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Encroachment: Where National Security, Land Use, and the Environment Collide†

Ryan Santicola*

Introduction

Sprawl is a phenomenon with wide-ranging implications for urban and suburban populations. One of the many definitions for sprawl includes “low-density development on the edges of cities and towns that is poorly planned, land-consumptive, automobile-dependent [and] designed without regard to its surroundings.”¹ Development away from the city center to the fringes of metropolitan areas began in earnest during the twentieth century, accelerating markedly in the later decades.² Attracted to the apparent comforts and ease of suburban living as opposed to the “corruption and density” of the city, Americans began an “exurban migration.”³

As the urban area expanded from the metropolitan center to pastures and woodlands once on the distant horizon, lands that saw little or no development on the outskirts of cities were now being targeted for suburban development.⁴ A natural consequence of developing once rural land was a depletion of the country’s natural resources.⁵ This spatial expansion caused by urban sprawl bred dependence upon automobiles for transportation, driving up both fuel consumption and traffic congestion.⁶ Yet, notwithstanding the seemingly self-destructive nature of sprawl, “suburbanization and sprawl” are realities of modern land use.⁷

This article considers another effect of urban sprawl: the encroachment of urban and suburban populations upon military installations,⁸ particularly training ranges.⁹ The Department of Defense (DOD)¹⁰ uses the term “encroachment” to describe “the cumulative result of any and all outside influences that inhibit normal military training and testing.”¹¹ According to the DOD, the eight encroachment issues of concern are “urban growth around military installations” and training ranges, radio frequency interference, “air pollution [and] noise pollution,” airspace interference, unexploded munitions, and “endangered species habitat and protected marine resources.”¹² The military identified urban sprawl as the primary source of encroachment in the United States and believes it will continue to present the greatest challenge in the future.¹³

† This article previously appeared in the *Albany Law Environmental Outlook Journal* and is reprinted with the permission of the publisher.

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¹ ROBERT H. FREILICH, FROM SPRAWL TO SMART GROWTH: SUCCESSFUL LEGAL, PLANNING, & ENVIRONMENTAL SYSTEMS 16 (1999) (quoting RICHARD MOE, LINCOLN INSTITUTE OF PUBLIC POLICY, ALTERNATIVES TO SPRAWL 4 (1995)) (alteration in original).

² *Id.* at 2, 16 (explaining that post-World War II federal urban renewal programs to improve “housing, taxation, and transportation” actually advanced the “suburbanizing process”). For example, highway systems offered accessible transportation to the suburbs where people could purchase cheaper land to build homes. *Id.*

³ Edward J. Sullivan, *Comprehensive Planning & Smart Growth*, in TRENDS IN LAND USE LAW FROM A TO Z: ADULT USES TO ZONING 177 (Patricia E. Salkin ed., 2001) (citing KENNETH T. JACKSON, CRABGRASS FRONTIER, THE SUBURBANIZATION OF THE UNITED STATES (1984)).

⁴ See FREILICH, *supra* note 1, at 2 (estimating that suburban sprawl annually consumes one and a half percent of agricultural land).

⁵ *Id.*; see also Sullivan, *supra* note 3, at 177 (noting that “federally imposed clear air, water, and endangered species regulations” attempting to restore depleted natural resources thwart developers’ choices).

⁶ Sullivan, *supra* note 3, at 178.

⁷ See FREILICH, *supra* note 1, at 17 (indicating that sprawl “has become an institutionalized facet of American life”).

⁸ A military installation is any “base, camp, post, station, yard, center, or other activity under the jurisdiction of the [Department of Defense], without regard to the duration of operational control.” 10 U.S.C. § 2801(c)(2) (2005).

⁹ The phrase “training ranges” “refers to air, live-fire, ground maneuver, and sea ranges.” *Military Training: DOD Approach to Managing Encroachment on Training Ranges Still Evolving: Testimony Before the S. Comm. on Env’t and Pub. Works*, 107th Cong. 1 n.1 (2003) (statement of Barry W. Holman, General Accounting Office, Director, Defense Infrastructure Issues), available at <http://www.gao.gov/new.items/d03621t.pdf> (last visited May 20, 2005) [hereinafter *Holman Testimony*].

¹⁰ For purposes of this paper, DOD and “military” will be used interchangeably as the two share the same interests on the encroachment issue. See *id.* at 1.

¹¹ *Id.* at 1 n.2.

