

The Reporter

THE JUDGE ADVOCATE GENERAL'S CORPS



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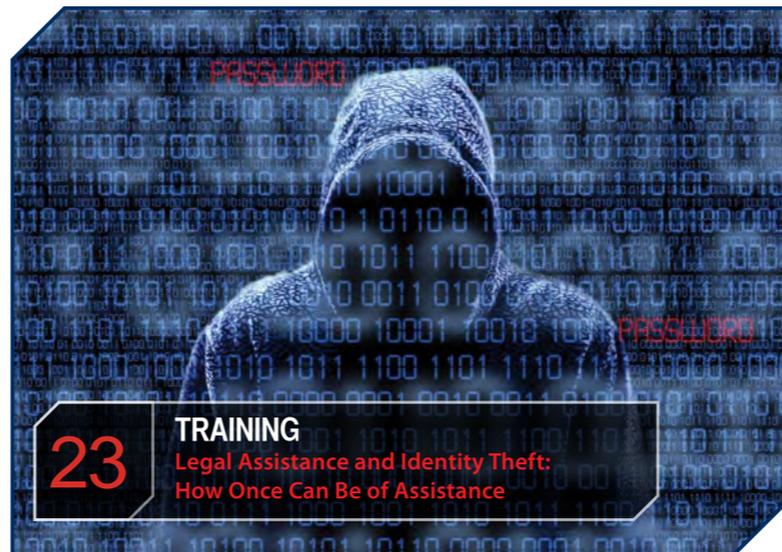
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2014 VOLUME 41, NO. 1

The Reporter

The Reporter is published by The Judge Advocate General's School for the Office of The Judge Advocate General, United States Air Force. Contributions from all readers are invited. Items are welcomed on any area of the law, legal practice, or procedure that would be of interest to members of The Judge Advocate General's Corps. Items or inquiries should be directed to The Judge Advocate General's School, AFLOA/AFJAGS, 150 Chennault Circle, Maxwell AFB, AL 36112.

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The Reporter can be accessed online at <http://www.afjag.af.mil/library/>.

Cite as: THE REPORTER, Vol. 41, No. 1.



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Message from The Commandant



After much anticipation, our new JAG Corps leadership is set and ready to lead us through a challenging time for the Air Force. On 23 May 2014, Lieutenant General Christopher F. Burne became the Air Force's 17th Judge Advocate General. Also in May, Major General Jeffrey A. Rockwell became the Deputy Judge Advocate General, and Chief Master Sergeant Larry G. Tolliver became the Senior Paralegal Manager. These three follow a long line of distinguished leaders. As they assume their new positions at the helm of the JAG Corps, we all wish them the very best.

It is appropriate to recognize here the outstanding contributions of Major General (ret.) Steven J. Lepper, who performed the duties of The Judge Advocate General from 1 February 2014 to 28 February 2014, and Major General Robert G. Kenny, who performed the duties of The Judge Advocate General from 1 March 2014 to 22

May 2014. Under their capable leadership, the business of the JAG Corps continued to move forward, without missing a beat. Maj Gen Kenny continues to serve as the Mobilization Assistant to The Judge Advocate General.

This edition of *The Reporter* also honors Lieutenant General (ret.) Richard C. Harding and Maj Gen (ret.) Lepper for their superior leadership spanning three decades of military service. Read their final messages for the JAG Corps, as well as thoughts on leadership by Brigadier General (ret.) David C. Wesley.

I am pleased to announce that *The Reporter* was named the best web-based publication in the Air Force in the recent Air Force Media Contest administered by the Air Force Public Affairs Agency. *The Reporter* went on to compete at the DoD level against the top publications from the other military Services, and was awarded second place for the Thomas Jefferson Award for Digital

Publication. On an individual level, the Judge Advocate General's School's own Ms. Thomasa T. Paul won first place at the MAJCOM level for Graphics Layout/Design, second place for Graphics Animation, second place for Graphic Artist of the Year, and third place for Graphics Illustration. Congratulations to Mrs. Paul, the editors of *The Reporter*, and to all the individuals who contributed articles to this outstanding publication.





The following is an excerpt of the remarks made by Lieutenant General Richard C. Harding at his retirement ceremony held on 31 January 2014 at Joint Base Anacostia-Bolling, Washington, D.C.

What an honor this ceremony is for Linda and me. We very much appreciate your attendance.

Notice how I said, “we.” Families serve today, not just a single individual. The Air Force is a fabric of families, woven together in a common cause. It takes a strong family for one Airman to serve, and I would like to start my comments today by honoring the Air Force Family.

I humbly submit that my family is emblematic of the Air Force Family. I grew up in an Air Force Family. My father, a retired Air Force colonel, a civil engineer by trade, and my mother, an artist and an Air Force leader in her own right, have sadly passed away. But my brothers are with us today. Linda and I followed in their footsteps and made our own Air Force Family.

As a second year law student, I met an amazing attorney in an Air Force uniform, Colonel Bill Martin, then Tinker SJA. Col Martin told me that when I completed law school, I could meet my personal goals, which were to get trial experience and travel overseas. More specifically, he told me I could be assigned in Europe and try my own cases without clerking for anyone else.

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Lieutenant General Richard C. Harding's Farewell Ceremony Speech

“Members of the JAG Corps, you have much to be proud of. You’ve led major changes to the provision of legal services in the Air Force. You have set an admirable example for others to emulate.”

I went home that afternoon and told Linda that I met this amazing guy, we could go to Europe, and I could try my own cases. Linda and I discussed the possibilities and then she said, “Let’s do it!”

Our first assignment was Bitburg Air Base. I arrived believing I would serve four years in the Air Force. I stayed in the Air Force until this day because of the people I met at Bitburg.

Originally, I was given an assignment to Torrejon Air Base, Spain, but was called by the JAG Career Management Office a few weeks before my basic class. They told me that because I had gone to school in Germany and taken German in college that they really wanted me to go to Germany. They told me that my knowledge of the German language and culture could really help the Air Force in Germany.

In short, they scared the heck out of me. I told them that I did not feel comfortable practicing law in German, and they said I would acclimate. “It would all work out,” they told me. “Just wait and see.” I thought, “What does that mean?”

I worried about it for weeks. They didn’t tell me that the Torrejon SJA had objected to receiving two rookies just out of law school (I was one of the two) and that for that reason, my assignment was changed to Bitburg. My knowledge of German culture and language was a convenient excuse to explain why my assignment had been changed from Spain to Germany.

But, because I felt so bad about being counted on to function in a German setting and practice law in German, I called my soon-to-be supervisor, Lt Col Nolan Sklute, who is here today. I told him that I looked forward to working for him and disclosed I could not practice law in German or any other foreign language and I hoped that wasn’t a “deal breaker.” Frankly I was worried about practicing law in English, much less a second language.

Well there was a pause on the phone longer than just the delay attributed to an overseas call, and I started to think, “Oh boy, it is a deal breaker. Then he said the kindest words ever spoken, “That will be fine. Just get over here.” I must have sounded like the dumbest lieutenant in the Air Force.

Our assignment change from Torrejon to Bitburg was a very lucky thing in my life, because I got a great boss and leader, who made work fun, and Linda and I got to meet Jay and Nancy Thompson, who are also here today.

Jay taught me how to try cases. And Jay and Nancy made life in a small town in Germany more enjoyable than Linda and I ever imagined it could be. If Linda and I could do it all over again, we would pick serving as a young JAG couple at Bitburg Air Base with Nolan Sklute and Jay and Nancy Thompson.

Well, I’d like to spend the remainder of my remarks today providing some parting thoughts

to members of the JAG Corps. Perhaps others present today might also find them useful.

Members of the JAG Corps, you have much to be proud of. You’ve led major changes to the provision of legal services in the Air Force. You have set an admirable example for others to emulate.

It was my privilege to witness you improve the provision of legal assistance by standing up and following a continuing legal assistance education standard.

I was immensely pleased to see attorney-paralegal teaming embraced by using paralegals teamed with attorneys to conduct witness interviews, conduct legal research and prepare legal documents. The fact that today thousands of wills for Airmen have been generated following this model is a testament to your commitment to teaming.

You reduced UCMJ processing times, and thus increased their disciplinary impact.

I was privileged to watch you stand up the first large scale Special Victims’ Counsel Program.

You embraced an enhanced Article 6 inspection regime and improved wing level services across the globe.

These accomplishments are yours, not mine. I have been repeatedly asked over the last several

days, “What are you the most proud of in your career?” And my answer is always the same: “You,” your enthusiasm, your character, your accomplishments. It’s “you,” in a word. So I will not tell you today what the traits of great leadership are because you’ve already demonstrated that you know the answer.

Moreover, I will not talk to you about leadership, because if I have not imparted those lessons to you before today, it’s too late now. I always modeled my approach on teaching leadership around timeless advice given a thousand years ago, “Preach often, and if necessary, use words.” It has always been true that actions speak louder than words.

So, rather than talk to you about leadership lessons, I’d like to alert you to dangers and pitfalls to any military organization that prides itself in following the precepts of integrity, service and excellence.

Each of us takes an oath to “support and defend the Constitution against all enemies, foreign and domestic.” Our foreign enemies are often easy to identify. They are the ones who shoot at us, and we shoot back. However, our domestic enemies may be more difficult to spot. They are, however, the more insidious and pernicious. They are “the enemy within,” and we must be ever vigilant to guard against their advance.

Apathy is a domestic enemy. Apathy’s closest ally is complacency. Apathy and complacency are the result of believing that one person cannot make a difference. Believe me, today one person can make a difference. And a team of people, committed to making a difference, can produce a difference greater than the sum of its parts.



Lieutenant General Richard C. Harding and Mrs. Linda Harding

“Linda and I leave you, proud of your accomplishments, confident in your future success, and very pleased to have served with the world’s greatest Airmen.”

Fear is also a domestic enemy. Fear is the product of uncertainty often associated with the anxiety of change. Change causes anxiety. Fear of change can cause blind allegiance to the status quo. Fear can cause great Airmen to lose their way.

It has been said that “change is a constant,” and so it is that “fear of change is also a constant.” Forward thinking, visionary leaders must attempt to persuade those who are fearful to examine their fear and to overcome it. If this fails, duty requires we leave those paralyzed by fear behind and move on, with the hope that someday they will accept the change and rejoin the team. And they often do.

Entitlement is also a domestic enemy. Those who have a sense of entitlement interfere with our achieving a more perfect meritocracy. We pride ourselves that we are the embodiment of what Jefferson had hoped would be a meritocracy rising from the ashes of an aristocracy.

Unfortunately, there are a small few today, and there will likely be others tomorrow, who believe that their future success should be guaranteed because of who their parents were, what school they attended, their rank, or perhaps because they were fortunate enough to be promoted below the zone sometime in their career.

These people say they believe in meritocracy; yet, their actions underscore another, less egalitarian, reality. They accept the concept of meritocracy so long as it does not interfere with their birthright. They

believe in equal opportunity for everyone else only after their destiny is fulfilled. They would do well to remember that we live in an age of enlightenment, not an age of entitlement, and they are judged like everyone else—on their accomplishments and strength of character and nothing else. They should walk with humility and respect for their fellow Airman.

So if I can leave you with a warning it is this: Apathy, fear and elitism, born of a sense entitlement, are domestic enemies and can impede an institution’s true greatness. You must guard against them.

As we guard against them, let us remember we live by a code of integrity, service above self, and excellence. We also live by the JAG Corps’ guiding principles of wisdom, valor and justice. The greatest of these attributes is valor, because valor subsumes all of the other attributes.

“Valor” cannot be attained without integrity, service, excellence, wisdom and justice. People with valor combat apathy, fear, and elitism. Valor requires that we lean into the wind and take a stance based on truth, especially if it’s an unpopular truth. Because truth can be a casualty of unpopularity, it is most important that we lean into the wind and represent unpopular, but necessary, truths. Valor also requires we represent those without voice. You can be very proud for giving voice to victims, and in so doing you have demonstrated valor for others to emulate.

Assuming confirmation, your new leadership has the right character, especially valor, necessary to lead our Corps to the next level, to ensure that truth is never a casualty, to combat apathy, fear, and elitism, whenever they make an appearance. Your new leadership team has my full faith and confidence. Give them yours as well.

So, it is time for me to leave the stage and time for a new chapter in our Corps’ history to begin. Let us also carry on with pride—pride for what you have achieved, for your demonstrated character, and for what you will achieve in the future.

Four years ago, I began my service as The Judge Advocate General by reminding you that “we stand on the shoulders of giants”—those whose accomplishments and character propelled us forward. Today, I end my active service as TJAG by pointing out to you that in but a few years from now, when a future TJAG reminds a similar audience that “we stand on the shoulders of giants, she or he will be referring to your shoulders, to your accomplishments, to your demonstrated character.

Linda and I leave you, proud of your accomplishments, confident in your future success, and very pleased to have served with the world’s greatest Airmen.

May God bless you, our great Air Force, and the United States of America.

Thank you. 🦅



The following is an excerpt of the remarks made by Major General Steven J. Lepper at his retirement ceremony held on 10 January 2014 at Joint Base Anacostia-Bolling, Washington, D.C.

This is one of the most difficult speeches I've ever given. It's difficult not only because it will be my last as an active duty Air Force judge advocate, but also because it is accompanied by my no longer wearing the uniform of our nation's armed forces. Like my USAFA classmates who are still in uniform, many of whom are here today, I have worn this uniform for almost 39 years. A lot has happened in that time. The uniform itself has changed significantly. Kathy and I got married the day I graduated. I wore my summer white mess dress, a uniform that doesn't exist anymore. The Air Force has changed. When we were cadets, the Class of 79 was the first class issued an electronic calculator. Today, cadets get PCs. The Air Force numbered over 600,000 active duty Airmen as we stared down the Soviet Union in the Cold War. Today, we are drawing down from an active duty force of about 325,000 as we remain engaged in many "hot wars" across the globe. Much has changed since 30 May 1979—the day my classmates and I were commissioned as second lieutenants.

Much has changed in the civilian workplace I'm about to enter. Fortunately, respect and appreciation for military service has increased over the years since we were commissioned. In the aftermath of the Vietnam War, when we were cadets, military service was not held

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MAJOR GENERAL STEVEN J. LEPPER'S RETIREMENT CEREMONY REMARKS



Don't wait until you assume a particular position, rank, or responsibility to exercise leadership...you've got to make a difference where you can and when you can.

in very high regard. It took many years before an entire generation of veterans was welcomed home from a war they fought in distant jungles. It was my honor three weeks ago to participate in the homecoming of one of our Vietnam heroes as he was laid to rest at Arlington Cemetery. Fortunately, today, Americans understand and appreciate the newest generation of veterans. It has been a privilege to serve during the many years over which that evolution occurred.

On a lighter note, one of the most difficult transitions for me will be deciding what to wear every day. I'm starting to notice what people wear and was recently surprised to learn that brown shoes and blue suits go together. If you're wearing civilian clothes today, don't be confused or flattered by my checking you out in the receiving line. I'm only trying to figure out how to dress, or how not to dress.

Last night, at our retirement dinner, I expressed my belief that everything happens for a reason. I said that the reason for my retirement is to make way for a new generation of JAG Corps leaders—leaders who, I believe, will take the Air Force and JAG Corps to new levels of excellence. Since I also truly believe that it is the duty of every generation of leaders to develop their successors, the

measure of my generation's legacy will be the degree to which your generation succeeds. I pass the mantle to you with my very best wishes for your success. The challenges you will face will require great wisdom, patience, and teamwork.

As I depart, please permit me to leave a few thoughts for your consideration. They are thoughts based on almost 35 years of service, leadership, and military legal practice and they are offered with great respect and humility and with the knowledge that the raw talents you are bringing to future Air Force leadership are light-years beyond those my generation possessed.

First, don't wait until you assume a particular position, rank, or responsibility to exercise leadership or to make a positive impact on the events or people around you. You may never achieve that position; you've got to make a difference where you can and when you can.

