

Summer 2007

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The Reporter

The Judge Advocate General's Corps



EMBRACING
CHANGE

The Stand-up of the Air Force
Claims Service Center

The Reporter

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Secretary Wynne, Maj Gen Rives, and DFAS Director Gaddy at the ribbon cutting ceremony for the 23 Mar 07 grand opening of the Air Force Claims Service Center in Kettering, Ohio. *Photo: TSgt Steve Moore*

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Message from the Commandant

Colonel David C. Wesley

JAG Corps 21 is accelerating rapidly and this edition of *The Reporter* highlights recent accomplishments on a number of fronts. Lt Col Eric Bee, who leads the Claims Service Center, discusses the remarkable accomplishments underway in Kettering, Ohio. Lt Col Melinda Davis-Perritano's staff at McGuire AFB put those improvements to the test during a recent fire and, through the professionalism of her Airmen and those at the Claims Service Center, the Air Force turned an unfortunate accident into a powerful good news story.

We also cover one of the pillars of our practice: the ability of judge advocates to give independent military legal advice to commanders. Though most of us make occasional reference to the power and authority afforded by Article 6 of the Uniform Code of Military Justice, Maj Chris Johnson's article discusses in more detail how Congress determined this independence was necessary and why they've recently reinforced its meaning and effect. This, too, is a good news story: commanders can continue to rely on the skill and independence of their military attorneys, thanks to the protections afforded by Article 6.

Since our last edition, the Action Officer Handbooks and the Division Chief Courses were fielded. A vignette on the use of both of these JAG Corps 21 products is designed to boost field awareness and understanding, and to solicit addition feedback, so that we can keep improving them.

The men and women of the Information Systems Division, commonly referred to by their office symbol of "JAS", continue to produce a panoply of important information technology weapons for use in our practice. We welcome their new leader, Col(s) Pete Marksteiner, and feature their important work in this edition as well.

As with our last several editions, this one bears witness to the rapid pace of change in our Air Force and Corps. We hope you'll find, both through our regular features and through the issues that are the focus of this edition, information that is interesting and useful to you as you approach your duties. As always, we solicit your input on future topics for coverage in *The Reporter*.

EMBRACING CHANGE: The Stand-up of the Air Force Claims Service Center

by Lieutenant Colonel Eric Bee,* USAF

Everything flows, nothing stands still

Nothing endures but change

**- from *Lives of the Philosophers*
by Diogenes Laertius**

These truisms from Plato's day have definitely stood the test of time. But, if change is the only constant, why does it frequently seem so difficult for us - especially for large bureaucracies? Most would agree that human beings and large organizations resist change with surprising gusto.

So how do Air Force leaders tasked with implementing Air Force Smart Operations for the 21st Century and JAG Corps leaders tasked with implementing JAG Corps 21 overcome the inertia that is inherent in every organization and individual to bring them into the enduring flow of change? The leadership methods for embracing change are as timeless as Plato's philosophizing. The creation of the Air Force Claims Service Center (CSC) serves as an example of how ordinary individuals embracing change can accomplish big things.

Background

In December 2005, General T. Michael Moseley, the Chief of Staff of the U.S. Air Force, and Major General Jack Rives, The Judge Advocate General, met to discuss how the JAG Corps might provide even better service to its Air Force clients. In that same month, a call went out to the JAG Corps for ideas on how to do things better. Thus, we learn our first lesson in change management – find the good ideas for change – they are definitely out there.

Among the hundreds of ideas, a young paralegal suggested that we consolidate the processing of

household goods claims. This and other ideas for transforming the delivery of legal support in the Air Force eventually became the comprehensive proposal we know today as JAG Corps 21. The proposal was approved by General Moseley on 2 March, 2006, and the JAG Corps was ready to successfully implement wholesale organizational change.

The Center Finds a Home

Change has a funny way of begetting change. Once you embrace a little change, more change gets easier. As the JAG Corps looked for a location to centralize Air Force claims, our friends in the Air Force Financial Management (FM) community were doing likewise. FM was examining locations to consolidate Air Force-wide financial operations. One of the locations not selected for FM's consolidation turned out to be a good fit for the Claims Service Center's needs - the former Defense Finance and Accounting Service Building in Kettering, Ohio. After reviewing site surveys and reports from JAG teams sent to review the facility, Secretary of the Air Force Michael W. Wynne and Maj Gen Rives quickly determined that Kettering was the place.



The Original CSC "Brain Trust"

* Lt Col A. Eric Bee is the Chief, Air Force Claims Service Center in Kettering, Ohio.

This brings us to our second lesson in change management – decisiveness. When leaders embark quickly on large scale organizational change, there will generally be less information available to make decisions. Nonetheless, big decisions must be made quickly and clearly to permit the organization to focus on the myriad of smaller tasks and decisions that naturally flow from large-scale change. Big decisions are critically important to an organization but few decisions are ever perfect. Lack of decisiveness stops change in its tracks.

The Process Takes Shape

As work continued to plan for the physical location of the CSC, people like Mr. Bill Emery at AFLOA/JAS were scratching their heads trying to figure out how to convert AFCIMS from its old client/host model to a new web-based, consolidated system. If this weren't challenging enough, JAS had only had a few months to make the change in order to support a goal of 1 October 2006 for initial operating capability. Additionally, JAS had to execute the change either with in-house resources or through the sometimes cumbersome government contracting process.

The challenge of making rapid wholesale changes to the computer infrastructure used to process claims highlights the third lesson in change management – harnessing creativity. JAS programmers eventually built a web page for claimants to directly interface with claims processors. But in the short term, JAS worked within the existing AFCIMS code to trick AFCIMS into treating user claims as transferred claims—meaning the program handled the claims as if each claim were transferred from another base legal office. Although the solution wasn't perfect and will go away in subsequent programming, the creative workaround was critical to meeting the operational goal of the CSC.

The People Make It Go

The challenges of the government contracting system were matched with hurdles in the military and civilian personnel systems. These systems

simply were not designed to create a completely new unit of over 100 personnel from the ground up and staff it with military and civilian personnel in only eight months. Yet it had to be done.

A unit manning document for the CSC had to be approved. People like Mr. Dave Fillman at JAZ had to quickly become experts in these processes. New positions had to be created and core documents had to be written from scratch.

Personnel decisions related to standing up the CSC were among the most difficult because they impacted the lives of people in our JAG family. Difficult decisions had to be made under labor law rules concerning transferring work or transferring functions to the Claims Service Center. Labor experts at AFLOA/JACL, Ms. Diane Cabrera from JAX, and SMSgt Janice Maupin-Andersen at AFPC had to educate everyone involved.

While manning decisions were made and that process developed, there was still much to be done to stand up a claims center. Without a permanent staff, who would do it? TDY volunteers! In all fourteen military and five civilians traveled TDY to create the operational capability of the CSC. They began work in Washington DC, and then traveled to Kettering to create a claims center from nothing.

The issues they faced were daunting. We needed to figure out how to run a 24/7 call center, how to perform inspections and salvage, and how many people were required to run it all.

Most of those supporting this initial development period could only afford 90 day TDYs away from their unit. As a result, three sets of TDY personnel supported the CSC. In order to maintain continuity, each group had to train the next. How did they do it? Of course they employed hard work, long hours, strong claims knowledge, creativity, and good humor. But, the leadership lesson of the TDY heroes who built the CSC was their unfailing focus on the goal. We needed to stand up the Claims Service Center by 1 October 2006, and it needed all new processes to make it work. By never losing sight of that simple goal and maintaining an intense desire to achieve that goal, we were successful.



TDY Heroes

The Center Goes Operational

Turning the new Kettering facility into an operational claims center involved many hurdles. Being 15 miles from the nearest Air Force base meant we had to build a powerful network connection in the building from scratch. We had to contract for a sophisticated call management system--a feature never before accomplished in the JAG Corps. JAS had to procure computer hardware and software to run the Center. And everything had to meet very aggressive timelines. TDY personnel remained here at the CSC in October when the Center became operational. They trained the first permanent party personnel at the Center, and these first permanent personnel continue to train new permanent party arriving every day.

Lessons to Grow On

When people ask me what my job has been like over the last nine months, I tell them that it's a bit like learning to fly an airplane while you are still building it. And, oh by the way, we've got several new "airplanes" on the drawing board (including a complete rewrite of AFCIMS, integration to the CSC web page, and an all electronic payment process).

Standing up the CSC offers many examples of the importance of embracing change. It's easier to do if you remember four basic rules:

- 1) **Find the good ideas**
- 2) **Be decisive**
- 3) **Harness creativity**
- 4) **Never take your eye off the goal**

Teamwork Put to the Test!

In May of 2007, the personnel of the Claims Service Center stepped up to yet another challenge, teaming with the legal office at McGuire AFB to work emergency claims quickly and fairly.

On 15 May 2007, a massive forest fire on the Warren Grove Training Range in New Jersey damaged three-dozen homes and destroyed numerous vehicles. The ACC Accident Investigation Board found that two F-16C Falcon pilots conducted an unscheduled "show of force" maneuver, releasing flares below the minimum altitude of 500 feet. Burning flares hit the ground, and extreme environmental factors caused a fire that spread outside of the range.



In creating the Claims Service Center, center staff planned for a "fly-away" functionality to augment base offices in processing claims in emergency situations. This resource continues the outstanding emergency support provided for decades by JACC, such as the response in 1991 at Clark Air Base in the Philippines following the eruption of Mount Pinatubo.

Applying the lessons discussed in this article, CSC staff immediately teamed with the McGuire legal office to quickly and efficiently respond to the fire and resulting damage claims. The teamwork earned praise from claimants and the local press.

Prospective Professional Responsibility: The Full Estate Planning Picture



Estate planning dominates the Air Force legal assistance landscape. Last year alone, Air Force legal assistance attorneys drafted over 60,000 wills. Many of these wills were created for married clients who frequently sought estate planning counseling together. Joint counseling provides a complete view of the couple's financial picture and allows a full discussion of estate planning tools. Coordinated estate plans can provide significant tax savings for clients' estates and often ensures the best distribution of assets in the widest array of circumstances. But with all of the advantages of counseling a couple together, the practice poses professional responsibility risks.

The "uh-oh" moment will likely arise a day or two after the joint appointment. The husband (or wife) drops by or calls in with a "simple change." Now, he doesn't really want the estate to be shared equally between his children and his spouse's children. Or he wants to give everything to the ol' alma mater. Or it may be any of a host of changes radically different from what they had discussed during the joint office appointment -- the discussion which the other spouse clearly relied upon in crafting her will.

This poses great professional responsibility issues. Disclosure? Can -- or should -- the other spouse be alerted to the material change? Duty? Which spouse deserves the attorney's full fidelity and best efforts? The answers to these questions we'll leave for another day. Thankfully, this situation can be easily avoided. Simply introduce a Dual Representation Authorization in the initial appointment. Proceed with clients who understand and agree to the authorization, and provide separate representation to clients in other cases.

A model agreement is included as Attachment 2 of AFI 51-504, Legal Assistance, Notary, and Preventive Law Programs. The agreement explains that conflicts can arise from the clients' separate interests and discusses the need to share confidential information between the clients and the attorney. It also clearly authorizes the serving attorney to withdraw if any conflict is sensed. The agreement also alerts each of the clients to their right to obtain independent counsel.

The model agreement covers these key items in language clients can readily understand. The agreement also includes an endorsement block, making it immediately ready to present to clients for signature. AFI 51-504, para. 1.4.1.4 recommends keeping the endorsed authorizations for 1 year.

Key Professional Responsibility Rule Involved in this Issue:

Air Force Rule of Professional Conduct 1.7. Conflict of Interest: General Rule

(a) A lawyer shall not represent a client if the representation of that client will be directly adverse to another client, unless:

(1) the lawyer reasonably believes the representation will not adversely affect the relationship with the other client; and

(2) each client consents after consultation.

(b) A lawyer shall not represent a client if the representation of that client may be materially limited by the lawyer's responsibilities to another client or to a third person, or by the lawyer's own interests, unless:

(1) The lawyer reasonably believes the representation will not be adversely affected; and

(2) The client consents after consultation. When representation of multiple clients in a single matter is undertaken, the consultation shall include explanation of the implications of the common representation and the advantages and risks involved.

Discussion

Some limitations may be inherent in representation by an Air Force lawyer. Counsel should always ensure that each client is aware of such limitations and how they may specifically affect the representation.



Ask the Experts

Can a former spouse still receive military survivor benefits even if he fails to comply with the 1-year application deadline?

Bottom Line Up Front: If the former spouse or the military member did not file the proper paperwork pursuant to statute to affect former spouse coverage within the one-year time limitation, the former spouse will not be covered under the SBP.

Under current law, Survivor Benefit Plan coverage at the standard annuity amount is automatic only for spouses married to military members at the time of SBP eligibility. 10 U.S.C. §1448(a)(2)(A). **Former spouses of military members are not automatically covered**, but can obtain coverage in one of two ways. The military member may elect coverage for a former spouse, which requires notification to the member's current spouse if the member is married, 10 U.S.C. §1448(a)(3)(e), (b)(2), and (b)(3), or the former spouse may request coverage in writing based on the member's failure or refusal to provide coverage despite a lawful obligation to do so. 10 U.S.C. §1450(f). The requests in both cases, to be effective, must be received by the military Secretary concerned within *one year of when the court order relating to divorce, dissolution, or annulment is issued*. 10 U.S.C. §1448(b)(3) and §1450(f)(3)(C).

From time-to-time, we're asked to review proposals with potential religious aspects. This seems to be a constantly changing area of the law. Where do we look for current guidance?

