal Sealift Agreement

Index