Second, the most effective leadership is inclusive leadership. Over my 35 years of active duty, I've observed many leaders and many different leadership styles. The most effective—those leaders who achieved the most—were those who were comfortable sharing leadership. It's a principle as simple as the proverb, "many hands make the work light."

Diversity is a form of inclusivity. We talk a lot about diversity in the Air Force and in the JAG Corps. As I've talked about it, I've tried to summarize my thoughts by reducing them to an equation: Diversity = Meritocracy + Mentorship.

In order for diversity to flourish in any organization, each person must believe that he or she can succeed based on his or her own merits: skill, hard work, perseverance. In other words, diversity is achievable only if the organization's playing field is level, only if the organization is a meritocracy. But a level playing field isn't enough. The organization's leaders must also teach its younger members the rules that apply on that level playing field. That's mentorship.

When I talk to JAG Corps audiences about diversity, I talk about the importance of harnessing the different cultural, ethnic, gender, and—since the repeal of DADT (a process to which I am proud to have contributed)—the sexual orientation perspectives of our Airmen. I also talk about the need to bring our officers, enlisted, and civilian legal professionals into the leadership process. As the son of an Air Force NCO, I developed this perspective by watching my Dad and his fellow NCOs serve as the backbone of the Air Force.

During my career, talented legal professionals and military leaders like Chief Master Sergeant Jef Williams reinforced my perspective. Chief Williams and I met and worked together at Air Mobility Command. I am honored that Chief, Reverend, and soon-to-be Doctor Williams agreed to preside over my retirement ceremony because he is one of the best leaders and most caring persons I have ever met. He is a living example of the proposition that good leaders can be found wearing stars, stripes, or civilian suits, even blue ones with brown shoes. He is an example of the idea that the best leaders can lead from anywhere, even from the middle of an organization. He is an example of the fact that the most effective leaders were once outstanding followers who developed their leadership styles by realizing and remembering what motivated them. More than anything else, though, Chief Williams is that rare leader who leads people effectively because he loves and respects people unconditionally.

Watching Chief Williams lead as we traveled across AMC and by watching how Airmen responded to his leadership, I learned that positive and negative feedback are necessary for organizational success. Those whom we are entrusted to lead crave feedback and it is best received when dispensed by a leader who is widely regarded as focused on his Airmen's best interests rather than his own. His willingness to retire me today closes a circle that began when another NCO, my dad, inspired me to join the

Air Force and fills a gap created by the fact that, as an NCO, my dad could not commission me.

...the best leaders are motivated by what they can do for others rather than what they can do for themselves...

Third, the idea that the best leaders are motivated by what they can do for others rather than what they can do for themselves is inherent in my observation that the best leaders are those who approach their responsibilities with humility. My last thought about leadership is that we must be humble; that we must treat the people we lead with respect.

When I think of humility, I think of Bill Crawford. Some of you may have heard me talk about him before; my USAFA squadron mates will remember Mr. Crawford from our days in CS-32. Mr. Crawford was our janitor. He was a kindly old gentleman; we hardly knew he was there. He pushed a cart filled with cleaning supplies down our hallways, cleaning showers and toilets as he went along. Those of us who noticed janitors at all tended to believe they were all OSI agents sent to spy on us. No one noticed Mr. Crawford at all, until one day when our cadet squadron commander asked him if he was the Bill Crawford mentioned in a book about WWII he'd been reading. The Bill Crawford in the

book served as the scout in a platoon moving forward against the Nazi and Italian armies in Italy on 13 September 1943. On that day, Private Crawford and his platoon were pinned down by 3 German machine gun emplacements. Private Crawford, on his own initiative and without orders, moved forward and single-handedly destroyed all three. After the battle, Private Crawford was captured and presumed dead.

For his heroism, President Franklin Roosevelt awarded Private Crawford the Medal of Honor posthumously. It wasn't until the war ended that the Army realized Crawford had been captured and held as a POW. In 1947, Private Crawford reenlisted in the Army and served until his retirement as a master sergeant in 1967. He then applied for a janitor job at the Air Force Academy. After recounting what he'd read, our squadron commander asked Mr. Crawford if the story was about him. He said yes. After that, Mr. Crawford became an honorary member of our squadron.

The Medal of Honor Mr. Crawford earned was presented to his father posthumously when it was believed that he had been killed in the battle. In 1984, during the graduation of the Class of 1984, President Ronald Reagan finally awarded Mr. Crawford his medal. Cadet Jim Moschgat, the squadron commander who first identified Mr. Crawford as more than just a janitor, memorialized his story. Col (Ret.) Jim Moschgat wrote an article some years later describing this story and

the lessons we cadets learned from our janitor, Mr. Bill Crawford. The words that follow are Col Moschgat's; they come closer than any I could write to capturing these lessons and the influence they had on my leadership journey:

1. Be Cautious of Labels.

Labels you place on people may define your relationship to them and bound their potential. Sadly, and for a long time, we labeled Bill as just a janitor, but he was so much more.

2. Everyone Deserves Respect.

Because we hung the "janitor" label on Mr. Crawford, we often wrongly treated him with less respect than others around us. He deserved much more, and not just because he was a Medal of Honor winner. Bill deserved respect because he was a janitor, walked among us, and was a part of our team.

3. Courtesy Makes a Difference.

Be courteous to all around you, regardless of rank or position. Military customs, as well as common courtesies, help bond a team. When our daily words to Mr. Crawford turned from perfunctory "hellos" to heartfelt greetings, his demeanor and personality outwardly changed. It made a difference for all of us.

4. Take Time to Know Your People.

Life in the military is hectic, but that's no excuse for not knowing the people you work for and with. For years, a hero walked among us at the Academy and

we never knew it. Who are the heroes that walk in your midst?

5. Anyone Can Be a Hero.

Mr. Crawford certainly didn't fit anyone's standard definition of a hero. Moreover, he was just a private on the day he won his Medal. Don't sell your people short, for any one of them may be the hero who rises to the occasion when duty calls. On the other hand, it's easy to turn to your proven performers when the chips are down, but don't ignore the rest of the team. Today's rookie could and should be tomorrow's superstar.

6. Leaders Should Be Humble.

Most modern day heroes and some leaders are anything but humble, especially if you calibrate your hero meter on today's athletic fields. End zone celebrations and self-aggrandizement are what we've come to expect from sports greats. Mr. Crawford was too busy working to celebrate his past heroics. Leaders would be well-served to do the same.

7. Life Won't Always Hand You What You Think You Deserve.

We in the military work hard and we deserve recognition, right? However, sometimes you just have to persevere, even when accolades don't come your way.

8. Don't Pursue Glory; Pursue Excellence.

Private Bill Crawford didn't pursue glory; he did his duty and then swept floors for a living.

Your success as leaders will be measured in the success of your people.

9. No Job is Beneath a Leader.

If Bill Crawford, a Medal of Honor winner, could clean latrines and smile, is there a job beneath your dignity? Think about it. Pursue Excellence. No matter what task life hands you, do it well. Dr. Martin Luther King said, "If life makes you a street sweeper, be the best street sweeper you can be." Mr. Crawford modeled that philosophy and helped make our dormitory area a home.

10. Life is a Leadership Laboratory.

All too often we look to some school or PME class to teach us about leadership when, in fact, life is a leadership laboratory. Those you meet every day will teach you enduring lessons if you just take time to stop, look and listen. I spent four years at the Air Force Academy, took dozens of classes, read hundreds of books, and met thousands of great people. I gleaned leadership skills from all of them, but one of the people I remember most is Mr. Bill Crawford and the lessons he unknowingly taught. Don't miss your opportunity to learn.

My final thoughts are expressions of thanks and a final admonition. My thanks go, first, to each and every one of you for the service you have devoted to our Nation and the support you've

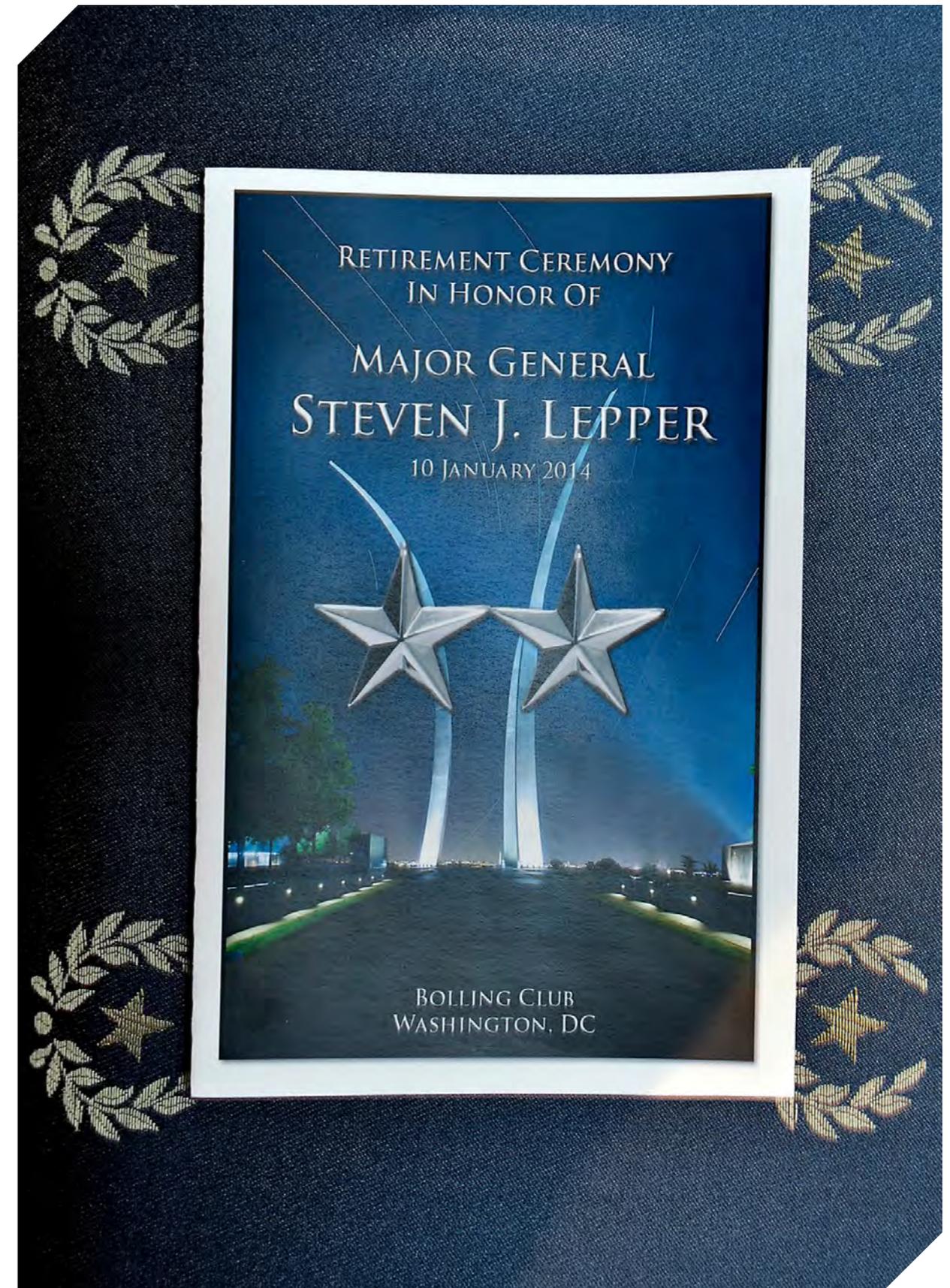
given me. I could not have served, and I wouldn't have wanted to serve for as long as I have if it had not been for the wonderful people in this room and those with whom I served and who could not be here today. All of you are my friends, colleagues, fellow Airmen, and members of my family who have made this journey worthwhile. I cannot thank you enough for your support, love, and friendship.

...

My final admonition is to the leaders of tomorrow: Take good care of your Airmen, your families and friends, and yourselves. Your success as leaders will be measured in the success of your people. If you keep them in the forefront of everything you do and of every decision you make, you will leave a legacy beyond any personal achievement, no matter how significant.

...

When I was commissioned, I took an oath to God to support and defend the Constitution of the United States. It will be up to God and to you to decide whether I have lived up to that oath. As I leave your ranks, I pray that God will bless me as I continue my journey, my family as they walk with me, and you as you continue to defend the greatest Nation on Earth and in history: The United States of America. ✈



The Leahy Amendment

An Analysis of Current Issues Facing the DoD

BY CAPTAIN JEFFREY J. LOREK

First enacted as part of the 1997 Foreign Operations Appropriations Act, the “Leahy Amendment” (“Leahy law” or “Leahy”) is named after its sponsor, Senator Patrick Leahy (D-Vermont). The law generally prohibits both the Department of State (DoS) and Department of Defense (DoD) from providing financial assistance to any individual(s) or unit(s) of foreign security forces who, through “credible information,” are implicated in “a gross violation of human rights” (GVHR). Leahy’s application to DoS is codified at 22 U.S.C. § 2378d, Limitation on Assistance to Security Forces. Within DoD, Leahy is implemented through recurring language in the annual Defense Appropriations Acts, most

recently appearing in the Consolidated and Further Continuing Appropriations Act, 2014.¹

To date, a 2004 DoD/Joint Staff Message entitled “Human Rights Verification for DoD-Funded Training of Foreign Personnel” (“DoD/Joint Staff Message”) is the cornerstone DoD guidance on Leahy law’s application to DoD-funded activities. However, without any subsequent clarification of the key terms and integral processes surrounding Leahy from either Congress or DoD, practitioners in the field have largely been on their own to resolve lingering questions. For example, what constitutes a GVHR? Who determines what constitutes “credible information?” What

factors are involved in making these credibility assessments? What constitutes “training” for purposes of the Leahy law? How can individuals and units against whom credible information of GVHR has been found (commonly referred to as “tainted” security forces) be mitigated so DoD may proceed with mission-essential training events? This article explores such issues by analyzing existing unclassified authorities.

When Does the Leahy Law Trigger?

Within DoD, Leahy triggers when the Secretary of Defense (SecDef) “has credible information” that a unit of a foreign country’s security forces or police force has committed a GVHR.² Before making any decision to provide train-

ing, equipment or other assistance to a unit of a foreign security force, SecDef is required to consult with the Secretary of State (SecState) and give full consideration to “all credible information available to the Secretary of State relating to human rights violations by foreign security forces.” Unlike DoD, DoS has issued a guide which serves as the primary source of instruction for both DoS and DoD personnel who implement their agencies’ respective Leahy laws.³ The guide defines key terms used

¹ Consolidated Appropriations Act, 2014, Pub. L. No. 113-76.

² Consolidated Appropriations Act, 2014 at Sec. 8057(a)(1).

³ The full title of the DoS guide is “Compliance with the State and DoD Leahy Laws: A Guide to Vetting Policy and Process.” The DoS guide is marked For Official Use Only (FOUO). This article neither directly cites to nor contains any information obtained from FOUO or classified documents. Key terms from the DoS guide are summarized in U.S. Government Accountability Office, Report to Congressional Requesters, “Human Rights: Additional Guidance, Monitoring, and Training Could Improve Implementation of the Leahy Laws,” GAO-13-866 (25 Sep 13) (hereinafter “GAO Report”).

in the Leahy laws. According to DoD officials, DoD personnel also follow the DoS guidance on the vetting process surrounding individuals and units when it comes to GVHR.⁴

The term “security forces of a foreign country” is defined by DoS to mean any division or entity, including an individual, authorized by a state or political subdivision of a state to use force. The use of force includes the power to search, detain and arrest to accomplish a mission. DoS advises the term “security forces” could be both military and law enforcement units. DoD also adheres to the DoS definition of foreign security forces. The DoD/Joint Staff message states “the term foreign security forces means foreign military, police, or other security forces.”