¹² *Id.* at 1; see also U.S. GEN. ACCOUNTING OFFICE, MILITARY TRAINING: DOD LACKS A COMPREHENSIVE PLAN TO MANAGE ENCROACHMENT ON TRAINING RANGES, REPORT NO. 02-6145, at 5-8 (2002) (describing the eight encroachment issues affecting military operations and training), available at

The source of this encroachment is not simply an expansion of urban centers. Originally, military installations were located in isolated areas because of the abundant supply of open land needed to provide adequate defense training and security.¹⁴ In addition to the natural trend of urban sprawl, military installations offered employment opportunities and created the need for goods and services that attracted people and businesses closer to military sites.¹⁵ The attraction of workers and service providers to the installations eventually created family communities, and before long, the urban area reached the training ranges.¹⁶ With such growth came the realization that “[i]ncompatible residential and commercial development patterns surrounding military bases can jeopardize an installation’s mission.”¹⁷

This article examines incompatible land uses related to encroachment and the remedies employed by both the military and civilian communities. Part I discusses the problem of urban sprawl around military installations to lay a foundational understanding of encroachment. Part II looks at measures taken by the military to ameliorate the encroachment problem, focusing particularly on collaborative planning efforts between military officials and state and local planning officials, in addition to the General Accounting Office’s (GAO) recommendation that the DOD develop a comprehensive plan to address encroachment on military installations. Part III examines the approaches taken by a number of state governments to combat encroachment. Finally, Part IV briefly considers why encroachment is an important issue for both military and civilian officials alike.

I. Encroachment: What Is It?

To accomplish its mission of defending and protecting the United States in armed conflict, the military must train and prepare soldiers in an environment as simulative of war as possible.¹⁸ “[W]ithout realistic combat training, particularly training with live ordnance, [the military is] unable to adequately prepare [its] young men and women for the operations and potential combat service which they may be required to perform in service to this Nation.”¹⁹ To conduct such training, some examples of the “[r]equired facilities include air ranges for air-to-air, air-to-ground, drop zone, and electronic combat training; live-fire ranges for artillery, armor, small arms, and munitions training; ground maneuver ranges to conduct realistic force-on-force and live-fire training at various unit levels; and sea ranges to conduct ship maneuvers for training.”²⁰ Needless to say, a large portion of the military’s training occurs on various types of terrain. Thus, vast, uninhabited land permits the development and maintenance of a military force equipped with the skills necessary to perform its mission under challenging and often life-threatening conditions.²¹

Military training exercises easily contribute to incidents related to the eight aforementioned DOD-identified encroachment issues. In fact, land use and planning decisions by individuals and municipalities neighboring military training ranges increasingly encroach on and impact the military in general and specifically training exercises.²² Military officials

<http://www.gao.gov/new.items/d02614.pdf> (last visited May 20, 2005) [hereinafter DOD LACKS A COMPREHENSIVE PLAN].

¹³ *Holman Testimony*, *supra* note 9, at 2 (explaining that encroachment interferes with the availability of training ranges and limits the kinds of training activities that can be performed).

¹⁴ Dep’t of Def., Office of Economic Adjustment, *Joint Land Use Study Program*, July 8, 2004, at 1, available at [http://www.oea.gov/OEAWeb.nsf/CEA72EC60031122885256E8300449772/\\$File/Jlus3pgr03.pdf](http://www.oea.gov/OEAWeb.nsf/CEA72EC60031122885256E8300449772/$File/Jlus3pgr03.pdf) (last visited May 20, 2005) [hereinafter *JLUS Program Description*].

¹⁵ *Id.*

¹⁶ *See id.* (noting that the enhancement of urban growth near military installations intensified struggles “between base operations and civilian advancement” and that unregulated urban development can interfere with the installation’s goals and operations).

¹⁷ NAT’L GOVERNOR’S ASSOC., CENTER FOR BEST PRACTICES, ISSUE BRIEF: STATE STRATEGIES TO ADDRESS ENCROACHMENT AT MILITARY INSTALLATIONS, 1 (2004) available at <http://www.nga.org/cda/files/032403MILITARY.PDF> (last visited Apr. 14, 2005) [hereinafter STATE STRATEGIES] (pointing out that encroachment endangers the public because people who live close to bases risk possible exposure to “artillery fire, aircraft noise, dust, and even accidents.”); *see also infra* notes 34-43 and accompanying text.