Since 2005, there have been several important issuances regarding the free exercise of religion in the Air Force. On 9 February 2006, the Secretary of the Air Force (SECAF) issued "Revised Interim Guidelines Concerning Free Exercise of Religion in the Air Force" ("Guidelines"). These provide general guidance and policy regarding free exercise, making reference to AF official neutrality, accommodations of religious practices, and the role of commanders and chaplains.

A couple of terms from the title bear notice. "Revised." These Guidelines replaced an earlier, longer set of guidelines from 2005. "Interim." These Guidelines were promulgated with the understanding that they would be revisited in the future and made final after further input from the field. "Free Exercise." While the focus is on the free exercise of religion, the Guidelines clearly deal also with the demands of the Establishment clause. In proclaiming that the Air Force does not endorse one religion over another, or religion over non-religion generally, the Guidelines merely reflect the Constitutional requirements of government entities.

More recently, the conference report to the 2007 National Defense Authorization Act directed the Air Force to rescind its Guidelines. In response, SECAF advised the field on 21 November 2006, that the AF is planning to go "no further on issuance of the [Revised Interim Guidelines.]" SECAF explained that the Air Force will go no further on the Guidelines "until there has been opportunity for the Congress to hold such hearings over the course of this fiscal year." This means that the Air Force does not plan to go final (vice "Interim") on the Feb 2006 Guidelines, but that they remain in effect as is. The Guidelines are available on the HQ USAF/JAA web page.

As we prepare another round of deploying Airmen, what guidance do we give them (and commanders) on anthrax vaccinations?

AF/A3 has announced that DoD approved the AF implementation plan for the DoD-directed mandatory Anthrax Vaccine Immunization Program (AVIP). The message and plan can be found at the AF/A3SC website:

https://www.a3a5.hq.af.mil/a3s/a3sc/CCBRN_resource/biological/anthrax/index.asp

The mandatory population consists mostly of personnel assigned to the CENTCOM AOR or Korean peninsula. Other personnel who have begun the immunization series may complete the six-part series on a voluntary basis. Paragraph 5.6 and Attachment 6 of the Plan deal with refusal management. Military justice practitioners should ensure that appropriate educational efforts are made before disciplinary actions are taken against personnel for refusing to be vaccinated.

Given past litigation on this issue, interest in monitoring the latest implementation of AVIP is high. Thus, all disciplinary actions should be reflected in AMJAMS and Special Interest Reporting (SIR) is required. Similarly, AF/JAA and AFLOA/JAC should be informed of any potential labor law cases or contractual issues that arise because of AVIP. Commanders and supervisors can help ensure the success of the program by educating personnel about the vaccine and the threat of biological weapons.

The Administrative Law Division experts in AF/JAA provide the answers to many of these questions. For additional useful guidance, check their very useful website on FLITE:

<https://aflsa.jag.af.mil/AF/lynx/jaa/>

When does a superior's suggestion that an Airman go to Life Skills constitute coercion to seek a mental health evaluation?

Only a commander may involuntarily refer an Air Force member for a mental health evaluation. (AFI 44-109, paragraph 4.2) Commanders or any supervisory personnel may encourage Air Force members to voluntarily seek mental health care, but they may not “under any circumstances attempt to coerce members to voluntarily seek a mental health evaluation.” (Paragraph 4.1)

AFI 44-109 does not define “coerce” or “voluntary.” Analyzing when a suggestion to visit Life Skills crosses the line from encouragement to coercion requires a “totality of the circumstances” test, much like how courts analyze voluntariness in the context of confessions and consent searches. An analysis of the totality of the circumstances should include factors such as:

- the mental condition of the member
- the age, education, and intelligence of the member
- whether the member knew of his or her right to refuse mental health treatment
- the manner in which the statement about going to Life Skills was made
- whether the commander or supervisor threatened to refer the member if the member did not go voluntarily
- whether the commander or supervisor withheld any privileges until the member agreed to go to Life Skills

I've read that the Air Force is undergoing a clarification that fundamentally changes the manner in which we organize units and present forces to the combatant commanders. Can you provide any specifics?

On 25 May 2006, the Chief of Staff approved Change 2 to the Air Force Forces (AFFOR) Command and Control (C2) Enabling Concept. Change 2 is designed to enhance the operational level support, planning, command, control, and execution of air, space, and information operations capabilities across the full range of military operations. It establishes an Air Force component structure for each combatant commander that consists of a "component MAJCOM" and/or "component NAF." The component NAFs, in particular, will serve as the primary operational-level commands, and will have ADCON and/or specified ADCON over Air Force forces assigned or attached to their respective combatant commands.

The component MAJCOM /component NAF headquarters are manned at the minimum core capability necessary to meet the unique demands of that theater's steady state operations as well as their most likely contingency scenarios. Because of this, these organizations will rely heavily on technology and reach back to maximize their manpower. Augmentation will be used when required for contingency and combat operations.

Many of the changes directed by Change 2 are currently being implemented IAW Program Action Directive 06-09. For quick reference, the following is a list of the Air Force components to the combatant commands:

- 1AF (AFNORTH) providing AF componency to USNORTHCOM
- 3AF (AFEUR) and USAFE providing AF componency to USEUCOM
- 7AF (AFKOR) providing AF componency to USFK
- 8AF (AFSTRAT-GS) providing AF componency to USSTRATCOM
- 9AF (AFCENT) providing AF componency to USCENCOM
- 12AF (AFSOUTH) providing AF componency to USSOUTHCOM
- 13AF (AFPAC) and PACAF providing AF componency to USPACOM
- 14AF (AFSTRAT-SP) providing AF componency to USSTRATCOM
- 16AF no longer supports USAFE in its USEUCOM componency role
- 18 AF (AFTRANS) and AMC providing AF componency to USTRANSCOM
- 23 AF (AFSOF) and AFSOC providing AF componency for USSOCOM

Special AF/JAA Notice: Required Supplementation of Article 137 Military Justice DVD with JAA Slides on Homosexual Conduct Policy

When Congress passed its policy concerning Homosexuality in the Armed Forces in 1994, they promulgated a requirement that Article 137, UCMJ briefings include "a detailed explanation of the applicable laws and regulations governing sexual conduct by members of the armed forces" including the Congressional homosexual conduct policy. 10 U.S.C. §937.

In response, JAA developed DoD-approved materials to meet this training requirement. These materials can be found on the JAA website under [Personnel Actions]/[Homosexual Matters]. After playing the new JAJM Article 137 DVD briefing, "Military Justice and You," judge advocates must brief the JAA slides on the DoD Homosexual Conduct Policy.

**If you have a question, the answer may help other readers!
Send your questions to "Ask the Experts" care of The Reporter editors.**

LEGAL INFORMATION SERVICES:

Leading Technology for The Judge Advocate General's Corps

by Mr. Dan M. O'Connor*

The Judge Advocate General's Technology Organization

The Judge Advocate General's Corps relies on information technology (IT) to perform its functions and to ensure the flow of vital information throughout the Air Force legal community. The lead office for providing the required IT services and resources is the Air Force Legal Operations Agency, Directorate of Legal Information Services (JAS). The same office also provides electronic research and web hosting for other Federal Agencies as Executive Agent for the Department of Defense (DoD).

In today's Air Force, the need for secure, stable, and innovative IT is greater than ever. The JAG Corps depends upon a robust, relevant, and responsive technology program. Like the Air Force, the success of the JAG Corps is in many ways tied to the effective use of technology. To assure this success, one goal is to automate and standardize legal office processes to best accomplish the mission and maximize the use of our human and other resources. One of the main benefits of automation is that it enables JAG Corps leaders to use the time they saved to address other responsibilities, including mentoring, leading or problem-solving.

The Director of JAS has two roles: the Chief Information Officer for The Air Force Judge Advocate General and the Director of Legal Information Services. In the first role, the Director of JAS is the JA representative on Air Staff for technology matters, and is charged with ensuring that the JAG Corps' IT program reflects the AF policies on technology.

* Mr. Dan O'Connor is an Attorney/Advisor with the Directorate of Legal Information Services, Air Force Legal Operations Agency, Maxwell Air Force Base, Alabama.

As the Director of the Legal Information Services, the charge is to maintain a center of IT innovation that provides unique legal programs like the Automated Military Justice Management and Analysis System (AMJAMS), the Armed Forces Claims Information Management System (AFCIMS), and a vast array of other legal programs that support legal offices worldwide. To enable both IT functions, the Directorate manages an aggressive development program and the worldwide print and electronic media law library.

The JAG Corps' IT program is used extensively throughout the Corps and DoD. JAS servers sustain over sixty million hits per year and support 4,000 to 6,000 users per month. In a 2006 study, JAG Corps members rated 30+ fully fielded programs as highly valued. Additionally, JAS presently has a significant backlog of IT requests that have come in from the Corps field and leadership. This presents a challenge to coordinate and synchronize limited IT resources with potentially

unlimited demand. In order to meet this challenge, JAS conducts an intricate choreography of in-house programmers, functional experts, support personnel, external assets, and IT contractors to ensure the success of the JAG Corps' IT program.

Overall, JAS is a diverse collection of talent and resources that work systemically to achieve a variety of goals. Although the organization's primary duty is to maintain a robust IT vision for the U.S. Air Force JAG Corps, it also directly supports sister services as well as other Federal entities. This brings efficiencies and can also benefit other FLITE users if hosted information is shared throughout the community.

"Technology is a leadership issue because it allows you to more effectively and efficiently accomplish your mission, allowing you to spend more time developing leaders and taking care of your people."

*Colonel Pamela Stevenson,
KEYSTONE '05*

IT Service to the JAG Corps

In 2006, TJAG directed a study of JAG Corps legal information systems - the Legal Information Integrated Study (LII Study). This comprehensive study was conducted over a 6 month period and included the time and contributions of 100 active duty, reserve, guard, and civilian personnel from across the Air Force to study the Corps IT program. The study and resulting report concluded in March 2006.

This study identified that JAS created and continues to maintain approximately 30+ fielded systems. The majority of these systems are essential for legal office processes. They allow JAG Corps members to produce a greater amount of work while realizing TJAG's vision for the Corps. As with most computer systems, these systems require continuous maintenance and upgrading to improve their usefulness and prevent failure. For example, in 2006 JAS performed over 20 separate modifications and updates to the ROSTER system alone.

The LII Study included a field survey of all JAS fielded programs and offered JAG Corps members the opportunity to rate each program. Over 1,000 members of the Corps completed the survey, giving the team excellent results to analyze. A

team of JAG Corps leaders studied the results of the ratings and concluded, "The vast majority of survey respondents have a very favorable opinion of AFJAGC IT services and products and there is room for product improvement."

JAS initiated action on the majority of the recommendations in the LII Study. Over a dozen major programs were created or enhanced due to LII study recommendations, including LYNX, ONS, and other programs highlighted in the sidebar.

Brief Examples of Recent JAS Initiatives

In addition to the programs that came out of the LII Study, in 2006 and continuing into 2007, JAS is involved in over 20 new initiatives requiring a substantial number of JAS development teams. Many of these initiatives are described in the sidebar and several are described in detail here.

- **Area Defense Electronic Reporting (ADER)**

ADER is a web-based program which assists Area Defense Counsels in documenting and tracking both their local and referred cases. Access to the program is restricted to the defense counsel community only.

LII Study Impacts: JAS' Immediate Action on Field Suggestions and Input

CAC Card and Single Authentication: Implemented CAC Card access and single authentication to FLITE and ROSTER systems. This provides convenient logging into FLITE and allows users to move between ROSTER and other FLITE systems without needing to log into each separately.

T-FLITE: The FLITE interface was streamlined and merged with the TJAG homepage. This action also implemented an all natural language search and added many more document collections.

JAGUARS Systems: JAS took on the responsibility of maintaining these valuable reporting systems and their 20 subsystems, originally created and supported by JAZ to collect data on a variety of activities.

AFCIMS/AMJAMS Contract: Competed and awarded new AFCIMS/AMJAMS contract for upgrades.

Worldwide Library Book Budget Study: Performed study of purchases for worldwide library and savings attributed to online purchases.

DEARAS Disk Search Engine: To help deployed JAG personnel find needed documents even without data communications lines, JAS implemented a search engine for thousands of documents on a DVD set.

Systems Protection – COOP System: A back-up server was installed in the event of a catastrophic failure. FLITE operations can now continue without interruption and with additional safety storage.

JAGipedia: Wikipedia encyclopedia software is being adapted to increase cross-flow of legal information and provide useful tools from across the JAG Corps, including sample legal reviews.

Home Case Reports Help

ADER (Area Defense Electronic Reporting)
A1C Aontre - Art. 15
 Thu Dec 28, 2006 1:25 PM

Service Punishment Specs

AMJAMS CaseID: 881

Offer

Date Offered: 15-FEB-06 Personal Hearing? Yes No Lawyer Consulted? Yes No
 Response Submitted? Yes No Response Date: 17-FEB-06 Forum Election: Accepted
 Dropped? Yes No

Offenses

Article	Status	Offense Description
134-C4	Principal	Restraint, breaking
107-B	Principal	Make false official statement
090-B1	Principal	Disobey lawful command
090-B1	Principal	Disobey lawful command
086-A2	Principal	Failure to go

Legal Review

Place in UFF: Yes No Legally sufficient: Yes No
 Place in promotion Folder: Yes No Date of Legal Review:

Sample ADER Screen

Efforts are underway to include enhancements that will enable the senior defense chain to leverage ADER as a management tool.