The term “gross violation of human rights” is not defined in the Leahy law itself. However, DoS applies the definition used in Section 502B(d) of the Foreign Assistance Act of 1961. That definition provides “gross violations of internationally recognized human rights include torture or cruel, inhuman, or degrading treatment or punishment; prolonged detention without charges and trial; causing the disappearance of persons by the abduction and clandestine detention of those persons; and other flagrant denial of the right to life, liberty, or the security of person.” DoS issued an advisory guide which, in addition to the above definition, adds politically-motivated rape.⁵ DoS cautioned the list is not exhaustive, and incidents are examined on a case-by-case basis to determine whether they should be

considered GVHR. The DoD/Joint Staff message incorporates verbatim the definition of GVHR found in the Foreign Assistance Act of 1961, but does not shed light on whether any additional crimes or wrongs would be included in the DoD interpretation of GVHR.

Who Makes the Credibility Determination?

An ongoing issue of ambiguity is the credibility determination with respect to GVHR. While the text of the Leahy law triggers its application “if the Secretary of Defense has credible information” of GVHR, the law also requires SecDef consultation with SecState prior to making a decision to provide any training, equipment or other assistance to a foreign security force. Specifically, SecDef must give “full consideration” to any credible information available to DoS relating to GVHR. The law does not prescribe whether it is SecDef or SecState who is responsible for making the ultimate assessment of what would be considered “credible information.” The DoD/Joint Staff message emphasizes the need for DoD to consult with SecState and explains DoS will help ensure DoD compliance with the Leahy law. Based on this message, DoD appears to defer to DoS on the credibility determination of information concerning GVHR. The message states in relevant part, “[i]n those instances where the [DoS GVHR vetting process] reveals information of a gross human rights violation, DoS and embassy assistance should include determination of whether human rights information is ‘credible.’” Nevertheless, the DoD/Joint Staff message is clear that DoD wants to receive actual documentation or verification of any DoS-issued credibility assessment. In other words, a lone DoS cable informing DoD cred-

ible information of GVHR has been found with respect to a foreign security forces unit would be insufficient—the underlying evidentiary package must be provided to DoD.

Further complicating the issue of whether DoS or DoD has final decision-making authority on GVHR credibility assessments, the Government Accountability Office (GAO) reported in a 2013 study, “[a]ccording to DoD’s Office of General Counsel, while DoD retains legal authority for final decisions regarding specific cases, it relies on State’s judgment in assessing the credibility of available information.”⁶ GAO noted DoD currently is working with DoS to play a more active role in credibility determinations affecting DoD-funded training events. Indeed, in a letter responding to a solicitation for comments prior to GAO’s publication of the report, DoD stated it is working with DoS to, *inter alia*, “ensure the information used to determine the credibility of information or allegations of [GVHR] reflects the best judgments of the country teams and other interagency partners.” Notably, even though the response letter gave DoD an opportunity to assert independent authority for final credibility determinations, DoD made no such suggestions. Regardless of who retains legal authority for final credibility assessment under the Leahy law, there is no question DoS is the primary executive agency responsible for evaluating information concerning alleged GVHR. Absent any new guidance from Congress or DoD, it would be prudent for DoD personnel to continue deferring to DoS to make ultimate credibility assessments regarding information of GVHR. It would be helpful, though, if DoD would

issue updated Leahy law guidance to resolve this apparent discrepancy.

What Constitutes “Credible Information” of GVHR?

The Leahy law does not define the term “credible information.” The DoD/Joint Staff message similarly lacks guidance as to what constitutes credible information of GVHR. Given the DoD inclination to defer to DoS on credibility assessments, DoD should look to DoS for direction. DoS advises latitude is required when determining what constitutes credible information, and evidence need not be admissible in a court of law.⁷ DoS further instructs good judgment and common sense should be exercised when determining whether information is credible. No clearly established DoD legal standard exists (e.g., preponderance of the evidence or clear and convincing evidence). Perhaps the nearest thing to a legal standard for adjudging credibility of GVHR information would be the DoS instruction that it “should be deserving of confidence as a basis for decision-making.”⁸

DoS employs a totality of the circumstances test to determine whether GVHR information is deserving of confidence as a basis for decision-making.⁹ Factors to be examined are: (1) the source of the information; (2) the details available; (3) the applicability of the information to the individual and/or unit implicated in alleged GVHR; (4) the circumstances in the country at issue; and (5) the availability

⁴ GAO Report at p. 12.

⁵ Department of State, “Leahy Vetting: Law, Policy, Process,” at p. 7 (15 April 2013).

⁶ GAO Report at p. 13.

⁷ Leahy Vetting: Law, Policy, Process at p. 6; GAO Report at p. 13.

⁸ Leahy Vetting: Law, Policy, Process at p. 6; see also GAO Report at p. 13.

⁹ Department of State, Office of Planning and Public Diplomacy, Humanrights.gov, “An Overview of the Leahy Vetting Process,” available at <http://www.humanrights.gov/2013/07/09/an-overview-of-the-leahy-vetting-process/> (last visited 30 Nov 2013).



There is a significant difference between mitigation requirements under the DoD and DoS Leahy laws.

of corroborating information concerning the GVHR. In vetting individuals and units for credible information of GHVR, DoS reviews relevant DoS and embassy files, databases and other available information. Outside of U.S. Government files, DoS also views major international non-governmental organizations (NGOs) and independent newspapers to be “relatively credible” sources of information provided they have a reputation for accurate and impartial reporting and the information itself has an “indicia of reliability.”¹⁰ On the other hand, credibility varies among opposition groups and smaller NGOs. DoS currently is in the process of developing a web portal – intended to be operational sometime in 2014 – where individuals and entities outside the U.S. Government may submit information regarding GVHR. Once available, one might expect to see an increase in GVHR reporting. Depending on the type of controls DoS puts on use of this web portal, though, weighing the credibility of information provided by unknown and unvetted sources could present its own problems.

Funding Restrictions Under the Leahy Law

All DoD-funded training events with foreign security forces and police units are subject to the Leahy law’s restrictions. The DoD/Joint Staff message is still regarded as the “go-to”

guide for determining what constitutes training. According to the DoD/Joint Staff message, the term “training” includes: (1) joint and combined exercises for training (JCETs); (2) counternarcotics training; (3) counternarcoterrorist training; (4) humanitarian demining training; (5) DoD regional counterterrorism fellowship training; and (6) any training activities conducted under a geographic combatant command’s (COCOM) initiative fund. Activities are deemed to be training if the instruction of foreign security or police forces units could result in improvement of their capabilities.

According to DoD, “training” does not include: (1) incidental training as part of an exercise, including familiarization, safety and interoperability training when necessary to conduct the exercise itself; (2) individual and collective interface activities (e.g., subject matter expert (SME) exchanges, “mil-to-mil” contacts, seminars and conferences, partnership and other small-unit exchanges where the primary focus is on interoperability or mutually beneficial exchanges rather than training foreign forces; (3) bona fide familiarization and orientation visits; and (4) pre-deployment site surveys and other planning and coordination visits that support JCET/training events so long as the identity of the foreign force(s) to be trained has not yet been confirmed.

A major development in DoD’s implementation of Leahy occurred in January 2014, when

Congress expanded the scope of Section 8057 in the new Consolidated Appropriations Act, 2014. Prior to 2014, DoD had only prohibited the funding of “training” of foreign security forces implicated in GVHR. However, the Consolidated Appropriations Act, 2014, contains newly crafted language expanding the list of prohibited activities to now include “any training, equipment, or other assistance” to foreign security forces involved in GVHR. The inclusion of the new phrase “or other assistance” renders DoD’s implementation of Leahy more akin to the way DoS applies the law. DoS interprets Leahy to prohibit funding of any assistance to foreign security forces where credible information of GVHR exists.

The 2014 move by Congress to expressly include the provision of equipment and other assistance of foreign security forces can only be seen as an attempt to reconcile prior inconsistencies between DoD and DoS Leahy law application. The issue of equipping has always been a controversial one and, until now, had not been explicitly addressed in the National Defense Authorization Act. Before the new language appeared in the Consolidated Appropriations Act, 2014, DoD had asserted it “may make a *policy* decision to withhold equipment from foreign security forces that are ineligible to receive training under the DoD Leahy law.”¹¹

The recent Congressional modification of Section 8057 to now include equipment and other assistance appears to go against DoD’s long-asserted position on this issue. It will be interesting to see what type of guidance DoD

publishes to the field on this change in the Leahy law. In the Consolidated Appropriations Act, 2014, Congress provided no definitions or analysis of the new terms “equipment” and “other assistance.” Whatever the case may be, one thing is appears certain—the question of what foreign unit activities may or may not be funded by DoD is yet another ambiguity in the Leahy law on which further legislative or agency guidance would be helpful.

Mitigating “Tainted” Individuals and Units

Even in situations where foreign security forces are implicated by credible information of GVHR, there is a process by which such “tainted” individuals and units can be “mitigated.” This process of mitigation is commonly referred to as Leahy’s exception to otherwise prohibited activities. If it properly invokes the exception, under Leahy, DoD may resume funding for the proposed foreign security forces assistance. There are three ways for DoD to invoke the exception and proceed with training, equipping or other assistance with respect to the tainted unit.¹² The first is for the foreign country to take “all necessary corrective steps” to remediate the GVHR-implicated individuals/units. The second is “if the equipment or other assistance is necessary to assist in disaster relief operations or other humanitarian or national security emergencies.” Lastly, DoD may proceed if SecDef—after consultation with SecState—personally grants a waiver with respect to the prohibited training, equipping or assistance when “extraordinary circumstances” require it.

¹⁰ Leahy Vetting: Law, Policy, Process at p. 6.

¹¹ GOA Report at p. 6.

¹² Consolidated Appropriations Act, 2014 at Sec. 8057(b)-(c).

There is a significant difference between mitigation requirements under the DoD and DoS Leahy laws. With respect to DoS-funded assistance, Leahy is more onerous regarding corrective action and requires “effective steps” to be taken to actually bring the offender to justice. DoS interprets its Leahy statute’s language to mean offenders (against whom credible allegations of GVHR exist) must face a credible investigation followed by appropriate disciplinary action or impartial prosecution by the foreign government.¹³ A host nation does not meet the DoS remediation requirement by merely transferring the offender(s) out of an implicated unit. Furthermore, the sole act of opening a formal investigation into alleged GVHR is insufficient to meet the exception; an actual trial or other disciplinary proceeding must be had.

The DoD Leahy requirement is that all necessary corrective steps be taken to mitigate the tainted individual(s) or unit(s). DoD considers this requirement to be fact-specific and examines, on a case-by-case basis, all facts pertinent to the allegations of GVHR. Taking all necessary corrective steps also includes conducting an analysis of the steps that could and should be taken to mitigate the problem. In other words, not only must the host nation actually correct the problem, but it must first provide to the U.S. an analysis of what steps it could take and should take. DoD has suggested that such steps include: (1) removing the identified offender(s) from the unit to be trained; (2) providing human rights training and law of armed conflict (LOAC) training; or

(3) some other combination of steps. Notably missing from the DoD list of suggested corrective steps is that the GVHR offender be brought to justice.

The DoD/Joint Staff message on implementation of the Leahy law directs the applicable Combatant Command to refer the tainted case to the Joint Staff for resolution by both DoD and DoS through a joint review. In tainted cases for which the COCOM “believes that corrective action (e.g., adjustments to the host nation participants) has been, or can be, taken, and the training event approved on that basis, the referral to the Joint Staff should state this and describe the completed or recommended action.” In no tainted case, however, shall any training event commence prior to the completed joint DoD/DoS review. It does not appear DoD has ever adopted the stricter DoS requirement that a tainted individual or unit be prosecuted or disciplined. Accordingly, the DoD implementation of Leahy provides more flexibility with respect to corrective action than does the DoS Leahy statute. Despite having a less burdensome remediation process, DoD has never proceeded with training for an otherwise ineligible unit on the basis that all necessary corrective steps had been accomplished.

Another avenue by which DoD may proceed with otherwise-prohibited training is for SecDef to grant a waiver after consultation with SecState. Such a course of action is not mitigation at all. Rather, waiver is simply an option of last resort allowing DoD to accomplish mission-essential training of foreign security forces despite the existence of any GVHR. SecDef may exercise this Leahy waiver only in

“extraordinary circumstances,” which, according to DoD, generally means circumstances important to the national security of the United States.¹⁴ In the rare and unusual event SecDef exercises the waiver, he must submit within 15 days thereof a report to congressional defense committees describing: (1) the information relating to the GVHR that requires exercising of the waiver; (2) the extraordinary circumstances or other circumstances necessitating the waiver; (3) the purpose and duration of the training, equipment or other assistance to be provided to the foreign security forces; (4) the U.S. Forces involved; and (5) the foreign forces involved. Research uncovered no instance in which SecDef has ever exercised this waiver.

Summary

Over the years, DoS has provided a plethora of guidance on Leahy’s application to U.S.–funded training and equipping of foreign security forces. This makes sense given DoS is the lead executive agency charged with vetting foreign forces for credible information of GVHR. However, DoD does appear to be taking a more active role in credibility assessments, inching closer into what has traditionally been the province of DoS with respect to foreign policy. Unfortunately, the only meaningful guidance from DoD on its implementation and application of Leahy is found in the now nine-year-old 2004 DoD/Joint Staff message, which was never sufficiently detailed to begin with. There is no question Leahy is more restrictive to DoS by statute than to DoD through Congressional appropriation. However, due a lack of current and detailed DoD instruction, over the years,

DoS interpretations of key terms and processes have permeated the DoD application of Leahy, whether intentional or not.

Now, as Operation ENDURING FREEDOM and other overseas contingency operations wind down and the U.S. military presence in Afghanistan and other hot spots diminishes, DoD-funded training and equipping of foreign security forces may be expected to increase in scope and importance. Therefore, Congress and/or DoD should provide updated guidance on the DoD implementation and application of the Leahy law. In doing so, they could address outstanding issues such as the role of military and defense officials in credibility assessments, the standardization of the mitigation process for GVHR-tainted security forces, the clarification of equipping versus training, defining what constitutes prohibited “equipment” and DoD “assistance” as the new terms are used in the Consolidated Appropriations Act, 2014, and any other similar areas of ambiguity present in Leahy. ↗



¹³ GAO Report at p. 6.

¹⁴ *Id.*; see also DoD/Joint Staff message at para. 4.C.



GOOD LEADERS MAKE MORE LEADERS

BY BRIGADIER GENERAL (RET.) DAVID C. WESLEY

Few topics have drawn more ink from military writers during my time on active duty and I'm humbled to have this opportunity to add my thoughts to that substantial body of work. If you've not already done so, I encourage you to read what others have said, and not said, about the process of building leaders.

Character

Our former Chief of Staff, Gen Buzz Moseley, was the first person I ever heard say "good leaders make more leaders," but the thought had long been resident in my DNA, having been imprinted there by examples I witnessed firsthand in Strategic Air Command and in the old Seventh Circuit during my first two assignments. I saw—experienced might be a better word—the powerful, inspirational ability some individuals exercised. It compelled those nearby to acknowledge the basic fact that the leader's influence did not spring from rank, for some of these leaders were quite junior. Neither did it arise from some defined authority for a given task. In my view, this influence sprang from the power of character, given physical form through the actions of these remarkable Airmen.

These leaders, each of whom inspired me to emulate their words and deeds, moved with confidence through challenging circumstances

without any visible indication that they were concerned with their own well-being, physical or professional. They did what they believed the circumstances called for and, as my Mama would say, "They let the hair go with the hide." This selflessness inspired awe in me for a time, but I came to see it was natural for these few individuals. They were never careless with the lives of those entrusted to them and neither were they disrespectful toward authority. They simply did what they believed was right and moved on—end of story.

Later, when I was assigned outside our great Corps (then a Department) in Washington, D.C., I saw the converse of this lesson a few times—individuals who had amassed enormous power, but were shackled to a pathological fear that if they did not test the winds carefully before speaking or acting, they would lose all their carefully assembled power and, most telling: the prestige they perceived accompanied their power.

