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The Reporter

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FROM THE EDITOR

This special issue of *The Reporter* shines the spotlight on some courageous JAGs and paralegals who have responded to the call to support the war on terrorism. These individuals provide varying perspectives on how to prepare and what to expect should you find yourself on your way to a deployed location. While much of the focus is placed on Iraq, we are also fortunate to have an article written by Maj Rick Pakola who shares with us his experiences while deployed to the Philippines. Maj Lee Gronikowski draws on his experiences and provides us with some great tips to assist discharge board legal advisors. And finally, court reporter Madonna Fell answers the big question that has been plaguing trial and defense counsel for months (but they have been too afraid to ask): what is that new fangled transcription contraption and how does it work? Enjoy!

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Contributions from all readers are invited. Items are welcome on any area of the law, legal practice or procedure that would be of interest to members of The Air Force Judge Advocate General's Corps. Items or inquiries should be directed to The Air Force Judge Advocate General School, CPD/JAR (150 Chennault Circle, Maxwell AFB AL 36112-6418) (Comm (334) 953-2802/DSN 493-2802)

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The Commandant's Corner...

Col Thomas L. Strand

Although this first 2004 *Reporter* edition is focused on operations law and its resulting support to the war fighter, my piece is a call for your personal support and attention to "your" JAG School.

The letters proudly affixed to the front entryway of the school state: "The Judge Advocate General School." Our TJAG, Maj Gen Thomas J. Fiscus, has frequently said that this institution is dedicated to the training and education of all the civilians, guardsmen, reservists and active duty members—the enlisted and officers, who have devoted their professional lives to the application of rule of law, military discipline and force readiness. These objectives combine in a powerful way to support, protect and preserve our national security and defend our Constitution.

Historically, senior leadership has referred to the JAG School as the "heart and soul" of our organization. In 2003 we changed the name or designation of the JAG Department to the JAG Corps. This new name does not affect the essence of our legal family or this school's relevance to increasing and improving legal services for airmen. This past year we taught, hosted and facilitated 42 different courses attended by more the 4,500 students. We generate the most student production of the eight specialty schools within the Air Force College of Professional Development. The "engine" for your JAG School is composed of 53 extremely talented faculty and staff from the total Air Force military and civilian force. Collectively we make it our business to ensure that our customers, "you" are closely connected with our mission and our remarkable 10 year old facility. The JAG School mission is to provide the highest quality legal education to judge advocates, civilian attorneys, legal support personnel and paralegals to meet the most demanding Department of Defense and Air Force requirements. This target objective is designed to achieve the Air and Space core competencies: developing airmen; technology to war fighting; and integrating operations. Now you know. We strive every day with each course, workshop, seminar and symposium to establish a strong sense of self ownership and belonging with all our customers and friends. We humbly solicit your energy, ideas and suggestions to ensure that our continuing quest for legal education excellence is, like our Air Force, "second to none."

The next time you visit Maxwell AFB or drive near Montgomery, Alabama, stop in and reconnect with the people who serve and care for "your" school.

Thomas L. Strand, Commandant

Colonel Thomas L. Strand (B.A., Bowling Green State University; J.D., University of Toledo College of Law; L.L.M., George Washington University) is the Commandant of the Air Force Judge Advocate General School, Maxwell AFB, Alabama.

Operation Iraqi Freedom:
Judge Advocates and Paralegals Answer the Call

Since the beginning of Operation Iraqi Freedom, 103 judge advocates and 62 paralegals have answered the call to deploy. The following articles are just a few examples of the valuable experience gained by these individuals and the significant contributions they have made in support of the global war on terror.

TSgt James D. Conger, NCOIC Military Justice, 62 AW/JA, McChord AFB, Washington

In February of 2003, I was privileged to be attached to an Army special operations unit for purposes of deploying in support of Operation IRAQI FREEDOM (OIF). For the deployment, I was teamed with Major Brian Lauri, of the 152nd Air Operations Group, New York Air National Guard. Our mission was to augment an Army legal team supporting a Combined Joint Special Operation Task Force. During the deployment, I worked in many rewarding areas, such as briefing rules of engagement (ROE), assisting with legal research, and even working enemy prisoner of war issues.

Briefing ROE proved to be more difficult than I would have expected -- mostly because I had very little time to prepare. Special Forces ROE is not something normally covered in day-to-day Air Force activities. However, the legal NCO-In-Charge, Army Staff Sergeant (SSG) J.D. Klein quickly brought me up to speed. On one memorable occasion, an infantry force made a very short stop at our location and had to be rapidly briefed in preparation for their newest mission. With SSG Klein's help, we were able to provide the troops with the information they needed to get back into the fight -- and fight with honor.

Another challenging area that I experienced was conducting legal research to assist our attorneys in advising the commander about whether or not plans were legally viable. Again, this is not an area of the law that we normally cover in peacetime operations. I soon learned that our planners were often very creative. Because of this, we had to be extremely resourceful and creative ourselves to ensure our commander had the information and options he needed to make the best decisions. Thankfully, the training I had in legal research in more traditional legal topics prepared me for working operational law issues.

During my OIF deployment, I was also very fortunate to join a team detailed to transfer several high-value detainees to a camp in Iraq. Being involved in that operation was extremely exciting. It was a unique opportunity to gain firsthand knowledge about a critical operational issue our forces must deal with. This experience was invaluable and certainly brought home the importance of being able to provide legal support directly to front-line operational personnel.

I will always remember my deployment in support of OIF and those with whom I served -- especially SSG Klein. He was my mentor throughout the operation. Salty and sardonic at times, he had the perfect blend of skills for an operational paralegal. He had an excellent understanding of international laws and treaties, laws of war, ROE, and special operations; but most importantly, he was a good soldier. We can all take away a lesson from my experiences working with soldiers such as SSG Klein: as paralegals we bring a valuable resource to the fight, but we must always remember that we are airmen, soldiers, sailors, or Marines first.

Editors note: This article has been reprinted from the 12 Nov 03 edition of the TJAG On-line News Service

TSgt Virginia Race, Military Justice Paralegal, 88 ABW/JA, Wright-Patterson AFB, Ohio

I am proud to say that I survived my six-month deployment as Law Office Manager of Tallil Air Base, Iraq! I have been a paralegal for 8 years and this was my first deployment. I deployed with Capt Jennifer Clay and it was her first deployment as well. I hope that some of my experiences will benefit you should you get the call to deploy in support of contingency operations around the world.

Capt Clay and I received approximately one week's notice before our deployment. The normal preparations took place such as receiving required immunizations, the issuing of chemical warfare gear and other required equipment as well as preparing family members for the separation. We had planned to bring numerous office supplies along with us as we knew it was a bare base; however, prior to our departure we learned that there was a "blue box," a deployment kit designed an provided by JAS, already in place. This was a true blessing!

Once we finally departed, it took us several days to arrive at our final destination: Tallil Air Base, Iraq. Upon our arrival we were a little shocked by our surroundings but soon it all became normal. Our office

was rather small with card tables and chairs as furniture. We were located in a bombed out Iraqi building. The windows were broken and we had no air conditioning or indoor plumbing. For approximately two months we used an outhouse before we finally graduated to port-o-potties!

Living conditions in tent city weren't the greatest but they quickly improved as time went on. We were eating MREs and UGRs (Unitized Group Rations) until about the end of our second month. Our restroom facilities in tent-city were Harvest Falcon latrines and showers. We were required to take combat showers (5 minutes) during the entire six-month deployment. The tents slept up to twelve people and were equipped with air conditioning. As we prepared to depart the tents were receiving cement floors just in time for the rainy season.

Communication with CENTAF (U.S. Central Command Air Forces) was a challenge at times. The phone lines were terrible so it was very hard to send or receive faxes and there was only one working document scanner on base. When we arrived we were not linked with global e-mail addresses, which made communications via e-mail difficult. Having research material available on CD-ROM proved to be very valuable as our Internet access was very slow and unreliable.

We handled a wide variety of issues while deployed to include operations and international law, military justice, claims, civil law, legal assistance, contracting and fiscal law. We worked 10 hour days, 6 days a week and were on-call 24 hours a day, 7 days a week. Most days were fairly slow. I would recommend that you find additional duties to keep you busy if time permits. I volunteered with several projects to include building Hesco walls, laying cement floors, tent city clean-up, serving meals at the dining facility, and stocking the BX. These projects helped my six months go by much faster, and I learned some very valuable skills!

If you are deploying soon, don't feel overwhelmed! You aren't expected to know everything; you just need to know where to find the answers. If you can't find the answers, there are numerous people at CENTAF and other bases in the AOR who will be more than willing to help you find the answer. My biggest recommendation if you are deploying to a bare base is to bring as many research materials, AFIs, forms, samples, and e-mail addresses on CD-ROM as you can! You never know how your Internet access and phone lines will be. As soon as you arrive at your base make sure that you check in with CENTAF as they will give you valuable information that will be required for your deployment. Most importantly, keep your spirits high with a positive attitude and know that people all around the world are praying for you.

MSgt Kenneth Moser, 55 WG/JA, Offutt AFB, Nebraska

The goal of this article is to help you prepare for a deployment. Recently I had the opportunity to deploy to Kirkuk Air Base in Northern Iraq. Our mission included, among other things, the execution of Combined Forces Air Component Commander (CFACC) taskings to establish an Aerial Port of Debarkation in Northern Iraq, execute Air Tasking Order directed A-10 sorties maintaining air dominance over Iraq, and create a logistical hub for U.S. Army and U.S. Special Operations Forces.

Before going on any deployment there are some things you need to do to get ready. The first thing is complete all your required training. This does not mean filling a square on a piece of paper but actually taking time to learn the task. The type of training I'm referring to includes Chemical Warfare, Self Aid Buddy Care (SABC), and your weapons training. The first time you hear "MOPP Four" you'll be glad you paid attention in Chemical Warfare class. I can recall one specific occasion that occurred during my deployment. It was about 0300 in the morning when I heard some noise outside our tent. As I stepped outside the tent, I saw several people running around yelling "MOPP four!" My stress level instantly peaked, however I reverted back to my training and was able to deal with the situation in a controlled manner. Lucky for us no chemicals were detected but I can't imagine what I would have done if I had not been trained. Another important training area is your weapons training. During our first couple of months, the Security Forces were stretched thin guarding the perimeter, and we heard gunfire almost on a daily basis. As a result of the limited SF manpower, we had numerous Iraqis breach the wire. Since we were all required to have our weapons 24/7 many of these local nationals were captured not by the SF patrols but by airman, NCOs, and officers like you and I. Living in a desert environment will also require you to constantly clean your weapon. If you don't keep it clean you might find yourself in a situation similar to that mentioned above with a weapon that doesn't work. When you're deployed you'll have many jobs that have nothing to do with the legal field. A few of the duties we were responsible for included; unloading boxes, building tent floors and tents, pulling escort duty, filling sand bags, and base clean-up. Another important training is SABC. This is not just important when you're deployed, but useful information to have for any accident or disaster. A lot of SABC is common sense, but

again if you don't know what to do in a situation you could make it worse. I had to do some SABC when an Iraqi contractor I was guarding was involved in an accident. He smashed his hands while unloading wood from his semi-truck. I reverted back to my SABC training and was able to keep this individual calm and get him bandaged up.

Another very important area of deployment preparation is mental and physical preparation. I have always maintained an active physical fitness program so this area was no problem. You'll want to be in shape so you can endure those long days in 130-degree temperatures. With the Air Force implementing new fitness standards everyone should already be getting "Fit to Fight." The mental aspect is something that's harder to prepare for. The first thing I did was to prepare myself as if I was going on a TDY longer than what my orders stated. This was helpful because our orders said 90 days but we ended up being there for 190 days. I also prepared my family for a possible longer deployment so they could prepare mentally. Next, I made sure my personal affairs were in order. I can't tell you how many clients came into our office for help because of issues they didn't get settled before they left. I made sure my spouse knew where our wills where kept. I also made sure she knew about insurance polices I had and where this important paperwork was filed. I then made a checklist for my wife that set forth what bills we had and when they were due. She also knew where we kept all our important papers in case something happened. Lastly, I gave her a list of contact numbers for various agencies in case of any emergency. Doing all this in advance kept my mind at ease while deployed. For myself, I made sure I took seriously the fact I was deploying to a combat zone. This mental preparation came in handy when I found myself sitting in a bunker on my anniversary because our base was under a mortar attack. If I hadn't prepared myself for this sort of danger, it might have been hard to deal with. Finally, I think being flexible and planning for the unexpected is important. I think my sense of humor helped me deal with this. For example, when we arrived at our base we were told tent city would be ready in 10 days. Two months later it was finally completed. Our tent city was later officially named "Ten Days from Tomorrow" by a unanimous vote. When somebody asked me a question about when something would open up or be completed, my standard answer became "ten days from tomorrow!"