¹⁸ *USALSA REPORT: Environmental Law Division Notes: Encroachment: Putting the “Squeeze” on the Department of Defense*, 2001 ARMY LAW. 33, 33 (2001) [hereinafter *Envtl. Law Division Notes*].

¹⁹ *Challenges to National Security: Constraints on Military Training: Hearing Before the House Comm. on Gov’t Reform*, 107th Cong. 32 (2001) [hereinafter *Hearings*] (statement of Admiral William J. Fallon), available at http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=107_house_hearings&docid=f:75041.wais (last visited May 20, 2005); *see also id.* at 76 (statement of Lieutenant General Larry R. Ellis) (stating that military personnel “must train in the field and train often under conditions that replicate war fighting”).

²⁰ *Holman Testimony*, *supra* note 9, at 4.

²¹ *Hearings*, *supra* note 19, at 76 (statement of Lieutenant General Larry R. Ellis) (explaining that proper training, skill development, and modern weapons requires sufficient areas of land and different types of terrain ranges).

²² *Id.* (stating that “the Army’s training lands are now faced with the cumulative effects of over thirty years of progressive encroachment”).

consider the genesis of most encroachment issues to be the spatial growth of urban areas and the attraction of civilian job opportunities, noting that the growth rate around military installations exceeds the national average.²³

The most pressing encroachment concern for the military is the sprawl that frequently characterizes urban areas in the United States.²⁴ Sprawl has occurred gradually, with Americans relocating to the outskirts of urban areas since World War II.²⁵ Some common characteristics associated with sprawl include low-density development,²⁶ noncontiguous “leapfrog” development often consisting of single-family residences, and the consumption of otherwise exurban lands for development.²⁷ Notwithstanding the gradual sprawl of American cities in the second half of the twentieth century, “[u]ntil the last thirty years, [military] training lands had been remote areas with little residential or commercial development.”²⁸

Today, however, the secluded military installation appears to be a fast dwindling relic of days past, arguably lost to the greed of the “cappuccino cowboys.”²⁹ In what was quite logical at the time of development, military installations were located outside of urban areas.³⁰ Not only did these spacious areas on the outskirts of urban areas offer a training grounds solution to the confines of the city, but the dispersed population more readily lent itself to providing the requisite security to the civilian population.³¹ “Over time, however, installations drew people and businesses closer and closer to take advantage of civilian job opportunities offered by the installation and to provide the goods and services to support the installation’s operations.”³²

To be sure, “a symbiotic relationship” was fostered between the military installations and the sprawling urban areas surrounding them, with the installation enhancing the market for civilian businesses and employees, and the civilian economy offering the installation much needed goods and services.³³ However, this relationship became strained and marked by increased land use conflicts, presenting disadvantages to both civilian development and military uses.³⁴ For encroaching civilian developments, the impact of a nearby installation can include noise disruption,³⁵ safety risks,³⁶ and other aesthetic and environmental concerns.³⁷ Conversely, for the military, “urban development near the perimeter of active military bases impacts operational effectiveness, training, and readiness missions.”³⁸

²³ *Holman Testimony*, *supra* note 9, at 9; *see also* STATE STRATEGIES, *supra* note 17, at 1 (noting that “[e]ighty percent of communities surrounding military installations are growing at a rate higher than the national average”).

²⁴ *See Hearings*, *supra* note 19, at 105 (statement of Major General Edward Hanlon, Jr.) (describing encroachment “as pressure to curtail the military use of land, sea and air space in favor of nonmilitary uses” and identifying sprawl as the “root problem”).

²⁵ Jeremy R. Meredith, Note, *Sprawl and the New Urbanist Solution*, 89 VA. L. REV. 447, 448 (2003).

²⁶ Robert W. Burchell & Naveed A. Shad, *The Evolution of the Sprawl Debate in the United States*, 5 HASTINGS W.-NW. J. ENVTL. L. & POL’Y 137, 137, 140-41 (1999) (explaining that sprawl develops at a lower relative density than other types of suburban growth in the United States).

²⁷ *Id.*

²⁸ *Envtl. Law Division Notes*, *supra* note 18, at 34; *see also* *Citizens Concerned About Jet Noise, Inc. v. Dalton*, 48 F. Supp. 2d 582, 599, n.17 (E.D. Va. 1999) (in denying a request for injunctive relief brought by Virginia residents who live near the naval station to halt the transfer of 156 naval aircrafts to Naval Air Station Oceana (NAS), the court recognized that NAS Oceana was relatively isolated until the last twenty years).