I can assure anyone reading these words: no level of prestige afforded these powerful men and women could match the respect of the Airmen who worked for the leaders in my first two assignments. In the end, it seemed the first group earned respect simply by walking through a squad bay or a chow hall, while the

“If you want to be a leader (or to make more of them): do what's right...if you're ever in doubt as to what the 'right thing' is, choose the harder path.”

second group often forfeited the prestige they so treasured, even though they would have said or done just about anything they believed might preserve it. To be sure, there were those who “played the game” and held onto power longer than others, but nothing any of them did ever inspired the enduring respect earned by leaders who simply acted on principle rather than the pursuit and preservation of their own power.

Courage

If you want to be a leader (or to make more of them): do what’s right. Though I am a lifetime member of the Methodist Church, when I was in third grade, my parents sent me to a Baptist private school some distance from our home. I learned a precious truth from my teachers there: if you’re ever in doubt as to what the “right thing” is, choose the harder path. If you’d be embarrassed to apologize for a mistake, apologize. If you’re afraid to ask the speaker a controversial question, ask. If you wonder if you can run a marathon, run one.

In so doing, you further develop your own character. Do not expect to be loved or appreciated. You probably won’t suddenly be acknowledged as a leader, but you begin to become one precisely when you stop worrying about yourself and thinking only of the mission and those accomplishing it. In the process, you may find that, over time, you have become the sort of person other Airmen respect and, ultimately, want to emulate.

Action

The next step is taking action based on the fact that you care more about your people than you do yourself or your career. This can be tough, in part because it requires you to tell people hard truths. As many who’ve seen me speak about

our performance reporting system have heard me say, you may well be the first person ever to provide honest feedback to Airmen and Air Force civilians who are not accustomed to hearing it. It won’t be easy, but it truly is necessary if you are to grow as a leader and demonstrate you truly care about those who work for you. If you are very fortunate, some of them may call you years later to say something on the order of, “I hated you at the time, but now I get it!” No praise from a senior leader ever meant

As you get more senior, the number of people willing to shake their heads while you’re talking plummets, as does your ability to get frank feedback—so you’ve got to let people know you value their honest, unvarnished views.

as much to me as those few calls spread out over the years past, for they represent tangible proof of the subordinate’s growth (a primary responsibility of the leader) and evidence of an earlier integrity test passed.

The central point here is one I strive to teach my daughter: doing the right thing is its own reward. That’s cold comfort to some who may believe their advice is not appreciated or to someone who is convinced they’ve been less successful because others thought they were too frank or overly focused on mission accomplishment. But I can say with confidence that being able to look back on challenging situations knowing that you stood up for what you believe in is something you can justly be proud of.

Even if that were not so: doing what you know is right and explaining that approach to others (Airmen and their commanders) is the very essence of what you and I do. This is a teaching requirement you take on, both as a member of the legal profession and as a leader. You’ve got to become comfortable telling others what you value and how those values affect decisions you make. Done correctly, this is neither self-righteous nor self-serving—it is a way to give others insight into the source of your own

character and values. That insight can help them build powerful values of their own. But, you must be willing to constantly reassess your own values in light of new experience. My own values spring from my faith and they are as timeless as the lessons my parents taught me as a child. However, I never want to become so complacent in my leadership that I don’t listen to a younger person who seeks to understand by challenging my beliefs. Show respect by listening and actually hearing what he or she is saying, especially if it doesn’t match your worldview.

And, while I’m on that subject, I encourage disagreement and debate within my own staff, so that we can test each person’s ideas,

especially my own. As you get more senior, the number of people willing to shake their heads while you’re talking plummets, as does your ability to get frank feedback—so you’ve got to let people know you value their honest, unvarnished views. When I was Commandant of our incredible JAG School, the faculty would assemble in that beautiful conference room downstairs and debate matters great and small—up to a point. When we left, I believed we were on one page as to the path forward. Consult others who were there on that unbeatable team to get their views on the process and make your own decision about how you want to work with your own staff.

Example

Lastly, remember that everything you do in a leadership position is visible and meaningful to your people. You want to teach them the right things to do through what you do and what you refrain from doing. You don’t get a day off on this—it goes with the job.

When I was in my first assignment, my first SJA was a major named Emil Brupbacher (since retired and now serving as the Chief of International Law for the 49th Wing at Holloman). He was a great guy and someone I liked working for a lot. He gave me lots of autonomy as a first assignment Chief of Justice and I used it to stack the work high. One week, due to a couple of schedule changes, I wound up trying a special court, a general court and served as the Government Representative to a fairly complex Article 32 investigation.

I’ll never forget how busy I was—really so busy I didn’t realize how tired I was and as the week’s end neared, Maj Brupbacher appeared in my doorway and told me to follow him. I



had no idea what was up and asked where we were headed a couple of times, as he led me out to his car and told me to get in. He was noncommittal as we rode across the base and I began to wonder what I'd done wrong. He pulled up in front of Base Ops and got out and went in without a word. Figuring I was supposed to follow, I went after him and found him at the counter facing a scheduling NCO. The Major said, "What do you have headed to Hawaii?" The TSgt behind the counter said, "Got one headed that way tomorrow, Sir, with an en route stop at Mather." Mather's closed now, but in those days, our great Air Force

had a lot of planes and they stayed airborne a lot of the time. Maj Brupbacher pointed at me and said, "Put him on it."

I spent a week in Hawaii with friends from college and paid my own way home, but I never forgot that, without hovering over me or saying much of anything, my boss knew I was working hard and he appreciated it. I think he also thought I looked tired enough that I shouldn't be around the shop for a few days. What you do and refrain from doing means a great deal to those who work for you—I promise.

Duty

As members of the Corps—as guardians of a way of life that is precious to the citizens of our Republic—our credibility is on the line for as long as we hold a position of trust. That's what you and I have: the trust of the American people. Not words—not a Gallup poll—not media hype. Trust.

Your fellow citizens trust you and me to do what's right. In spite of all they see and read about those who fail to meet that basic standard, the American people still need and want you and me to raise the bar and clear it every time we speak and act as members of the greatest Air

Force in history. If the respect and trust of your fellow Americans doesn't motivate you to do the right thing, if the dependence of your fellow Airmen on your integrity and abilities doesn't drive you toward that goal, if your own internal compass doesn't ping you every time you stray from the appointed heading, then nothing I can say will turn you from the path you're on. I'll simply suggest you're in the wrong uniform and that I hope you find the right line of work soon. For those who are willing to meet the standard, I can say from my own experience: it is well worth the cost. It is the most rewarding way to spend one's time and energy. That has most surely been true in my case. ✈



Capt Ngegba prosecuting a court-martial in Sierra Leone

AN INTERNATIONAL OFFICER'S JASOC EXPERIENCE

BACKGROUND

The mission of the Judge Advocate Staff Officer Course (JASOC) is to provide the new judge advocate a foundation in military law and advocacy skills, prepare him or her for the immediate demands of an Air Force legal office, and lay the groundwork for continuing professional development as an airman, commissioned officer, and judge advocate

In addition to the U.S. Air Force officers who are assigned to JASOC, international officers may also attend. The Air Force Judge Advocate General's School partners with the Air University International Officers School to help educate and support international military students. The learning environment created by the two organizations is intended to maximize positive development of international relations.

Captain Mark Ngegba was one of those international military students selected for JASOC. He traveled from Freetown in the Republic of Sierra Leone and arrived at Maxwell AFB in July 2013. Despite the challenges that come from studying law 6,000 miles from home, Capt Ngegba focused his attention on his studies and learned everything he could about the U.S. military legal system during his 9-week stay at Maxwell Air Force Base. He has taken that knowledge and experience back to his position as a military legal officer in Sierra Leone, where he applies that knowledge to his military mission and shares his experience with superiors and subordinates alike. Through his efforts as an international student in JASOC, Capt Ngegba became a more experienced lawyer and leader, and will positively affect the relationship between our two nations.



JASOC Graduation

Prior to my attending JASOC at the Air Force Judge Advocate General's School at Maxwell Air Force Base, I was working in the Directorate of Defense Legal at the Ministry of Defense in Freetown as Staff Officer Class Three. My responsibilities ranged from providing legal advice on disciplinary issues from across the Republic of Sierra Leone Armed Forces (RSLAF), to advising on defense contracts, memorandums of understanding with other countries' militaries, local organizations and government departments. I did not do trial work in my military legal job. I received court room experience from the government Law Officers Department where I was still doing my pupillage—an 18 month practical training required to qualify me as a legal practitioner in Sierra Leone.

I had the academic background to perform these functions, having just graduated from law school. However, I needed practical experience. This I knew would come with time, study, and hard work. I decided it would probably take me about two to three years to gather the necessary experience to qualify for a job with more responsibility, so when I was nominated to attend JASOC with the U.S. Air Force, I knew that there was a great benefit available. The opportunity to attend JASOC was just what I needed, and I welcomed the chance.

JASOC reduced the period of time it would take me to gain experience to the barest minimum. In nine weeks I learned U.S. military law and found ways to adapt it and make it relevant to my situation and mission here in Sierra Leone. I also tremendously improved key leadership characteristics and legal skills needed to succeed in an Army that has only six lawyers

and four paralegals. The course served as a 'one-stop-shop' for a lawyer of my standing to learn and develop teamwork, the ability to work under pressure, court room advocacy, leadership, officership, and creativity. I had received lessons on some of these topics at the Sierra Leone Law School, but JASOC provided me with the unique practical experience that is critical to the discharge of my responsibilities.

In the first two to four weeks I faced serious challenges—learning Air Force civil law for the first time, getting used to the new environment, and having to use a laptop for my studies. Modules like contract law, consumer law, fiscal law, environmental law, legal reviews, and legal assistance posed special learning challenges because they were issues I had not studied much before, or they were very different from what I was used to working as a member of RSLAF. Working through those issues helped develop my sense of initiative and ability to adapt. Legal issues in the U.S. involve different procedures, nomenclature, and even basic principles that are different from how we do things in Sierra Leone. Those challenges notwithstanding, JASOC is designed in such a way as to not let me even notice that I was learning law for the first time in a foreign country.

Military justice was the area where I learned the most during my time at JASOC. Within a month of my return to my position in the Republic of Sierra Leone Armed Forces, I had the opportunity to practice many of the new competencies I had learned. I have researched cases, created a proof analysis, prepared opening and closing arguments, used looping and rephrasing in cross examination, and applied other trial advocacy skills. I gained more skill

and experience in four weeks of military justice lectures, seminars, written assignments, and moot courts than I could have obtained in the two to three years I had initially planned to dedicate to additional legal training. I am very grateful for the professionalism and commitment of the JASOC instructors!

I cherish my time at Maxwell and my hope for the future is to have another successful opportunity to get further training...

In the months since I have returned home, I have shared my JASOC knowledge with others and put my education to good use. I am actively involved in prosecuting fourteen infantry personnel in a military court-martial. It is an ongoing case so I won't share the details, but they are accused of mutiny and related offences. At the time I sent this article we have not yet begun the trial, but my contributions at this early stage have made a tremendous impact.

The knowledge I gained at the course was not the only part I enjoyed. I appreciated the social aspects too. The visits to operational bases in Florida, the different sporting events, and several dinners and barbecues were there to help me ease the stress of being a full-time student in an unfamiliar environment. In hindsight, I feel that I was not up to the task on the soccer field, probably because I had not played soccer for a long time, coupled with the difference in the climate, although I don't mean that as an excuse. I feel very good when I think back about some of those early morning exercises. They were a lot of fun for me and the rest of the class. At one point here in Freetown during some downtime I almost got my colleagues together to play a game of Ultimate Frisbee.

Looking back, I cherish my time at Maxwell and my hope for the future is to have another successful opportunity to get further training as I prepare myself for more responsibility and more difficult tasks in the RSLAF and my Country as a whole. My JASOC experience has had much more of an impact than you will ever know. 🦋



JASOC 13C Class Photo



Parallel Processing: Tips for a New Chief of Military Justice

BY CAPTAIN FRED E. LEWIS

The Chief of Military Justice (CMJ) position is a demanding job. It is the job in the legal office that no one wants, if they are in their right mind, but is the job that offers the greatest opportunity for young JAGs to learn the military justice process and develop their leadership skills. You always have more work than you can accomplish and tight deadlines to get it done. On most days a “hot” issue comes up that prevents you from doing what you planned. It is normal to be prepping several time-sensitive packages, and then have a new case come up and need to attend a subject interview with the local Office of Special Investigations (OSI) and draft a Special Interest Report (SIR). I found the position to be a challenging one and I have tried to collect what I learned through trial and error. The target audience for this article is the JAG who is a new CMJ or expects to be in the job soon. The information contained in this

article would have been immensely helpful to me when I started out as CMJ. While it covers familiar ground for more experienced JAGs, take a look at your military justice program and how you are doing in the three focus areas of this article: anticipation/parallel processing, communication, and situational-awareness.

Anticipation/Parallel Processing

Running a justice program is about doing things right and doing them quickly. A CMJ must focus on keeping each action moving for them to meet metrics. While metrics should never be the top priority, swift justice is good justice. We must get it right, but metrics help eliminate “disciplinary limbo,” where an Airman knows he or she is in trouble, but does not know what action the commander is going to take. One way to stay ahead of metrics is to do tasks in parallel as opposed to sequentially, or, put another way, by anticipating what will

need to be done next.¹ Often, we focus on each piece of a court-martial, get it done, and then move on to the next piece. So, we do our proof analysis, then wait and do a preferal package, then when that is done we start looking for an Article 32 IO, etc. When doing “parallel processing,” you anticipate that an Article 32 IO will be needed before you prefer charges and start looking for one at that time. For example, a CMJ should ensure that the justice team is working the draft proof analysis, preferal package, and scheduling the 32 all at the same time. In this way, you minimize delays between each step, and can lead to significantly reducing the overall processing time. The goal is to consider the process as a

¹ My former SJA, Lt Col John D. Smith, taught me the concept of “parallel processing” and I thank him for allowing me to cite him here. His ideas about military justice inform the entire article. I also want to thank Lt Col Robert C. Cottrell for his time and advice regarding this article and Maj Sam Kidd for “highly encouraging” me to write it.

whole and eliminate any unnecessary delays by working the next step, or the next two steps in the process, in advance. You have to make sure your immediate deadlines are met, but you also have to be looking ahead.

Courts

For courts-martial, this means leaning forward as far as you can at any given stage of the process. As mentioned above, for a general court-martial, you should be working on a number of tasks prior to preferal, not just the proof analysis or preferal package. Before you prefer, you should be coordinating for an Article 32 investigation, including getting an idea of the defense counsel’s schedule, locating an IO, and getting witness availability. If you have all of these tasks on your radar, you can keep the court moving. Once you get to preferal you should have the groundwork laid for the Article 32 investigation. Next, your section should prep a referral package prior to the Article 32 report being completed. At the same time, the CMJ can prepare for docketing by ensuring trial counsel has determined witness availability for court. Doing this early is critical for witnesses like DCFL experts, who are usually not available for 30 to 60 days. Once the case is referred, act on defense requests for experts quickly. The General Court-Martial Convening Authority (GCMCA) may not be immediately available and a delay in granting or denying and expert can delay the trial. Coordinate regularly with your GCMCA’s military justice team. Send up witness funding requests as soon as you get them. Waiting to send them all at once can overload your NAF or your GCMCA, resulting in delays in witness funding. After trial is docketed, the post-trial paperwork should be prepared. Because many courts get delayed,

you may want to wait until 2-3 weeks out from a court to schedule witness travel. Once trial is completed, have the court reporter send what she transcribes each day to trial and defense counsel, so they can read the transcription in stages instead of all at once. Make sure that your section is preparing the court-martial order and coordinate with the NAF to ensure they have what they need to start early on the Staff Judge Advocate Recommendation.