Packing for the big deployment is something that seems trivial but can mean the difference between being comfortable and miserable. All bases should have a standardized packing list, which should give you a good place to start. All TDY locations are different, ranging from five star hotels to living in bombed out mosquito-invested shacks such as we had in Iraq. Keep in mind just because your orders say you're deploying to a nice base doesn't mean you can't get forward deployed to somewhere else in the AOR. Some things that I found very helpful to have in a bare base environment were: JAG Flag Resources-Army and Air Force Ops Law books, basic paperwork and office supplies such as claims forms, POAs, notebooks, pens, pencils, sticky pads, stapler ect., First Aid Kit containing Aspirin, Pepto, Tums, Visine, cough drops, Band Aids, Neosporin, hand sanitizer, baby wipes and hand lotion, a 220 volt adapter, snack food (this may end up being your first meal if you arrive in the middle of the night), and powdered Gatorade or Crystal Light so you won't be limited to drinking just water. A small flashlight packed in your carry-on is a great idea, especially if you arrive late at night to a place that has no electricity. You should also have a second flashlight as a back up. Some other good items to bring with you are a poncho and poncho liner, parachute or 550 Chord, glowsticks, leatherman, books, cards, portable CD player, a large plastic Tupperware bin (we used ours as a wash bucket to do our laundry), and office/JAG coins or memorabilia. If you have room in your bags then bring it, provided of course that it is not a contraband item. I also put my clothes, books, uniforms, and sleeping bag inside large Ziplock bags and garbage bags. Our bags were palletized and left outside and if it would have rained my stuff wouldn't have gotten wet. I marked my bags so I could pick them out from the hundreds of other bags that looked like mine. I also put a copy of my orders in all my bags just in case they got lost. We had several lost luggage claims because people didn't put orders in their bags. Finally, I made extra copies of my orders before I left.

Now that I was trained, mentally and physically ready, and all packed, I was ready to go. Getting to a deployed base will happen one of several ways. You will either fly commercially, by military aircraft, or via ground transportation or a combination of all three. We flew commercially to the East Coast where we caught a C-17 directly to our deployed location. In our case, we landed about 0200 in the morning in blacked out combat conditions. As we stepped off the plane, all we saw were oil fires burning in the distance and a whole lot of darkness. We were quickly ushered to a run down hanger where we in-processed. Next came the unloading of our bags from the pallet. We didn't just grab our bags but helped everyone else with their bags as well. Being deployed is all about teamwork and the sooner you get that mentality the better off your experience will be. Next we loaded our bags onto a small truck for a ride to our billet. This short

ride had to be one of the most surreal experiences imaginable. Here I am riding in the back of this truck in total darkness, looking at oil fires burning in the distance, listening to gunfire somewhere out by the perimeter, when a pack of wild dogs came running by our truck. The only thing I could think of was the old saying, "We're not in Kansas anymore."

The next day after we received an in brief with the Command Chief and Group First Sergeant we sought out the main players. We introduced ourselves to the Group Commander, Deputy Group Commander, OSI, Security Forces Commander, and Contracting and Finance Officer. Our commander immediately had some issues for us to work so we had to seek out a work place for our research. For our first three weeks, we did all our Internet research in the Communications Squadron tent. We soon discovered these were good people to know because we were able to get them to put phone lines and Internet connection in our office before the rest of the offices were even ready to move in.

We were on base five days before we were able to have our first shower, which was essentially a trickle of brown water. Water soon became a luxury and was a hit and miss item. We were allowed a shower every four days if we were lucky enough to have water. If we weren't lucky then we relied on either bottled water or baby wipes to keep us clean. Our food the first couple of weeks consisted of MREs and anything we brought with us. The packaged tuna, sandwich spread and granola bars we brought were a great break from the MREs. The Army eventually started cooking UGRs once a day to give us a break from the MREs. If you don't know what a UGR is, it's basically a heated MRE, but tastier.

As the paralegal, I did a lot of the coordinating with base agencies to improve our office or living quarters. The attorney will usually be very busy with other issues so you must take the lead to get these necessities done. There wasn't a day that went by that I wasn't looking for something to add to our office or living space. It's important to get to know the people on base that can help you make your life easier. I also attended Group Staff meetings sometimes to help the attorney listen for potential issues or problems. Other essential tasks included establishing a file plan, getting access to Weblions, and establishing POCs and rules of engagement with the ADC.

The paralegal's research skills are also invaluable to the attorney. I needed to know where to look and usually in a fairly quick time frame. It was important for me to know my way around Flite and all the different links it provided. The Army JAGCNET was very helpful on a range of issues as was the United States Code, AFIs, other service Regulations and DOD directives. I tried to become familiar with the contracting and fiscal law references before I left, because I knew these would be issues we would deal with. As the only paralegal deployed I had a lot of autonomy to manage the legal office. I needed to be well versed in claims, not only personnel claims for lost luggage but Foreign Claims Act claims as well. I needed to be skilled in drafting specifications and filling out an AF Form 3070. I had to do all this manually because I didn't have AFCIMS or AMJAMS to help me out. Finally, I needed to know how to log clients into Weblions and do notaries and POAs. I never thought I would do many notaries but I ended up doing over 175.

This was just a small sample of what my experience was like. I hope I was able to provide some insight into what you can expect when you deploy. I have many more examples and stories but not enough time to tell them. Remember, if you aren't prepared to experience something like we did for 190 days both mentally and physically, if you don't take your training seriously, or don't get your affairs in order, then you're setting yourself up for failure. If you and your partner keep a positive frame of mind and take care of each other, your deployment will be a success. Just remember every deployment is different and every location has its unique challenges, but if you take time to prepare for those challenges you will come away a better person with an experience of a lifetime.

Maj Derek Hirohata, Chief, Reserve Affairs Law, Office of the Special Operations Judge Advocate, MacDill AFB, Florida

"It doesn't take a rocket scientist to be miserable in the field."

Ground Launched Cruise Missile Defense Force Commander, circa 1988

The military and the world have changed since those words were spoken. In those days, at the height of the cold war, actual deployments were more of a theoretical or exercise problem. In fact, at about the time those words were uttered by an anonymous GLCM DFC, there were only about three AF units, GLCM among them, that were even issued Battle Dress Uniforms (BDU). Now, everyone in the AF is issued BDUs and everyone, not just special units and aircrews, can expect to be deployed in a real world scenario at least once in a career.

How then, does one prepare for a JAG deployment? I was asked by the AF JAG School this shortly after my return from Iraq, where I was the first Staff Judge Advocate for the Iraq Survey Group (ISG). While the actual mission of the ISG is classified, meaning I

would have to give a GLOMAR response (neither confirming or denying what may be read in the newspapers), I can say that it was a Presidential directed mission and the over 1500 members of the ISG were in three countries: Qatar, Kuwait, and Iraq. I was deployed primarily into Baghdad Iraq, but there were several other areas in Iraq that had an ISG presence. It was quite an adventure and challenge to be the sole legal advisor to a group composed of DoD military, civilian and numerous other federal agencies as well as Australians, British, and Canadians.

Of course, when asked to apply pen to paper, or to be more precise, fingers to keyboard, and opine on such a topic, my first thought was: "are they kidding? Me? It is so busy around here….." However, then I thought of all the JAGs who took the time to write out their After Action Reports after their deployments so that JAGs who followed them might have an easier time of it. Then I thought of all the JAGs who were a vital reach back asset for me either for legal research or just plain connectivity with home while I was deployed. I also recalled how one Christmas, while deployed to Bosnia, I received a care package with a message from TJAG reminding me that no matter where I was, the JAG family was there for me. Nor was that package from JAI the only one! I remember getting packages from JAGs at a variety of bases. Faced with those recollections, how could I not lend whatever assistance I could?

The first advice I can give to a younger JAG is: if you are waiting until you are notified that you are deploying, you are too late. Quite simply, getting ready for deployment is like practicing martial arts. You are constantly preparing, physically and professionally.

GETTING READY, PHYSICALLY

No matter what the environment, a four star hotel, or bare field conditions, there is just no getting around one paramount truth: stay in shape! The human body is able to adapt to environmental stressors a lot easier if it is in shape than if it is not. Aside from that, the work tempo will be magnitudes of difference from that of a base office, with long hours and very little diversions. Remember you will in all likelihood have to hit the ground running. I was already rendering legal opinions within an hour of getting off the plane both in Qatar and Iraq. If you are out of shape, you will be starting out fatigued, and just falling further and further behind the power curve. Being excessively fatigued will render yourself even more susceptible to sickness or fatigue injury.

Remember, you will not only be fighting jet lag, but in a bare base environment you will no doubt not only be working long hours, but also be without climate control, either air or heat, at least at first. This will not be conducive to catching up on any sleep. You will have to ask yourself, exactly how much confidence can my commander have in me if I am so tired I am falling asleep at my work station and can't think straight?

GETTING READY, PROFESSIONALLY

This area is one of continuous preparation. In numerous after action reports, there was the same theme. JAGs were challenged across their entire spectrum of legal experience! Often the comments were something along the order of: " I was deployed to be the legal advisor to this operation, I soon found myself doing not only that, but fiscal, legal assistance, etc…" I was no different, I had prepared myself for what I thought the legal focus was going to be, however by the end of my deployment I found that I had advised or participated in such diverse topics as: Civilian Labor Law, International Law of War, Detainee/Enemy Prisoner of War, Intelligence Law, Contract/Fiscal Law, Foreign Claims, Joint Military Justice, AR 15-6 investigations, JAGMAN investigations (Army and Navy CDI equivalents), Operational Law, and War Crimes. Not only was the Iraq Survey Group a joint service mission, which meant that joint justice was a continuing topic of interest, but we were also a coalition group. This lead me to having to coordinate on a politically sensitive investigation into a coalition member which necessitated cooperation with British forces for a section 76 investigation under the Air Force Act (1955, UK)!

Other legal involvement included participation in Article 78 hearings and Article V tribunals, providing legal assistance to over 40 ISG members ensuring they had peace of mind on their personnel legal matters and were better able to concentrate on the ISG mission, and drafted/staffed the first executed guidance on release of high-valued detainees (this resulted in the release of the first eight high-valued detainees mere weeks from when ISG received Secretary of Defense authorization to do so.)

While the above may sound a little unusual, the future trend is such that it may well become the norm. Not only are operations going to be joint force, having more than one component involved, but most likely, multinational and interagency as well!

So how does one prepare professionally? Quite simply by gleaning as much knowledge and experience out of EVERY legal position in a legal office. Now some may pooh pooh that notion. They are free to do so, I readily admit that this is an opinion piece. Those naysayers may say, "I want to be an operations lawyer, that is all I want to be." When they deploy,

they might be fortunate enough to only be confronted with operational issues, but when reviewing the various after action reports, I have yet to see one that says, the ONLY issue that a JAG faced were operations.

Some areas of legal office operations are self apparent as being value added: Military Justice, International Law, and Operations Laws to name the most obvious, but what about other areas?

It would be burying ones head in the sand, if one does not believe that we are going to have more civilian and contractors accompanying the force in the future. Where can one get the experience to be able to handle that? Will you be able to keep the commander from having to defend a mistake in labor relations? It may sound cliché, but invariably, cutting corners only results in having to correct it later on with more paperwork than it would have taken to do it right the first time! Usually this happens when the unit can least afford the time to correct the situation. A case in point, shortly before I arrived, we had an unauthorized obligation of funds. The actual expenditure of funds could have been done legally, but someone opted for the short cut, and when it was discovered later, when we were very busy with our mission, we had to spend valuable senior leadership time to go through the ratification paperwork.

Another incident could have occurred with contractors taking leave. In this case, contractors were taking leave in accordance with their contract and clearing it with the contracting representative. Unfortunately, the supervisor was out of the loop and wanted to cancel all contractor leave unless HE approved it. Luckily, we were able to bring the contracting representative on board and arrived at a mutually agreed prior notification process. Had the military member did what he was originally inclined to do, we could have had an ugly contractor dispute. Lesson here, if you have the opportunity to work with contracting law, do so. Imagine the poor JAG who has absolutely zero experience in contracting, missing the above issue, and then having to deal with the nasty outcome in a combat zone!

How about the disciplining of a civilian employee? Here, one has to know the basic rule. Civilian employee discipline is different from military discipline! You have to work closely with civilian personnel to ensure that a letter of reprimand is administered correctly and will become a proper part of the employee's record. In the case I have in mind, the military supervisor knew there was a difference, also knew that mistakes could come back to haunt him, and opted to do nothing about the situation. In an AOR where discipline, both civilian and military, is vital to mission success and survival, this was dangerous! We were able to establish contact with the servicing civilian personnel office and run through the spectrum planned disciplinary action. The result was a disciplined employee without a legal leg to stand on for discipline appeal. If you are a junior JAG who thinks that there is absolutely nothing to be had from working labor law issues, think again!

Other areas often ignored by JAGs fixated on operations law includes claims and ethics. This is a huge mistake. While deployed, I have never been more grateful that I had a grounding in claims from one of the acknowledged gurus of the department (Gary Pederson, Col, USAFR (ret), currently at WPAFB) or that I have been intimately involved in ethics counseling. Both experiences paid off in allowing me to guide soldiers to the right area to make claims, guide the group when we had accidents with local nationals, and how to buy unit coins.