- **Judicial Docketing System (JDS)**

JDS is a web-based program which provides calendar-based scheduling of military trial participants. It facilitates informed and responsive centralized detailing of military judges, JAJD and JAJG personnel to courts-martial across the globe. The program allows the chief military judge to view overall and individual schedules, plus add events (e.g. detailing a military judge to a courts-martial or an Article 29a hearing).

- **Transitioning AMJAMS and AFCIMS to Web-Based Format**

JAS is working with contractors to move AFCIMS and AMJAMS to a pure web-based format. A web-based format allows field users to enter data directly into the main AFCIMS and AMJAMS databases providing greater access to that data. Additionally, web-based programs work more efficiently within the more restrictive IT environment that the Air Force is heading towards.

- **KEYSTONE Conference Programs**

JAS created several work-saving programs to automate the process of setting up and running the annual KEYSTONE conference. Public and private websites were created to solicit conference topics and speakers and to keep JAG Corps and other attendees informed about conference information and deadlines. An invitation and registration

program was created to handle the inviting and registering of KEYSTONE attendees. The program uses attendee data from ROSTER and allows attendees to choose the events and electives they want to attend. A web-based critique program was created that provided live anonymous feedback to conference managers during the conference. These programs and others allowed the JAG Corps to host larger KEYSTONE conferences in a more efficient manner.



The small satellite modem provides voice and data virtually world-wide.

- **Mobile Satellite Communications**

After the disaster of Hurricane Katrina, JAS recognized the need of first responders in a natural disaster or other emergency to have access to immediate legal resources. During the Hurricane Katrina disaster, National Guard personnel and other responders were called upon to address quite a few unique legal issues during their operations. However, since they were on the ground in an area with limited communication, they were unable to get expedient answers to some of their legal questions. In response to this need, JAS acquired a limited number of mobile satellite units for the JAG Corps. These allow first responders to have internet and telephonic communication in a disaster area where the normal means of communication are limited or nonexistent. For example, responders would be able to access legal resources through the internet, and contact people by email and telephone, so that they could find answers to urgent legal issues that arise in responding to emergency situations.

Recent JAS IT Initiatives

Claims Center Support: JAS handled purchasing of IT and telephonic equipment, made major modifications to AFCIMS systems, and provided support of IT systems in the fast-track CSC stand-up.

ROSTER and Professional Responsibility Certification: JAS created a certification system of ROSTER data by JAG Corps members, and is developing a separate bar status verification system.

JAG Family News: The JAG Corps Family News website was updated and a modified version was created on the AF Crossroads web site, giving spouses and family members access to submissions.

VTC System Purchase: JAS facilitated purchasing and implementing video teleconference equipment connecting TJAG, AFLOA, and MAJCOM offices, and is developing innovative uses for the VTCs.

TJAG Action Line: JAS created a system that allows the field to send suggestions to TJAG's office.

WebDOCS: JAS created a fast and user-friendly JAG Corps document system replacing DocuShare.

CALR Contract: JAS substantially completed the contracting process for a new commercial Computer-Aided Legal Research contract. The contract is expected to result in marked savings over previous years.

CSS Personnel Management Program: JAS created a ROSTER-based data management system to provide the AFLOA Commander Support Staff with enhanced oversight of AFLOA personnel worldwide.

Court Reporter Website: JAS redesigned the Court Reporter Website, adding availability requests and an interface to allow transfer of audio files allowing court reporters to share transcription duties.

Court Recording Equipment: JAS evaluated and made recommendations to replace court recording equipment in order to move AF courtrooms into the digital age, with cost and convenience benefits.

Foreign Criminal Jurisdiction Management System: JAS assumed responsibility for this Army-owned system and is redesigning it to provide constant monitoring of FCJ status and other data.

Law Manager Case Management System: JAS is directing a contractor in configuring and customizing a case management system for the massive amounts of information involved in federal civil law litigation.

Interwoven Document Management System: This document management system integrates with the Law Manager Case Management System to provide advanced capability in working with case documents.

Standard Desktop Configuration (SDC) Compliance: JAS designed a plan to ensure JAG Corps IT systems comply with new AF SDC requirements. Rigorous testing proved SDC to be incompatible with most AFJAG IT programs, so JAS negotiated a technical solution that was approved by HQ/AF.

Relocation Study: Based on JAG School manpower requirements, JAS studied JAG School building space configurations and Maxwell AFB and Gunter Annex building options for housing the missions.

Feedback Program: JAS developed a computer-based student/supervisor feedback program for courses.

Product Development Systems: JAS is installing a development system to test and evaluate new projects in an unencumbered environment. Projects can then be moved from the "testbed" to real-world.

DoD Legal Research Domain: To create an easily identifiable, unique operating environment for the many DoD agencies it supports, JAS has obtained the management rights to the domain "flite.dod.mil."

Podcasting: Podcasting disseminates institutional and educational information for mobile professionals. For example, audio legal assistance tips can be heard while driving, jogging, or otherwise multitasking.

Distance Education: JAS is developing distance education programs which support the JAG School, FLITE, AMJAMS, AFCIMS, and a vast array of TJAG programs. This includes production and publication of complete stand-alone courses, on-demand lessons, webcast training, and desktop meetings.

E-Books: New technology allows quick and inexpensive dissemination of periodicals and publications.

- **JAG Corps Communications**

JAS has been working closely with HQ USAF/JA to enhance the ability of JAG Corps leadership to communicate with the field. JAS has created programs automating both the Online News Service (ONS) and the JAG Family News. The programs will allow personnel in the field to submit articles and pictures directly to both of these publications. Additionally, JAS has set up a partnership so the JAG Family News will also be available on the AF Crossroads website:

<http://www.afcrossroads.com/>. JAS has also created the TJAG Action Line, which allows the field to submit suggestions or comments to TJAG's office. These submissions can be signed or sent anonymously and serve as an "online suggestion box" for JAG Corps leadership.

Partnering with Greater Air Force IT

Over the last few years, the Air Force has invested a significant amount of resources towards the dual objectives of increased IT security and creating uniform Air Force-wide IT systems. The efforts on increased security have taken the form of a revised IT system certification process (IT LEAN), the standard desktop configuration (SDC), and increased IT network restrictions. The pillar of the AF wide IT system effort is the Air Force Portal, which is intended to provide a single point of internet access for much of the Air Force. Through the portal the Air Force hopes to provide a host of IT systems such as distance learning and document management.

Although the increased security efforts of the Air Force are necessary, they present a host of challenges to the team charged with maintaining JAG Corps IT systems. SDC has created connection, access, and speed issues for some of Corps IT systems, including AFCIMS and AMJAMS. This development and other related issues have caused JAS to focus almost exclusively on web-based systems, as they are less affected by SDC and other PC based security restrictions.

At the beginning of 2007, the Air Force instituted the new IT LEAN certification requirements which are designed to make Air Force software certification quicker and easier. However, many of the processes are new and have had a steep learning curve and its requirements apply to both existing and future JAG Corps IT systems.

Overall, it is JAS' goal to become more proactively involved with Air Force IT. This should provide the JAG Corps opportunities to partner where it benefits us the most and have advance warning to avoid the pitfalls of changing security requirements.

A Bright Future

JAS has a proud history, pre-dating both LEXIS and Westlaw's electronic databases. As the examples outlined here describe, JAS continues to evolve to meet the needs of the JAG Corps and the Air Force.



"The servers and other equipment are only a small part of the story . . . JAS' real success lies in its people and dedication in evolving the tools the JAG Corps' needs."
Lieutenant Colonel Pete Marksteiner, CIO and Director, Legal Information Services (AFLOA/JAS)
Panoramic photo composition created by Grace O'Connor

Heritage to Horizon

This edition's article on Legal Information Services provides an excellent update on recent efforts and projects on the horizon. Even with all of the great changes over the past four decades, though, it is remarkable how much this 1965 user's manual for LITE (Legal Information Through Electronics) still rings true of FLITE and JAS personnel: comprehensive, client-oriented legal technology!

What it is

LITE is an informational SEARCH and RETRIEVAL system that utilizes the TOTAL TEXT of the material available. The word-by-word text is stored on electronic media such as tapes, discs, etc. This text is searched by the computer ... DESIRED PORTIONS retrieved ... and printed out in the FORMAT most responsive to your needs.

In accordance with your SPECIFIC research requirements, the ENTIRE BODY of a particular text base or bases is scanned electronically ... and the material containing a PARTICULAR word, words, or phrases you consider relevant to YOUR problem is IDENTIFIED and RETRIEVED for analysis and use.

For example, assume you wish to know the references, if any, to LIQUIDATED DAMAGES in the United States Code. This system will search each word of the entire Code ... identify and retrieve all sections using the words LIQUIDATED DAMAGES -- or, if so, reveal the absence of these words.



LITE is an entirely NEW APPROACH to research. It eliminates your reliance upon indices. It eliminates those long hours of manual research of masses of accumulated law.

True, computers still cannot "think"! But even more "endless hours of drudgery" can avoided now, thanks to the hundreds of sources available through FLITE. (LITE started in 1965 with three databases!)

LITE was truly an "entirely new approach", moving far beyond the few computerized indices of the day by offering searches across the full-text of the source material.

What it can do for you

LITE is a TOOL for those problems requiring EXTENSIVE RESEARCH. It will quickly perform the "pick-and-shovel" work of finding material related to your particular problem.

The electronic search will often identify and retrieve MORE material than would be discovered by human methods ... and do so much more rapidly. This is because the computer is not subject to HUMAN FATIGUE or ERROR.

The computer will retrieve two types of material ... the EXPECTED and the UNEXPECTED. The EXPECTED is CONFIRMATION ... it is the UNEXPECTED that we may call true INFORMATION! This is not always true of manual research.

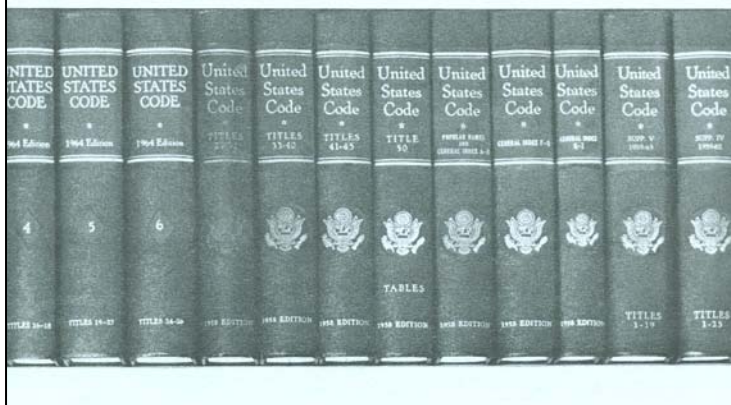
The computer cannot "THINK". It cannot exercise JUDGMENT or INTELLECT. It cannot furnish "ANSWERS" to your problems or questions. These "HUMAN" factors are up to you, the USER. However, your judgment can ... by use of the computer ... be based upon a COMPLETE SEARCH of ALL the data bases you request ... and this WITHOUT the endless hours of drudgery normally associated with a comprehensive research project.

Imagine, if you will, the task of finding ... by HUMAN effort ... all references in the United States Code to Section 1401 of Title 10. Disregarding the probable errors and oversights ... would you care to estimate the time required to do the job manually? This can be accomplished by ONE SIMPLE SEARCH ... using the LITE SYSTEM.

When you should use it

You should USE the LITE System WHEN:

- your MANUAL RESEARCH IS UNSUCCESSFUL (you KNOW the answer is there but have been unable to find it)
- you need POSITIVE PROOF that the subject matter of your inquiry is not specifically treated (it's important to know there is nothing squarely in point)
- the subject matter of your inquiry is NOT INDEXED (you haven't been able to "second guess" the manual indexer, so you can't find out how he classified the source data you want to read)
- you need EXHAUSTIVE RESEARCH (you're not willing to settle for the possibility that your manual research has - or will - find only about half of the relevant documents)



The computers in the background had less power than today's digital watches, and memory capacity thankfully advanced enough to now allow upper- and lower-case text. But the "KWIC" concept and basic research process were clearly in place before many of today's legal professionals were even born!

- your TIME IS LIMITED (you can find some more constructive way to use your available time than pouring through indices, digests, or just leafing through the source documents, page by page, in the hope that you'll find something that answers your question)
- your LIBRARY IS INCOMPLETE (the documents in the LITE data base are not available to you for manual research)

These reasons are as relevant as ever! Time is still limited, and positive proof and exhaustive research are still the goals. It is interesting, too, how law libraries are still incomplete . . . but due in large measure to the success of LITE and its successors!

KWIC

The Key-Word-In-Context option was designed to display HOW words used in the search actually appear IN THE TEXT. For example, if the search word HOLIDAY were used, the computer would produce a KWIC printout of THREE LINES of copy with the search word HOLIDAY in the MIDDLE LINE. If processed against the U.S. Code, the KWIC printout would be as follows:

- U.S. CODE TIT. 2, SEC. 60C-1
- /2/WHEN SUCH FIFTH OR TWENTIETH DAY FALLS ON SATURDAY, SUNDAY, OR ON A LEGAL HOLIDAY, SUCH COMPENSATION SHALL BE PAYABLE ON THE NEXT
- IF SUCH FIFTH DAY FALLS ON SATURDAY, SUNDAY, OR A LEGAL HOLIDAY, SHALL BE CONSIDERED TO HAVE BEEN MADE ON THE LAST DAY OF THE
- U.S. CODE TIT. 2, SEC. 60E
- OF DECEMBER/WHEN THE LAST DAY OF SUCH MONTH FALLS ON A SUNDAY OR A LEGAL HOLIDAY,
- OFFICERS AND EMPLOYEES OF SENATE AND HOUSE



Question to the Field...