Article 15s

For article 15s, it is important to find out the discovery date and calculate when offer and punishment need to happen in order to meet the metrics. That way, you are able to create a “flight plan” for when offer and punishment must happen to be within metrics. Of course, the ultimate goal is to offer as soon as possible, but knowing the “drop dead” days for metrics will help you achieve them. If you have calculated your “drop dead” dates, when you call the unit you already know if their proposed day of service will work within the metrics. Be proactive! Do not wait for your commander or first sergeant to call you. Read the blotter each morning and contact any unit that has an NJP level offense. In this way, you can both help the commander decide what to do and speed up the process. If you find out that the member may appeal an Article 15, pre-draft an appeal package and check the squadron and group commanders’ availability. Know your commanders, their execs, and their secretaries. Go meet them; that way you when you need their help to getting on the commander’s calendar, they will be more likely help you. Building relationships is critical. While you will not have the details of their appeal, you can draft the rest of the package and fill in the details of the member’s appeal

when you get it. If you wait for the appeal decision, you may lose days drafting the appeal and coordinating with a commander.

Discharges

The same concept applies to discharges, in that you should anticipate what will need to be done and see what dates will meet the metrics. Whoever is working NJP needs to coordinate with the unit on which members they plan to discharge, especially where an Airman is getting a second Article 15. If different people work Article 15s and discharges, be sure they are communicating about Airmen that will be discharged. That way, the discharge can be drafted while the Article 15 is underway, allowing it to be served as soon as the SJA legal review is complete. Discharges can be timed to be served the day after the Article 15 is complete. Similarly, the legal review should be drafted at the same time as the rest of the package, but certainly prior to getting the member’s response. Instead of having to draft and review the entire legal review after receiving the member’s response, you can pre-draft the portions that will not change and add analysis of the member’s response when you get it.

Communication

The justice process has a lot of important players: the justice section, the SJA, the commanders, the GCMCA’s military justice section and SJA, first sergeants, investigators, witnesses, and defense counsel. The CMJ is the central point of communication for all these players and it is vital that they all be included in the process. As a CMJ, you are the central hub between all these entities and you are in the best position to make sure each one gets the information they need. Whenever

you receive new information, consider who else needs to have it. When I started as a CMJ, I would forget to notify squadron commanders when the courts for their members were scheduled. While this does not directly impede the processing of that specific court, it made the commanders feel like they were not being included in the court process and sours them on the legal office. Communicating information to everyone who needs it keeps them informed and happy and helps things go smoothly.

SJA

Ensure that the SJA is informed about any important issues during the court-martial process. Even if your SJA is more hands-off, he or she will still want to know any significant court news and you will probably have some updates for them every day. The SJA needs to be informed so they can weigh in on important decisions and no SJA wants to find out about an issue with one of their cases from someone outside of their office. Also, get a feel for how involved your SJA likes to be in military justice. Most SJAs will want to be briefed daily. You need to determine what decisions you can make on your own and decisions the SJA will want to at least weigh in on.

Justice Section

Communicating well with your justice section will improve your productivity as a team. There are always multiple tasks that the justice section needs to complete. Take the time to look at the tasks you have and what your folks are doing, then determine what taskers you need to do yourself and what tasks need to be delegated to your section. Communicate to your section what tasks they need to accomplish early, and give them a deadline for each project. This

will help you and your team prioritize the workload. When you have multiple taskers that need to be completed ASAP, be sure you make a plan for completing them right away. If you wait to delegate the task to your section, they may not have the time to finish it that day or may be staying late to finish. If you give out multiple taskers, be sure you communicate what needs to be done that day and what can be accomplished later. Make sure your section knows what tasks are more important so they can prioritize properly. As the CMJ, you cannot do everything. Empower your justice staff—delegate to manage. Then you can focus on prioritizing and leading your team.

Commanders/CCFs

Because the legal office runs all the military justice actions, it can be easy to forget that military justice is a commander’s program. They are your customers, so try to look at things from their perspective and do what they want, if possible. Remember that the commander and first sergeant are closer to the situation and may have reasons for wanting to take an action that you are not aware of. Your job is to guide them through the justice process. As a guide, you have to advocate at times, but always remember that you do not decide—that is the commander’s job. You need to inform commanders about significant developments in the cases of their members. The unit cannot properly take action on the case if they do not know what is happening. It is also important to establish a good working relationship with the commanders. Commanders are more likely to listen to your advice if they know you. You should go to the office of each commander you work with and introduce yourself. Take time to meet with

Running a successful military justice section requires a consistent commitment to

- (1) anticipate what to do next,
- (2) communicate with the key players, and
- (3) maintain situational awareness of the cases.

them about cases. Go to their change of command ceremonies. Get to know them. This will help you give them better advice, and if they can put a face to the JAG calling them they are more likely to listen to and accept your advice.

Investigators

OSI and Security Forces Investigators are important players in the military justice process. When investigators are working the case, either the CMJ or trial counsel should be talking to them early and often. The CMJ should know all the base investigators. Remember, we are a team and relationships are the key to success. There are many benefits to working with them early in the investigation and starting a proof analysis long before you have a report of investigation in-hand. Once you do a proof analysis you will start to see the holes in the case and what questions you need answered. If you figure this out while the investigation is ongoing, you can ask the investigators to help answer those questions, hopefully avoiding doing your own “investigation” later. Attend victim and subject interviews. Then you can immediately give advice on any issues and help the investigators ask about each element

of an offense. Also, if you know the facts of the case you can better assist investigators with any legal issues that come up during their investigation. The closer the CMJ and trial counsel (TC) work with investigators the better they will know each case.

NAF

Be sure to keep the GCMCA’s legal office, typically the NAF/JA, up-to-date on all of the cases that pertain to them, but be aware that your SJA may want to know about communications with the NAF. The NAF owns the general courts-martial, Officer NJP, and certain discharges, so they need to be informed on any significant developments. Usually, this communication is accomplished via a weekly telecom or VTC, but if something important happens be sure to let the NAF know after you have informed your SJA. You also want to find out the GCMCA’s availability and when your NAF SJA has meetings scheduled. That way you prioritize your work based on when the GCMCA is available.

Witnesses

While witness coordination is usually a TC and case paralegal responsibility, the CMJ

needs to ensure it is completed. Encourage your TC to interview witnesses early in the process, so you know what they will say at court and when they are available. Also remember to inform witnesses of the status of the case, so that they do not become overly frustrated with the process because they do not know what is going on with the case. As mentioned above, be sure you know your witness availability when scheduling Article 32s hearings and courts. Focus on witness and victim care. Do not rely on investigators to take care of them. Get VWAP folks involved early. If you build rapport and communicate frequently with your victims and witnesses, it can be the difference between them cooperating or not later on.

Defense Counsel

While you are not working on the same side as the defense counsel (DC), you can keep the process moving by coordinating with them early and often. Hand over discovery early to avoid defense delays. Be sure defense knows when something is happening in their client’s case, such as a pretrial confinement hearing, referral, etc. If you cooperate with defense when you can, they are more likely to work with you when you need a favor. In most situations, the law is clear so there is little to gain from gamesmanship. Frank discussions between trial counsel and defense counsel prevent delays. Open discovery and discussions of evidentiary issues between TC and DC can prevent unnecessary delays or “thrashing” just before trial. Trial counsel and defense counsel cooperation does not mean you advocate less zealously for your client. You are simply avoiding unnecessary conflict over minor issues or issues with a clear answer.

Situational Awareness

As the CMJ, you need to know where each case is in the court-martial process. Depending on how your section is set up, you may also need to know about each discharge and NJP as well. In order to do this effectively, you need a tracking mechanism that works for your section. Whether it’s the standard AMJAMS reports, internal stoplight charts, a whiteboard, or something else, it is important that you have a tracker that shows you all the important dates for your courts. It should include the discovery to referral date, the discovery to action date, the referral to action date, the 120-days from referral/pre-trial confinement to arraignment, and the 120-day *Moreno* date from sentence to action. In order for the tracker to be useful it must be meticulously kept up to date, and YOU HAVE TO USE IT. You should find yourself looking at your tracker every morning and at least once again before the end of the day. If you stay on top of the important dates and review what needs to be done for each case each day, you will be better able to keep all your military justice actions on track.

Conclusion

Running a military justice section is a demanding job, but it is not rocket science. Nothing in this article is all that new. Running a successful military justice section requires a consistent commitment to (1) anticipate what to do next, (2) communicate with the key players, and (3) maintain situational awareness of the cases. Implementing these relatively simple but effective tips will help you manage the section and will enable commanders to maintain good order and discipline within their units. 🐦

“Military Justice Is to Justice What Military Music Is to Music:”

Anatomy of an Apocryphy or
How to Get Kicked Out of a Cocktail Party

(Assuming You’re Invited in the First Place)



(Images courtesy of iStock)

BY MR. THOMAS G. BECKER

“Military Justice Is to Justice What Military Music is to Music”

OK, let’s have a show of hands. How many of you, when telling new acquaintances that you’re a military lawyer, have received the above quote in response, often accompanied by a slight curl of the upper lip? I heard it the first time in 1982 from a woman at my mother’s funeral. She then argued with me whether JAGs were licensed attorneys. Really. *At...my...mother’s...funeral*. Similar conversations at cocktail parties and other social get-togethers followed over the years. When I was in the DoD General Counsel’s Office, I’d sometimes see it in constituent inquiries from Members of Congress (who obviously thought they were the first to have used such a clever turn of phrase). I even heard it from a Federal Magistrate Judge in an after-dinner speech much to the apparent delight of the audience, although some of us were pretending.

After the judge’s speech, I resolved to research the quote. Was it real? If so, who said it? When? What was the context? And what the heck is it supposed to mean? What I found out was not only interesting, but gave me opportunities to practice cross-examination skills on unsuspecting people who picked the wrong guy to smart off to at the bar.

What does it mean?

Is comparing military justice to military music supposed to disparage both? If so, one wonders

whether “Stars and Stripes Forever” is included in the disparagement, or Glenn Miller’s “St. Louis Blues March,” or Chopin’s “Military Polonaise.” It’s fun to ask such questions to the clever fellow who thinks he’s poked you in the eye.

Is it a real quote and who said it?

Let’s assume our quote is intended as a genuine insult to both military law and John Phillips Sousa. But is it real? There is no primary record that anyone of historical significance was the first to say, “Military justice is to justice what military music is to music.” The original quote has been widely attributed to either Groucho Marx or Georges Clemenceau. In that the former was a vaudevillian, movie actor, and early TV game show host with no apparent reason to comment on either subject, the Groucho attribution is doubtful. The more reliable attribution is to Clemenceau, the prominent French politician of the late 19th and early 20th Centuries.

When was it said and about what?

The Clemenceau attributions put the statement around the turn of the last century and in the context of the notorious Alfred Dreyfus affair. Captain Dreyfus was a French Army officer and a Jew whom, history has judged, was framed for spying for Germany by a rabidly anti-Semitic French Army. Dreyfus was railroaded by a court-martial into a Devil’s Island prison cell while the true spy, Major Ferdinand Esterhazy, was acquitted by a court-martial after senior officers suppressed evidence against him. After several years and multiple trials, Dreyfus was cleared and reinstated. He went on to serve in the First World War and retired as a lieutenant colonel. Clemenceau was a vocal supporter of Dreyfus and contemptuous of the military. In

the context of the Dreyfus affair, the “military justice/military music” quote is something Clemenceau would have said.

Arguendo (as we say in the law when we are in a pompous mood), let’s say the quote is real and Clemenceau said it. What is its significance to today’s American military justice system?

And your point is . . . ?

Once you cross-examine your cocktail party smart aleck with the above facts, you may now sum up. The “military justice/military music” quote, if genuine, was an opinion about France’s military justice system, not that of the United States. Even if that quote could fairly describe U.S. military justice circa 1900, how did American *civilian* justice shape up in comparison? In 1900, Jim Crow was judicially protected and “separate but equal” was the law of the land.¹ It was more than 50 years before that constitutional chestnut was discarded.² In 1900, the Due Process Clause of the 14th Amendment still hadn’t been applied to the states and a state could constitutionally try an indigent person for a capital crime without providing a lawyer. This wasn’t changed for more than 30 years.³ And it was four decades more before the right to counsel for poor people was extended to all cases with potential imprisonment.⁴ In 1900, the U.S. courts allowed child offenders to be put to death. It wasn’t until nearly 90 years later that the death penalty was abolished for some

¹ *Plessy v. Ferguson*, 163 U.S. 537 (1896).

² *Brown v. Board of Education*, 347 U.S. 483 (1954).

³ *Powell v. Alabama*, 287 U.S. 45 (1932).

⁴ *Gideon v. Wainwright*, 372 U.S. 335 (1963) (right to counsel for indigents facing felony charges), followed by *Argersinger v. Hamlin*, 407 U.S. 25 (1972) (right to counsel in all cases with potential incarceration). *CF Scott v. Illinois*, 440 U.S. 367 (1979) (no right to counsel where statutory punishment includes possible imprisonment but only a fine is imposed). *But see Alabama v. Shelton*, 535 U.S. 654 (2002) (right to counsel in cases where suspended sentence to prison is imposed).

(Image courtesy of United States Library of Congress)

children in the United States, and over a century later for all children.⁵

So, if your cocktail-party conversationalist is using the Clemenceau quote as a descriptor of the current U.S. military justice system, you may inform him he’s more than 100 years out of date. You may further inform him that our military justice system has matured along side the rest of American criminal justice, provides full Due Process rights to accused military members, and is served by top-drawer attorneys who’ve chosen the profession of arms as well as the profession of law. A slight curl of your upper lip is an optional accompaniment. Your host may ask you to leave, but who wants to hang out with those jerks anyway? 🦋

⁵ *Thompson v. Oklahoma*, 487 U.S. 815 (1988) (death penalty unconstitutional for offenders under age of 16), followed by *Roper v. Simmons*, 553 U.S. 551 (2005) (death penalty unconstitutional for offenders under age of 18).



Picture It.

You arrive at work at 0715 hours on a Tuesday morning after a three-day weekend, and you have just now remembered that you are scheduled for legal assistance from 0800-1200 hours. At the same time, you are thinking about how to accomplish everything you did not get done on the Friday afternoon before the long weekend, as well as everything that also must be accomplished in the short 4-day work week. As you get your first cup of coffee, you see your first client has just signed in and has in her arms a stack of papers (with sticky notes here and there). You think to yourself, how am I going to be able to help her in the twenty to thirty minutes I have been allotted per legal assistance client?

You bring her into your office, introduce yourself and ask her how you can be of assistance. She immediately begins to tell you she was recently denied credit for a car loan based upon her negative credit rating. She also informs you she was given the credit report, has reviewed it and identified a number of credit accounts (credit cards, department store accounts, etc.) on the credit report that are not hers and were not opened by her. However, she does not know what to do or how to fix the problem. At this point, it crosses your gray matter this is not going to be a simple legal assistance appointment, and you see all your open suspenses being pushed back at least a day. What do you do, other than think incredibly negative thoughts about how you came to be scheduled for legal assistance on the first day after a 3-day weekend?

Legal Assistance and Identity Theft

How One Can Be of Assistance

(Image courtesy of iStock)



SSgt Doe does not need to know who may have stolen her identity in order to file a police report, but a police report is necessary for filing an identity theft complaint with the FTC and disputing credit reporting incidents with individual creditors.

While I do not consider myself an expert in this field by any right, having worked this issue more than one would like to [given the impact to the victim], I have gained some insight which may prove helpful. What I have discovered is there is a *tremendous* amount of information about identity theft and how to resolve it available from various resources (books, news articles, internet sites, including the Federal Trade Commission’s (FTC’s)). In fact, there is so much information, it is overwhelming. If you simply provide the client the FTC internet web site (which is a good resource), my experience has been that clients are so overwhelmed they give up and decide to ignore the problem hoping it will go away or somehow resolve itself.

Unfortunately, we all know what generally happens when an individual does nothing in response to a legal problem. The problem only gets worse! It will impact the individual’s ability to get other loans and the interest rates the individual is given when he or she is able to

obtain a loan. But ultimately it may impact their security clearance and thus his or her ability to stay in the military. Identity theft can happen to anyone. It, in turn, impacts the United States Air Force (USAF) because of the loss of trained and experienced military members who could be potential mentors and leaders for our young Airmen.

This article cannot address all actions that must be taken to resolve the problem, but it can assist an attorney in navigating through the process of assisting a legal assistance client.