Fortunately, there was one area of experience that I did not have to use, but it was a close run event: Mortuary affairs. My location had several attacks. During one, a mortar round went off within 15 meters of me. Yet, while we did have wounded from the attacks at my location, none were life threatening. That was not the case at one of our operating locations. There, a VBIED (vehicle borne improvised explosive device), did attack some of our personnel, and while we did not suffer any fatalities, we did have some wounded that had life threatening injuries. This is one of those areas, that if you need that knowledge, you won't have time to learn. You have to at least know the basics of what a Summary Courts Martial Officer will need to do!

Finally, on the topic of legal assistance: All the troops should have taken care of this before they left, so you won't have to worry about it, right? WRONG ANSWER. Thank you for playing. Seriously, the deployments are now running 4 plus months to a year in length. In that time frame, legal circumstances change. You have to know how to provide legal assistance because quite frankly, the airman or soldier will find you. They will find you in the dining facility, they will find you at your rack, they will follow you to the laundry facility just to get some assistance because they are worried about their legal situation at home. General Fiscus said it best when he said "Whether deployed side-by-side with troops in the field or helping them prepare for deployment at home station, our service members and their families deserve our best efforts to help resolve their personal legal problems. Mission accomplishment depends on it."

How to prepare professionally? Everyday you are a JAG is preparing you for the next legal challenge. All anyone sees is the JAG badge. No one, least of all commanders will be happy if you think you can shield

yourself from other areas of the law by saying "I'm just an _____ lawyer." Come to think of it, that would be a wrong answer on another level as well. Anyone who graduates law school can be a lawyer, but to be a JAG, you have to be more than just a lawyer. You have to be a military officer as well.

A final illustrative note on how, when you are deployed, you may find yourself utilizing skills and talents in the most unforeseen manner! While deployed, I not only used the field combat skills from my days in GLCM during and after attacks on my base, but also utilized my Aeronautical Science Masters degree to assist another federal agency when their subject matter expert (SME) on unmanned air vehicles (UAV) was unavailable.

HAVING THE RIGHT EQUIPMENT

This is relatively simple. Most people will know where they are going and for what duration. This will impact on the type of equipment to bring. In most cases, this is all issued to you. However, as the lead off quote says, this does not mean that you have to be miserable in the field.

Obviously, the first bit of intelligence you need is what you can expect in living accommodations. Some JAGs will come back telling you of deployments where they were billeted in four-star hotels, others will speak of Spartan conditions that will make you cringe. If you are fortunate to be in the first type of accommodations, then the cultural shock will not be great.

If you are in the second type, you might have a cot to sleep on at your deployed location. If you are going into this type of environment, I have two words for you: TRAVEL LIGHT. You will in most cases, have to haul any personal gear that you bring around by hand. Just the issue equipment can weigh as much as 70 lbs, so you will be adding on top of that weight. Let's face it, no matter what command you are in, or what your physical conditioning, you are not an infantry type who is used to ruck marching with 60lbs plus on their back.

There are some things that will come in handy in such an environment. First and foremost, TOILET paper! Charmin has those little rolls that you can carry everywhere with you, and you just never know how valuable that can be in a bare base environment.

Another thing that you will find useful, is a heavy duty luggage cart. These are the types that fold out into a cart and have wheels. Make sure it is the heavy duty types, not the ones with narrow wheels. The bigger and more stable it is, the easier it will be to haul your stuff over terrain. (If you are not in a rocky place, that is! In most cases, AF will deploy to a relatively flat place, if for nothing else, the aircraft!) (Also bring some bungee cords.)

Another item that you will find useful is a RIGGER's belt. This is a belt that is made of canvas and is secured by Velcro. To be brutally honest, the issue belt with the BDU or DCU is worthless in a deployed field environment. In that type of environment you will be using your cargo pockets, which puts more weight in your pants, and the issue belt will soon be useless.

Finally, bring bandanas and camel packs. Bandanas have a variety of uses no matter what the temperature environment is and camel packs are a much easier way of ensuring that you have water at all times. It is often repeated like a mantra in the high heat environments, hydrate or die!

And one final bit of field knowledge, that is not usually passed on. Bring a roll of duct tape. As has been noted, nothing is truly broken if you have a roll of duct tape with you!

I doubt I will go out on a deployment in the manner I was trained in GLCM. There, it was days, weeks in the field, with only MREs and sleeping on the ground under the camo netting. E-mail and computers (except for those required by the weapon system) were not even dreamed of as requirement! Today we are heavily dependent on technology, but that does not mean that a fundamental truth of deployments has changed: as the GLCM DFC noted, it does not take a genius to be miserable in the field. Furthermore, it is not a mandatory rule that you HAVE to be miserable in the field; being able to be somewhere close to your comfort zone relies heavily on being prepared. This is invaluable when you find yourself without Internet connectivity and having time critical actions that you need to advise on. Finally, remember, JAGs never act in a vacuum. You can always network back to someone in the JAG family for expertise once you get internet connectivity!

WE SHALL RETURN! SUPPORTING THE WAR ON TERROR IN THE PHILIPPINES

Major Richard S. Pakola

In July 2002, as the Chief of International Law at Yokota Air Base, Japan, I received word that I would be deploying. I expected to be going to the Middle East, where I thought most of the action in Operation Enduring Freedom (OEF) was taking place. Instead of the Middle East, though, I was shipped to a small air base in the Philippines, where we had just started operations four months earlier. I soon learned that I would help shut down U.S. operations at Mactan-Benito Air Base, Cebu Island, the Philippines, just three months later. At the time, I thought it would be a rare opportunity for a JAG to deploy in support of the war against terrorism. In retrospect and in light of world events, Air Force JAGs will probably be seeing more assignments like this. While not every JAG will have the opportunity to deploy, increased operations make it necessary for all base level JAGs to be as prepared as possible should they get the call.

Unlike past enemies, terrorists have no fixed home and can threaten American interests in almost all countries, but particularly in Third World countries with poor security infrastructures and relatively high levels of political instability. JAGs should be prepared to deploy not only to stead state bases, but also newly opened and short-lived bases in places we have typically not operated in, such as the Philippines, Indonesia, or African countries with significant Islamic populations. Deploying to areas like these, where the U.S. may not currently have Status of Forces Agreements (SOFAs), or any well-fleshed out agreements at all, may raise novel issues we are not used to dealing with. My deployment was a short three months without major complication, but still a few issues did come up that I hope will be of help to others.

PREPARING FOR DEPLOYMENT

One of the first places to call for information on the deployment is the deploying Numbered Air Force (NAF), either the NCOIC or OIC of Operations Law. Either will be able to give you general background information on the deployment. If you are replacing someone, the NAF can provide you contact information. The JAG or paralegal already there can tell you what to expect, what to bring and any issues you should start preparing for before you arrive.

Aside from legal assistance and military justice issues we all expect to handle when deployed, one of the most important aspects of our jobs is providing information, not only to commanders, but to everyone else deployed. This will always include answering questions and briefing on the following: Rules of Engagement (ROEs), any applicable lawful general orders (e.g., no drinking), local laws everyone needs to be aware of, and important aspects of SOFAs or Visiting Forces Agreements (in particular, criminal jurisdiction and procedures for arrest and service of process.)

My commander thought these issues so important, he required a briefing for every active duty member arriving on base within an hour of their arrival. Along with OSI, Intelligence, and the doctor on call, almost every day of my deployment was spent briefing incoming personnel in groups ranging from between one and sixty people.

In general, before leaving home you should already be familiar with the applicable ROEs for the country you are deploying to, general orders and any legal documents covering U.S. forces in country. Do not assume that because you are familiar with the Chairman of the Joint Chiefs of Staff SROE[1], that is all you need to know. In almost all deployments there will be a combatant command as well as a more localized ROE.

CHAIN OF COMMAND AND MILITARY JUSTICE ISSUES

Since military justice issues will invariably come up, you should also know the chain of command for ADCON[2] and OPCON[3]. In joint deployments, the Air Force component commander (COMMAFOR) will probably not have authority to punish non-Air Force members and may not have authority to punish even Air Force Special Operations members. In my deployment, the COMMAFOR was also the base commander. There were a significant number of Navy and Special Operations personnel on base, and the different handling of disciplinary issues among the different services for a brief period of time did have an effect on morale and discipline. We raised the issue with the Joint Task Force (JTF) Commander, who was going to delegate authority to the COMMAFOR to handle fu-

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ture misconduct across services. After a meeting with all service commanders on base, where the importance of keeping discipline at a fair but relatively even level was made clear, we had no further problems.

Another important aspect of chain of command in deployed situations is that it is not always clear where it flows. At home bases, we know which NAF and MAJCOM we report to. But in joint operational situations, command will flow in different directions. ADCON will flow along Air Force lines (up through the next Air Force level, usually the deploying NAF, then deploying MAJCOM.) OPCON will flow differently depending on how the operation was set up—in my case, from Aerospace Expeditionary Group (AEG) to the JTF, then to the combatant command. This information will likely be in classified operation orders.

WHO TO MEET

Once you arrive on station, there are a few people you should try to meet in person. You should make an effort to meet your equivalent host nation military attorneys, if there are any. These people will be invaluable for local nation legal issues, for which you may have difficulty finding materials. Also, you should meet the local district attorney. In case there are any criminal issues with military personnel, you will have a much easier time dealing with someone you are already on good terms with, as opposed to meeting for the first time when there is a difficult situation.

Because I was on Cebu Island and the U.S. Embassy was in Manila, I did not get to meet embassy personnel in person, but I spoke to them frequently. In fact, they were essential to my handling of several issues. I didn't expect to deal with the Embassy at my level, but would recommend any deployed person to contact the military representative at their respective embassy and introduce him or herself. Especially if there is no SOFA or other detailed agreements between the U.S. and the host nation, embassy coordination may be necessary for numerous issues, such as property disposition, covered below. Also, in my case, the Embassy provided information on U.S. approved contractors for environmental remediation.

U.S. INVOLVEMENT

Another person to talk to is the Public Affairs Officer (PAO), not so much for any legal issues, but to get background information on the operation. Our PAO had background statements, reports to higher headquarters, and every local newspaper clipping dealing with our operation and a lot of other information, which helped me understand what we had accomplished operationally and what we were still trying to accomplish.

Our Group's mission was to be the air transport hub for JTF 510, with other operations taking place on Mindanao and Basilan Islands. U.S. forces were in the Philippines because one of the leading terrorist groups based out of Mindanao, the Abu Sayyaf ("Bearer of the Sword"), had ties to al-Qaida (some of the leaders had been al-Qaida trained.) There was also a possibility some al-Qaida might be hiding in one or more of the southern Philippine Islands.

Another reason for U.S. concern with the Abu Sayyaf was that they kidnapped two American missionaries, Martin and Gracia Burnham. The terrorists financed themselves through extortion. They kidnapped foreigners and demanded money from their families in exchange for their safety. If money wasn't provided, they would murder the hostage. In June of 2001, when no money was forthcoming for the American Guillermo Sobero, the terrorists beheaded him.

The day I arrived in the Philippines, Philippine and American forces engaged the Abu Sayyaf. Martin Burnham was killed in the firefight, but Gracia was rescued and later brought back to America. The plane carrying Martin's remains was supposed to stop at Mactan. One of my first jobs on base was searching with the base commander through make-shift caskets (from a prior helicopter accident) for an American flag to drape over Martin's body.

DUTIES AND TAXES

An issue that seems to come up fairly often at overseas bases or deployed locations is an over-zealous customs official trying to board a military plane or tax a military shipment. Almost all SOFAs or VFAs will exempt U.S. military personnel and property from duties and import requirements. In my case, our maintenance troops shipped a part via Federal Express and the customs official wanted us to pay tax. I brought a copy of the VFA, talked to several officials and had to fill out a form, and they released the part to us the same day. The U.S. Embassy was also helpful here in making a phone call to the local officials.

DISPOSITION OF U.S. PROPERTY

All issues dealt with in closing down a base in America also have to be considered overseas, along with numerous other issues that are unique to the deployed location. Two issues I dealt with in the Philippines were leaving the base in as good a condition environmentally as it was when we arrived and making sure that there were no tort issues (such as abandoned concertina wire, fences or other structures) that could lead to future claims or suits.

In many of the issues I researched, it became clear that the Department of Defense (DoD) is not the ex-

ecutive agency Congress usually expects to be dealing with foreign nations on non-military issues (such as disposition of property, even if the property was used for military purposes,) the Department of State (DoS) is. This means that a lot of things that seem easy end up being time consuming and difficult in large part because virtually everything that is done has to be coordinated with DoS.

The best example in my case was the disposition of property that was basically useless to the U.S., but would have been valuable to the Philippine Air Froce (PAF.) During our stay at Mactan, U.S. forces purchased about 20 air conditioners. Our logistician estimated that flying them back to U.S. control, either at Andersen AFB, Guam[4] or Hickam AFB, Hawaii,[5] would have cost almost $100,000.00, where their depreciated value was no more than $8,000.00. There were U.S. areas of operation still in the Philippines, but these forward areas didn't need the air conditioners.