²⁹ FREILICH, *supra* note 1, at 17 (referring to citizens who demand urban amenities such as “jacuzzi baths, great rooms, mammoth kitchens, and five-acre ranchettes” while trying to “imitate rural life”); Marcilynn A. Burke, *Klamath Farmers and Cappuccino Cowboys: The Rhetoric of the Endangered Species Act and Why it (Still) Matters*, 14 DUKE ENVTL. L. & POL’Y F. 441, 441 n.1 (2004).

³⁰ *JLUS Program Description*, *supra* note 14, at 1.

³¹ *Id.*; *see also infra* note 38.

³² *Id.*

³³ *Id.*; *see also* STATE STRATEGIES, *supra* note 17, at 2 (discussing the economic importance of military installations).

³⁴ NAT’L GOVERNOR’S ASSOC., CENTER FOR BEST PRACTICES, ISSUE BRIEF: MILITARY INSTALLATIONS PRESSURED BY SPRAWL 1 (2002) *available at* <http://www.nga.org/cda/files/100802SPRAWL.pdf> (last visited May 20, 2005) [hereinafter PRESSURED BY SPRAWL]; *see also JLUS Program Description*, *supra* note 14, at 1 (recognizing the increase in land use conflicts as urban growth continues to rise near military installations).

³⁵ The source of the noise may be anything from “low flying, high performance, military aircraft” on training exercises to ground impact noise from artillery firing ranges. *JLUS Program Description*, *supra* note 14, at 1.

³⁶ The primary risk to civilian populations posed by military installations is the accident potential from military aircrafts during take-offs and landings and exposure to artillery fire during training exercises. *Id.*; PRESSURED BY SPRAWL, *supra* note 34, at 1.

³⁷ For instance, the dust and smoke created by military training activities has the potential to impact civilians. PRESSURED BY SPRAWL, *supra* note 34, at 1.

³⁸ *JLUS Program Description*, *supra* note 14, at 1. For instance, night training exercises are routine at military airports, but “the effectiveness of night vision equipment” is impaired by encroaching city lights. PRESSURED BY SPRAWL, *supra* note 34, at 1. Similarly, military airports are forced to use narrow runways to decrease the potential for accidents even when aircrafts carrying heavy artillery “can not take off or land in narrow flights paths if there is a

The military's common response to encroachment has been the "workaround," an adjustment to training activities that inevitably "lacks realism," alters the tactics employed, and results in training techniques that are "contrary to those used in combat."³⁹ This demonstrates the frequently incompatible land uses of the military and civilian worlds⁴⁰ that have become a source of significant conflict.⁴¹ Complicating matters is that, "[a]ccording to DOD officials, new residents near installations often view military activities as an infringement on their rights, and some groups have organized in efforts to reduce operations such as aircraft and munitions training."⁴² The challenge for all those involved is to work toward a mutually agreeable plan to limit encroachment around military installations and its attendant conflicts.

II. The DOD Response to Encroachment

In the past, specific encroachment problems were addressed on an individual basis by the particular installation impacted.⁴³ While this approach enabled a particularized and locally sensitive response to the encroachment issue, it also precluded a uniform and comprehensive analysis of the methods most suitable to resolving encroachment across the military spectrum.⁴⁴ As the GAO noted, "[e]ffective management of encroachment issues on military training ranges has been hindered by the divided management roles, responsibilities, and accountability that exist among several different levels within the military services and the Office of the Secretary of Defense."⁴⁵

The GAO sought to remedy this deficiency in a 2002 report and recommended that the DOD must prioritize the development of a comprehensive plan to identify and coordinate the objectives, strategies, funding, and reporting of efforts to combat encroachment.⁴⁶ According to the GAO, "[a]lthough the department [had] prepared draft action plans that deal with each encroachment issue separately, the plans [were] not finalized, and information [was] not yet available on specific actions planned, time frames for completing them, clear assignment of responsibilities, and funding needed—the elements of a comprehensive plan."⁴⁷ Fortunately, the GAO report did not fall on deaf ears, neither in the halls of Congress nor across the Potomac in the corridors of the Pentagon.

The GAO's advice was incorporated in the National Defense Authorization Act for Fiscal Year 2003, wherein Congress required that the Secretary of Defense develop a comprehensive plan to mitigate encroachment.⁴⁸ Specifically, section 366(a) of the Act reads as follows:

The Secretary of Defense shall develop a comprehensive plan for using existing authorities available to the Secretary of Defense and the Secretaries of the military departments to address training constraints caused

strong headwind." STATE STRATEGIES, *supra* note 17, at 1.