FIRST - Contact the Three Major Credit Reporting Companies

Inform Staff Sergeant Jane Doe she must contact the three major credit reporting companies and request a fraud alert be placed on her account. The three companies are Equifax, Incorporated (Inc.), Experian, and TransUnion. The fraud alert will require future creditors to verify the identity of a person attempting to obtain credit in her

name. The fraud alert is good for 90 days, so SSgt Doe will need to consider future options after the 90 days have expired. While placing a fraud alert with one credit reporting company should automatically flow to the other two companies, SSgt Doe should contact all three individually to ensure the three companies have been notified.

SECOND - File a Police Report

If SSgt Doe has not filed a police report yet, tell her that should be the next thing on her list of actions to complete. SSgt Doe does not need to know who may have stolen her identity in order to file a police report, but a police report is necessary for filing an identity theft complaint with the FTC and disputing credit reporting incidents with individual creditors. Conveniently, some states allow the identity theft victim to file the police report over the telephone or via the internet. If SSgt Doe has to go to the police department, have her call ahead to find out what office accepts the identity theft complaints as not all police offices within a city or state may accept them. States also vary as to whether an official police report will be opened as some states do not mandate the filing of a police report for identity theft, while other states do. If SSgt Doe lives in a state where a police report is not mandated, SSgt Doe will need to be persistent and may have to file a “miscellaneous incident” report.

The police report is necessary in order to have the debt removed from her credit report as a fraudulent entry or identity theft entry. If SSgt Doe is not able to get a copy of the police report prior to the deadline for filing notice with her creditors of the fraudulent transactions, she needs to get the police report number in order to provide it to the creditors and the credit reporting companies. She can then follow up with a copy of the police report when it is completed. Also inform her she should get the police officer’s business card so she has the officer’s name and business address which she can provide to both the creditors and the credit reporting companies.

THIRD - Carefully Examine the Credit Reports

Instruct SSgt Doe not only to carefully examine the credit report she has obtained, but also to get a credit report from each major credit reporting company. SSgt Doe may have to pay a small fee for the additional credit reports. I recommend this action as each credit reporting company’s report is different, and while there is a considerable amount of overlap between the three, I have found differences in the debts reported by each company.

FOURTH - Check for Duplicate Accounts

Advise SSgt Doe the debts on the report may be duplicative. For example, if there is a delin-

RESOURCES

[Equifax Web Site](#)

[Experian Web Site](#)

[TransUnion Web Site](#)

quent account from ABC Department Store, by the time SSgt Doe inquires into the status of it, ABC Department Store may have turned the delinquent account over to XYZ Collection Agency. As a result, you and SSgt Doe will see two delinquent accounts for only one debt. In addition, perchance the debt has been disputed, sometimes ABC Department Store will show a zero balance, with a comment that “customer disputes or customer disagree.” However, because the account was turned over to the collection agency before the dispute, the entry of the collection agency appears to be valid. If the underlying ABC Department Store account was created fraudulently, then SSgt Doe must include both accounts as fraudulent accounts when notifying the FTC and in her police report.

FIFTH - Contact Each Creditor

Tell SSgt Doe to contact each creditor, specifically the fraud complaint division (or it may be known as billing inquiries), directly and inform them she has been a victim of fraud. She needs to ask if they accept the FTC Identity Theft Affidavit or require their own affidavit. Some creditors will accept the FTC affidavit. The FTC affidavit is available at the FTC website: www.ftc.gov. If the creditor requires its own affidavit, then SSgt Doe will have to request they provide it to her. SSgt Doe must complete the affidavit and write each and every creditor. The FTC has sample memorandums which officially notify the business entity (or creditor) she is a victim of identity theft, the debt is not hers, and she has filed a complaint with her local police department and the FTC. It would be best if SSgt Doe provided a copy of the police report to each creditor; however, if she is unable to (because of time constraints), at minimum she needs the police report number and the name of the police officer who accepted her

identity theft complaint. In addition, because each debt is different, SSgt Doe will need to submit additional documentation, if applicable, to each creditor. For example, if the debt is for cable services at a house she never lived in because she was deployed, include a copy of her military orders as part of the evidence and notice to the creditor and credit reporting agency. The notification letter to the creditor, with the Identity Theft Affidavit, police report, and FTC Identity Theft Complaint should be mailed certified, return receipt requested, to each creditor as well as each credit reporting agency. SSgt Doe should also keep a copy of every package she mails to the individual entities.

SIXTH - Monitor Your Credit Report

Advise SSgt Doe she will likely have to monitor her credit report for a number of years (I recommend at least ten years) to ensure the debts do not reappear.

a. SSgt Doe is entitled to one free credit report per year from each credit reporting agency. To order her credit report, SSgt Doe can access www.AnnualCreditReport.com or call 1-877-322-8228, a service created by the three credit reporting companies. She can also write: Annual Credit Report Request Service, P.O. Box 105281, Atlanta, GA 30348-5281.

b. While time and money (i.e., copying, certified mail, monitoring of one’s credit report) is required to fix this problem, the record keeping is necessary. In the event SSgt Doe has to hire a private attorney to have the credit reporting agencies correct her account, the detailed record keeping will greatly assist her. Given that Equifax was recently ordered to pay \$18.6 million dollars to a plaintiff for failing to correct

her credit report (after being contacted eight times between 2009-2011¹), SSgt Doe also may be able to find an attorney who would be willing to represent her.

SEVENTH - Be Pro-Active in Protecting Your Personal Identifying Information

Inform SSgt Doe she must be pro-active in protecting her personal identifying information. Examples include:

a. Invest in a good shredder and shred all documents containing personal information, even if addressed to “resident” as that piece of mail still has her personal address.

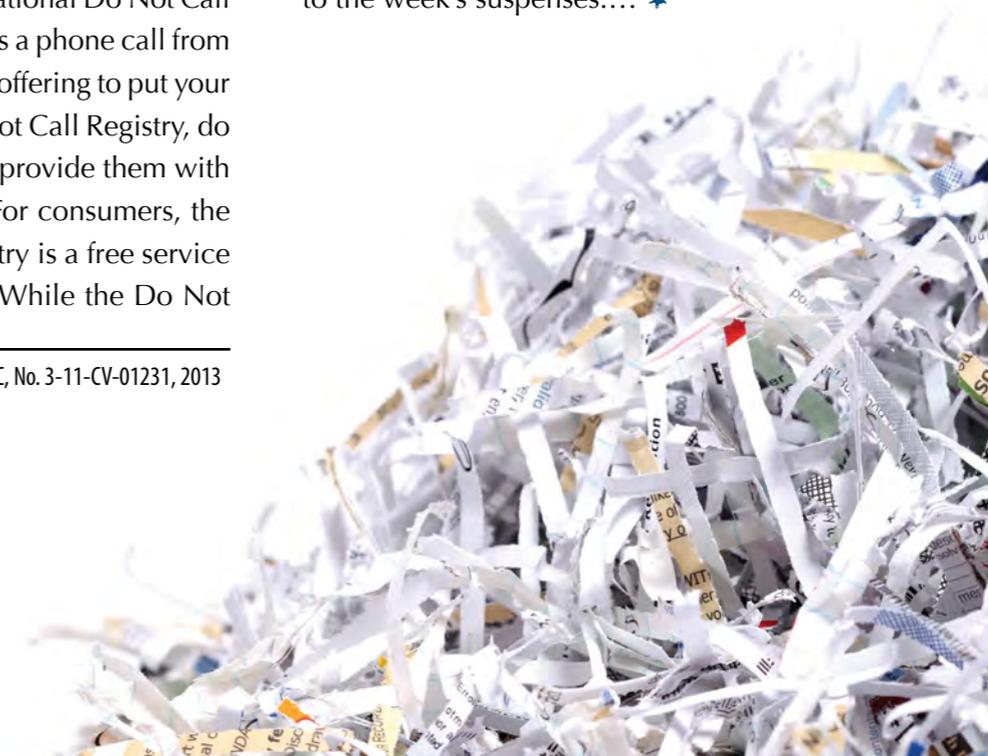
b. Use the “National Do Not Call Registry,” which gives you the ability to limit telemarketing phone calls. Once you register your phone number, telemarketers have up to 31 days from the date you register to stop calling you. You can register online at <https://www.donotcall.gov/> or by calling 1-800-382-1222. The FTC does not allow private companies or third persons to register consumers for the National Do Not Call Registry so if anyone receives a phone call from a company (or third person) offering to put your name on the National Do Not Call Registry, do NOT let them and do NOT provide them with any personal information. For consumers, the National Do Not Call Registry is a free service of the federal government. While the Do Not

¹ Miller v. Equifax Information Services, LLC, No. 3-11-CV-01231, 2013 WL 4078812 (D.Or. Jul 26, 2013)

Call Registry will not stop some calls (charities, political organizations, telephone surveys, etc.), it can limit most telemarketing phone calls. For the other calls, SSgt Doe should consider caller ID (either through her telephone service or as an attachment to her phone) and an answering machine. If she does not recognize a number, she should not answer the phone and make the caller leave a message.

c. Do not give out any personal information on the phone or through the mail, internet, or social media, and know that financial institutions do not request personal information via email.

This article was not intended to provide everything you need to know about combating identity theft and it is not intended to replace individual attorney research. However, it will hopefully orient the legal assistance attorney to the myriad issues and potential remedies associated with identity theft in order to better assist the Airmen who are our clients. Now, on to the week’s suspenses.... 🦋



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[American Bar Association CLE Information](#)

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Over 27 years ago, the Deputy Judge Advocate General, then Major General Keith Nelson, and retired General (and former JAG) Russell Dougherty discussed the value of attorneys continually honing their craft, particularly in light of the growing mandate of many states for Continuing Legal Education (CLE). From that discussion arose a plan for active duty, reserve and retired JAGs to pool their collective expertise for a JAG Corps CLE program. Major General Nelson assigned the task to then Captain Richard Harding, resulting in the first Air Force Judge Advocate General's Continuing Legal Education Program. Known for years simply as "the TJAG CLE," in 2011 the program was renamed "the Dougherty-Nelson Air Force JAG Corps CLE Program" in honor of the Air Force legends who conceived the program. For years, the CLE program's benefits were restricted to those within the National Capital Region who were able to attend in person. Leveraging available technologies, this beneficial program was offered worldwide for the first time ever this year, reaching nearly 400 active duty, reserve and civilian attorneys throughout the Department of Defense (DoD).

Initially focused on distinct subject matters such as government contracting and aerospace operations law, the two-day program has expanded to include topics in areas such as military justice, legislation, labor and employment law, and legal assistance. The annual event provides 12 hours of continuing legal education on some of the most timely and relevant top-

ics, and traditionally includes two hours of professional responsibility. This year's program also included two hours of legal assistance instruction.

While the CLE program started as an additional duty assignment for select active duty members, for nearly 15 years the program has been spearheaded by a dedicated cadre of reserve component members who orchestrate the two-day event largely in a points-only status. Though different venues have hosted the program, the George Mason University (GMU) School of Law has generously provided classroom space and other essential support to the program over the course of the last decade, which has facilitated its continued success.

This year's unprecedented travel restrictions limited the ability of many JAGs to obtain necessary CLE. In recognition of a potential shortfall, and at the urging of the Air Reserve Component's Information Technology Readiness Committee (ITRC), this year's program sought to expand the audience as much as possible by adding a distance learning (DL) component. Recognizing the benefits of in person attendance, as well as the benefit to speakers in having a live audience, a pure DL model was ruled out. A hybrid program, combining an on-site program at GMU with a DL program was determined to be the best approach. This allowed the JAG Corps to offer local attendees the option of in-person attendance at GMU and made the CLE available to attorneys across the Air Force and DoD.

The CLE team was fortunate to have the ITRC onboard to tackle the DL portion of the program.

The ITRC determined that based on the venue, the number of potential distance learning participants, and the fact that the participants had widely varied demographics, web streaming over Defense Connect Online (DCO) offered the most accessibility to the greatest number of participants. The ITRC obtained best practices from a DCO "Evangelist," who also arranged for on-site DCO support during the event. The CLE team also sought volunteers from around the Air Force to host group sites where multiple people could participate using a single DCO connection. The assistance of these volunteers proved critical to the success of the program and the group sites enabled greater interaction among attendees. A limited number of connections for individual viewing from home or office were also offered. In total, 60 individual viewers and 20 group sites, ranging in size from 4 to 40 participants, registered for the CLE.

Overall, the distance learning experience was a great success. The team overcame technological issues, successfully delivering 12 hours of CLE to over 250 DL and nearly 150 in-person participants. In person attendees indicated minimal impact from the DL piece, and a handful of longtime attendees dubbed it the best CLE ever!¹

¹ Attorneys considering participating in this or any distance learning CLE program should be aware of their state bar's requirements for crediting DL programs.

“ [P]reparation began with the assembly of a comprehensive reference binder, which was informally referred to as “pure gold” by the Inspector General.



OPERATIONAL READINESS INSPECTIONS

A Practical Guide for the Legal Team

BY MS. NANA KNIGHT

The [62d Airlift Wing Office of the Staff Judge Advocate](#) (62 AW/JA) Operational Readiness Inspection (ORI) team, led by Captain Nana Knight and Staff Sergeant Roberto Vargas, received the only “Outstanding” rating awarded by the Inspector General (IG) during the most recent ORI at Joint Base Lewis-McChord. The 62 AW/JA team simulated deployment of the 131st Air Expeditionary Wing (131 AEW) to Ali Al Salem Air Base, Kuwait. This article is intended to provide other legal offices with a practical guide for success during an ORI by identifying and examining 62 AW/JA’s best practices and preparation methods, and by offering some execution tips for those tasked to be the deployed JAG/Paralegal team. While there are numerous objective and subjective

factors that contribute to a successful performance during an ORI, *meticulous preparation*, *proactive engagement*, and *teamwork* were central to 62 AW/JA’s success and made a favorable impression on the IG.

Preparation

In preparation for the ORI, the office—and the “deploying” team, in particular—focused on review of substantive legal topics, Ability to Survive and Operate (ATSO), and Self-Aid/Buddy Care (SABC). Prior to the ORI, 62 AW/JA participated in three Operational Readiness Exercises (OREs),¹ designed to test the legal team’s ATSO skills and ability to execute its

¹ 62 AW/JA participated in two “fly-aways” and one local Mobility Exercise (MOBEX) on McChord Field, Joint Base Lewis-McChord.

core functions in a deployed environment. The OREs allowed the deployed team to gain a broader understanding of its role in a deployed environment and to look for “outside-the-box” ways to maximize its contribution to deployed operations, while sharpening critical war-fighting capabilities of the team members. The legal team treated each ORE as if it were the actual inspection, taking advantage of every opportunity to fine-tune its legal processes, identify and correct weaknesses, build on strengths, reinforce attorney-paralegal teaming, and network with key personnel.

The 62 AW/JA’s preparation began with the assembly of a comprehensive reference binder, which was informally referred to as “pure gold”

by the Inspector General. Early on, during the OREs, the sheer volume and diversity of the legal issues the legal team faced created a need for an “all inclusive guide” to serve as a roadmap for all JA operations. The legal team filled this need by creating a 5-inch binder containing an exhaustive collection of all applicable agreements, policy letters, general orders, military justice forms (e.g., non-judicial punishment, DD Form 458), legal references, and templates necessary to execute the mission quickly and efficiently. The legal team reviewed and collected the relevant Operations and Execution Orders, The Judge Advocate General (TJAG) operational readiness memoranda, the governing status of forces agreements (SOFAs), acquisition and cross servicing agreements, and

(Image courtesy of iStock)

“ [O]ne of the best ways to contribute during the ORI was to be proactive and engage, before and during the inspection, in any ORI-related activity transpiring on base.

TJAG Special Subject Letters. The reference guide was also saved on a compact disc, which allowed convenient electronic access to the material at the deployed location.