My commander had a good relationship with the PAF commander and wanted to leave the air conditioners for PAF use. However, the U.S. Constitution provides that Congress is the branch of government responsible for disposing of property.[6] In the absence of an Acquisition and Cross-Servicing Agreement (ACSA),[7] Mutual Logistical Support Agreement (MLSA), or similar agreement, in order for the Air Force to leave property behind in a foreign country, there must be specific Congressional authority. Congress has provided numerous ways for DoD to leave property in place.[8] However, most of these are difficult to execute and require a lot of lead time. None of them were practicable for our situation.

In the end, PACOM Legal, J4, and DRMO sent down guidance that we should pursue disposing of the property under 40 U.S.C. 511-514.[9] This process required the appointment of an Abandonment Destruction Officer, filling out appropriate forms, doing certain calculations to insure the current value was less than the costs of keeping the property in U.S. control, and finally, coordination with DoS. Because of the length of time the JTF was taking to handle their more complicated property issues, I requested (and was granted) permission to handle our property issues separately. I followed the same guidelines as the rest of the JTF, including coordinating with DoS, but was able to significantly speed up the process by handling just Mactan's property issues.

As military attorneys, we get many professional opportunities civilian attorney's don't, but probably the one that is most meaningful is the opportunity to deploy. In my case, I was the only attorney on base and had to handle every legal issue that came up, including many issues that had little to do with the law. I worked closely with the commander 7 days a week and usually for more than 12 hours a day. When I left, I felt like I had worked hard, accomplished something and contributed directly to the mission. I've always known I've made the right decision in becoming a JAG, but as I left the Philippines on a C-130 in August of 2002, I definitely felt the most pride and job satisfaction I've ever felt in being an Air Force officer and attorney.

[1]Chairman of the Joint Chiefs of Staff Instruction (CJCSI) 3121.01A, Standing Rules of Engagement for U.S. Forces, 15 January 2000.

[2]ADCON (Administrative Control) is the authority over subordinate or other organizations with respect to administration and support responsibilities. In short, it provides authority for the services to prepare, train, equip, and support military forces and to administer their organizations. Specifically, ADCON includes the authority to punish. ADCON is set forth in 10 U.S.C. 165 (although the term isn't actually used), and further spelled out in JP 0-2, Unified Action Armed Forces (UNAAF),10 July 2001, JP1-02, Dictionary of Military and Associated Terms, 12 April 2001, and AFDD2, Organization and Employment of Aerospace Power, 17 February 2000.

[3]OPCON (Operational Control) is the command authority involving organizing and employing forces, assigning tasks, designating objectives, and giving authoritative direction necessary to accomplish the mission. JP 0-2.

[4]Home of deploying NAF, 13th AF.

[5]Home of deploying MAJCOM (PACAF) and combatant command (PACOM).

[6]US Constitution, Article IV, Section 3, Clause 2

[7]Under an ACSA, "logistics support, supplies, and services" may be transferred on a reimbursement basis, or by replacement-in-kind, or an exchange of supplies or services of an equal value. 10 USC 2344a. These "payment options" make ACSAs more attractive to our allies than Foreign Military Sales (FMS) under 22 USC 2751, et seq.; but ACSAs also provide an attractive and easy venue for us to leave behind unwanted property in foreign countries.

ACSAs apply to "logistic support, supplies, and services," further defined in 10 USC 2350(1) as "food, billeting, transportation (including airlift), petroleum, oils, lubricants, clothing, communications services, medical services, ammunition, base operations support (and construction incident to base operations support), storage services, use of facilities, training services, spare parts and components, repair and maintenance services, calibration services, and port services."

Work through MAJCOM/LG or JA to determine whether an ACSA is in place for the deployed location.

[8]The following are the programs considered during my deployment: Foreign Military Financing Program (FMFP), based on the Arms Export Control Act (AECA), sections 23-24 (22 USC sections 2763-64) and governing regulations (e.g., Security Assistance Management Manual (SAMM) (DoD 5105.38-M)); Excess Defense Articles (EDA), 22 USC 2321j; Presidential Drawdown Authorities (PDA), 22 USC 2318(a)(1); Noncombatant Assistance to UN, 22 USC 287d-1; Foreign Assistance Act, 22 USC 2301 et sec., 2348a (Unforeseen Emergency), 2357 (Furnishing Services and Commodities), 2387 (Detailing Personnel); Arms Export Control Act (AECA), 22 USC 2751 et sec.; Foreign Excess Property, 40 USC chapter 10, subchapter III.

[9]Implemented through DOD 4160.21-M, Chapter 8, Abandonment or Destruction.

PRACTICUM

SLOPPY POST TRIAL PROCESSING MAY RESULT IN PLAIN ERROR OR PREJUDICE

Appellate court decisions and military justice practice advisories have frequently foot-stomped the need for exercising care in post trial processing of courts-martial. While some errors result from new matters in the addendum to the SJAR, problems may also result from inattention to detail within the SJAR itself.

Although the onus is on defense counsel to object to errors in the SJAR (Article 60(d), UCMJ; RCM 1106 (f)(6)), some errors may be sufficient to require a new convening authority action. In *U.S. v. Wellington*, 58 M.J. 420 (2003), CAAF held an erroneous statement that the appellant had received two field grade nonjudicial punishment actions required a new SJAR and convening authority action notwithstanding the lack of an objection by the defense.

Sergeant Wellington was convicted of several sexual assault offenses against his 16-year-old stepdaughter and sentenced to a dishonorable discharge, confinement for six years, total forfeitures and reduction to the lowest enlisted grade. The sentence was approved as adjudged although the military judge recommended that the convening authority suspend the adjudged total forfeitures. The SJAR had recommended suspension of the forfeitures but stated that Sergeant Wellington received two nonjudicial punishments for underage drinking, assault consummated by a battery, and drunk and disorderly, and for failure to obey a lawful order. In fact, Sergeant Wellington had no disciplinary record prior to his court-martial. Additionally, the SJAR also erroneously indicated he had not been subjected to any pretrial restraint, when he had actually been subjected to restriction.

The defense post trial submission requested suspension of adjudged and automatic forfeitures to the fullest extent permitted by law. The defense submission also asserted the restriction was tantamount to confinement but failed to note the SJAR was incorrect. No corrections were included in the SJA's addendum.

The CAAF noted the purpose of the SJAR is to assist the convening authority in deciding what action to take on the sentence in the exercise of command prerogative. Its importance has increased over time because the convening authority is no longer required to personally review the record of trial. It is well settled that the convening authority's action is an appellant's best hope for sentence relief.

However, RCM 1106(f)(6) provides that defense counsel's failure to comment on matters or errors in the SJAR waives later claims of error in the absence of plain error. Accordingly, the CAAF tested the incorrect comments concerning the disciplinary record under the plain error standard. Noting the errors were "clear" and "obvious," CAAF tested for material prejudice. Because the SJAR portrayed Wellington as a mediocre soldier despite his unblemished disciplinary record, the Court held there was plain error and would not speculate on what action the convening authority would have taken if he had been presented with an accurate record.

This case is a good example of how computers can make life easier in a law office but can create problems if not used carefully. In a work environment where a SJAR may be prepared using "cut and paste" techniques from an earlier SJAR, the need to carefully review matters affecting decisions by the convening authority becomes critical. Results such as this can be avoided through simple attention to detail. By having several staff members review the personal data sheet before trial and the SJAR prior to service on the defense, errors such as this can be eliminated. At a minimum, law offices should fully review the case file and be able to identify and correct such errors when preparing documentation for the convening authority's action. Service appellate court and CAAF opinions have previously discussed shoddy staff work and alternatives to correct the problem such as forwarding sloppy post trial work to the SJA's supervisory chain. *See, e.g., U.S. v. Johnson-Saunders*, 48 M.J. 74 (1998) (Crawford, J., dissenting); *U.S. v. Chaney*, 51 M.J. 536 (AF Ct. Crim App 1999). This frustration clearly has not been abated. Now, CAAF has shown it is willing to order remedial action in a case involving abhorrent crimes against a child even where defense counsel's failure to identify errors would have previously resulted in application of the waiver doctrine.

COURT CLARIFIES RULES FOR DEFENSE EXPERT CONSULTANTS

A recent Air Force Court of Criminal Appeals (AFCCA) decision reexamined the issue of expert assistance to an accused. An understanding of the law in this area is important, particularly to avoid blurring the distinction between expert witnesses and consultants.

Federal and military courts have examined the right of the defense to expert witnesses and consultants under both a due process and equal protection analysis. *See, e.g., U.S. v. Robinson*, 39 M.J. 88 (CMA 1994) (citing *Britt v. North Carolina*, 404 U.S. 226 (1971) and *Ake v. Oklahoma*, 470 U.S. 68 (1985)); *U.S. v. Kelly*, 39 M.J. 235 (CMA 1994); *U.S. v. Gonzalez*, 39 M.J. 459 (CMA 1994); *U.S. v. Garries*, 22 M.J. 288 (CMA 1986), *cert. denied*, 479 U.S. 985 (1986). *Garries* held that, as a matter of military due process, ser-

vicemembers are entitled to investigative or other expert assistance when necessary for an adequate defense, without any regard to indigency, but must demonstrate the need for such services. *Garries*, 22 M.J. at 290-91. *Garries* noted that the services available within the military are usually sufficient to adequately prepare for trial.

In *U.S. v. Warner*, 59 M.J. 573 (A.F. Ct. Crim. App. 2003), AFCCA clarified the rules and standards for defense entitlement to expert assistance.

At issue was whether a military expert consultant identified by the government in lieu of a specific civilian expert requested by the defense was acceptable. At trial, the military judge denied the defense's by-name request. On appeal, Warner continued to complain the military expert consultant was not competent and that trial counsel played an improper role in the selection of the expert consultant.

The Court noted R.C.M. 703(d) is generally considered applicable to expert consultants and investigative assistants as well as expert witnesses.

Warner's trial defense counsel never proffered what testimony the requested civilian expert could provide, or that counsel had even interviewed him. Accordingly, the Court reviewed the case in the context of a request for an expert consultant. As a consequence, the Court focused on whether the provided consultant was not competent and there was, instead, a need for the civilian consultant.

The Court noted confidential expert assistance is a matter of military due process, however, the burden is on the accused to demonstrate, on the record, that such services are necessary. Even if necessary, the accused is not entitled to an expert consultant of his or her own choosing. "Competent" assistance must be made available, not necessarily an expert who would reach a specific conclusion. An expert's competence is not diminished solely because the expert holds an opinion unfavorable to the accused. Indeed, as a supplement to the defense team with a cloak of confidentiality, only candid, honest advice from a consultant is required.

Establishing Necessity

In discussing how the defense establishes the need for expert assistance, the Court referenced the three-part analysis set forth in *U.S. v. Gonzalez*, 39 M.J. 459, 461 (CMA 1994).

First, the defense must show why the expert assistance is needed. Stating that an expert would be of great assistance is insufficient. *U.S. v. Kelly*, 39 M.J. at 237. The defense must show a particular need for the expert -- that there is a reasonable probability the expert would be of assistance to the defense and that denial would result in a fundamentally unfair trial.

Second, the defense must show what the expert would accomplish for the accused. Counsel must provide sufficiently detailed information "to establish a nexus between the facts and circumstances of the case and the need for a particular expert." *U.S. v. Warner*, 59 M.J. at 579. The Court suggested that this may require an accused to reveal his or her theory of the case and lose the element of surprise, but the underlying rationale for expert assistance must be fully developed to receive those benefits. Establishing a sufficient nexus for an expert consultant might involve explaining the nature of the government's case and evidence linking the accused to the crime and how the expert can establish weakness in those links; explaining how expert assistance would impeach or cast doubt on the government's case through cross-examination; or disclosing how an expert supports a specific defense theory.

Third, the defense must show why the defense counsel is unable to gather and present evidence that the expert assistant would be able to develop. This prong requires defense counsel to do their homework and educate himself or herself to attain competence in defending an issue. "A mere averment that self-study efforts have failed is not sufficient in most instances." *U.S. v. Warner*, 59 M.J. at 580. Reasonably diligent steps to become educated, such as reading current literature, talking with witnesses, and pursuing available government resources are required. Having the expert appointed by the convening authority gave Warner's defense a tool to establish the relevance and necessity for having a consultant with different or better credentials. Her expertise could have been used to develop a trial strategy establishing the need for additional experts in other fields or to provide a factual predicate for a better or different expert. In failing to so utilize the expert provided, the defense failed in being able to establish need.

The Court concluded the military consultant provided by the convening authority was competent to assist the defense. The Court noted her impressive credentials, including her medical experience, training, involvement in child abuse programs, and experience within the military justice system as an expert witness. Moreover, the Court noted the defense concerns that the military consultant would "defer" to the opinions of the more renowned government expert were unsupported by any factual assertions. Given that failure, the Court held there was no way to determine whether she was a "potted plant" who acquiesced to the government expert or if she simply agreed with his conclusions. However, the Court felt there was nothing in the record to suggest the military consultant was a "potted plant." Noting the multiple theories pro-

pounded by the defense, the Court was unwilling to find a lack of competence in the military consultant.