³⁹ *Holman Testimony*, *supra* note 9, at 2.

⁴⁰ *JLUS Program Description*, *supra* note 14, at 1 (noting that this is particularly true for such land uses as residences, schools, places of assembly . . . childcare centers, nursing homes, hospitals, restaurants, theaters, [and] shopping centers").

⁴¹ *Id.* (commenting that exposure to "irritating noise and accident potential" creates a community-wide need for relief. This creates public pressure on military base commanders to change the manner in which they operate their installations or to move military activities elsewhere).

⁴² *Holman Testimony*, *supra* note 9, at 9 (noting that the military believes that these conflicts are only likely to intensify because sophisticated new weapons systems "are expected to increase training range requirements"); *see, e.g.*, *Citizens Concerned About Jet Noise, Inc. v. Dalton*, 48 F. Supp. 2d 582, 599, n.17 (E.D. Va. 1999) (pointing out that, because the base was present prior to a majority of the development now impacted by the base, "any diminution in value was built into the cost of the home to begin with").

⁴³ DOD LACKS A COMPREHENSIVE PLAN, *supra* note 12, at 5.

⁴⁴ *Id.* at 26 (noting that a comprehensive analysis was impossible because much information was simply unknown).

⁴⁵ *Id.* (explaining that various officials within several different military departments "are responsible for different aspects of overseeing training ranges and addressing encroachment issues," thereby resulting in countless responses). For example, the military department Secretaries are responsible for "training personnel and for maintaining their respective training ranges," the Under Secretary of Defense for Personnel and Readiness ensures military readiness and oversees training, and the Deputy Under Secretary of Defense for Installation and Environment creates programs for the "DOD's environmental, safety, and occupational health programs." *Id.* at 8-9.

⁴⁶ *Id.* at 30-31 (recognizing the severity of the potential for continual loss of military training range capability and stressing the importance of attacking the problem from all angles to most effectively curb the rate of encroachment).

⁴⁷ *Id.* at 4.

⁴⁸ *See* National Defense Authorization Act for Fiscal Year 2003, Pub. L. No. 107-314, § 366, 116 Stat. 2458, 2522 (2002) (addressing the limitations on military training and availability of resources for the Armed Forces).

by limitations on the use of military lands, marine areas, and airspace that are available in the United States and overseas for training of the Armed Forces.⁴⁹

In February 2004, the Under Secretary of Defense for Personnel and Readiness submitted a report outlining the implementation of the DOD's training range comprehensive plan.⁵⁰ In addition to complying with section 366, the stated objective of the DOD's report was to "explain its plans for addressing training constraints caused by encroachment."⁵¹ The report includes an assessment of current and future military training and range requirements, an inventory of the training ranges, an identification of critical encroachment issues facing these ranges, and a list of proposals to abate encroachment.⁵² Particularly noteworthy is that not only has the DOD started to work with states and other "organizations to promote compatible land usage," it has also taken the initiative to create programs that would serve "to protect facilities from urbanization."⁵³

Central to the DOD's encroachment response has been the Readiness and Range Preservation Initiative and the Sustainable Ranges Initiative.⁵⁴ "The sustainable ranges outreach effort provides stakeholders with an improved understanding of readiness needs, address[es] concerns of state and local governments and surrounding communities, work[s] with nongovernmental organizations on areas of common interest, and . . . partner[s] with groups outside the Department to reach common goals."⁵⁵ Moreover, DOD Directive 3200.15, promulgated by the Deputy Secretary of Defense, identified "coordination and outreach programs" as a crucial element of the DOD's policy toward encroachment.⁵⁶

An example of the military's active role in coordinating with civilian governments and communities is the Marine Corps' Community Plans and Liaison Offices ("CPLOs").⁵⁷ The CPLOs, with the help of the Marine Corps Installations and Logistics Department, work to develop "partnerships with local communit[ies] and government[al] agencies to prevent incompatible land use near [military] installations and training ranges."⁵⁸ Similarly, the DOD initiated the Air Installation Compatible Use Zone ("AICUZ"), the Installation Compatible Use Zone ("ICUZ"), the Environmental Noise Management Program ("ENMP"), and the Range Air Installation Compatible Use Zone ("RAICUZ") programs to inform local governments about the negative effects of developing nearby military installations.⁵⁹ These programs "encourage

⁴⁹ *Id.* § 366(a). The Act further requires the DOD to submit a report to Congress describing the DOD's assessment and evaluation of current and future training ranges. *Id.* § 366(a)(2)-(4).