In addition, the legal team created approximately 44 checklists designed to efficiently and quickly address common legal issues. The checklists covered all necessary steps to resolve issues such as fuel spills, political asylum, jurisdiction requests, gifts/awards, contractor and reservist misconduct, Enemy Prisoner of War abuse, Law of Armed Conflict (LOAC) violations/reporting, etc. The checklist drafting process forced the team to think about some of the most commonly occurring legal issues, to anticipate new scenarios, and to increase its efficiency and productivity in providing legal advice. The checklists, combined with electronic and hard-copy access to the *The Military Commander and the Law*, *Air Force Operations and the Law*, the *Army Law of War Deskbook*, and the *Army Operational Law Handbook*, provided the legal team with all the required resources to address legal issues that transpired in theater.

The most valuable portion of the reference binder was, perhaps, the “Table of Contents” (TOC) section. Tailored to the Mission Essential

Task Lists, the TOC contained 57 headings which covered gifts, ethics, political asylum issues/detainee treatment, fiscal law, customs inspections, claims, civilian and contractor issues, military justice, legal assistance, environmental law, command, and various other legal issues. Additionally, each heading contained a customized pre-drafted checklist outlining all the steps required for resolution. The TOC succinctly summarized the scenarios, such as “fuel spills” and “commander is killed—successor,” and pointed to the appropriate tab in the binder containing the legal reference and the corresponding checklist to respond to the legal inject. The legal team methodically consulted the TOC for every legal inject, even if they knew what the advice would be, immediately consulted the applicable checklist, and apportioned the execution of the checklist items between the attorney and paralegal to arrive at a fast and efficient legal solution.

Immediately upon arrival in theater, the legal team consulted the “Hit the Ground Running” checklist—a comprehensive outline of the steps required to set up an office and launch operations. The checklist contained items such as setting up the laptops, ensuring access to application tools, such as RINNERS tool, FLITE, WebLions, DL Wills, and posting JA signs

around major buildings and common areas. Other checklist items included identification of all host country and U.S. agencies that would be helpful to the legal office, drafting letters of introduction, and obtaining names for delegation letters. The IG complimented this effort, stating that the JA team “surpassed expectations by contacting all levels of host nation counterparts and sister service agencies, guaranteeing positive relations.” The legal office also made initial contact with Intel and Public Affairs (PA), checked for the existence of any Memoranda of Agreement, confirmed alternate locations, ensured LOAC compliance for medical personnel, and ensured access to the Installation Control Center (ICC) and Emergency Operations Center (EOC) events logs, including the Security Forces Squadron (SFS) blotter. Finally, the legal team set up meetings and liaised extensively with fiscal and environmental team leads.

Proactive Engagement

The 62 AW/JA discovered that one of the best ways to contribute during the ORI was to be proactive and engage, before and during the inspection, in any ORI-related activity transpiring on base. Keeping abreast of all events can prove challenging, especially if JA is geographically separated from the ICC and the EOC, which was the case for the 62 AW legal team. To overcome this particular limitation, 62 AW/JA increased its emphasis on extensive networking with all of the major players and agencies to ensure regular information flow to JA in theater. For example, two weeks prior to deployment, the legal office met with the 131 AEW Commander to discuss Rules of Engagement (ROE), Use of Force, and to sign delegation and appointment letters. With the commander’s

approval, the legal team created ROE cards for all deployed personnel, including specialized ROEs for SFS, and LOAC cards for medical personnel. The IG recognized this effort, stating that the “legal team provided customized quick reference ROE cards to Security Forces and Medical personnel; ensuring flawless notification of any possible legal violations to the legal team.” JA also liaised with SFS, Office of Special Investigations, the EOC Manager, 131 AEW executive officers, Force Support team leads, and established real-life “reach-back” support with the Air Forces Central Command Judge Advocate’s Office (AFCENT/JA), Air Force Operations and International Law Directorate (JAO), the Environmental Law and Litigation Division, the Claims and Tort Litigation Division and other agencies, documenting all contact made for the IG. These contacts proved invaluable for ensuring information flow to JA and simulated reach-back capability during deployed operations.

Regular briefings and early advertisement of services also enhanced JA’s presence on base and increased information flow to JA. Prior to deployment, JA provided a comprehensive briefing on legal readiness, including ROEs, LOAC, claims, and SOFA, as well as a Reception Briefing upon arrival to theater, which covered local law and general orders. Additionally, the legal team provided pre-deployment Law of Air Mobility training and brochures to more than 80 flyers, and created sign-up sheets for proof of attendance to show the IG. Upon arrival, the legal team handed out business cards to the major players, and posted large JA posters in all major buildings and common areas with JA’s contact information and services. Further, the legal team worked with PA to publish an

“With the right mind-set, teaming, and preparation, an ORI can serve as a great opportunity to showcase legal talent and provide maximum contribution to the wing for success.

article on legal services in the base newspaper (drafted by the paralegal) and worked to advertise JA services daily on the 131 AEW Commander’s Channel.

The JA information campaign and briefings continued at the deployed location. The legal team provided daily briefings (night and day shift) to SFS on the Use of Force, LOAC and ROEs, drawing on the SFS members’ experience for practical scenarios and hypotheticals. EOC representatives and Unit Control Center operators soon learned to recognize potential legal issues and quickly filter information to JA for legal advice. For example, the SFS team leader at the EOC contacted JA every hour to update JA on issues relating to SFS operations, such as enemy prisoner of war abuse or

negligent discharge of a weapon, which were designed to be SFS-testable scenarios requiring legal input. Staying proactively engaged allowed the legal team to receive the most up-to-date information on developing issues on base, and provide speedy and well-researched advice to the appropriate personnel. The legal team soon became an indispensable part of the deployment operations and one of 131 AEW Commander’s “go-to” agencies.

Attorney-Paralegal Teaming

Recognizing the importance of attorney-paralegal teaming, 62 AW/JA searched for innovative ways to implement TJAG’s teaming pillar in ORI preparation and execution. Paralegals and attorneys worked together to create the checklists and assemble the reference guide,

research substantive legal issues, draft legal reviews, provide legal assistance, and check for LOAC and ROE compliance. The legal team demonstrated strong teaming initiative by quickly distributing the deployed workload between attorneys and paralegals for speedy execution, which earned favorable feedback from the IG. The paralegals and attorneys also both played a critical role in networking with relevant players, spotting legal issues, checking the blotter and EOC/ICC logs for new developments, and making frequent visits to the EOC/ICC for periodic updates.

In the After Action Report, the IG noted that the “JA team showed unmatched professionalism and teaming” as one of its strengths. The IG was especially complimentary of the “attorney and paralegal for meticulously processing an international claim in one day” and noted a strength in a scenario where the “attorney communicated via paralegal to provide legal assistance to [a] male client bound by religious restrictions to not be advised by females.” After months of working together, the attorneys and paralegals had learned to rely on each other to tackle the most daunting and novel issues, serving as each other’s “eyes and ears” for all new developments. Attorney-paralegal teaming is a

critical force multiplier in deployed operations, and was absolutely key to 62 AW/JA’s success during the ORI.

Conclusion

With the right mind-set, teaming, and preparation, an ORI can serve as a great opportunity to showcase legal talent and provide maximum contribution to the wing for success. To that end, contacting other bases for information regarding areas for improvement and cross-feed of successful tools and tips, as well as establishing “reach-back” support from AFCENT/JA, JAO and other agencies can be invaluable. A careful study of the Airman’s Manual and perfecting SABC and ATSO skills will also prove critical during the ORI. Additionally, preparation should incorporate regular training for JA personnel manning the deployment line at home station along with a pre-deployment review and update of mobility folders. While a positive disposition is imperative in overcoming unforeseen hurdles and unprecedented legal issues, *meticulous preparation, proactive engagement, and teaming* will surely impress the IG and greatly enhance the legal team’s chance for success on an ORI. ↘

RESOURCES

[Air Force Operations and the Law](#)

[Airman’s Manual](#)

[Army Law of War Deskbook](#)

[Army Operational Law Handbook](#)

[The Military Commander and the Law](#)



BY MASTER SERGEANT STEVEN L. PIERCE

The Department of Defense faces ongoing fiscal constraints, resulting in reduced budgets and manpower. Fiscal and manpower constraints present challenges for military and civilian members. These challenges must be confronted realistically and require innovative leadership at every level of the JAG Corps. Obviously, the Air Force mission must be accomplished regardless of ongoing budgetary and manpower concerns. Doing the same amount of work with fewer resources will stretch our Airmen to maintain current capabilities. This is a fact. Determining what activities to allocate resources against and the racking and stacking of to-do lists will become more difficult. Activities that directly contribute to mission accomplishment will stay at the top of the list. On-the-job training (OJT) of our paralegals, especially in practice areas that may not be part of their current primary duties, must be near the top of every leader's list of priorities. Without effective OJT we fail to properly develop our Airmen, which adversely impacts their careers and has the potential to adversely affect the mission in the long run. Setting aside time to provide effective OJT is easier said than done due to the workload at many legal offices, regardless of current constraints and challenges.

ON-THE-JOB TRAINING Sharpening the Blade

(Image courtesy of iStock)

“OJT provides paralegals with opportunities to sharpen their skills by performing the task under the supervision and mentorship of a paralegal or attorney skilled in the activity.”

Ops Tempo and OJT

The base legal office is where most of our young paralegals start their career, and OJT is enormously important for these new professionals. Unfortunately, base offices have a high operations tempo which impacts the time available to conduct training. Demand for legal expertise will not decrease in the face of fiscal constraints. Fiscal constraints, combined with high operations tempo, will further impact an office's ability to conduct effective paralegal training and career development. This problem is not unique to the JAG Corps. Excuses must not be made to justify the lack of sufficient OJT at an office. Poor training can severely stunt the growth of a paralegal's skill set. The immediate impact on the Air Force is a manpower slot that has been filled, but not maximized. Simply put, the Air Force is not getting the biggest bang for its buck from this individual due to insufficient training. Despite the challenges, meaningful OJT must remain a priority for every legal office. Supervisors and leadership have an obligation to sharpen the skills of the paralegals assigned to their offices.

Training sharpens the skills of our paralegal corps in the same way that a whetstone sharpens a blade. Sharpening the blade takes an investment of time to begin with, but pays off

exponentially. A dull blade may be able perform its primary function, but it is less effective than a sharpened blade. Also, using a dull blade to cut will produce a less desirable finished product with jagged edges. The job has been completed and a product produced, but not without some concession to the quality or timeliness of the product. A sharpened blade cuts reliably, quickly, smoothly, and will produce a finished, professional product. The potential of the blade has been maximized. Deliberate and organized OJT produces the same results by building upon knowledge gained through course instruction and sharpening the practical application skills of the paralegal being trained. Understanding the training process from trainee to craftsman will assist legal offices in developing OJT plans that will prepare paralegals for in-residence training and best hone paralegal skills.

Paralegal Apprentice Course

A paralegal begins his or her Air Force legal career at the Paralegal Apprentice Course (PAC). This course provides paralegals with a broad overview of core tasks they will be expected to perform at a typical base legal office. Many paralegals describe this as training by fire hose due to the massive amount of new information presented throughout the course. The typical adult learner will retain only a small percentage

of information provided through a classroom environment due to the nature of classroom training. To assist with retention, lectures are often followed by an opportunity to perform the task taught. Once the exercise is completed the class moves on to the next subject, typically without revisiting the subject in detail. The paralegal who had graduated PAC has been exposed to many tasks, but has not mastered those tasks. This is when the importance of OJT comes into play at the base legal office.

Learning by Doing

OJT provides paralegals with opportunities to sharpen their skills by performing the task under the supervision and mentorship of a paralegal or attorney skilled in the activity. When it comes to training, this is where the rubber meets the road. OJT can be done by completing tasks through real world situations, like producing an Article 15 for a squadron, or through scenario based training when real world situations are unavailable. It is through this method of training that a paralegal is able to apply the knowledge learned at PAC and through his or her Career Development Course (CDC) study to produce a finished product while under the supervision of an experienced trainer. Learning by doing and then receiving constructive feedback has proven to be one of the most effective ways for adult learners to understand new concepts and develop new skills. Investing time every week to perform OJT is an up front investment that will better equip paralegals to produce better work products and results in higher output from the individual. Skimping on OJT results in an inequitable distribution of tasks to the experienced paralegals in the office and underutilization of new paralegals. This leads to

legal offices manned with more dull blades than sharp blades. The effectiveness of a legal office's training program is evident when journeymen paralegals attend the Paralegal Craftsman Course (PCC).

Paralegal Craftsman Course

A journeyman paralegal has graduated PAC, passed CDC testing, and completed required core tasks through OJT. Paralegals will ultimately attend PCC with approval from unit leadership after completing these prerequisites and upon selection for promotion to Staff Sergeant. PCC is designed to refine the skills paralegals have previously developed over time and introduce them to more complex tasks like writing proof analyses and drafting motions. Many PCC attendees demonstrate strong foundational knowledge and skills in certain subject matter areas during the course. However, many PCC attendees have less understanding in areas of law that they were not exposed to at base legal offices. For instance, a paralegal who is strong in military justice is typically weak in civil law, because he or she spent most of his or her career working in military justice. This is understandable. The real problem is when a paralegal has little to no working knowledge of one area of law or the other. This paralegal is now forced to learn the basics of an area of law rather than refining and improving on an already developed skill set in that area. PCC ends up being a struggle for paralegals who find themselves in this situation, and they are not able to reap the full benefit of the course.

This imbalance can be avoided by ensuring new paralegals are rotated through the different sections at the base legal office. This provides

paralegals with critical OJT and hands-on experience necessary for them to become well-developed professionals. Paralegals will become craftsmen upon graduation from PCC and be expected to train and develop the next generation of craftsmen. It is at this point that their paralegal skills should be razor sharp due to the knowledge and skills gained through years of effective OJT and the additional polishing provided by in-residence courses.

Conclusion

The new paralegal craftsman should be ready to pass their knowledge to new paralegals, effectively produce and review work product, and contribute to the mission at a high level. Failure to effectively leverage OJT opportunities produces paralegals that do not reach their full potential, which may negatively impact a legal office's ability to meet mission requirements in a timely manner. Failure to effectively train paralegals will be magnified if manning reductions continue to impact the career field. Training is time consuming, ops tempo is high, and fiscal constraints have increased. These challenges are real, but OJT must remain a top priority at legal offices in order to continually meet the high demands of our profession now and in the future. Don't let the opportunity to sharpen your paralegals' skills be overcome by the latest emergency suspense. Aggressively carve out time to effectively invest in your paralegals. It will pay dividends for your office and your people. 🦋



PCC students during an exercise at the Air Force Judge Advocate General's School



THE AMERICAN BAR ASSOCIATION LEGAL GUIDE FOR MILITARY FAMILIES

REVIEWED BY CAPTAIN JOSEPH B. AHLERS

“[T]o protect those who have been obliged to drop their own affairs to take up the burdens of the nation.”¹

Evidencing its long-standing and multifaceted commitment to the legal needs of military personnel, the ABA recently published the *Legal Guide for Military Families*.²

¹ *Boone v. Lightner*, 319 U.S. 561, 575 (1943).

² AMERICAN BAR ASSOCIATION [ABA], *LEGAL GUIDE FOR MILITARY FAMILIES* (2013).

This book, an expansive supplement to the ABA Homefront website,³ is directed to the service member seeking legal help. However, the guide is also a valuable tool to the new Judge Advocate seeking common-sense discussions of legal issues that arise throughout the normal course of legal assistance practice.

³ ABA Military Pro Bono Project, <http://www.militaryprobono.org/> (last visited Dec. 1, 2013).

Legal Advice

Legal professionals face a challenge with every blog post, base newspaper article, or flyer stacked up in the lobby: Where is the line between providing enough information to educate, but not so specific to rise to the level of actual legal advice, whereby a client relies on the information without seeking legal counsel? It's sometimes as easy as saying you “may” need this kind of power of attorney for a particular situation versus saying that you

“should” avoid a specific action. But our craft is built on the idea that curbside lawyering, or being hit up at family gatherings for a “quick question,” can be a red flag for malpractice for fear that a client may rely on an underdeveloped opinion and later blame the attorney should the outcome not meet the client's expectations.