Madonna Fell, of Tyndall AFB, asked her fellow court reporters to draw on their years of courtroom experience to provide advice for litigators. She provides an excellent summary and a wealth of additional advice at: https://aflsa.jag.af.mil/court_reporter

Madonna Fell's favorite court reporter tidbits to litigating attorneys:

1. Slow down & speak distinctly. What you have to say is important; don't rush through it.
2. Contact your court reporter for advice, and keep them advised on witness lists, schedules, and last minute changes.
3. Remember that the reporter has the job of creating the official ROT. You can help. Witnesses should spell their names on the ROT, and unusual names or locations mentioned in testimony should be spelled on the ROT.
4. Give original documents to the reporter. Once that is done, let the reporter know if you "borrow" the document during the court.
5. Know the right and wrong way to mark exhibits, offer exhibits, and account for exhibits.
6. Be conscious of the role of the microphone. If you have a cold or allergies, step away from the microphone. Don't rustle papers by the microphone, especially during testimony and court colloquy. "Hard" noises record over voice testimony.
7. Account for the parties after the court is called to order.
8. "If it pleases the court" and "permission to approach the bench" are not necessary unless required by the military judge. Ask beforehand in an R.C.M. 802 session.
9. If you have any doubts about convening orders, names or dates in the script, or even how to do the court script, ask your court reporter.
10. Never ever leave the courtroom without the military judge's permission. Always inform and get permission from the military judge when a spectator or witness may be armed, or if there are security concerns in your case.



Madonna Fell
325 FW/JA
Tyndall AFB, FL

*Civilian court reporter
for over 20 years after
serving 6 years as a
military paralegal*



Joe Ritmo
2 BW/JA
Barksdale AFB, LA

*Civilian court reporter
for nearly 20 years after
retiring as a Law Office
Manager*

Joe Ritmo's Top 10 litigation recommendations:

10. **Don't pace** It draws attention from what you are saying and judges don't like it.
9. **Avoid reading arguments** You might look at your notes once or twice during your argument, but don't read them.
8. **Speak clearly and plainly** We all have idiomatic idiosyncrasies, but that doesn't mean anyone else will understand us.
7. **Look your audience in the eye** if you can.
6. **Make sure your uniform and appearance are correct and in first class condition** Jury members notice these things. In this regard the court reporter is your friend. Most keep a needle and thread, frogs, polish, a shoe brush, etc. for the asking.
5. **Don't overkill** Make your point, state your case, and sit down.
4. **Don't talk down to the jury** These are well-educated intelligent men and women.
3. **Skip the legalese wherever possible.**
2. **Maintain facial decorum** while the other side is questioning a witness, even if you know that witness may be lying.
1. **Make the court-reporter your friend** Speak up so everyone can hear you, and when reading your script, keep it under 500 words per second so the court reporter can keep up with you.

CROSSFLOW: THE JOINT ISSUE OF THE ARMY LAWYER

The Air Force recently joined with the other services on a special joint issue of The Army Lawyer. The issue contains three Air Force articles by noted operations and international law experts:

The Influence of International Law on the Military Commissions Act of 2006: The Glass Half Full or Half Empty? *Colonel Larry D. Youngner, USAF, Squadron Leader Patrick Keane, RAAF, and Squadron Leader Andrew McKendrick, RAF*

The authors detail how international law had a decisive impact on the U.S. Supreme Court's majority opinion in *Hamdan v. Rumsfeld*, 548 U.S. ___, 126 S.Ct. 2749 (2006), and played an integral role in shaping lawmakers' response to *Hamdan* in the form of the MCA, concluding that:

International law has exerted a profound influence over the MCA. International law has been subject to unprecedented discourse by legislators in the passage of the law. The personal jurisdiction of the Military Commissions has changed from terrorists as designated by the executive to unlawful combatants in accordance with criteria and processes thematically derived from international law. The subject matter jurisdiction of the Act includes both war crimes and domestic crimes, but draws heavily upon international law.

The implementation of the MCA will bring additional debate. The authors note that the "devil is in the details" any time international law concepts are reduced to working domestic statutes. Understanding the role of international law in creating the MCA will help those charged with implementing it.

Tactical Level PSYOP and MILDEC Information Operations: How to Smartly and Lawfully Prime the Battlefield *Major Joshua E. Kastenberg*

The author provides an in-depth primer on psychological operations (PSYOP) and military deception (MILDEC), two pillars of information operations (IO). The primer explores "ripped from the headlines" scenarios through the rigorous lens of doctrine, as well as traditional law of war principles.

The article quite usefully exceeds its author's vision for the piece and the topic:

Thus, this article is simply a start, but hopefully a helpful one. In particular it must be stressed that the liberal application of the laws of armed conflict constraining tactical IO should be the case. The intent behind most of these operations is not to kill, but rather, to win by avoiding killing. Secondly -- but of equal importance -- is that many IO also may buttress the principles of distinction, necessity, and proportionality inherent in military operations. In the present era of irregular warfare, IO, and in particular, tactical level operations will be increasingly used. It is critical for judge advocates to become literate in the doctrine and law involving such operations.

The Detention and Prosecution of Insurgents and Other Non-Traditional Combatants – A Look at the Task Force 134 Process and the Future of Detainee Prosecutions *Captain W. James Annexstad*

The author explains the mission and processes of Task Force 134 with the insight of having served within that joint legal office. It is a massive mission of extreme importance:

The judge advocates and paralegals assigned to Task Force 134 are not only bringing these terrorists and insurgents to justice, but they are helping to establish the rule of law in Iraq. It is the latter that will be crucial to our long-term success in the region and to Iraq's success as a nation. Over the past three years Coalition Forces have detained roughly 61,000 individuals and currently have about 14,000 in detention facilities throughout Iraq. Of that 61,000, roughly 3,000 have been charged and tried in Iraqi Courts with approximately half of those trials resulting in a conviction. This means roughly 1,500 terrorists were brought to justice and nearly 43,000 individuals have been released. These statistics clearly show the system works and while it may not be perfect, it is up and running, during a time of war. Hopefully, the Iraqi people will be left with a positive outlook on their future.

The article will certainly help prepare other judge advocates and paralegals whether they are headed to the unit or are involved in supporting its mission. The full and frank discussion of the people and processes involved should also help clear the full spectrum of misperceptions regarding Task Force 134's mission.

THE AIR FORCE JUDGE ADVOCATE: An Independent Legal Advisor

by Major John C. Johnson,* USAF

“Wherever Law ends, Tyranny begins.” - John Locke

I. Introduction

Since the creation of the Air Force Judge Advocate General’s Department (now Corps) (JAG Corps) in 1949,¹ Air Force judge advocates have been a crucial resource for commanders. The judge advocate’s role has expanded over the years from a critical actor in the military justice system to include advising commanders on contract, labor, environmental, ethics, and international and operations law, as well as managing the Air Force’s claims and legal assistance programs. Air Force judge advocates provide the timely and accurate legal advice commanders need to effectively navigate the demands of command in today’s Air Force.

Our nation’s military and political leaders have long recognized that independence is critical to a judge advocate’s effectiveness. During World War II, the need for independent legal advice on military justice matters became quite apparent.² In the wake of perceived abuses of command authority in military justice during this war, Congress specifically emphasized the need for judge advocates to be a free, clear, and independent voice to advise commanders when it enacted Article 6 of the Uniform Code of Military Justice (UCMJ).³

Congress specifically emphasized the need for judge advocates to be a free, clear, and independent voice to advise commanders

Article 6 makes plain the importance Congress places on frank and open advice from military lawyers to commanders, uninhibited by either bureaucratic barriers to communication or an incentive to curry favor. For example, Article 6 requires convening authorities to communicate directly with their staff judge advocates.⁴ It guarantees the ability of judge advocates to communicate within JAG Corps channels.⁵ Article 6 also requires The Judge Advocate General (TJAG), or his senior assistants, to frequently inspect the administration of military justice in the Air Force.⁶ No less important is the unique degree of control Article 6 gives TJAG over judge advocate duty assignments. Article 6 provides that judge advocate assignments “shall be made upon the recommendation” of TJAG.⁷ The congressional record makes clear that TJAG’s “recommendation” on assignments is no mere opinion; Congress intended that TJAG control the decision.⁸

More recently, Congress reemphasized the value it places on the independent counsel that uniformed attorneys provide. Congress clarified the Air Force TJAG is “the” legal advisor to the Secretary of the Air Force and throughout the Department.⁹ Congress also forbid any member of the Department of Defense to interfere with

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¹ See Major Keith R. Alich, *Sharpening the Sword of Justice*, THE REPORTER, Vol. 26, at 91 (1999).

² Walter T. Cox, III, *The Army, the Courts, and the Constitution: The Evolution of Military Justice*, 18 MIL. L. REV. 1, 10-12 (1987).

³ 10 U.S.C. § 806.

⁴ 10 U.S.C. § 806(b).

⁵ Id.

⁶ 10 U.S.C. § 806(a).

⁷ Id.

⁸ See generally *Uniform Code of Military Justice: Hearings on H. 2498 Before a Subcomm. of the House Comm. on Armed Services*, 81st Cong. (1949) (hereinafter *Hearings*).

⁹ 10 U.S.C. § 8037(c)(1)

the ability of judge advocates to give independent legal advice to commanders.¹⁰

Congress believed that giving judge advocates a prominent voice and putting them under TJAG's control was essential to ensure commanders receive clear, sound, and impartial legal counsel. The paragraphs that follow explain why Congress gave high priority to reforming the military justice system after World War II, and how the establishment of an independent JAG Corps was an important element of that reform. This article examines Congress's determination to establish a corps of independent judge advocates, free not only to communicate directly with commanders and among themselves, but able to render legal advice unadulterated by concern for personal interests. Furthermore, it demonstrates that in the era of the Global War on Terror, Congress remains convinced of the importance of the timely, independent counsel military attorneys provide. Finally, it considers why the judge advocate's independent voice is not an obstruction to command but, on the contrary, essential to the judge advocate's value to commanders and to the Air Force.

II. UCMJ: The Judge Advocate's Role

A. Background

Military justice in the United States Armed Forces originated with the Articles of War, which the Continental Congress adopted at the outset of the War of Independence.¹¹ The Articles of War, with several revisions, remained the basis for military justice until the end of World War II.¹² Justice administered under the Articles was quite different from the system we know today. For example, a military judge did not preside over courts-martial. Instead, the senior court-martial member, who typically was not an attorney, supervised the proceedings. The Articles did not require counsel representing the prosecution and defense to be lawyers. If the accused was convicted, his

appeal went not to an appellate court but to a "Board of Review" in the Office of the Judge Advocate General.¹³

World War II was a catalyst for dramatic change. Approximately 16 million Americans served in uniform during the war, during which a staggering 2 million courts-martial were convened.¹⁴ Members of the public and civic leaders became acquainted with the military justice system as they never had before, and much of what they saw disturbed them. Many perceived the military justice system as too harsh and lacking adequate protection for individual service members' rights. Numerous apparent instances of improper command influence on the court-martial process particularly troubled many observers.¹⁵ After the war, Congress felt the need to act.

As a result, Congress enacted the UCMJ on 5 May 1950.¹⁶ The UCMJ applied to each branch of military service, which had previously been governed by separate sets of rules.¹⁷ In addition to promoting uniformity across the services, the UCMJ established a number of specific reforms. For example, it forbade convening authorities to interfere with court-martial proceedings and criminalized unlawful command influence.¹⁸ It granted an enlisted accused the right to a court panel composed of at least one-third enlisted members; previously only officers served as court members.¹⁹ The UCMJ required the prosecution and defense counsel at all general courts-martial to be lawyers.²⁰ It greatly increased the accused's right to appellate review of his conviction, including the establishment of a new Court of Military Appeals composed of

¹⁰ 10 U.S.C. § 8037(f).

¹¹ Cox, *supra* note 3, at 5-6.

¹² *Id.* at 5-12.

¹³ Alich, *supra* note 2, at 91.

¹⁴ Cox, *supra* note 3, at 10-11.

¹⁵ *Id.* at 10-12.

¹⁶ Alich, *supra* note 2, at 91.

¹⁷ *Id.*

¹⁸ *Id.*; see 10 U.S.C. §§ 837 (UCMJ Article 37), 898 (UCMJ Article 98).

¹⁹ Alich, *supra* note 2, at 91; see 10 U.S.C. § 825 (UCMJ Article 25).