On a related but distinct issue, the Court held the defense failed to meet its burden in establishing the need for the specifically requested civilian expert. The defense never established exactly what he could do for the defense that the military consultant could not. When given the chance by the military judge to renew this question at trial, the defense failed to do so and therefore failed to satisfy prongs two and three of *Gonzalez*.[1]

Trial Counsel's Role in Selection of the Defense Consultant

The *Warner* case also raised a question of whether the trial counsel's role in securing an expert for the defense was unfair or improper. The issue was not raised at the trial level; therefore the Court reviewed this issue using a plain error analysis and found no error, plain or otherwise.

The government anticipated the defense need for an expert before referral and notified defense counsel of the proposed military consultant. The defense response merely sought a different, civilian expert and did not suggest that the proposed consultant was designed to place the defense at an unfair disadvantage. The convening authority, however, approved the expert identified by trial counsel from within the military community.

The Court looked to R.C.M. 703(c) and (d) for guidance on the roles of trial counsel, convening authority and the military judge in processing requests for consultants. The Court found the analysis of R.C.M 703 (c) helpful by equating the role of trial counsel in handling requests for nonexpert witnesses with the position of a civilian clerk of court. Judicial economy and the normally ministerial function of dealing with uncontested witness requests justify having trial counsel assuming responsibilities for witness production. Nothing in the record indicated the trial counsel or convening authority acted contrary to their administrative roles delineated in the Rules. Furthermore, the Court declined to speculate that the trial counsel sought to place the defense at an unfair disadvantage through the expert made available.

If trial counsel seeks to overreach or engage in tactics designed to place the defense at an unfair disadvantage, they run the risk of denying the accused their right to equal access to witnesses or evidence under Article 46, UCMJ. Such improper actions may be corrected by the military judge after conducting an independent review of an accused's request pursuant to a defense motion or by the appellate courts in finding that such action was error affecting a substantial right of the appellant.

[1]While the Court decided this issue based on failure to demonstrate what the expert could do for the defense under the *Gonzalez* test, the Court might have been justified in relying upon the precedent from two CAAF cases: *U.S. v. Ingham*, 42 M.J. 218 (1995) and *U.S. v. Calhoun*, 49 M.J. 485 (1998). The *Ingham* Court held an accused doesn't have the right to compel the Government to purchase any particular expert or particular opinion for him. 42 M.J. at 226. The *Calhoun* Court held an accused that believes a Government expert witness will not provide unbiased and objective evidence does not have an absolute right to a Government-funded independent expert witness of their choice. 49 M.J. at 487.

CAVEAT

SEX OFFENDER? REGISTER?

So the confinement officer at the base comes to the chief of military justice and asks about that 18 year old airman in the confinement facility serving six months for having been convicted of possessing child pornography in violation of 18 USC 2252A. "Hey judge, aren't there sex offender registration laws that apply to him?"

In short, the answer is **no**. This airman has no obligation to register. Furthermore, the confinement officer has no obligation to advise him to register, and (this is most important), no one should be advising any state or local agencies or officials concerning his release.

The underlying law is the Violent Crime Control and Law Enforcement Act of 1994. The Jacob Wetterling Crimes Against Children and Sexually Violent Offender Registration Program, found in §14071 of Title 42, United States Code, provides that a person who is convicted of a "criminal offense against a victim who is a minor" must, upon release from confinement and under penalty of law, register a current address with a designated State law enforcement agency. A "criminal offense against a victim who is a minor" is defined in 42 USC 14071(a)(3)(A). Most relevant to the issue under consideration, however, is the limiting language at the end of that section: " . . . conduct which is criminal only because of the age of the victim shall not be considered a criminal offense [for registration purposes] if the perpetrator is 18 years of age or younger."

The Federal law establishing the registration program was amended in 1997 to include among potential registrants those sentenced by court-martial. *See* 42 USC 14071(b)(7)(A). Among other amendments made to the law by the 1997 legislation, *see* Pub.L. 105-119, was a direction to the SecDef to specify categories of conduct punishable under the UCMJ which encompass a range of conduct "comparable to" those described in 42 USC 14071(a)(3)(A), i.e., criminal

offenses against minors. *See* note following 10 USC 951.

In order to comply with Pub.L. 105-119, the Secretary of Defense published a "directive-type memorandum" on December 23, 1998 to implement policy, assign responsibilities, and prescribe procedures for the registration and notice of release of military offenders convicted of sex offenses and crimes against minors. Subsequently and pursuant to the law, the Secretary listed in attachment 27 of DODI 1325.7, December 17, 1999, the offenses he considered "comparable to" those set out in 42 USC 14071(a)(3)(A). Among them is "Pornography Involving a Minor" under Article 134, UCMJ, the conviction for which is meant to trigger requirements contained in the instruction to notify State and local law enforcement agencies and provide inmates information concerning their obligations to register.

The SecDef's memorandum charged the Secretaries of the Military Departments to ensure compliance with the memorandum and "take reasonable and necessary steps to fully implement the requirements of Federal law." This reflected the statute's direction to the SecDef that the procedures and requirements he established ". . .*to the maximum extent practicable* be consistent with those specified for Federal offenders . . . ." [Emphasis added.] Pub.L. 105-119, Title I, §115(a)(8)(C)(iii).

The Air Force in its instruction, AFI 31-205, 1 February 2001, hasn't included among the offenses triggering sex offender registration requirements, "Pornography Involving a Minor." Whether that activity is "in the range of conduct comparable to" those described in 42 USC 14071(a)(3)(A) and should be included in the Air Force instruction need not be decided to resolve the matter posed by the confinement officer to his "judge."

A glaring omission from both the DODI and the AFI is the exclusion from registration requirements of offenders "18 years of age or younger." This is an omission that must be rectified in amendments to the DODI and the AFI in order that our procedures and requirements be consistent with those for Federal offenders. Until those amendments have been promulgated, however, the plain language in the statute must take precedence. Our 18 year old's possession of child pornography could be and was prosecuted, but it is not a criminal offense triggering all the registration requirements in Federal law for sex offenders because of his age at the time he committed the offense.

Not only is our 18-year-old airman not required to register anywhere as a sex offender, it is important that no government official attempt the notifications to State or local agencies that the statute directs for those who are required to register. Such notifications could open the United States and perhaps State and local agencies to litigation for violating a member's privacy interests under the Federal Constitution. Litigation of this sort is not *Feres* protected.

A SHOULDER TO CRY ON--NOT!

According to several individuals, the convening authority (CA) had given briefings in which he stated that "individuals under his command who were caught using illegal drugs would be prosecuted to the fullest extent, and if they were convicted, they should not come crying to him about their situations or their families," or words to that effect. Although his strong message to potential drug abusers reflects an understandable concern about preventing drug abuse in his command, the issue during the appeal of a drug abuser's conviction was whether the CA's remarks disqualified him from taking action in the case. In the recent case of *United States v. Davis*, 58 M.J. 100 (2003), the United States Court of Appeals for the Armed Forces (CAAF) held that the CA's remarks were disqualifying.

In its discussion of the issue, CAAF compared previous similar scenarios to that before them in *Davis.* In one, *United States v. Fernandez,* 24 M.J. 77 (C.M.A. 1987), the CA in question had issued a policy letter to subordinate commanders that characterized illegal drugs as a "threat to combat readiness" and reminded the commanders that "detection and treatment of drug abusers" should "be a primary goal." The CA directed commanders to "personally screen the names of all court member nominees" to ensure that only the most mature would become court members. The letter added that the "full weight of the military justice system must be brought to bear against these criminals," and also enjoined commanders to consult with legal advisors prior to taking action. The Court found that although the quoted policy letter revealed the CA's strong concern about preventing drug distribution, on the whole it was balanced and "indicate[d] a flexible mind" regarding the legal way to handle drug dealers. The Court held that the record did not demonstrate a predisposition to take any particular action and that the CA was not, therefore, disqualified.

By marked contrast, in another much earlier case, *United States v. Howard, 23 C.M.A. 187, 48 C.M.R. 939 (1974),* the CA had issued an open letter of sorts to drug dealers in which he informed them that their pleas for clemency would be answered as follows: "No, you are going to the Disciplinary Barracks at Fort Leavenworth for the full term of your sentence and your punitive discharge will stand. Drug peddlers, is that clear." Not surprisingly, the Court decided that

the CA was disqualified in those cases because his blunt statement demonstrated an inelastic attitude toward clemency requests. In a third, still older case, *United States v. Wise*, 6 C.M.A. 472, 20 C.M.R. 188 (1955), the Court found that a CA's policy that "he would not consider the retention in the military service of any individual who had been sentenced to a punitive discharge," to be contrary to the spirit and intent of military justice. CAAF commented that in both of the latter two cases the CA "set forth in unmistakable terms" an "unwillingness to apply required standards and give individualized consideration during the post-trial review process."

Returning to the *Davis* case, CAAF found the CA's words equally unacceptable. In the Court's view, he "erected a barrier to clemency appeals" by convicted drug abusers who desired to have "their situation or families" considered. The Court added that the CA's words demonstrated that the "barrier and attitude" related directly to his post-trial role: "'Don't come crying *to me.*'" CAAF found those words unmistakably reflected an "inelastic attitude and predisposition to approve certain adjudged sentences." Being unpersuaded that the CA possessed the required impartiality to execute his post-trial responsibilities, CAAF set aside his action and ordered a new review and action by a different CA.

Most CAs we have known have been remarkably fair and impartial in executing their military justice responsibilities. As a matter of fact, rare is the Air Force case where it has been shown that a CA failed to give full and fair consideration to all matters submitted by an accused prior to acting on the sentence. Nevertheless, SJAs must be ever vigilant to ensure their CAs are well aware of the requirement for impartiality and that their words or deeds cannot be construed as reflecting otherwise.

GENERAL LAW

HOMELAND SECURITY AND HOMELAND DEFENSE GAME

From 3-5 June 2003, a Homeland Security "war game" was held at Maxwell Air Force Base, Alabama. The event, sponsored by the Air Force Doctrine Center, involved a scenario in which members of an international terrorist cell launched attacks against the Houston metropolitan area with radiological and chemical devices. An attempted chemical attack was "launched" from an unmanned aerial vehicle (UAV), while the radiological device (or "dirty bomb") was "exploded" in a building. The scenario was designed to primarily assess current Air Force doctrine and organization in support of domestic operations. It also assisted participants in gaining insight into the roles and responsibilities of the various agencies involved in domestic terrorist incidents.

Representatives from numerous federal, state and local agencies, including the White House, the Department of Homeland Security, the Federal Bureau of Investigation, the Department of Defense, US Northern Command (NORTHCOM), NORAD, the Air Force, the Texas National Guard and the City of Houston participated in the exercise. Three Air Force Judge Advocates and one Navy Judge Advocate participated in the game.

The scenario contained a number of procedural and substantive legal issues that have unique application in domestic support operations. One of the first issues involved the legitimacy of military intelligence assets actively engaging in the tracking of the suspected terrorists prior to the attack. Military intelligence assets are generally prohibited from collecting, retaining or disseminating information about the "domestic activities" of "United States persons." The applicable provisions of the *Foreign Intelligence Surveillance Act* (50 USC § 1801 et seq.), Executive Order 12333, and Department of Defense Directive 5240.1 permitted extensive intelligence activity by military assets in this scenario, because the "terrorists" were not "United States persons."

Institutional relationships between the Air Force and the other agencies, both within and without the Department of Defense, also provided a number of interesting legal questions. Within the United States, the role of the military is to provide support to those various civilian agencies responsible for domestic terrorism incidents. This fundamental relationship is reflected both in statutory law, such as *The Posse Comitatus Act* (10 USC § 1385), *The National Emergencies Act* (50 USC §§ 1601-1651), *The Defense Against Weapons of Mass Destruction Act* (50 USC §§ 2301-2367), and *The Insurrection Act* (10 USC §§ 331-334), and in policy documents such as *The National Strategy for Homeland Security* and Presidential Decision Directive 39, *United States Policy on Counter-Terrorism*. The Federal Bureau of Investigation, as the "Lead Federal Agent," is responsible for the management of the overall response to terrorism incidents, including those involving weapons of mass destruction. In the early stages of the exercise, the FBI, Department of Homeland Security and state officials took a series of actions designed to counter the threat with little coordination with the Department of Defense. Thus, during initial stages of the scenario, the role of NORTHCOM and its Air Force component was limited to preparation and planning for various options.

The exercise confirmed that, within the United States, the transition from civilian control to military responsibility for an operation requires coordination with and decisions at the highest levels of government. Procedures outlined in *The Defense Against Weapons of Mass Destruction Act* require that both the Secretary of Defense and the Attorney General declare an emergency situation and each determine that the special capabilities of the military are required in order to counter the threat prior to a decision to employ military assets. In addition, Article II of the United States Constitution provides the President with inherent authority to respond to a national security emergency. In the exercise scenario, these sources, coupled with existing NORAD authorities dealing with airborne threats, helped provide the legal basis for the destruction of the airborne UAV by First Air Force assets under the command of NORAD.