⁵⁰ UNDER SEC'Y OF DEF. (PERSONNEL AND READINESS), U.S. DEP'T OF DEF., REPORT TO THE CONGRESS: IMPLEMENTATION OF THE DEPARTMENT OF DEFENSE TRAINING RANGE COMPREHENSIVE PLAN: ENSURING TRAINING RANGES SUPPORT TRAINING REQUIREMENTS (2004), available at http://www.dod.gov/prhome/docs/rpt_congress.pdf (last visited May 20, 2005) [hereinafter DOD COMPREHENSIVE PLAN].

⁵¹ *Id.* at 1.

⁵² *See id.* at 2-6.

⁵³ *Id.* at 1.

⁵⁴ *Id.* at 7-8. The Readiness and Range Preservation Initiative promulgated a number of measures to enhance troop readiness while, according to the military, "maintain[ing] [the military's] commitment to environmental stewardship"; five of the measures have been enacted into law. DOD COMPREHENSIVE PLAN, *supra* note 50 at 7-8. Although the measures allow effective cooperation between the military and third parties to transfer land for conservation purposes, they also provide the military, to ensure troop readiness, with temporary exemptions from the Migratory Bird Treaty Act and broad exemptions from the Marine Mammal Protection Act, and the Endangered Species Act. Julie G. Yap, Note, *Just Keep Swimming: Guiding Environmental Stewardship Out of the Riptide of National Security*, 73 FORDHAM L. REV. 1289, 1315-17 (2004); 16 U.S.C. § 1361 (2000); 16 U.S.C. § 1531 (2000 & Supp. II 2002); 16 U.S.C. § 710 (2000).

⁵⁵ DOD COMPREHENSIVE PLAN, *supra* note 50, at 8. The Sustainable Ranges Initiative also provides "a suite of internal changes to foster [training] range sustainment." *Id.*

⁵⁶ DEP'T OF DEF., DIRECTIVE 3200.15: SUSTAINMENT OF RANGES AND OPERATING AREAS (OPAREAS) 3 (2003), at http://www.dtic.mil/whs/directives/corres/pdf/d320015_011003/d320015p.pdf (last visited May 20, 2005). It is the DOD's policy to "[i]nstitute multi-tiered (e.g. national, regional, and local) coordination and outreach programs that promote sustainment of ranges and [operating areas] and resolution of encroachment issues that promote understanding of the readiness, safety, environmental, and economic considerations surrounding the use and management of ranges and [operating areas]." *Id.* The directive also recognizes that the Under Secretary of Defense for Personnel and Readiness is responsible for monitoring range encroachment and its effects on readiness. *Id.* at 4.

⁵⁷ *See* DOD COMPREHENSIVE PLAN, *supra* note 50, at 53 (explaining the CPLO's role in relation to the local community and government agencies).

⁵⁸ *Id.*

⁵⁹ OFFICE OF ECON. ADJUSTMENT, U.S. DEP'T OF DEF., JOINT LAND USE STUDY: PROGRAM GUIDANCE MANUAL 1 (2002) (indicating that the programs were a response to the DOD's recognition of the "problem of urban encroachment" surrounding military installations), available at [http://www.oea.gov/oeaweb.nsf/FD3D3C042BA4EC1285256E83004497AD/\\$File/JLUS_program_manual.pdf](http://www.oea.gov/oeaweb.nsf/FD3D3C042BA4EC1285256E83004497AD/$File/JLUS_program_manual.pdf) (last visited May 20, 2005) [hereinafter PROGRAM GUIDANCE MANUAL].

communities to adopt land use controls that will ensure compatible development in [adjacent] areas adversely affected by military operations.”⁶⁰