²⁰ Alich, *supra* note 2, at 91. A later amendment applied the right to be represented by an attorney to special courts-martial as well. See 10 U.S.C. § 827 (UCMJ Article 27).

civilian judges.²¹ And, in Article 6, the UCMJ substantially increased TJAG's control over the JAG Corps and, as a result, the independence of judge advocates from command pressure.²²

B. Article 6: An Independent Corps

Article 6 of the UCMJ contains a number of provisions clearly intended to enhance the role and freedom of judge advocates as a bulwark against improper command influence. It requires court-martial convening authorities to "at all times communicate directly" with their staff judge advocates on military justice matters.²³ It also guarantees the ability of judge advocates to communicate with judge advocates in subordinate and superior commands, and with TJAG himself.²⁴ Article 6 further requires TJAG, or senior members of his staff, to "make frequent inspection in the field" of the actual administration of military justice.²⁵

Perhaps most surprising is the opening sentence of Article 6, which states in subsection (a): "The assignment for duty of judge advocates of the Army, Navy, Air Force, and Coast Guard shall be made upon the recommendation of the Judge Advocate General of the armed force of which they are members."²⁶ The phrase "upon the recommendation" caused some discussion among the Congressmen who drafted the UCMJ. At first blush, the term "recommendation" could be misinterpreted to mean the service TJAGs would give only an advisory opinion on the assignment of judge advocates. However, the official record leaves no doubt that Congress intended the TJAGs to control the assignment of judge advocates, and that personnelists would

issue assignment orders in accordance with TJAG's directions.²⁷

That Congress should write a law specifically addressing the assignment of judge advocates is striking. This attention suggests Congress intended to concentrate more control over assignments in TJAG's hands than was true of the heads of other career fields. The historical context magnifies this impression. When it created the UCMJ Congress intended to address the "heavy" complaints regarding "too much command influence" in the military justice process.²⁸ Based on the enhanced role judge advocates were to play as advisors and advocates in military justice under the new UCMJ, Congress clearly intended the JAG Corps to be both active and independent.

The congressional committee members' statements during their discussions at the time emphatically describe the scope of TJAG's assignment authority. Congressman Smart, one of the drafters of the UCMJ, explained the assignment of judge advocates "will initiate in the Judge Advocate [General's] office and not in Personnel."²⁹ Congressman Brooks put it more bluntly: Article 6 gives TJAG "the absolute power of veto" over judge advocate assignments.³⁰ The committee members described TJAG's control as a "recommendation" in an effort to clarify that TJAG, while responsible for making assignment decisions, is not responsible for issuing the actual assignment orders.³¹ Instead, "the appropriate personnel divisions of the respective services will issue [assignment] orders in accordance with the recommendations of The Judge Advocate General."³² Congress believed that TJAG control over judge advocate assignments would help shield lawyers from pressure to conform their advice to command desires, as opposed to the requirements of the law.

²¹ Alich, *supra* note 2, at 92. The former Court of Military Appeals (COMA) is now known as the Court of Appeals for the Armed Forces (CAAF). See 10 U.S.C. § 867 (UCMJ Article 67).

²² 10 U.S.C. § 806 (UCMJ Article 6).

²³ 10 U.S.C. § 806(b).

²⁴ *Id.*

²⁵ 10 U.S.C. § 806(a).

²⁶ *Id.* Interestingly, and in contrast, a later change to the UCMJ specified that judge advocates in the Marine Corps are assigned at the direction of the Commandant of the Marine Corps. *Id.*

²⁷ See *Hearings, supra* note 9.

²⁸ *Id.* at 899.

²⁹ *Id.* at 901.

³⁰ *Id.* at 900.

³¹ See *id.* at 898-901.

³² House Report No. 81-491, at 12 (1949).

The new UCMJ had clear implications for the role of Air Force judge advocates. In a system widely perceived to be too dominated by command authority and with too few safeguards for the rights of individual service members, the UCMJ entrusted the JAG Corps with greater freedom and a greater duty to promote fairness and the rule of law in the administration of military justice. That responsibility did not diminish in the decades that followed. In fact, the judge advocate's role has extended to support the accomplishment of Air Force missions far beyond the courtroom walls.

III. Subsequent Developments

A. The Independent JAG Corps Evolves

The UCMJ reforms succeeded to a great extent. Public complaints regarding the fairness of the military justice system dropped after 1950.³³ The heightened role of judge advocates played an important part. Although the UCMJ has remained in effect ever since, changes in the Code and other military justice processes have accentuated both the role and independence of judge advocates. For example, in 1968 Congress amended the UCMJ to replace "legal officers" with military judges, authorized an accused to choose to be tried by a military judge alone without any court members, and required an accused at a special court-martial to be represented by an attorney (unless military necessity did not permit).³⁴ In 1974, the Air Force created the Area Defense Counsel Program, in effect creating an independent corps of dedicated defense counsel within the JAG Corps.³⁵ Whereas previously defense counsel were assigned from the base legal office on a case-by-case basis, the new program enhanced the appearance of defense counsel independence and increased the confidence of their clients.

Although enacted with the intent to reform the military justice system, the UCMJ gave the

JAG Corps the importance and independence that expanded judge advocates' and paralegals' involvement in and contributions to the greater Air Force. In an increasingly complex legal environment, judge advocates brought their skills to bear on the government contracting process, ethical questions, environmental issues, managing the federal civilian workforce, and myriad other legal issues commanders face. The JAG Corps also operated the claims program. This ensured our military personnel were taken care of, boosted morale, and improved relations with local residents both at home and overseas. Through the legal assistance program the JAG Corps promoted the Air Force's mission readiness by providing innumerable wills, powers of attorney, and other services. In recent decades, international and operations law has become an increasingly important element of a judge advocate's practice. Whether based with a CONUS unit, working with higher headquarters, stationed overseas, or deployed, judge advocates give advice and training to commanders and troops to ensure compliance with law and policy. In each of these areas, as in military justice, the Air Force has benefited from the independent voice of judge advocates able to assist commanders and personnel at every level to accomplish their missions within the bounds of the law.

B. Now More than Ever: The Global War on Terror & the 2004 Amendments to the UCMJ

The world changed after the terrorist attacks of 11 September 2001. As the United States and its allies embarked on the Global War on Terror, the American military faced a determined, decentralized, and often elusive adversary. The conflict ranges worldwide. But the need to pursue such an enemy around the world and defeat them where they are found does not make the law or the lawyer's skills any less relevant. On the contrary, judge advocates are more valuable than ever to commanders facing challenges of unprecedented legal complexity. And in such an environment, the judge advocate's independent voice is as critical as ever.

³³ Alich, *supra* note 2, at 92.

³⁴ *Id.*; see 10 U.S.C. §§ 816 (UCMJ Article 16), 827 (UCMJ Article 27).

³⁵ Alich, *supra* note 2, at 93.

Congress agreed. In 2004, it amended Section 8037 of Title 10 of the United States Code, which supplements Article 6 of the UCMJ and further describes the Air Force TJAG's duties.³⁶ Among other changes, Congress inserted the following language in the statute: "The Judge Advocate General ... is *the* legal adviser of the Secretary of the Air Force and of all officers and agencies of the Department of the Air Force" (emphasis added).³⁷ Furthermore, TJAG "shall direct the officers of the Air Force designated as judge advocates in the performance of their duties."³⁸ Thus Congress clarified TJAG is the Air Force's preeminent advisor on all legal matters and reemphasized TJAG's control over the judge advocates within the JAG Corps. Clearly, Congress continued to value the judge advocates' role within the military.

Congress did not stop there. It also forbid any "officer or employee of the Department of Defense" to "interfere with" TJAG's ability to give "independent legal advice to the Secretary of the Air Force or the Chief of Staff of the Air Force," or "the ability of [judge advocates] to give independent legal advice to commanders."³⁹ The message could hardly be clearer. Just as 55 years earlier Congress had looked to an independent JAG Corps to safeguard the rule of law within the military justice system, in 2004 it insisted the judge advocate's independent voice not be stifled or suppressed. Air Force judge advocates respond to that call to duty every day, around the world.

IV. The Value of an Independent JAG Corps

A. Why the Special Emphasis on Judge Advocates' Independence?

We have seen that Congress has deliberately created an independent JAG Corps, and that judge advocates have applied their independent voice and expertise to the full range of legal

issues that confront Air Force commanders today. One might ask why judge advocates have been singled out in this way. Why does the law explicitly guarantee the judge advocate's access to her commander? Why does the law give TJAG such specific control over judge advocates, to include the "absolute power of veto" over assignments?⁴⁰ An independent JAG Corps is crucial for several reasons.

First, independence is the key to a judge advocate's usefulness to a commander and to the Air Force. To have value, the judge advocate's advice must be accurate. In legal matters, as in any other decision, commanders need correct information in order to make the best possible decision. Commanders need an accurate assessment of a threat in order to counter the threat appropriately. Similarly, commanders need accurate advice on the law in order to comply with the law. If a commander cannot or should not issue a certain order, spend appropriated funds in a certain way, or impose a certain punishment, his judge advocate needs to tell him so.

A judge advocate is more likely to accurately advise the commander on what the law requires or allows on a particular subject if she both has access to the commander and is not concerned about the impact that a correct but unpopular answer will have on her career. Judge advocates are taught an ethic of helping commanders achieve their objectives by lawful means. If the law permits the commander to achieve his goal, the judge advocate should help the commander achieve it. However, there will be times when the law simply does not permit a proposed course of action. In such a case, it is the judge advocate's duty to tell the commander so. If she either "looks the other way" or skews her interpretation of the law out of concern for her personal interests, she does a disservice to her commander, to the Air Force, and to those who are impacted by the outcome. She is knowingly allowing the commander to make a mistake, perhaps a serious one. Simply put, she is failing in her duty.

³⁶ 10 U.S.C. § 8037.

³⁷ 10 U.S.C. § 8037(c)(1).

³⁸ 10 U.S.C. § 8037(c)(2).

³⁹ 10 U.S.C. § 8037(f).

⁴⁰ See *Hearings*, *supra* note 9, at 900.

Wise commanders recognize the value of unvarnished truth to the decision-making process. However, both history and human nature teach us that in some cases subordinates who bring good news are rewarded while the bearers of bad news are shunned. We hope the judge advocate would do the right thing regardless of the personal consequences; but placing her under TJAG's control helps remove the pressure to conform her interpretation of the law to the commander's expectations or desires.

Second, giving TJAG control over judge advocates is important to the Air Force as an institution. In particular, assignment authority helps ensure judge advocates receive assignments on the basis of providing good legal advice rather than their skill in pleasing commanders. TJAG is in the best position to discern the distinction. Judge advocates should strive to be helpful and to maintain good relations with Air Force leaders, but the primary concern must be to provide commanders with timely and accurate advice.

Third, the independence of the JAG Corps matters because of the nature of the advice that judge advocates provide. Every career field requires its own kind of expertise, but the practice of law can be more subtle and theoretical than many. If a commander wants to know if a bomb struck its target, the answer to that question can be objectively determined. Similarly, if the commander wants to know how many dollars are left in the unit Operations and Maintenance fund, the means exist to verify that as well. In contrast, if the commander asks his staff judge advocate whether the law permits him to provide support to a non-governmental organization, the answer may be more difficult to objectively confirm. Whether the judge advocate says "yes" or "no," the commander may have difficulty verifying that opinion, short of asking another lawyer. Moreover, the wrong answer may be personally attractive to the commander and popular with others in the community. The commander may feel no adverse short-term consequences if he makes the wrong choice. For these reasons the judge advocate may feel pressure, real or imagined, to conform her advice to the commander's desires.

Putting judge advocates under TJAG's control bolsters the judge advocate's ability to "speak truth to power" when necessary.

Fourth, an independent JAG Corps is important because the rule of law is fundamental to our military, our society, and our system of government. Air Force officers take an oath to support and defend the United States Constitution. Statutes passed by Congress, executive orders, regulations established by federal agencies, and decisions of the federal courts are all extensions, directly or indirectly, of that constitutional system. The United States military has legitimacy because it respects and is subordinate to civilian authority and the rule of law.

King George III of Great Britain was told that George Washington was retiring as commander of the Continental Army at the conclusion of the American War of Independence. The king reportedly replied, "If he [Washington] does that, he will be the greatest man in the world."⁴¹ This is the heritage we receive as members of the United States armed forces. In the Air Force, the JAG Corps is the voice of the law. Judge advocates, through their advice, help commanders sustain this tradition by operating within the bounds of the law.

B. The Commander/JAG Relationship

Is the independent judge advocate an obstruction for commanders? Is it her role to constantly peer over the commander's shoulder, inspecting his actions, waiting to shout "gotcha" and cancel his plans with a legal veto? Worse, is she a spy nestled in the organization, ready to report any error up her functional chain to higher headquarters? Emphatically, the answer should be "no."

First, while judge advocates advise, commanders decide. In most situations, the commander will have a range of legal options available. The judge advocate should ensure the

⁴¹ Wikipedia, George Washington, http://en.wikiquote.org/wiki/George_Washington (last visited March 2, 2007).

commander understands the range of options and help him select the best one. The judge advocate may, and certainly should be ready to, give a recommendation; but the commander is not bound to follow it. The commander may choose any lawful alternative, and occasional differences of opinion are to be expected in a healthy commander-staff judge advocate relationship. To paraphrase Ross Perot, if two people agree all of the time, one of them is not thinking. The judge advocate's intended role is not to attempt to control the commander but to advise him of legal alternatives and ensure he makes an informed decision.

Judge advocates understand this. From the beginning of their careers as Air Force judge advocates they are taught and frequently reminded that they are primarily advisors, and that commanders control the system. Judge advocates may be more heavily involved in some areas than in others – for example, the military justice system. But even there, commanders decide whether to prefer the charges against an accused; refer the case to trial; send the case to a summary, special, or general court-martial; approve or disapprove any of the findings or punishments; or order a new trial, to name a few key decisions. And once the commander has made an informed, legal decision, the judge advocate should support the commander in seeing the decision carried out.

Thus, commanders should not fear, resent, or ignore the independent voice of their staff judge advocate. Commanders have authority to decide and to lead – to command. The judge advocate is not a threat or an obstacle but a resource and a safeguard. The commander should expect accurate advice from the judge advocate, and he should enjoy peace of mind when he relies on that advice. If the commander later needs to justify his actions, it is a powerful defense for him to be able to say he relied on the independent legal advice of a judge advocate.