The primacy of civilian agencies was also highlighted in the disaster response actions taken after the scenario's detonation of the "dirty bomb" in Houston. The Federal Emergency Management Agency (FEMA), now a part of the Department of Homeland Security, assumed responsibility under the provisions of *The Robert T. Stafford Disaster Relief and Emergency Assistance Act* (42 USC §5121 et seq.). Requests for military support from the Department of Defense were channeled through NORTHCOM. Shortly after the detonation, Air Force representatives sought to deploy medical assets to the Houston area from various Texas bases without any request by FEMA or authority from NORTHCOM. Advocates for this action suggested that it could be justified under a commander's "immediate response" authority. That authority, outlined in Department of Defense Directives 3025.1 and 3025.15, permits a commander to provide immediate assistance upon request in order to "save lives, prevent human suffering, or mitigate great property damage" when time does not permit prior coordination with higher headquarters. Because the Air Force, as a service, cannot engage in operations, such a deployment would have conflicted with provisions of both the *Goldwater-Nichols Act* (10 USC §§ 162, 8013) and the *Anti-Deficiency Act* (31 USC §§ 1341-1342, 1511-19). Moreover, "immediate response authority" was inapplicable because the deployment was not specifically requested and NORTHCOM could have been contacted. In the end, requested Air Force support was limited to transport missions tasked through TRANSCOM in support of NORTHCOM.

Participants came away from the exercise with a greater appreciation of their roles and the complexity of some of the legal challenges involved in domestic support operations. There was extensive discussion of two specific issues with legal implications: (1) perceived legal limitations on active military operations within the United States and (2) the use of mutual support agreements between local communities and local military installations. In regard to the first, civilian officials hesitated to request certain types of military support because of their perception that the terrorism scenario involved a "law enforcement" incident rather than a "national security" incident. As a result, they discounted a military role because of *The Posse Comitatus Act*. The classification of international terrorist events within the United States as "law enforcement" or "national security" incidents, and the legal consequences of such a classification, requires further study and examination by legal scholars and policy specialists. The discussion of mutual support agreements centered on their lack of coordination with either NORTHCOM or the Department of Defense and their questionable use for support requiring significant resources. Representatives from the Department of Defense indicated the need to better identify the number and purposes of such agreements.

TORT CLAIMS AND HEALTH LAW

It is worth reminding medical personnel that, even if a malpractice case is settled or judgment rendered against the United States, it does not necessarily mean that a report of the settlement/judgment will go the National Practitioner Data Bank. Per a Memorandum of Understanding with the Department of Health and Human Services, a separate peer review of each case will be made by the respective service Surgeon General office, and, if the expert peer review and Surgeon General determine that the standard of care was met, no report is submitted. This peer review process allows for finding of "systemic" negligence that might have been beyond the control of the provider, or it may find cases where a settlement may have been made simply to avoid more costly litigation by the United States Attorney. The criteria for reporting are spelled out in DoDI 6025.15 and AFI 44-119.

RES GESTAE

The 2004 Medical Law Consultant Course will be held at Andrews AFB from 3 March through 2 April 2003. Attendees will received intensive training by the Medical Staff at Malcolm Grow, AFLSA/JACT, AF/SG, and the Justice Department in all areas of medical jurisprudence, standards of care of the various

health care specialties, bioethical dilemmas, quality assurance, and patient safety. The course will conclude with a three day meeting with incumbent Medical Law Consultants.

VERBA SAPIENTI

Most of us are aware of the legal status and consequences of Federal employees as opposed to contract employees in the Military Treatment Facility (MTF). With the advent of increased utilization of MTFs as teaching hospitals, we need to take a closer look at status in terms of affiliation agreements. The Health Professions Scholarship Program (HPSP) (10 USCA 2120) and the Uniformed Services University of the Health Sciences (USUHS) (10 USCA 2112) are two complementary programs for physician training created in 1972. HPSP Students attend civilian medical schools and receive tuition and stipend in return for a service obligation of 4 years. Upon completion, these students have a seven year service obligation that begins to run at the completion of their first residency program. USUHS students are commissioned and paid at the grade of O1 while in the four year medical program at the university. The final two years of USUHS studies are done in a number of our MTFs. Their status is usually detailed in a training affiliation agreement. Generally, for Federal Tort Claims and Military Justice purposes, they are treated the same as other medical personnel in the facility with the exception that USUHS is always involved with the students. HPSP students do serve during breaks from their civilian education at MTFs and would fall under the Federal Tort Claim Act and UCMJ during those periods. A more detailed examination of the MTFs role in medical education will find that there are several other categories of individuals where it is necessary to trace their affiliation to determine their status. An example of such a situation is that of teaching faculty at the MTF. Some providers, primarily clinical faculty, are assigned to the MTF and "billeted" to the facility in which case the status is clear. Other faculty may be assigned to the MTF but are "billeted" to USUHS in which case the status in terms of lines of authority must be traced back using the affiliation agreement. A more recent trend is the augmentation of research staff with term and appropriation limited personnel through the utilization of not for profit 501 (c) (3) organizations such as The Henry M Jackson Foundation for the Advancement of Military Medicine (10 USCA 178) or other newer groups such as TRUE and Geneva. These individuals are for the most part contractors assigned to specific research projects. Absent a nametag that identifies them as non-governmental, and therefore not enjoying the benefits of the FTCA, it is again necessary to view them through affiliation agreements or in many cases grant or contract documents. Today, it would not be possible to function without such a web of affiliations, yet it is wise to determine the correct status of those individuals. (Col (sel) Charles Mannix, USAFR)

ARBITRIA ET IUDICIA

In a recently reported case settled in litigation, the United States paid out eight million dollars for allegedly leaving a car accident victim brain damaged. Following an automobile accident, the plaintiff was taken to a military hospital where he was stabilized. However, nine days later someone allegedly failed to monitor his insulin drip or give him a proper dose at the scheduled time. His blood-glucose levels dropped, and he suffered a hypoglycemic event that left him in a vegetative state. Cases like this demonstrate the need for careful patient monitoring.

TRIAL BRIEF

LIEUTENANT COLONEL TIMOTHY J. COTHREL
MAJOR CHRISTOPHER C. VANNATTA

Among the military services, the Navy gets the bulk of attention in popular culture. Navy-esque icons like Popeye, Cap'n Crunch, Donald Duck, and the Cracker Jack guy are everywhere. The only character even remotely related to the wild blue is Rocky the Flying Squirrel. In theaters, the Navy got Tom Cruise and *Top Gun*. We had to settle for Jason Gedrick and "Iron Eagle." And on television, their JAGs have, well, *JAG*, whereas we have . . . well . . . zilch.

Luckily, to balance the scales a little bit, Navy JAGs also have that notorious movie scene that makes trial lawyers cringe. It is from *A Few Good Men*, during the climactic trial. The prosecution's expert physician (who is actually a fact witness in the case) takes the stand and after a few questions, the lead defense counsel (played by Tom Cruise, yet again) stands up and objects that the witness should not be considered an expert because he lacked the specific training. He is overruled, just as he expected to be (more on that point later). And then . . . then . . . the painful part – the assistant defense counsel (played by Demi Moore) jumps up and "strenuously objects," laboriously explaining why the witness is unfairly prejudicial to the defense's case.

More than a tad peeved about having his ruling more or less ignored, the judge practically shouts back about the doctor having eye-watering credentials and a service history that would make Patton blush. Then, with every court member, spectator, and school child within a four-mile radius listening, he caps off the filet job on the defense team by concluding emphatically that the doctor "***is*** an expert and the court ***will*** hear his opinion!" Ooooh, that has gotta hurt—not only the poor commander's pride but, most importantly, her credibility and their clients' cases as well. Let's talk about why.

Objections are an important part of trial practice that we rarely discuss, but they can certainly cost you the case if not handled correctly. Oh sure, you have probably heard about citing the rule when you object and stating succinctly the basis for the objection. That is because lecturers talk about objections primarily in the theoretical context of the rules of evidence—in other words, what evidence is admissible or inadmissible, what foundations must be laid, and how questions must be formed. But, theory is merely the tip of the objection iceberg. In this article, we are instead talking about the art of making objections as a means of advocating your case more effectively during trial.

Now, at this point you are probably expecting us to say objecting effectively is ***the*** most important part of the trial, simply because every time someone talks about some aspect of trial practice, they ***always*** say that part is the most important. Well, it's not; other parts of the trial are more important. But, objections are ***an*** important part of the trial, because, as trial lawyers often learn the hard way, advocacy isn't everything in court, but everything in court is advocacy.

To squeeze more advocacy value out of your objections, you must make effective decisions regarding ***whether to*** object, ***when to*** object, and ***how to*** object.

First, let's consider what an objection really is. An objection is the means by which the advocate attempts to prevent the court members from hearing or seeing unfair evidence presented by the opposition. Lots of things make evidence unfair and, therefore, objectionable – for example, it might be irrelevant, inflammatory (thereby robbing the fact finder of objectivity), untrustworthy (e.g., hearsay), unjust (e.g., information procured in violation of the Constitution), or presented in an improper form (e.g., testimony about the contents of an available document).

There are a number of problems with recognizing objectionable evidence, however. Simply stated, on the question of what might be unfair, reasonable people will disagree. Even though a trial is supposed to be a search for the truth, in the context of an adversarial proceeding, the truth is certainly a moving target. Also, what might be unfair in one context may not be unfair in another, or it might be unfair but not so unfair that it should be inadmissible. Fairness is all the more fluid because judges do not have clear guides moving them in the right direction. For example, just how inflammatory do pictures of the murder victim have to be before they are ***too*** inflammatory to be admissible? Finally, even if something is genuinely unfair, making that known to the judge or the court members is often difficult to do effectively in the context of a trial.

In the middle of trial there is never enough time to think all of this through along with everything that goes into making an objection. Thus, you must rely on instinct to make objections. Since this instinct is not inborn in most of us, it needs to be developed through reading, preparation, practice, and experience. Be-

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cause we cannot provide experience, practice, or preparation in an article, we will focus on providing you the best possible opportunity to read about making effective objections.

Assume you are in trial and some unfair evidence is about to make an appearance during your opponent's direct examination. Assume further that we can slow everything down to *Matrix*-like "bullet time" so we can examine the possibilities.

Because in this scenario we presume the evidence is unfair we have already determined you ***can*** object. Thus, the first question you have to answer is ***should*** you object? The answer—well, it depends on the case, the evidence, the panel, etc. But, to leave you with that alone would be a bit too much of a copout, so let's look at some key considerations in deciding whether or not to object.

In any given trial, you could probably find some reason to object to half of the questions or evidence offered by your opponent, particularly during a direct examination—e.g., lack of foundation, no personal knowledge, assumes a fact not in evidence, irrelevant, ambiguous, compound, leading, etc. Of course, if you did that, the jack-in-the-box effect might induce the judge or the court members to tape you to your chair. Therefore, before launching yourself from the chair you should consider whether the unfair evidence ***hurts your case***. For example, in a rape case the defense counsel asked the victim, "Isn't it true that my client apologized to you because of his poor sexual performance?" The eager trial counsel sprang to his feet, gleefully barking out, "Objection! Calls for speculation!" The judge sustained. As the trial counsel sank smugly back to his seat, he realized to his great horror that he had just prevented the victim from telling the members, "No, your client apologized to me because he felt guilty for raping me." The net result was a legal victory that actually detracted from the trial counsel's advocacy.

Even if the evidence may damage your case, you must also consider whether it is ***worth the risk*** to object. We have heard it time and again from court members that the occasions when their interest was piqued was the minute they heard a lawyer blurt, "Objection!" It is not that they weren't paying attention before, but they knew if a lawyer was objecting, there was something the lawyer did not want the court members to know. That made the item all the more interesting.

The peril for the objecting attorney is two-fold. First, if your objection is sustained, there will be, to some degree, discontent among the members because they perceive they are not being provided information one side thought was fair and helpful. By contrast, if you are overruled, then the court members will pay special attention to and remember more firmly the bit of evidence one side did not want them to hear, going so far as to give it more weight than it might deserve. Plus, the judge may even salt the evidence with some extra credibility during his ruling, just as he did in the previously described cinematic debacle.

To some extent court members expect attorneys to object. But, they still react consciously or, at a minimum, subconsciously to your objections and the subsequent rulings in ways that can hurt your credibility and your case. The bottom line is that to truly win an objection, the objecting attorney has to be right about the law, and the exclusion of the evidence has to be more important than the risk of court member annoyance.

Another consideration in deciding to object is whether it might be more advantageous to ***deal with the evidence in some other fashion***. It may be that cross-examination would be the better place to address the matter – you have greater control, can put your spin on the evidence, can make a greater impact with numerous questions, and can avoid being seen as obstructionist or secretive. Perhaps merely commenting on the evidence in closing argument would be more advantageous. For example, it may be better to tell the court members the statements testified to by the witness were actually made by someone else we never got to cross-examine, so we have no idea if the statements were true, were clearly understood, taken out of context, or even if the person ever really said it. Something like that might be a lot more powerful than merely asserting the testimony is hearsay and having the judge say, "sustained." It may even be better than the judge saying with great glee, "Counsel you're brilliant. That's right. Your objection is really, really sustained!"