Furthermore, Congress authorizes the DOD to provide financial support to assist state and local governments in evaluating land use policies to adequately respond to encroachment issues.⁶¹ The primary vehicle for this assistance is the Joint Land Use Study (“JLUS”) program, initiated by the DOD in 1985.⁶² The objective of the JLUS program is to promote cooperation in land use planning between the military and civilian communities as a way to reduce adverse impacts on both military and civilian activities.⁶³ To attract communities to the program, the DOD Office of Economic Adjustment (“OEA”) “offers matching grants” to fund the JLUS, while communities act as the sponsor for the study.⁶⁴ Military departments for the program annually nominate military bases with existing encroachment or bases that have the possibility of encroachment in the near future.⁶⁵ Study participants generally include “representatives from the military . . . all counties directly abutting the military” installation, and affected municipalities within those counties.⁶⁶ The JLUS focuses particularly on “noise and aircraft safety” concerns, but the study could also include the economic impacts of the installation.⁶⁷ The program also emphasizes “public participation and awareness” through comment meetings and news releases to “instill public confidence” in the study.⁶⁸ While the study’s recommendations are not binding on the communities and are “used to guide local jurisdictions in the development and implementation of land development controls,” for the study to be successful, the recommendations should be implemented “and incorporated by local ordinance into the community comprehensive plan, zoning ordinance, subdivision regulations, and building codes.”⁶⁹

Congress has also authorized the DOD to enter into agreements with both private and public civilian entities to limit the construction of incompatible land uses in close proximity to military installations.⁷⁰ Such agreements are becoming increasingly popular as a tool for warding off incompatible uses because they allow parties to share the costs of acquiring real property to create “compatible land use buffers.”⁷¹ For instance, the military encourages Army Compatible Use Buffers

⁶⁰ *Id.* (noting that some communities fail to implement the military’s advice). Examples of land use controls include limiting development in land areas below military take off and landing flight paths to reduce aircraft accidents and noise levels in surrounding communities; and prohibiting inherently incompatible land uses surrounding military installations such as uses that “release into the air any substance, such as steam, dust, or smoke, which would impair visibility or otherwise interfere with the operation of aircraft . . . [or] uses that produce electrical emissions which would interfere with aircraft communication systems or navigation equipment. DYESS AIR FORCE BASE, AIR INSTALLATION COMPATIBLE USE ZONE, 42-44 (2000), available at <http://www.cevp.com/docs/AICUZ/dyess/2000-11-02568.pdf> (last visited May 20, 2005).

⁶¹ 10 U.S.C. § 2391(b) (2000 & Supp. II). Section 2391(b) provides, in pertinent part, that

[t]he Secretary of Defense may make grants, conclude cooperative agreements, and supplement funds available under Federal programs administered by agencies other than the Department of Defense in order to assist State and local governments in planning community adjustments and economic diversification required . . . by the encroachment of a civilian community on a military installation.

Id.

⁶² PROGRAM GUIDANCE MANUAL, *supra* note 59, at 1.

⁶³ *Id.* at 2 (explaining that the JLUS program advocates open forum discussions where both communities and military installations can express their viewpoints).

⁶⁴ *Id.* (describing the program as a “win-win situation”).

⁶⁵ *Id.* Strong base support and “good community/base relations track record” are also important selection factors. *Id.*

⁶⁶ PROGRAM GUIDANCE MANUAL, *supra* note 59, at 3. Other potential study participants include affected communities located outside the perimeter of the encroaching counties, and the Federal Aviation Authority or state aviation agency if military base operations negatively affect airports in the region. *Id.*

⁶⁷ *Id.* at 6 (explaining that the purpose of including economic considerations is to convince “local officials that the potential cost of losing the base due to incompatible land development is too high”).

⁶⁸ *Id.*

⁶⁹ *Id.* at 2, 7.

⁷⁰ 10 U.S.C. § 2684a (Supp. II 2002). The statute provides that

The Secretary of Defense or the Secretary of a military department may enter into an agreement with an eligible entity . . . to address the use or development of real property in the vicinity of a military installation for purposes of (1) limiting any development or use of the property that would be incompatible with the mission of the installation; or (2) preserving habitat on the property.

Id. § 2684a(a). According to § 2684a, “eligible entities” include States, municipalities, and private conservation or land preservation organizations. *Id.* § 2684a(b).

⁷¹ DOD COMPREHENSIVE PLAN, *supra* note 50, at 46; 10 U.S.C. § 2684a(d).