V. Conclusion

During World War II, “[m]any an otherwise competent staff judge advocate stultified his conscience and prostituted his profession in the

interest of obtaining promotion.”⁴² That situation contributed to abuses of command authority and loss of confidence in the military justice system. Congress enacted the UCMJ, and in particular Article 6, with the intent to create an active and independent JAG Corps under TJAG’s control. Over time, the Air Force has benefited from the JAG Corps’ growing role in coping with an increasingly complex legal environment. The 2004 amendments forbidding interference with judge advocates’ independent advice to commanders makes it clear that role is as important now as it has ever been. An independent voice is the key to a judge advocate’s value to commanders and to the Air Force.

10 U.S.C. § 806 (Article 6 of the UCMJ):

§ 806. Art. 6. Judge advocates and legal officers

(a) The assignment for duty of judge advocates of the Army, Navy, Air Force, and Coast Guard shall be made upon the recommendation of the Judge Advocate General of the armed force of which they are members. The assignment for duty of judge advocates of the Marine Corps shall be made by direction of the Commandant of the Marine Corps. The Judge Advocate General or senior members of his staff shall make frequent inspections in the field in supervision of the administration of military justice.

(b) Convening authorities shall at all times communicate directly with their staff judge advocates or legal officers in matters relating to the administration of military justice; and the staff judge advocate or legal officer of any command is entitled to communicate directly with the staff judge advocate or legal officer of a superior or subordinate command, or with the Judge Advocate General.

(c) Disqualification and (d) Detailing to Other Agency omitted from this excerpt

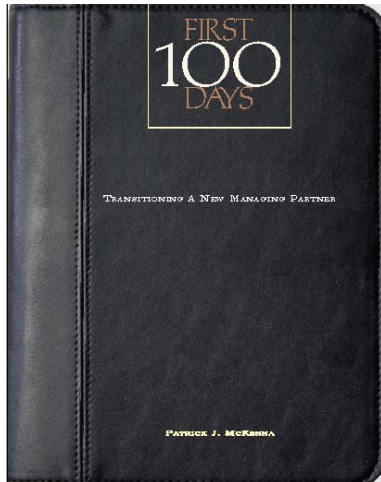
⁴² See *Hearings*, *supra* note 9, at 752.



BOOKS IN BRIEF



The summer PCS season brings the challenge of change. Our JAG Corps leadership manual, *I Lead!*, provides an excellent guide to managing this phase of change in an office. In addition, here are two very different works on coping and capitalizing within this window of opportunity.



First 100 Days: Transitioning a New Managing Partner

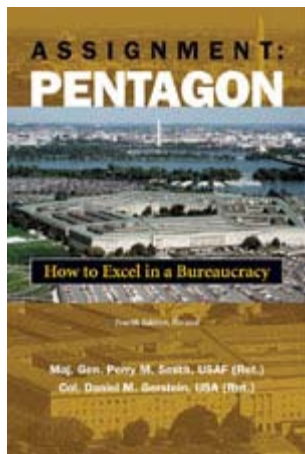
Patrick J. McKenna free <http://www.patrickmckenna.com/>

At first glance, this work may seem an odd fit for the military environment, targeted to the world of for-profit law partnerships, million-dollar prima donna employees, and clients auditioning firms for each project. But there are deep similarities as attorneys grow into leaders, managing law practices with a variety of personalities, constrained resources, and a demanding clientele.

This is an easy lunch-time read. Or tuck a printout in a gym bag and take it to an elliptical trainer session. An hour invested will reward the reader with insights on management and leadership -- with the immediacy of taking key actions within the first 100 days.

I Lead! selected the same term: the first 100 days. Indeed, this is an excellent time to read Chapter 17 of *I Lead!* for Air Force and JAG Corps-specific advice.

This work enhances the *I Lead!* chapter. In addition to Mr. McKenna's general themes, the book highlights specific advice from highly successful managing partners. Many of the practical principles and suggestions transcend a particular setting and are easily adapted to our practice.



Assignment: Pentagon, How to Excel in a Bureaucracy (4th ed.)

Major General Perry M. Smith (USAF, Ret.) and Colonel Daniel M. Gerstein (USA, Ret.) \$22.95 Potomac Books, Inc. (2007)

Don't be misled by the "Pentagon" in title. This book is a worthwhile read for anyone in the Air Force or any other large organization.

Major General Perry Smith is known to many readers as a television network news military correspondent, a frequent speaker at Squadron Officer School and other developmental education schools, and as the author of *Taking Charge* (1993) and *Rules & Tools for Leaders* (2002).

Some particulars in this book are truly for the Pentagon-bound. (A one-page, two-minute primer on finding a Pentagon office address is crucial for those navigating within the five-sided building for the first time!)

Much of the book, though, applies equally to audiences outside of the Pentagon. General Smith writes in a very engaging style, as if the reader were learning from an experienced mentor. He provides specific by-the-numbers guidance to anyone working in the Air Force, including advice for those entering a new office or changing roles within an office. He also summarizes his points in checklists and provides other practical tools for readers. The addition of a co-author for this edition adds even greater joint service perspective -- useful inside and far outside of the Pentagon.

Read a good book lately? Share your thoughts by contacting the editors of The Reporter!

Legal Assistance Notes

ABA LAMP Distinguished Service Award

On 26 July 2007, Lieutenant Colonel Ferah Ozbek, currently the Staff Judge Advocate, 45th Space Wing, Patrick AFB, FL, was presented the Distinguished Service Award from the American Bar Association's Standing Committee on Legal Assistance for Military Personnel (LAMP). She earned the award for her work as the Chief of Legal Assistance and Preventive Law Division (JACA), Air Force Legal Operations Agency, Washington D.C. During her tenure at JACA she was directly responsible for the significant legal assistance innovation of Corps-wide video teleconferences on legal assistance topics.



This exceptional achievement continues to bring cutting-edge expertise to hundreds of legal assistance practitioners. Entire offices are educated without using precious travel dollars. This technology allows questions from the field to be shared in "real-time," so that everyone may share in the answers. Through the use of this technology, experts are now available in every base legal office. The program has also focused on tapping the great expertise of legal assistance practitioners -- including Guard and Reserve members with specialized civilian practices. The JACA VTCs have transformed into the webcast series presented by The Judge Advocate General's School.

During her acceptance remarks, Lieutenant Colonel Ozbek thanked those people that were the target of her video teleconferences and webcasts: the base-level assistant staff judge advocates that provide legal assistance to our Airmen, retirees and their families, assuring all of them are provided competent, professional legal counsel that supports and sustains command effectiveness and readiness.

ABA LAMP CLE Event at The Judge Advocate General's School

The American Bar Association's Standing Committee on Legal Assistance to Military Personnel held an all-day CLE event at The Judge Advocate General's School on July 26, 2007. The LAMP Chair, General Earl Anderson (USMC, Ret.), started the day with inspirational comments on the importance of legal assistance and the rewards of providing professional counsel. The keynote address from Colonel Henry Fowler (USAF, Ret.) focused all of the attendees on the unique community they serve.

Colonel John Odom (USAFR, ret'd) and Lieutenant Colonel Greg Huckabee (USA, Ret.) provided a historical and theoretical overview of the Servicemembers' Civil Relief Act, punctuated with cutting-edge pointers for practitioners. Colonel Odom also spoke on the Uniformed Services Employment and Reemployment Rights Act, drawing upon his remarkable breadth of experience enforcing USERRA.

Faculty members also shared the spotlight. Colonel Dexter Lee, USAFR, explained immigration law from his unique vantage point. Major Jennifer Hyzer provided an extensive discussion of the wide spectrum of military family law issues. The event was emceed by Rear Admiral Thomas Morrison (USN, Ret.), sharing insights in introducing each speaker. A reception capped the day, allowing speakers and attendees to meet informally.

Attendees included military and civilian legal assistance professionals from across the Southeast, including members of the other services and private attorneys. The entire event was also webcast across the Corps and to the other services. Materials are posted at: <http://www.abanet.org/legalservices/lamp/clematerials.html>

Colonel David Wesley, Commandant of The Judge Advocate General's School, noted that "the education also benefited the new judge advocates in JASOC 07C -- providing an excellent introduction to this crucial aspect of their practice, and highlighting the career-long importance of legal assistance!"

ORGANIZED CHAOS: Managing the Disorder of Trial

by Captain John W. Bellflower,* USAF

*Editor's Note: In presenting this challenging view of litigation through key military principles, we wish to remind readers of the controlling goals of Air Force Standards for Civility in Professional Conduct***

*"Along with our obligation to represent clients zealously, we must also fulfill our responsibilities to the administration of justice. Civility—treating others with courtesy, consideration, and mutual respect, regardless of the cause they espouse—enhances the dignity of the profession of law and the satisfaction of all who are affected by it."****

Think for a moment of the difficulties of trial. You are striving diligently to present the jury with your theory of the case while an opposing counsel is not only presenting an alternative theory but actively attempting to discredit yours. You are in a constant battle to convince the members that your version of events and your interpretation of those events is the correct one. Despite your best preparation, events unfold during trial that you cannot control. Opposing counsel files last minute motions or objects to your evidence, the judge makes rulings that you believe run contrary to law, or witnesses fail to testify as anticipated. Despite your best efforts, these events coalesce to create a trial scheme that you may not have anticipated. Your ability to work within this chaotic environment and adapt to the changing nature of the trial is critical to influencing the jury's perception of your case theory. Understanding this chaos will help you quickly determine and execute a course of action that will further your theory of the case and give you a decisive advantage.

In 1989, the U.S. Marine Corps published the basic military philosophical manual,

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** The Air Force Standards for Civility in Professional Conduct are contained in Attachment 2 of TJAG Standards Policy Memorandum 2: Air Force Rules of Professional Conduct and Standards for Civility in Professional Conduct (17 Aug 05) [hereinafter TJS-02].

*** TJS-02, para. 2(b).

Warfighting.¹ The manual serves as the authoritative basis for how Marines fight and how they prepare to fight. Although Warfighting was written to address maneuver warfare and describes characteristics, problems and demands of war, the principles may also be more broadly applied to the traditional battleground for attorneys, trial practice, as well.

Boiled down to its most basic feature, trial is much like war; it is a state of opposition between two parties. At trial, though, the opposition is characterized by the use of intellectual, rather than physical, force. Each party takes a position (typically after some form of diplomacy has failed) that is independent of and irreconcilable with the other party's position, leaving no alternative but trial. These competing wills result in a dynamic complexity that is compounded by the fact that the opposing parties are seeking to impose their will not only on each other, but also upon the jury. At trial, therefore, you must thoroughly understand this complexity and be able to adapt to the dynamic environment in order to effectively advocate your position. Developing this understanding is crucial to convincing a jury that your theory of the case is the correct one. Thus, you must develop an appreciation for the three specific characteristics explained in Warfighting that contribute to the difficulty of trial: friction, uncertainty, and fluidity.

Friction

Friction is that which makes the seemingly easy more difficult. The very nature of our adversarial trial system dictates that friction is the norm rather than the exception. Since each attorney is an independent, volitional being seeking to pursue his own objective, each attorney will attempt to advance his case theory and thereby impede his opponent's case theory in a unique fashion. The ensuing conflict between these

¹ See U.S. MARINE CORPS, FLEET MARINE FORCE MANUAL 1, WARFIGHTING (6 Mar 1989) [hereinafter WARFIGHTING]

opposing positions results in a discordant environment that magnifies friction.

Friction is a malleable concept and subjective in nature; what may be friction to you may be your opponent's blessing. Friction can, however, be *loosely* categorized into four types: mental, physical, external, and internal.² *Physical friction* results from the course of action taken by opposing counsel. Whether in the form of peremptory motions, timely objections, or the like, the actions of opposing counsel serve to disrupt your own case presentation. This action need not be successful to constitute physical friction; the mere taking of the action is what causes the friction because it generates the need for a response and the possibility for *mental friction*.

Mental friction occurs as a result of indecision regarding a particular course of action in response to physical friction. This indecision may stem from your lack of knowledge of the facts, case law, or rule of evidence germane to a particular issue, or it may occur because of your inability to adapt to opposing counsel's attempts at increasing your level of friction. In other words, mental friction typically results from some action by opposing counsel for which you have no immediate answer. Failing to account for these possibilities has the potential to increase mental friction.

Although most of the friction in our adversarial trial system results from the dynamic relationship between opposing attorneys, friction can also result from external factors. *External friction* encompasses that friction which cannot be controlled by either counsel. It runs the gamut from the innocuous, such as jet noise that interrupts your closing argument - to the exasperating, such as a witness that fails to testify as advertised - as well as to the infuriating, such

as a judicial ruling you believe to be contrary to law. External friction generates reaction from both attorneys thereby creating the potential for additional mental and physical friction.

Unlike external friction, you have almost total control over *internal friction*. Internal friction is self-induced and differs from mental friction in the sense that it is a potential byproduct of the mental process rather than the mental process itself. It happens when you make a mistake that causes a disruption in your case presentation.

Internal friction is caused by failing to adequately prepare your case or witness, or even by choosing what turns out to be the wrong course of action. This kind of self-induced friction is the most costly because it results from an inner failure that blindsides you because you never anticipated it; if you had, you would have, presumably, rectified the problem.

Friction is often exacerbated by your failure to account for it. As you prepare for trial, you most likely think in two dimensions; you plot your course of action and attempt to anticipate your opponent's responses. Often left undiscovered, until it is too late, are the effects those responses will have on your own course of action. Plotting and adhering to a two-dimensional course of action ignores the fact that your opponent's responses will often

require a change in your course of action, and as a result, another change in your opponent's course of action, and so on. To be successful you must reject the two-dimensional process in favor of one in which you make decisions in light of your opponent's anticipated responses. By accounting for, and attempting to anticipate, each type of friction, you will see past your adversary's reaction and into the cycle of action-reaction that is created in trial. Thus, you are better prepared to manage friction rather than succumb to it.