With the luxury of bullet-time, we can ponder whether we want to risk objecting to every question and each piece of evidence. In real time, however, our balancing test must be immediate. You must therefore know your case inside and out, and must give the matter of potential objections extensive thought before ever coming into the courtroom. Remember, a trial is the time for advocating, pretrial is the time for thinking. Doing as much thinking as possible before trial eliminates the need for bullet-time to assess the impact of unfair evidence. Thanks to your reading (of this article, the RCMs, and the MREs), preparation, and practice, even with limited experience you can walk into your next trial having already made decisions regarding the vast majority of your objections, and truly focus on what is happening around you—what is the opposing counsel asking, what is the witness saying, how are the members reacting, etc.

So, what if a defense counsel is leading her own client through his testimony like he is wearing a nose ring (which, particularly if he is under 25, he may well be)? You might conclude that you *should* object to prevent damage to your case. What then is the next consideration? Well, that would be . . . (long unnecessary pause) . . . ***timing*.**

Ideally, you want to prevent the offending evidence from being heard – this is the most effective objection. Thus, you should usually object as soon as a ***good faith basis*** arises. Note that this may even be pretrial. For example, while reading over the accused's pretrial statement, you notice that he continually refers the victim's reputation for promiscuity. Rather than waiting until he testifies, you should object to any defense evidence of the same via a motion *in limine*. Objecting during a pretrial session allows you to present your case in chief knowing whether or not he will be permitted to testify to those facts. Also, it prevents the defense from alluding to it during opening statement or *voir dire*. Finally, it provides you with a much freer forum in which to argue your points—the members are neither present in court being tainted, nor are they waiting impatiently in the deliberation room during a 39(a) session you requested right in the middle of testimony.

If your objecting reflexes fail you, late may be better than never for a couple reasons. You may need to make a record to preserve the opportunity to appeal. That aside, Air Force court members are remarkably good at ignoring information the judge tells them to disregard. You may also elect to hold your objections to improperly formed questions in order to create the appearance of extreme fairness. In other words, when the opposing counsel asks the third leading question in a row you can object with "Your honor, I hate to interrupt counsel's questions, but she is continually leading her witness. I really must object."

Once you are ready to object, the next big question you have to answer is, what is the ***best way*** to object? Best way? Is there really more than one way to object? Yes, there is, and your assessment of the unfairness of the evidence and its impact on your case tend to drive that decision.

Regarding the ***style*** of your objections, it should be dictated by the situation. Generally, there is no call for outrage or condescension merely because your opponent is attempting to introduce hearsay evidence. Project an image of cool competence, objectivity, and professionalism by keeping your tone forceful and confident, with a hint of apology for sidetracking the proceedings. If the opposing counsel insists on ignoring a ruling or otherwise playing transparently dirty, you may indulge in a pinch of outrage, but do not let your emotion detract from your credibility. One other aspect of style is physical style. When you object, stand up . . . and, for the love of all things litigious, stand up all the way. Don't do that half standing, stooped over like an octogenarian thing. It is disrespectful and gives the impression you are not committed to your case or do not care that much about what is going on. And, the court members will think, "Hey, if he does not care, why should I?" Remember what we said before . . . everything in court is advocacy. You stand up halfway with a half-hearted objection and you'll be advocating . . . it will just be the wrong message.

Regarding the ***substance*** or content of your objections, there is only one hard and fast rule: if you want a ruling, always include the word "object" or "objection" at some point. Otherwise, your interjection may be legitimately treated as a mere observation or comment on the action. "Judge, he's leading the witness" may get you nothing more than "Indeed he is, counsel. Indeed he is." Judges are not required to rule on observations or comments. They are, however, required to rule on objections. Ensure that it is crystal clear to the judge, to the opposition, to the members and most importantly to the record that you are making one.

You may have heard that another hard and fast rule is to include a ***rule number*** in your objections. In fact, unless the jurisdiction requires such a thing, it probably is not necessary and may even detract from your advocacy. Most people don't talk in numbers. If they want to refer to something, they call it by name. It is therefore unnatural to object by saying, "Objection, Rule 401!" rather than, "Objection, irrelevant!" Plus, any judge worth her salt knows the rules even if she does not know the corresponding numbers. By citing the number, you may even embarrass her by forcing her to consult a book or cheat sheet before ruling. Also, if you use only the number, the panel members will be completely confused as to why the evidence is unfair.

Note that it may be necessary to use the number if the objection is uncommon or obscure, has multiple elements or bases, or the judge looks confused. In such cases, you can object with "Your honor, I object. This document is irrelevant [judge frowns, starts looking for his MCM]. Under MRE 401, evidence must be both material and probative. This document establishes fact X, so it is probative, but fact X is not material to this case, so it is still irrelevant [judge smiles and sustains]."

In addition to the common name of the objection, the corresponding number and a summary of the rule (as illustrated above), you may want to consider injecting

a brief ***offer of proof*** into your objections if the basis is unclear. For example, the defense counsel may ask a witness, "How did my poor client get home that night?" You know from your extensive pretrial preparation that the witness was not with the accused that night, but the next day the accused told him that he ran out of gas and had to walk 17 miles, thus establishing his alibi for a robbery. This evidence, if introduced in the manner sought by the defense, is clearly hearsay. But, crying "Hearsay!" in response to that particular question would make no sense to anyone else in the room. Thus, to object effectively you must also provide an offer of proof as to what you expect the witness will say. "Your honor, I object. The witness is about to tell the members not what he personally saw or heard that night, but what the accused told him the next day. That is hearsay, and I object." If the offer of proof will be lengthy, will require the judge to *voir dire* the witness, or will likely elicit argument from the defense counsel, make it in a 39(a) session.

Sometimes counsel include so much content in an objection it becomes a "speaking objection"—that is, an objection with an explanation that goes beyond an offer of proof (of course, if your opponent is making it, it is an "improper argument" rather than "merely an explanation"). While speaking objections are technically frowned upon, explaining why you are objecting may very well help you win the point (particularly if you are late with your objection) by orienting the judge as to the reason for your objection and providing supporting argument.

This approach also provides a few nice perks unrelated to convincing the judge to rule your way. First, you get to explain the basis for your objection to the court members. At a minimum, that paves the way for an argument on the point in closing. Better still, the court members may agree with you about the evidence regardless of the judge's ruling. Even a single word (e.g., "The question calls for ***unreliable*** hearsay") may help them better understand your motives for objecting, thereby mitigating the risks of seeming like an obstructionist. Second, a speaking objection may give your witness the assurance that you are looking out for him and protecting him from the evil lawyer on the other side. Also, if she is paying attention, the witness may take (however inadvertently) a hint from the objection about how to respond to the question. Finally, a speaking objection may disrupt the counsel's presentation by either destroying her train of thought or intimidating him into subtly altering his questions to your benefit.

As an illustration, advocates rarely bother to object to an occasional leading question unless they know the opposing counsel can't ask an open-ended question to save his or her life; this is because merely saying, "Objection, leading" would be practically meaningless. Even if you win, all the judge will do is tell opposing counsel to stop leading. The court members are not likely to know that leading on direct examination is against the rules. Therefore, they will neither credit you nor penalize your opponent based on the objection, which means your objection has no advocacy value. Sure, it has evidence class value, but getting slap on the back from your evidence professor won't help you win the case.

What the court members ***will*** understand is the ***reason*** the rule exists if you explain it to them: advocates are not allowed to lead because this gives them an opportunity to testify in lieu of the witness. The resulting "testimony" is viewed as unreliable and highly suspicious; hence, the prohibition. You can use a speaking objection to explain that to the court members in a way that helps your case. For example, "Your honor. I must object to this line of leading questioning. Opposing counsel is practically feeding this witness answers with his questions. Rule 611(c) prohibits this kind of questioning for this very reason." Now, be advised that most judges do not like these speaking objections and may try to stop you from making such objections. Get to know your judge, and if he tells you to cease and desist with the extra verbiage, do so.

Along these lines, keep in mind that speaking objections are often useful to simply make the point to the court members about an item of evidence. In that sense, while the advocate still must have a good faith basis to object, a favorable ruling by the judge is not really important and may not even be expected. Consider Tom Cruise's objection to the doctor's testimony, discussed above. He had a good faith basis, but all he really wanted to do was make a point with the court members. By doing so, he plants the seed he will later cultivate during his closing argument. That point alone will not net him a win, but it will help erode the credibility of the doctor, and when put together with the points he later makes on cross, may add up to reasonable doubt.

Some trial advocacy books/articles suggest that objecting is really all about buzzwords. In other words, the advocate has to listen for buzzwords during the examinations at trial to know when it is time to object (e.g., "what else" questions assume facts not in evidence, "why" questions are irrelevant, etc.). Objecting effectively is not about buzzwords—such an approach is overly simplistic and just plain wrong. It might be helpful for novice litigators, cutting their teeth on their first few trials, but, for an experienced litigator, relying on buzzwords simply won't be enough to give your objections genuine advocacy value. It might not mat-

ter if the witness is about to speculate or if the question is argumentative or if the fact is irrelevant or whatever. The only way to know if and how you should object is to study the MREs and RCMs dutifully, absolutely know the case thoroughly, examine the evidence specifically (as in, specifically to identify potential objections), and listen to the trial very, very closely. Relying on buzzwords is more like Pavlov's dog than advocacy. Advocacy is about more than merely reacting. Its about reacting tactically based on thought and knowledge of your case, objecting if and when it is tactically beneficial to winning that case, and making your objections in a manner that bolsters the overall credibility of your presentation.

And speaking of credibility, we really need not be too envious of our Navy colleagues. After all, the Marine Corps is part of their service, which means the infamous Gomer Pyle must be counted among their pop culture icons—no matter how strenuously they may . . . object.

PRACTICAL TIPS FOR LEGAL ADVISORS TO DISCHARGE BOARDS

Major Lee Gronikowski

I have served as legal advisor to many administrative discharge boards as an Air Force Reserve JAG and as an Army Reserve JAG. This article has some practical pointers for legal advisors that I suggest based on my experience. Most of what follows is plain common sense.

TAKE CHARGE

You are, in effect, acting as a judge. Strictly speaking, you are acting in a quasi-judicial capacity. You may not dismiss any allegation or terminate the proceedings. However, you should exercise polite, but firm, judicial-like control over the proceedings and counsel from the time you are appointed.

Once I receive an assignment, I e-mail both counsel, identify myself, and advise them of the location of the hearing, preferably a courtroom, and the date and time the hearing will begin. Both counsel should be told that all of their pre-hearing preparation, e.g., witness interviews, discovery exchanges, etc., must be completed before the scheduled start of the proceeding. I also advise the lawyers that I will accept communications only by e-mail, which must be copied to the other side, and that I will not accept *ex parte* contacts from either side. If someone has to talk to me, it must be via conference call with everyone on the line.

During the hearing, make it clear by your words and actions that you are the "captain of the ship." The uniform for all hearings should be the service dress uniform to establish appropriate decorum.

DATES MUST BE FIRM

Requests for adjournments are common. An adjournment should not be granted unless a new date has been fixed. The establishment of a new date should be done via conference call with both lawyers on the line with their calendars in front of them. Once a new date has been set, send out an e-mail to confirm the date with a copy to the SJA.

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ENSURE REQUESTS FOR ENLISTED MEMBERS ARE MADE IN ADVANCE

When the case is scheduled, ask the respondent's counsel if enlisted members will be requested. If so, direct that the request be made before the hearing date. Needless time is wasted on the day of the hearing while the command deals with the respondent's last-minute (usually an hour or so before the time the hearing is scheduled to start) request for enlisted members.

READ THE CASE FILE AND GOVERNING AUTHORITY

AFI 36-3208 sets forth the grounds for discharge and underlying policies; AFI 51-601 describes the function of boards of officers; and AFPAM 36-3210 is the procedural guide to board hearings, which contains a script and canned charges. You must be familiar with each of these authorities before the hearing. The recorder should provide the file to you in advance. Relevance and materiality are the basic requirements for evidence to be admissible. These basic determinations are more easily reached if you educate yourself about the case and the law beforehand. Moreover, you may find an error in the paperwork. In a recent case, I discovered that the case file and the respondent's Personal Data Sheet contained different enlistment dates. One date (the wrong one) would have placed the alleged misconduct outside of the current enlistment, so the error had to be corrected on the record during the hearing.

HAVE YOUR OWN CLEAN COPIES OF AFI 51-602, AFI 36-3208, AND AFPAM 36-3210

Download these from AfPubs (you will get a clean PDF copy) or FLITE (not as clean a copy) before you depart for the hearing, three-hole punch them, and put them in a binder. You will have to provide the board with clean copies of AFI 51-602 and AFI 36-3208 for use during deliberations.

CONTROL THE PRESENTATION OF EVIDENCE

Direct both counsel to pre-mark all exhibits before the hearing starts, and get agreement on what is objectionable and what is acceptable. Admit documentary evidence before the panel is seated to streamline the

case, and let the panel review the documents before testimony begins. Interrogation of witnesses must be orderly, i.e., direct, then cross, then examination by the panel, then examination by the legal advisor, then re-direct, etc. Maintain this order by calling on the parties one at a time. If someone has no questions, pass to the next party. You are entitled to ask questions. You, and the board, are required to develop the evidence in the case. Therefore, do not be reluctant to ask any question you deem appropriate.