The ABA editors were clearly aware of this problem when publishing the *Legal Guide*, reminding readers up front that the book “is

(Image courtesy of iStock)

Even in tough to comprehend areas, the authors narrowed the focus and complexity of the law into a workable format.

not intended as legal advice.”⁴ The first chapter focuses exclusively on the benefits of having real legal counsel, and points out the first step in any legal matter is consulting with a base legal assistance attorney even if just to find out how to hire civilian counsel.⁵ Further, the Landlord-Tenant Chapter provides overviews of common issues that arise, but—especially pertinent with each state having different rules for what constitutes habitability and move-out rights—does not give even the scantest detail on how to proceed to a small claims court to enforce tenant rights.

Deference to an attorney’s legal advice is more blatant in other sections of the *Legal Guide*. For example, those looking to establish a basic trust⁶ or determine which power of attorney⁷ is needed are advised to “see a military legal assistance attorney first.”⁸ Clients seeking a supplemental needs trust are reminded the “law is highly complex, and you should consult with an attorney” before proceeding.⁹ Moreover, attorneys aren’t the only experts readers are directed to for further information. The authors are quick to defer questions

beyond basic guidance to financial advisors,¹⁰ Department of Veterans Affairs (VA) officers,¹¹ and even primary care physicians.¹² When discussing transitional compensation, for instance, the books refers to the installation Family Advocacy Program or Inspector General as first-line resolution agents in lieu of legal help.¹³ As legal assistance providers, one key to success is knowing when to refer a client to outside sources. The authors manage to go just far enough in whetting the knowledge appetite to enable military members to ask the right questions, but not so far as to recommend any fact-based solutions that require in-person legal or other professional consultation.

Staying Up-To-Date

A key concern for any kind of reference book is staying current in light of constantly changing federal statutes, Department of Defense (DoD) directives, and military service-specific regulations. By couching advice in terms of general principles and avoiding citations to specific authority, the authors clearly contemplated and met this challenge.

Take, for instance, the Family Law Chapter and section on Family Care Plans (FCP). The 2010 National Defense Authorization Act

reflected Congressional concern deployed parents were not being given adequate legal protection under the Servicemembers Civil Relief Act (SCRA) with regard to child custody disputes.¹⁴ The DoD responded with a rather sweeping change to Department of Defense Instruction (DoDI) 1342.19, *Family Care Plans*. Specifically, DoDI 1342.19 mandated that, “to the greatest extent possible,” a military member inform the child’s other biological parent of an absence due to military orders, seek to obtain his or her consent for naming a third-party as the caregiver in the FCP, and consider incorporating their third-party designation into a court sanctioned custody agreement prior to an absence.¹⁵ While the Air Force incorporated and expanded upon DoDI 1342.19 in AFI 36-2908, *Family Care Plans*, the Navy, for example, has not updated their regulation since 2009.¹⁶

The ABA guide ignores service-specific issues and instead focuses on broader issues of importance to military families regardless of branch of service: consent forms, false beliefs in POAs for guardianship, and the long-standing (but false) belief that a step-parent absorbs a biological parent’s visitation rights at the service member’s bequest.¹⁷ In fact, the words “Air Force,” “Army,” “Navy,” “Marine Corps,” and “Coast Guard” are rarely found throughout the book. You also won’t find many cites to specific laws or regulations (with the exception of VA information), which is a good thing as it keeps the guide understandable for military families.

By keeping the information provided general in nature, the *Legal Guide* places the onus on the service member to visit a legal professional to find out what service-specific as well as state-specific guidance may apply. What practitioner hasn’t had a client start a legal assistance appointment with “I found some information online...” and the information is not applicable because of their state of legal residence or situs of the claim? One can hardly blame the client—a search of a simple term like “military residential lease” brings up 2.5 million hits on Google with top 10 picks covering Air Force, Coast Guard, and DoD policies, as well as information from the state of Mississippi.¹⁸

Readability

A reference book like this must strike a balance between being too broad—providing the reader with too little useful information—and being too “in-the-weeds,” whereby the reader is pushed away by complicated text. To be useful, it must have a high degree of readability for the average consumer—here, the military member in need of basic legal information.

The *Legal Guide* strikes the appropriate balance, relying on two strengths: concise text and visual appeal. The importance of concise text cannot be overstated for the non-lawyer consumer, especially in this age of instant access to concise information through online and social media outlets.¹⁹ Getting a consumer to pick up a book rather than Googling²⁰ a question may be a victory for the printed word in and

⁴ ABA, *supra* note 1, at x.

⁵ *Id.* at 10.

⁶ *Id.* at 214.

⁷ *Id.* at 222.

⁸ *Id.* at 214.

⁹ *Id.* at 217.

¹⁰ *Id.* at 227 (discussing life insurance policies).

¹¹ *Id.* at 229 (discussing burial benefits).

¹² *Id.* at 247 (discussing battle injuries).

¹³ *Id.* at 107-108.

¹⁴ National Defense Authorization Act of 2010, S. 1390, 111th Cong. S 555-556.

¹⁵ U.S. DEP’T OF DEF., INSTR. 1342.19, FAMILY CARE PLANS, para. 1a(2)(b)-(c), 1c(1)(e) (7 May 2010).

¹⁶ U.S. DEP’T OF NAVY, SEC’Y OF NAVY INSTR. 1740.4D, U.S. NAVY FAMILY CARE POLICY (27 Oct 09).

¹⁷ ABA, *supra* note 1, at 30, 32.

¹⁸ Google, <https://www.google.com> (last searched Dec. 1, 2013).

¹⁹ This applies beyond just legal practice; as attention spans have dropped, consumers are demanding information broken down to the lowest level, a prime reason sites like Wikipedia have become so popular.

²⁰ For those unfamiliar with the term, head to www.google.com and type it in for a definition.

While the ABA guide is targeted to the military service member, veterans, and dependents seeking basic advice on how to approach a particular legal issue, it also serves as a functional addition to the bookshelf of any legal assistance practitioner looking for a quick reference tool that covers a variety of topics.

of itself.²¹ The editors were no doubt aware of the need to keep the reader's attention and managed to break potentially complex issues down to an understandable level. For example, when delving into topics like the Fair Credit Reporting Act²² or Truth in Lending Act,²³ the ABA kept it simple: here's what the statute is, how it applies to you, why this information is important, and what you can do if you think you've been victimized in some way under the Acts.²⁴ No doubt almost any attorney familiar with these areas of law will see room for growth ("They missed this one important point!" or "How could they have overlooked XYZ!"), but in compressing 11 areas of law into a book less than 400 pages, the editors struck the right balance in providing sufficient information, while maintaining readability for the average consumer.

²¹ In 2012, book sales fell another nine percent from previous levels. See Sale of Print Books Fell in 2012, http://www.huffingtonpost.com/2013/01/04/sales-of-print-books-fell_n_2410079.html.

²² ABA, *supra* note 1, at 127. See also the Fair Credit Reporting Act, 15 U.S.C. § 1681.

²³ ABA, *supra* note 1, at 130. See also the Truth in Lending Act, 15 U.S.C. § 1601.

²⁴ The breakout on the Fair Credit Reporting Act, for example, manages in four pages to explain how credit reports work, the ways to obtain a copy of ones credit report, how agencies obtain your credit information, and how to appeal erroneous information in a credit file. *Id.* at 127-131.

Even in tough to comprehend areas, the authors narrowed the focus and complexity of the law into a workable format. For example, the last three chapters of the book focus on three vital areas of the law for those exiting military service: discharge,²⁵ disability,²⁶ and veterans benefits.²⁷ As practitioners we tend to see these three areas through a very different lens: discharge as a manner or means of characterization in the court-martial and administrative discharge process, and disability and veterans benefits are either too complicated (and thus handled with a private referral or in-house consult with the VA) or a mere matter of explaining to the client what the paperwork they received in the mail means. For many of these matters, full-fledged assistance is beyond the capabilities of the base legal office.²⁸ But as they are legal matters at the very heart of military service, the ABA guide makes a valiant attempt to breakdown perhaps one of the most complicated and frustrating bureaucracies in the federal government (the VA). Even I, as a legal assistance practitioner who receives questions every week on these

²⁵ *Id.* at 271.

²⁶ *Id.* at 302.

²⁷ *Id.* at 315.

²⁸ For example, AFI 51-504, LEGAL ASSISTANCE, NOTARY, AND PREVENTIVE LAW PROGRAMS, para. 1.7, encourages referrals for matters beyond the competence of the legal assistance consultation.

issues, walked away feeling more confident about the advice I provide to my clients after reading those chapters. The *Legal Guide* does an excellent job taking apart a the multi-layered VA process and laying out the basics for not only Joe Veteran to understand, but also the baby JAG who gets his first difficult client and needs help explaining the process.

In addition to its actual text, the book's visual appeal also significantly adds to its readability. How can looks alone add so much? Recall in law school the difference between 60 pages of rambling notes and a well-written, concise outline and you've got the answer. The ABA guide breaks up chapters into short highlights of various topics that permit the reader to skip to their desired area of interest. The chapter on Military Health Care and Insurance, for example, begins with a breakdown of health insurance terms the reader may not fully understand (such as premium, deductible, and in-network provider)²⁹ and continues with digestible information on 12 other sub-topics in the chapter's brief 19 pages.³⁰ For the target user, likely just skimming for answers to their particular problem at a particular time, the

²⁹ ABA, *supra* note 1, at 235-236.

³⁰ *Id.* at 235-254.

breakdown makes it much easier to find the desired information.

The visual appeal extends beyond just breaking up the chapters into organized subsections, the ABA did a great job utilizing visual tools that draw the reader's attention: charts explaining various types of trusts³¹ and powers of attorney;³² breakouts on specific healthcare issues such as traumatic brain injury,³³ homelessness,³⁴ and suicide;³⁵ a checklist for calculating military pension;³⁶ scenario examples for discharge proceedings;³⁷ and stem charts on steps to appealing VA claims.³⁸ For more complex topics, these visual tools are a welcome break to text heavy documents and provide a simple way to extract important information.

Conclusion

While the ABA guide is targeted to the military service member, veterans, and dependents seeking basic advice on how to approach a particular legal issue, it also serves as a functional addition to the bookshelf of any legal assistance practitioner looking for a quick reference tool that covers a variety of topics. The editors have crafted a useful handbook packed with legal information applicable across all services and states that will hopefully be updated with subsequent editions as rules and regulations change. ➤

³¹ *Id.* at 216.

³² *Id.* at 224.

³³ *Id.* at 247.

³⁴ *Id.* at 249.

³⁵ *Id.* at 251.

³⁶ *Id.* at 59.

³⁷ *Id.* at 272.

³⁸ *Id.* at 356.

THE ILLIAD



BY HOMER, REVIEWED BY CAPTAIN R. SCOTT ADAMS

Air Force Judge Advocates rarely, if ever, find themselves actively engaged in the violence of war. We use words, not weapons. But as participants in the profession of arms, fully integrated in an organized war effort, we share in a myriad of emotions, challenges and experiences with our fellow warriors. Tears flow at the bitter separation from spouse and children. At some times and in some places, we find ourselves side by side with soldiers, sailors, marines, and our fellow Airmen, face to face with the tragedy of war.

In wrestling with such emotions, we may forget to seek consolation or abstract lessons from the past. We may tend to imagine that the chronology of progress applies to all realms of life, including emotion and understanding. We are, therefore, surprised when we discover that thousands of years ago, in a language we no longer know how to pronounce, we already had profound descriptions of our most bewildering experiences and our deepest and most obscure emotions.

Few works of literature have had more influence than Homer's *Iliad*. For over two thousand years, the story, created by an author whose very identity is uncertain, has captured the imagination of the world. Homer's famous work influenced the writings of Dante and Shakespeare. While in exile, the former Emperor Napoleon would often read the *Iliad* long into the night. Andrew Jackson had scenes depicting the story painted on wallpaper in his Tennessee home. In Thomas Jefferson's personal journal, in 1774, he

(Image courtesy of http://commons.wikimedia.org/wiki/File:The_%22Triumph_of_Achilles%22_fresco,_in_Corfu_Achilleion.jpg / Wikimedia Commons / CC-BY-SA-3.0)

“The *Iliad* illustrates the benevolent ideals that may sometimes lead to war

quoted at length from Alexander Pope’s translation of the *Iliad*’s Book XV:

**Death is the worst; a Fate which all must try;
And, for our Country, ’tis a Bliss to die,
The gallant Man tho’ slain in Fight he be,
Yet leaves his Nation safe, his children free,
Entails a debt on all the grateful State;
How own brave Friends shall glory in his Fate;
His wife live Honour’d, all his Race succeed;
And late Posterity enjoy the Deed¹**

The ancient Greek poem focuses on the final few weeks of the Trojan War. The poem also addresses the causes of the ten year war and describes battles and sweeping events, while providing intimate glimpses of men and Gods.

The story begins when the Trojan Paris captures Helen, the beautiful wife of the Greek Menelaus. Paris, the son of Trojan king, Priam, and brother of the great warrior, Hector, brings Helen to Troy. In response, Agamemnon, the brother of Menelaus, attacks Troy with a collection of Greek nations. Among the warriors are Ajax, Odysseus, Patroclus, Nestor and the greatest of all warriors, Achilles. The story tells of the battle between the Greeks and Trojans, including intervention from the

Gods and a quarrel between Agamemnon and Achilles. It ends with the Trojans mourning their dead.

In the final book, after Achilles has killed Hector, who had earlier killed Patroclus, Achilles’ beloved friend, Achilles drags the body of Hector to the Greek camp where the corpse rots in the dust, chewed by dogs. Hector’s father, Priam the King of Troy, comes to Achilles for his son’s body. In one of the most moving moments in literature, Priam, the old man, stretches out to grasp the hands of his son’s murderer and put them to his lips—

**and overpowered by memory
both men gave way to grief. Priam wept freely
for man-killing Hector, throbbing, crouching
before Achilles’ feet as Achilles wept himself,
now for his father, now for Patroclus once again,
and their sobbing rose and fell throughout the
house.²**

Achilles then tells Priam they both must “put their griefs to rest in their own hearts...so the immortals spun our lives that we, we wretched men live on to bear such torments.”³

While providing powerful, emotional close-ups in Achilles’ tent, where there is regret and mourning, the *Iliad* is simultaneously a celebration of war; a praise of bravery that paints a picture of malevolent attraction. What would be the value of an Achilles, or where can we find the triumph of Odysseus without war?

The *Iliad* illustrates the benevolent ideals that may sometimes lead to war: the heroism, courage and altruism with which it is sometimes fought and the freedom from oppression that is often its goal. In the end the *Iliad* shows us that war is a paradox—a troubling paradox.

There are no practical lessons in the *Iliad* for the modern warrior to put on a PowerPoint presentation for a meeting. But we may find ourselves standing in fallen comrade ceremonies or come face to face with a captured enemy or a truly courageous hero. We may even assist in gathering a KIA Airman’s intimate, personal belongings to be sent home to grieving loved ones. In these, or dozens of other moments, we feel the sacred nature of our service, while putting our grief to rest in our hearts.

We may never be Ajax, Hector or Achilles. But we can, as Plato argued, take “vicarious pleasure” in contemplating the tales of others. Plato went on to reference “the elements in us that poets satisfy and delight;” elements that, when we read the *Iliad*, enrich our own lives. “For, after feeding fat the emotion of pity”⁴ we may find consolation, context and meaning for our own sufferings and experiences. 🐦

¹ Jon Meacham, *Thomas Jefferson: The Art of Power*, 2012; quoting *Iliad*, XV, 580.

² *Iliad*, XXIV: 594-599.

³ *Id.* at 613-620.

⁴ Plato, *Republic*, 10, 606

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Where in the World?



Major Christopher J. Goewert touring an outdoor market in Bong County, Liberia
Photo courtesy of Master Sergeant Brain R. Bahret, USAF

If you have a unique, funny, or poignant photograph of your travels in the JAG Corps for inclusion in “Where In The World?” please email the editors at AFLOA.AFJAGS@us.af.mil.



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