Uncertainty



Major-General Carl von Clausewitz developed "friction", "fog of war", "centers of gravity" and other key terms in On War (1832). The Prussian General's work has shaped military thinking for nearly two centuries.

Bust displayed in the National War College.

² See WARFIGHTING, *supra* note 2, at 5-6.

Unlike friction, the effects of *uncertainty* are initiated before trial even begins. As you prepare for trial, you are acutely conscious of what you do not know. Case preparation and research is your attempt to minimize that which is unknown. Although you will continually gather information throughout the preparation phase of the case, you can never fully eliminate the unknowns. Even as you enter the courtroom on the first day of trial, you may still be unaware of your opponent's strategy, how witnesses will hold up to the strain of actually testifying, and how friction will alter your own strategy. Uncertainty is pervasive throughout a case and the key to managing it is distinguishing between the probable and the possible.

As you gather information regarding the facts and circumstances that led to the trial, you will likely become aware of a number of potential issues that may arise. Thorough research, case preparation, and experience, however, will help minimize the impact of the issues on your case. Those actions that are most likely to occur are probable while those less likely to occur are simply possible. Assigning a level of probability allows you to develop a vision of the most likely progression of the case along with possible variations. Similarly, you can also develop contingencies for each anticipated issue, and therefore establish some measure of control. This control may help avoid some portion of mental and internal friction stemming from possible unanticipated events. However, in the development of contingent courses of action, care must be taken not to ignore those scenarios assigned a low level of likely occurrence since it is often those scenarios that can have the greatest impact on a case because of their increased ability to generate friction.

Since a scenario's ability to generate friction is inversely proportional to its predictability, care must be taken when attempting to determine potential issues. However, any assessment of probable and possible issues will necessarily fall short since the element of chance always exists. Chance consists of those events that cannot reasonably be foreseen; what Secretary of Defense Donald Rumsfeld would call unknown

unknowns.³ Although chance may generate the highest level of friction, you should remember that chance can equally affect your opposing counsel. You, therefore, must lessen unknowns by identifying both probable and possible events to give yourself some measure of control.

Fluidity

Fluidity is the flow of a case and must be measured from the jury's perspective. Trial fluidity is naturally disruptive for the simple reason that facts are presented through multiple mediums. Each witness or exhibit provides only a small piece of the story. Your job is to arrange these pieces for the jury throughout the course of trial so they are able to digest and accept your theory of the case. To properly manage the flow of a case, therefore, you must first recognize that evidence is not viewed in isolation by the jury. As one bit of evidence is received, the jury merges it with previously received evidence and uses the end result to interpret evidence subsequently received. Thus, you must continually manage fluidity to ensure proper interpretation of evidence.

Another aspect of fluidity that must be considered is the effect of friction. Just as *you* must adapt to friction's presence, so too must a jury. However, since the jury has no previous knowledge of the case, or of the law, you must either assist them in digesting the meaning of the friction or help them overcome the temptation of succumbing to it. Simply put, this means that you must seize the opportunity friction provides. For example, when receiving an objection by opposing counsel during the questioning of a witness, you must be able to quickly recapture the attention of the jury. How you accomplish this is dependent upon the ruling of the judge. If the objection to a question is overruled, a repetition of the question in a measured manner, with proper tone to draw attention, may suffice. If the objection is sustained, quickly moving to a more important point or rephrasing the question in a measured manner may be enough.

³ Donald H. Rumsfeld, *News Transcript* (Feb. 12, 2002) available at http://www.defenselink.mil/transcripts/2002/t02122002_t212sdv2.html (last visited Jul. 30, 2007).

The synergistic effect of friction, uncertainty, and fluidity is disorder.⁴ Despite rules of procedure and rules of evidence, disorder is the one constant in trial that can never be eliminated. It can, however, be managed to the extent that it actually becomes somewhat of an advantage. The attorney that acknowledges, understands, and prepares for this disorder gains a decided advantage over the attorney that does not. From the moment you are handed a case, you should account for the effects that disorder will have. A failure to account for these effects during trial preparation cedes the initiative to opposing counsel and may engender adverse results.

Managing Disorder through Presentation

The importance of case presentation vis-à-vis the jury is best illustrated through a passage from Lewis Carroll's *Alice in Wonderland*. Lacking direction, Alice asks the Cheshire Cat, "Would you tell me, please, which way I ought to go from here?" The Cheshire Cat replies, "That depends a good deal on where you want to get to." "I don't much care where," says Alice. "Then," says the Cheshire Cat, "it doesn't matter which way you go." At the beginning of trial, the jury stands before a fork in the road. One leads to a favorable result for you while the other leads to a favorable result for your opponent. Like Alice, the jury doesn't much care where it goes so long as the result is just. Since the Cheshire Cat has no vested interest in where Alice ends up, he has allowed an opportunity to pass. You cannot do so with the jury. You want them to travel down a particular road and you know that disorder will create many opportunities for them to stray from that path. As they stand before you, just as Alice stood before the Cheshire Cat, asking for directions, choose your response wisely. Give them the guidance they seek by developing a case presentation that uses: (1) a simple theory that captures the essence of the case; (2) themes that act as cues to reinforce your case theory, and (3) proper tempo to account for juror attention span.

Case presentation begins with the construction of a basic case theory. Although some attorneys only begin to consider case theory when developing opening statements or closing arguments, managing disorder requires theory

development at the initial stage of case development. This is especially true since, in constructing a case theory, you are actually constructing the road you want the jury to travel upon. At this stage, however, only a basic case theory is required. Throughout the preparation of your case you should continually reassess and further develop this theory. As new facts are discovered, they must constantly be weighed against the initial theory to determine whether they support or alter it. Despite the possibility that an initial case theory may be altered, it behooves you to develop a coherent theory early in the case since this theory will ultimately guide case preparation.

To develop a logical and persuasive case theory, you must find the *essence* of the case. The essence of a case is its most basic concept; it is distillation of facts down to the clearest, most succinct, most relevant terms possible.⁵ While this may be a simple endeavor in a single-use drug case, it may require intense thought in a complex, multi-offense case. Establishing the essence allows you to describe the case in simple, easily grasped terms. From this beginning, you can develop a concise storyline that is consistent with the undisputed facts and substantive law. Of course, a case theory will inevitably involve disputed facts. You must keep in mind when preparing your theory that these facts must fit logically within the case theory framework without contradicting or detracting from overall theory. Constructing a case theory by utilizing the essence of the case best helps in managing the fluidity of the case. As discussed above, the staccato nature of presenting a theory to the jury through multiple witnesses and exhibits contributes immensely to the disorder of trial. A simple, clear and concise theory assists in managing the flow of the case so that, to some extent, this disorder is controlled.

Once a basic theory has been developed, you must develop the themes that will act as signposts to guide the jury to your desired verdict. Like any directional signs, your themes must be clear and easy to understand. As the jury begins its journey toward deliberation and verdict, they will have multiple opportunities to succumb to the

⁴ See WARFIGHTING, *supra* note 2, at 8.

⁵ See DAVID H. FREEDMAN, CORPS BUSINESS 10 (2000).

disorder of trial and become lost. You should use themes throughout the case to remind the jury of your theory and point them in the direction of a favorable result.

Never miss an opportunity to present your theme; it should be woven into every aspect of your case from voir dire through your rebuttal argument in sentencing. Themes are to the trial attorney as talking points are to the politician. To learn how to effectively direct and redirect the jury to your theme, you should watch politicians. Turn on a news analysis/commentary show. Notice how the politician fields every question by reverting back to his talking points. No matter what question is asked, in answering he always moves back to the central idea he wants to convey to his audience. You should do the same with the jury; no matter what the witness, opposing counsel or the judge throws at you, always revert back to your theme. Effectively done, your theme can become the one beacon that the jury can point to and follow.

A final factor in guiding the jury is tempo. While your theory is the road upon which the jury will travel and themes are the signposts that guide them, tempo acts as an usher to move them along the road toward your verdict; it keeps them on task. For the most part, people have relatively short attention spans. The longest you can expect to have a jury's complete attention on any particular issue is twenty minutes.⁶ Evidence of this is clearly seen in today's sound-bite media world. Watch any news program and you'll notice how the news is presented in small, easily digestible chunks. Your tempo should incorporate this method by arranging witness and fact presentation accordingly.

A good way of doing this is to have your witnesses present their testimony in the same way news is delivered. When the media presents news, whether in written or verbal form, the essence of the particular topic is set forth in the beginning and the remaining time is spent further developing the topic. For those jurors with longer attention spans, you will be able to give them a fuller picture, while those with shorter attention spans will at least absorb the essence of your case. Your theme can help reinforce this to ensure juror retention.

⁶ See THOMAS A. MAUET, TRIAL TECHNIQUES 19 (2000).

Another method of assisting in juror retention and establishing tempo is the use of technology. Particularly with military juries, technology can make a presentation more effective since military members are accustomed to receiving information through technology (e.g. PowerPoint). Using technology in the courtroom not only allows you to pique the interest of your jurors but also assists in absorption and retention since people are more likely to learn something when it engages multiple receptors. In other words, jurors are more likely to grasp your theme and theory if they see it as well as hear it.

A final note on tempo deals with the Rule of Three.⁷ This rule suggests that an effective method of conveying your idea is to reduce it to three main points; any more than three and recipient is likely to become confused or uninterested. A good example is this very paper. In it, I have used the Rule of Three to identify the problem (disorder in trial); define it for you, and suggest a solution (case presentation). The employment of the Rule of Three continues by separating disorder into three parts (friction, uncertainty, and fluidity) and doing the same with case presentation (theory, theme, tempo). Hopefully, this method has enabled you to grasp and retain the concepts sufficiently to assist you in your next trial.

Conclusion

As in war, disorder at trial emanates from multiple sources and every possible instance of disorder can never be conclusively predicted prior to trial (hence uncertainty). Thus, an exhaustive review of trial disorder within a single article is impossible. However, by recognizing the presence of disorder and understanding how it manifests itself, you can better prepare to manage it and better position yourself to achieve a favorable result. You must continually review and assess the facts and your case theory in light of the factors that lead to disorder. In doing so, you can more quickly react to the dynamic nature of trial and position yourself for victory. Although a failure to account for disorder does not ensure defeat, it can certainly make trial more difficult.

⁷ FREEDMAN, at 36.

Military Justice Pointers

A Job Is Just a Job

The Air Force Court of Criminal Appeals reminded trial advocates of proper aggravation in sentencing in *U.S. v. Wingness*, ACM 36186 (16 Jun 06). The accused was assigned to a security forces squadron as a “Response Force Member.” Approximately 5 months prior to trial, he had been moved to “X-Ray Flight,” a subunit of the squadron reserved for members facing discharge or other adverse actions. While assigned to “X-Ray Flight,” the accused and a co-worker came across an ATM card, not belonging to either of them, which they later wrongfully used.

During sentencing argument, trial counsel referred to the accused’s responsibilities as a “missile cop,” and argued, “the fact that he’s a cop makes it all the more aggravating.” Trial defense counsel did not object to trial counsel’s argument. On appeal, however, the court reiterated its well settled precedent in *U.S. v. Collins*, 3 M.J. 518 (AFCMR 1977) and progeny. Counsel are not permitted to argue that a member’s duty position aggravates an offense unless there is evidence which demonstrates some reasonable link or manner in which the offense or the duty position was somehow compromised by the offense. Appropriate relief was afforded by the Court.

The Devil Is in the Details

In a second look at *U.S. v. Polinard*, ACM 35806 (f rev) (31 July 2006), the Air Force Court of Criminal Appeals reminds practitioners of the importance of an accurate record of trial (ROT). At trial, the military judge permitted the deposition of an AFOSI agent to be read to the members due to the agent’s unavailability at trial. The agent’s deposition contained the following language: “And he [the accused] requested legal counsel.” As would be expected, trial defense counsel objected to the members being apprised of the accused’s invocation of his right to counsel. The government agreed not to read that sentence to the members. Nevertheless, the ROT reflected that trial counsel did read that sentence to the members. The ROT had been certified by assistant trial counsel and the military judge. The SJA, in his SJAR, asserted that he too had read the ROT.

Based upon the ROT, appellate defense counsel raised the issue as an assigned error. The Court granted relief by setting aside an offense. Government appellate counsel requested reconsideration and submitted an affidavit from the court reporter stating that “I did ‘cut and paste’ portions of [the] deposition into the transcript without deleting those lines that were not read into the record.” Therefore, the ROT that had been read and/or certified by at least three judge advocates, did not accurately reflect the court proceedings. In its opinion, the Court acknowledged that errors can creep into lengthy ROTs. However, the court did not find this particular error to be trivial. It found that the original, uncorrected ROT created the impression that the prosecutors caused reversible error and the military judge did nothing to correct it. This resulted in the Court granting relief predicated on facts which later all parties acknowledged were untrue. The Court was not, at its second look, inclined to retreat from its previous grant of relief.

In the end, “no matter how lengthy a record or soporific its contents, trial participants must read it carefully to ensure its accuracy.” Enough said!