TAKE NOTES

You will need a frame of reference to rule on objections and to tailor the final charge to the board. Your rulings are not subject to question. Be correct.

USE THE SCRIPT, BUT SUPPLEMENT IT USING YOUR SOUND DISCRETION

AFPAM 36-3210, as noted above, contains the script for the proceedings and canned charges to the board. The script covers all of the basics and should be used to conduct an orderly hearing. However, failure to follow the script is not error and does not provide grounds to set aside or modify the result of the hearing. As long as the Air Force's policy with regard to discharges in AFI 36-3208 is followed, the proceedings pass muster.

It is often necessary to supplement the script. For example, you will have to charge the board on the spot to disregard any inadmissible evidence that seeps into the record. I also remind the board at every recess not to discuss the case until it is turned over to them for deliberations. Often, the board will have questions after deliberations begin, the answer is apparent, and all that is necessary is to re-charge the board on a particular point. Sometimes, the questions can require more thought. In these cases, I ask both attorneys out of the board's presence what they think the answer should be. After we reach an agreement, I provide the agreed-upon answer to the board. This procedure avoids later allegations of error if the respondent is not satisfied with the result. I also have copies of the Manual for Courts-Martial and the Military Judges' Bench Book available, especially if misconduct is one of the alleged grounds for discharge.

The board must recommend how to characterize the respondent's service (honorable, etc.) if they recommend discharge. However, the script does not define the types of discharge. You will find these definitions in AFI 36-3208, para 1.17 and para 1.18. I read this portion of the AFI to the board with the canned charges from AFPAM 36-3210.

AVOID FAMILIARITIES WITH PARTICIPANTS

You must be impartial. You must not do anything to create a contrary impression. Most of the participants will be Air Force lawyers, so you will have a lot in common with them. However, avoid situations that could call your impartiality into question. Use common sense. For example, do not go to lunch with only the recorder or attend a social function with the SJA's staff while the case is in progress. Use the judge's chambers and private entrance if available. *Ex parte* contacts with counsel must be avoided. Such contact could cause a reversal on appeal.

Repeat After Me: What's New in the World of Court Reporting

Ms. Madonna Fell

You may have noticed a new addition in most Air Force courtrooms lately. No, it is not that wonderful "SmartBoard" on the wall above counsel, and no it is not that new amplifier over by the witness. I'm talking about that blue laptop over by the court reporter that the reporter keeps glancing at as you are giving your earth shaking argument. JAS has purchased from a company called AudioScribe, voice recognition court reporting equipment (SpeechCAT) and all those wires, speakers, mics, mask, and laptop are part of that package. Although the court reporter doesn't look all that different to you with their face still covered by the mask, rest assured there is a lot going on underneath that wonderfully calm façade.

In order to appreciate how advanced this technology is, it is helpful to know historically some of the methods used to record courts-martial in the past. I was talking to a young officer the other day who is a casual lieutenant in our office awaiting the start of his training. He is from Wichita Falls, Texas, and he told me that a lot of his family had worked at Sheppard AFB as civil servants. More conversation followed, and you can imagine both of our surprise when it was revealed that his great aunt, Lou Parker, had been the "shorthand" court reporter at Sheppard for many years. Even more surprising, his aunt Lou had trained me as a "legal services specialist" coming straight out of legal school at Keesler during my first court as an enlisted reporter. What are the odds? I remember Lou, and I had a lot of respect for that woman. She would go into every court with her steno pads and plenty of pencils. Lou recorded every word, gesture, and occurrence in those steno pads using shorthand. Lou retired in 1978. She was one of the last reporters to use that methodology in our Air Force court system.

Of course, you are familiar with the stenomask method of reporting, which has been the method of choice for military and civilian court reporters in the Air Force for many years. What the reporter says into the stenomask microphone is recorded on to a cassette tape and then transcribed later into text documents. In 1975, when I first used this method, the cassette recorded only the reporter's voice, and a backup system to record the actual participants in the trial had to be utilized. Sony made huge advances in their equipment when they perfected the old BM-147 by adding dual cassette decks and four channel recording capability. This enabled the reporter to record separate tracks of the proceedings and the reporter's voice all on to the same tape, and in the same location of the tape. This BM-246 is the machine that you still see in the courtroom, and is now being used primarily as a backup.

The other method of reporting courts has been and is machine writing, which started out as a simple typewriter and then evolved into what you see now in some courts as the stenotype computer aided transcription (CAT) machine. During the O.J. Simpson trial, they would occasionally pan down on the stenographer who was recording the proceedings. What you may have noticed was that the spoken word in court was being placed "realtime" on the screen in the courtroom. This has become known in the reporter's world as realtime transcription, which is the simultaneous and live production of text during a proceeding. There are some Air Force court reporters who use this method of reporting.

SpeechCAT is a combination of the traditional stenomask method and CAT, with the difference being that it is voice writing as opposed to machine writing, a conversion of the reporter's voice into text versus the brief keystrokes being converted into text. Although the concept sounds simple, the actual techniques employed can be fairly complex. A reporter says into the mask what he/she would like to have come out on the screen in text using speaker codes, macros, punctuation, and enunciated speech. Recognition is enhanced if the reporter lags behind the speaker several words and then repeats the phrase into the mask. Breathing techniques, vocal cord relaxation control, clear enunciation, and consistent speech patterns are just a few of the methods that reporters use to get better results. The system is user specific for each laptop; in other words, a reporter cannot go TDY to another base, pick up that base's system and go into the courtroom. Instead, they have to, over time, work with a specific system to improve their recognition accuracy by training that machine to match up what is said with the text that is produced.

Madonna Fell (B.A., Columbia College, Missouri), is currently a court reporter at Tyndall AFB, Florida. She has been a court reporter since 1980 and employed at various AF bases, both overseas and stateside. She was an enlisted paralegal from 1975 to 1980 with the USAF.

Better recognition is gained through use and training. "Use" can be just general use in an office where a person might utilize an old tape and practice recording, or take the machine home and practice voice writing with the folks on the nightly news [newscasters tend to enunciate very well and speak fairly quickly so they make ideal speed and recognition enhancers for the reporter], or take the equipment into very real courts and boards. "Training" is through the machine itself where you read materials into the machine that are "knowns" to it and it translates your speech patterns to fit those known words; or using the features of "QuikCorrect" or "Homework" after "use" to select what was actually said versus what the machine thought was said. For instance, when a reporter is repeating the military judge and the judge says, "***Very well. This court-martial is adjourned,***" it is very possible that the system will voice write that as "***Farewell. This court-martial is sojourned.***" Another example, "***Yes, sir***" may become "***Yes, cert***." I'm sure your court reporters have shared some of the more colorful inaccuracies with you. I know I've shared a few with the judges and counsel, and we always get a good laugh. But it is by utilizing this "training" method that a reporter can improve their recognition accuracy. You may also notice the reporter in your office doing some of this training after a record of trial has been produced. That is one of the great benefits of the new equipment in that the reporter can actually come out of the courtroom and immediately start on the record, and then after the time crunch has passed and the record of trial is complete, go back and do recognition training on it to improve their accuracy level.

No matter how inaccurate the recognition may be at the beginning, it does improve. And the bottom line is that if the reporter comes out of the hearing with 75 percent accuracy in word recognition, that is 75 percent they may not have to type. So, the goal is to come out with as much accurate text as possible. To do that, as I mentioned, a reporter has to train the machine, they have to learn the system, and they have to learn new ways of speaking into the mask. This is where that calm façade on your reporter's face may be misleading. For some of us who were trained by the school at Keesler, we were taught speaker codes which were abbreviations that were used to identify who was saying what before the reporter repeated what they actually said. For others of us, speaker codes are a total new way of doing our jobs. But in either event, speaker codes are an integral part of the SpeechCAT system and must be used because a code will format your text for you as you speak, it will place an identifier, i.e., MJ: or TC:, and it will punctuate the sentence. For example: "***MJ: The court will come to order,***" is voice written as, "***Judge-co the court will come to order***." A little more complex, "***TC: Members of the court, during the trial the government put on evidence…,***" is voice written as, "***pros-co members of the court comma during the trial the government put on evidence…***"

These are two relatively simple phrases to give you an idea or flavor for what is going on under the mask. As the trial progresses, it can get more complex. Most reporters have come up with some macros to help with repetitive stock phrases. The whole idea here is to save time so that during the trial when a person is speaking, the reporter has the necessary time to repeat what is heard in a clear and enunciated manner so that recognition is more accurate.

Once the hearing is over, it is time to produce that record of trial. AudioScribe has given us some handy tools to help us out in the "scoping" process of the record. But even before that, let me explain that during the hearing there are basically four tracks being recorded, two that record the court reporter's voice with one track to utilize with QuikCorrect and Homework, and one track for the text file; one for a high gain microphone that records all sound in the room; and one for the backup Sony machine that is recording the court. In other words, you have on the laptop the reporter's voice and the courtroom hearing, along with the text file that was produced. To "scope" the document means to match up the recording with the text and make sure it is an accurate reflection of what happened in the hearing.

What is so wonderful about this scoping process to me right at this particular time, since my recognition is still pretty hit and miss, is the fact that the system is so transportable. While I have been TDY, I have been able to take the whole system with me and do what I was paid to do. On a two-day litigated case, I was able to turn that record around in about four days and that was because of the total portability of the system. After dinner at night (and sightseeing), I would continue to transcribe the record. I would get up early and continue to transcribe the record. It was absolutely wonderful to not have to bother any office folks about keys or locking up my equipment in an unfamiliar place. And the real beauty was that everything I needed was right there in the laptop. I didn't need the Sony, I didn't need a desktop computer, and at that point, I didn't even need a printer.

But there is a glitch. By way of illustration, let me entertain you with a little brain teaser. Please count the "F's" in the following sentence:

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FINISHED FILES ARE THE RESULT OF
YEARS OF SCIENTIFIC STUDY COMBINED
WITH THE EXPERIENCE OF YEARS
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There are actually six. The brain doesn't process the word "of" for some reason. This system is somewhat similar in that small words like: of, and, in, no, an, the, et cetera, will get misrecognized or "not processed" all together. As wonderful as technology is, it can never replace the sharp eyes of certifying trial counsel. I challenge each and every one of you certifying trial counsel to find the "F's" in your next record of trial. Not only are you helping your court reporter with the burden of producing accurate records of trial, but you are also contributing to the ultimate goal of no post-trial processing errors.

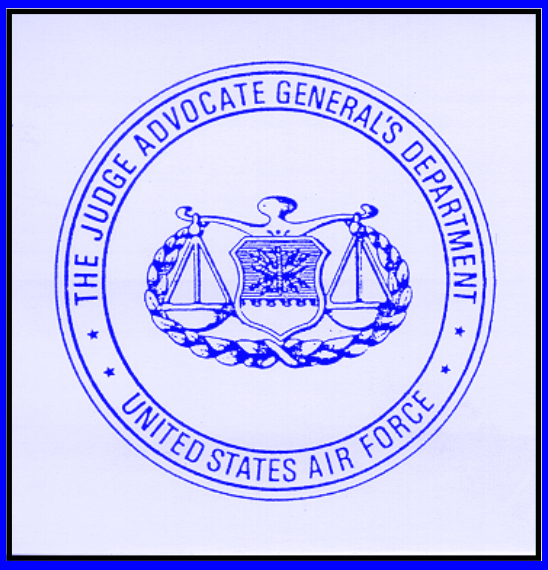
This new system is impressive. But like any piece of equipment, it is totally dependent upon the human factor. Every court reporter utilizing the system right now is striving for more accuracy with every court. You can be part of that success. If you are a trial attorney or a military judge, just slowing your speech down could be a significant contributor to better recognition. If the reporter actually has the time to enunciate the words and not scramble after you to try to catch up, the system will recognize the words more accurately. If you are a trial attorney, provide a list of witnesses and unusual terms to your court reporter prior to trial. The reporter has the capability of "training" those into the system before court even starts, and that means that during court, the recognition for those names and terms will be much improved. And lastly, if you are a trial attorney, don't be offended if you find your biggest fan all of the sudden watching their computer screen instead of you during your argument. I can tell you firsthand, we are still impressed with your arguments, we are just ensuring that the laptop is memorializing it.

P.S. The Judge Advocate General has provided each of us reporters with a wonderful opportunity, and we all love to brag about our new equipment and experiences with it. If you are interested in a close-up and personal view of the equipment, don't hesitate to ask for a demonstration.

A MESSAGE FROM THE EDITOR:

Have you worked an interesting issue in a recent court-martial? Have you found a great technique or approach that could help other base level attorneys or paralegals? Write a short article about it and submit it to *The Reporter*!

Contributions from all readers are invited. Items are welcome on any area of the law, legal practice, or procedure that would be of interest to members of The Air Force Judge Advocate General's Corps. Send your submissions to *The Reporter*, CPD/JA, 150 Chennault Circle, Building 694, Maxwell AFB, AL 36112, or e-mail Capt Christopher Schumann at chris.schumann@maxwell.af.mil.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