AFJAGS Outreach

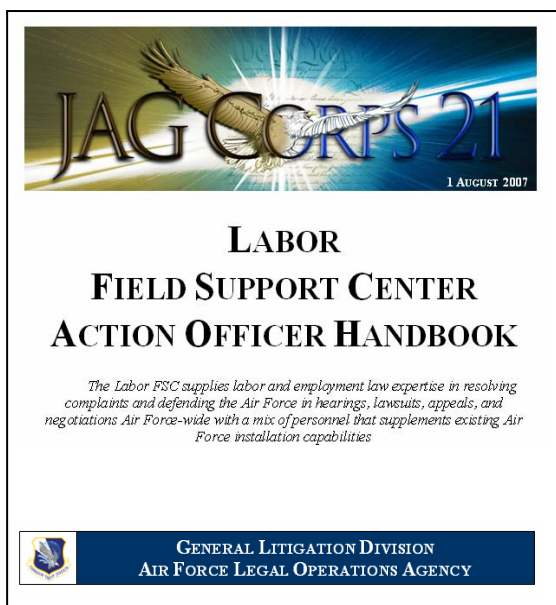
Educating Beyond the Walls of the School

With the SJA taking well-deserved leave and the Deputy at sick call, Capt Perez covers this week's Wing Staff Meeting. The Wing Commander announces that he's scrapping the base's traditional compressed work week -- no more Fridays off for civilians or military.

Back in the office, Capt Perez remembers a labor law distance education lesson and alertly thinks to dig into how this change may impact base civilians' conditions of employment. She pulls up the Labor Law Field Support Center Action Officer handbook and quickly learns the process and players. With FSC contact information in hand, she rapidly obtains expert counsel from the FSC and seamlessly applies it in advising her Wing Commander.

This scenario is unfolding across the Air Force. Realizing how JAG Corps 21 will shift the placement of functional expertise, Major General Rives challenged The Judge Advocate General's School to create two new key products: FSC Action Officer handbooks and distance education courses.

The FSC Action Officer handbooks are the day-to-day "user's guide" to each FSC. Legal professionals across the Corps can turn to the handbooks to learn when and how to work with each group of consolidated experts. The handbooks detail each FSC's scope, processes, and other operating information.



The FSC Action Officer handbooks are the product of great effort within each of the Field Support Centers, including the key personnel standing up the FSCs that come online over the next year. The Professional Outreach Division of the School works closely with each FSC to provide consistency across the set of handbooks. The Captain with a labor law issue in the scenario may have a NEPA issue next week and turn to the Environmental Law FSC AO Handbook. It has different information, of course, but works very much like the Labor Law FSC AO Handbook. She spends her time on the issue -- not on learning a new handbook.

JAG Corps 21 is an evolving process -- as General Rives has noted, "we have 93 more years in the 21st century!" Each of the handbooks reflects this evolution, as all six are updated monthly. Updates from the immediately prior edition are highlighted, so that frequent users can quickly assess new material. The handbooks are available on the School's FLITE site:

<https://aflsa.jag.af.mil/AF/lynx/afjags/>

The new distance education courses provide "on demand" lessons in targeted topics.

The first series -- targeting base legal office Division Chiefs -- went online on June 1, 2007. These courses prepare incoming leaders of six common wing legal office divisions:

- Adverse Actions
- Civil Law
- Claims
- Legal Assistance
- Military Justice
- Operations Law



Currently, the six courses contain thirty-six lessons.

The Chief of Legal Assistance course, for example, contains four separate lessons. Two of the lessons focus primarily on substantive law -- consumer law and a VA benefits. The other two lessons focus on leadership -- including guidance on managing a legal assistance program, often the first leadership role for new judge advocates.

This same blend of law and leadership is seen across the courses. The faculty and experts across the Corps captured decades of practical advice, with pointers on the law and guidance on applying it as a JAG Corps leader. Many of the lessons provide practical tools, including sample operating instructions and checklists. The lesson on legal readiness not only contains video of a model mobility line briefing, it also provides the script for offices to easily tailor for local use.



General Rives has mandated that new division chiefs complete the appropriate course before they move into those positions of responsibility. This includes successfully completing the quizzes that test the application of each lesson's lessons.

Each lesson can also be used individually by anyone in the Corps. The lessons are typically a half-hour or less. This is a very useful length, allowing the right lesson to be a centerpiece of an office training session.

The distance education lessons are hosted on JAS' JADE server. JADE stands for Judge Advocate Distance Education: <https://aflsa.jag.af.mil/kworks/> (Note: the "/" at the end of the address is crucial!) The "Distance Education" tab on the School's FLITE site contains a guide to using JADE, as well as a syllabus describing each of the courses and lessons.

New courses are being developed with lessons on working with the Field Support Centers.

As with the FSC Action Officer handbooks, each division chief distance education lesson is reviewed monthly for updates in the law and additional practice pointers. Both are evolving projects -- and input from the field will continue to fuel the handbooks and lessons!

The Judge Advocate General's School

Fiscal Year 2008 Course Schedule

<p><u>9 Oct-13 Dec 2007</u>: Judge Advocate Staff Officer Course (08-A)</p> <p><u>10 Oct-30 Nov 2007</u>: Paralegal Apprentice Course (08-01)</p> <p><u>15-19 Oct 2007</u>: Area Defense Counsel Orientation Course (08-A)</p> <p><u>15-19 Oct 2007</u>: Defense Paralegal Orientation Course (08-A)</p> <p><u>24 Oct-7 Dec 2007</u>: Paralegal Craftsman Course (08-01)</p> <p><u>29-30 Oct 2007</u>: Advanced Environmental Law Course (08-A (Off-Site Wash DC Location))</p> <p><u>3-4 Nov 2007</u>: Reserve Forces Judge Advocate Course (08-A)</p> <p><u>27-30 Nov 2007</u>: Deployed Fiscal Law & Contingency Contracting Course (08-A)</p> <p><u>10-14 Dec 2007</u>: Federal Employee Labor Law Course (08-A)</p> <p><u>3 Jan-22 Feb 2008</u>: Paralegal Apprentice Course (08-02)</p> <p><u>7-18 Jan 2008</u>: Trial & Defense Advocacy Course (08-A)</p> <p><u>25-26 Jan 2008</u>: Air National Guard Annual Survey of the Law (08-A & B (Off-Site))</p> <p><u>25-26 Jan 2008</u>: Air Force Reserve Annual Survey of the Law (08-A & B (Off-Site))</p> <p><u>28 Jan-1 Feb 2008</u>: Military Justice Administration Course (08-A)</p> <p><u>4-8 Feb 2008</u>: Legal & Administrative Investigations Course (08-A)</p> <p><u>8-10 Feb 2008</u>: Total Air Force Operations Law Course (08-A)</p> <p><u>11-13 Feb 2008</u>: Homeland Defense/Homeland Security Course (08-A)</p> <p><u>14-15 Feb 2008</u>: Legal Aspects of Information Operations Law Course (08-A)</p> <p><u>19 Feb-18 Apr 2008</u>: Judge Advocate Staff Officer Course (08-B)</p> <p><u>25 Feb-11 Apr 2008</u>: Paralegal Apprentice Course (08-03)</p> <p><u>3 Mar-11 Apr 2008</u>: Paralegal Craftsman Course (08-02)</p>	<p><u>14-18 Apr 2008</u>: Senior Defense Counsel Course (08-A)</p> <p><u>15 Apr-3 Jun 2008</u>: Paralegal Apprentice Course (08-04)</p> <p><u>19-20 Apr 2008</u>: Reserve Forces Judge Advocate Course, (Class 08-B)</p> <p><u>21-25 Apr 2008</u>: Environmental Law Course (08-A)</p> <p><u>21-25 Apr 2008</u>: Area Defense Counsel Orientation Course (08-B)</p> <p><u>21-25 Apr 2008</u>: Defense Paralegal Orientation Course (08-B)</p> <p><u>29 Apr-2 May 2008</u>: Advanced Trial Advocacy Course (08-A)</p> <p><u>5-9 May 2008</u>: Advanced Labor & Employment Law Course (08-A)</p> <p><u>12-22 May 2008</u>: Operations Law Course (08-A)</p> <p><u>19-23 May 2008</u>: Negotiation and Appropriate Dispute Resolution Course (08-A)</p> <p><u>28-30 May 2008</u>: Environmental Law Update Course (DL) (08-A)</p> <p><u>2-13 Jun 2008</u>: Reserve Forces Paralegal Course (08-B)</p> <p><u>4 Jun-23 Jul 2008</u>: Paralegal Apprentice Course (08-05)</p> <p><u>9-13 Jun 2008</u>: Senior Reserve Forces Paralegal Course (08-A)</p> <p><u>16-27 Jun 2008</u>: Staff Judge Advocate Course (08-A)</p> <p><u>16-27 Jun 2008</u>: Law Office Management Course (08-A)</p> <p><u>14 Jul-12 Sep 2008</u>: Judge Advocate Staff Officer Course (08-C)</p> <p><u>29 Jul-16 Sep 2008</u>: Paralegal Apprentice Course (08-06)</p> <p><u>31 Jul-11 Sep 2008</u>: Paralegal Craftsman Course (08-03)</p> <p><u>15-26 Sep 2008</u>: Trial & Defense Advocacy Course (08-B)</p>
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IN MEMORIAM

MAJOR GENERAL HAROLD R. VAGUE (USAF, RET'D)

Major General (Retired) Harold R. Vague, The Judge Advocate General (TJAG) from 1 October 1973 - 1 October 1977, passed away peacefully on 19 February 2007. He was laid to rest on 9 March 2007 at the Riverside National Cemetery, in Riverside, California. He is survived by his wife, Virginia.



General Vague's service to his country epitomized the Air Force Core Values of Integrity, Service Before Self and Excellence in All We Do.

General Vague enlisted in the Army Air Corps in March 1942. He flew 25 combat missions as a B-17 navigator in the European Theater of Operations during WW II, then returned to the University of Colorado to finish his law degree.

General Vague was an incredible pioneer in the JAG Corps. Indeed, he was a member of the first class that graduated from The Judge Advocate General's School at Maxwell AFB, Alabama on 30 March 1950. Then-Captain Vague noted that "the main thrust of the course was to study the new UCMJ [and the new] Manual for Courts-Martial."

As the fifth TJAG, General Vague inaugurated the Funded Legal Education Program and the Area Defense Counsel program. The Winter 2000 edition of *The Reporter* reflected his thoughts on the ADC program:

The most significant change in the military justice system during my tenure as TJAG occurred on 12 December 1973, when I signed a letter establishing the Area Defense Counsel (ADC) program on a worldwide basis for the Air Force. This was the culmination of some two years of work, including a six-month trial in one judicial circuit and an evaluation board consisting of both senior commanders and JAGs that recommended the final action.

Due credit for much of this must be given to my predecessor TJAG, Major General James S. Cheney (TJAG from September 1969 to September 1973). Both he and I had, as combat flying officers and non-lawyers during World War II (General Cheney flew 57 combat bombing missions), tried cases under the Army 1928 Manual for Courts-Martial, and as lawyers we tried them under the 1949 Elston Act (reforms to the Articles of War, which directly preceded adoption of the UCMJ).

I have always been extremely proud that the Air Force was the leader in this program, which was eventually adopted by the other services. In addition, I truly believe that the ADC program has been successful, as have many other aspects of the Air Force's military justice system, because the command structure of the Air Force wholeheartedly supported it in every detail recommended by the JAG Department.

In Tuesday Knights: Air Force Reserve Judge Advocate Training in Washington, 1950-1995, Colonel David Benkin (USAFR, Ret.) described General Vague's dedication to the Air Reserve Component:

[General] Vague professionalized the reserve program. You could no longer get in and prosper on political connections alone. We got selective. We [reservists] had input into reservists' OERs [performance ratings]. SJAs were told to manage their reserve resources. We grew toward becoming an augmentation force, as opposed to merely a mobilization force.

General Vague's concern for people is exemplified in a story from The First 50 Years: U.S. Air Force Judge Advocate General's Department involving Chief Master Sergeant (retired) Steve Swigonski. (CMSgt Swigonski was the first Special Assistant to TJAG for Legal Airmen Affairs, the forerunner of the Corps' Senior Paralegal Manager to TJAG.)

In the summer of 1970, [CMSgt Swigonski] was ready to retire from his 20-year military career, having relocated his family to Tucson, Arizona, for his last assignment as the NCOIC of the legal office at Davis-Monthan Air Force Base. Unexpectedly, he was asked to withdraw his retirement papers so he could be considered for the Special Assistant position. Initially, he was not interested in staying on active duty, but a number of people convinced him to change his mind. One of those was General Vague himself. Chief Swigonski had previously worked for General Vague and frequently had asked for his help in making improvements to the career field. Now General Vague told the Chief that he had a chance and therefore a responsibility to do something about it. Chief Swigonski agreed to go to Washington to interview for the position. He was selected.

In continuing recognition of General Vague's decades of distinguished service, the JAG Corps created The Outstanding Legal Service Civilian of the Year Award. The award is presented annually to the legal service civilian who is selected as the most outstanding civilian based upon demonstrated excellence, initiative, and devotion to duty.

Additionally, the law library of The Judge Advocate General's School is named in his honor to inspire others with his great legacy of dedication and innovative action.



Photos courtesy of Majors David and Shannon Bennett as they escorted General Vague to the World War II, Korean, and Vietnam memorials in 2004. General Vague visited DC in May 2004 in order to present the award in his name at the TJAG Annual Awards Banquet.

The Vague Award, FLEP, the ADC program, and the impact of General Vague's countless other efforts across a remarkable career will continue to shape and support The Judge Advocate General's Corps and the Air Force for generations to come.

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IN THE TWENTY-FIRST CENTURY

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