“ACUB”), which are “formal agreements between [the] Army and eligible entities” to restrict encroachment by acquiring “development rights, cooperative agreements, conservation easements, and other means in accordance with applicable laws.”⁷² An exemplar of such agreements is the Private Lands Initiative between the Department of the Army, Fort Bragg, and The Nature Conservancy.⁷³ Located in North Carolina, Fort Bragg is the largest Army base in the country, covering approximately 161,000 acres.⁷⁴ Yet, the military utility of the acreage was threatened by encroaching urban growth⁷⁵ and the presence of the red-cockaded woodpecker (“RCW”), a bird protected by the Endangered Species Act.⁷⁶ Under the agreement, the Army and The Nature Conservancy have committed \$9.4 million and \$7 million respectively toward purchasing conservation easements on the undeveloped land surrounding Fort Bragg.⁷⁷ The purchase provides a buffer zone between the fort and civilian developments, and preserves the woodpecker habitat since live-fire training is precluded on this land.⁷⁸

By protecting the installation from encroaching development while also providing a habitat for an endangered species, the Private Lands Initiative gives life to the ideal of joint land use.⁷⁹ The experiment’s success has inspired similar programs on lands surrounding other military installations.⁸⁰ Thus, recognizing the likelihood that the encroachment problem will intensify, the DOD’s efforts to curtail encroachment are increasingly focused on cooperating and partnering with communities and organizations that are impacted by military installations.⁸¹

III. The State Response to Encroachment

A number of states and local governments have taken proactive steps to mitigate the effects of sprawling urban areas on military installations located within their respective jurisdictions. While approaches have varied, the ultimate goal of preventing incompatible land uses adjacent to military installations remains constant.⁸² Some strategies employed by state governments in the hope of providing a cross-section of responses to encroachment include enacting legislation prohibiting incompatible land use near military installations; enacting legislation requiring local communities to coordinate with nearby installations in their planning and zoning activities; and creating military advisory boards and support offices.

⁷² Dep’t of the Army, *Memorandum: Army Range and Training Land Acquisitions and Army Compatible Use Buffers*, May 19, 2003, at 1-2, at <http://www.hqda.army.mil/acsimweb/doc/IMI2004/ACUBPolicyMemo19May03.pdf> (last visited Apr. 14, 2005).

⁷³ U.S. ARMY ENVTL. CTR., *Private Land Initiative: Cooperative Agreement Between U.S. Department of the Army, Fort Bragg, U.S. Army Environmental Center and The Nature Conservancy*, at 1-2 (1995) available at <http://www.aec.army.mil/usaec/natural/natural03a05.html> (last visited May 20, 2005) [hereinafter *Private Land Initiative*]. The purpose of the cooperative agreement is to maintain the military training objective at Fort Bragg, to contribute to the restoration of the endangered red-cockaded woodpecker on abutting private land, to preserve parts of the North Carolina sand hills, and to support the “bioregional management of the North Carolina Sand hills ecosystem.” *Id.*

⁷⁴ STATE STRATEGIES, *supra* note 17, at 13; *Fort Bragg’s Woodpeckers: Soldiers, Wildlife Find Common Ground in North Carolina* (NPR radio broadcast, May 9, 2002) (explaining that the 161,000 acres consist mostly of “long-leaf pine forests and fields”) available at <http://www.npr.org/programs/morning/features/2002/may/woodpecker/> (last visited May 20, 2005) [hereinafter *Fort Bragg’s Woodpeckers*].

⁷⁵ *Fort Bragg’s Woodpeckers*, *supra* note 74. Encroachment around Fort Bragg apparently became so bad that, according to one report, a paratrooper landed in a nearby resident’s swimming pool during a training exercise. *Id.*

⁷⁶ 50 C.F.R. 23.23 (2005). Fort Bragg’s long-leaf pine forests are the RCW’s habitat. *Private Land Initiative*, *supra* note 73 at 1. The Army was concerned that live-fire exercises would have to cease to protect the bird. *Fort Bragg’s Woodpeckers*, *supra* note 74.

⁷⁷ STATE STRATEGIES, *supra* note 17, at 13.

⁷⁸ *Fort Bragg’s Woodpeckers*, *supra* note 74. However, the Army can continue to conduct training practices in the buffer zone, “minus the live fire.” *Id.*

⁷⁹ *See id.* (noting the innovative solution to the “woodpecker’s plight”).

⁸⁰ For instance, the Army and The Nature Conservancy are again working on an agreement to create a buffer zone around a military installation, this time at the Marine Corps’ Camp Lejeune in North Carolina. STATE STRATEGIES, *supra* note 17, at 13. Similarly, the DOD partnered with the State of Florida, The Nature Conservancy, and others to create the Northwest Florida Greenway, a 100-mile corridor of open space intended to both protect against encroachment and to preserve the environment. Press Release, Department of Defense, DOD, Florida Partner to Protect Military Ranges, Environment (Nov. 12, 2003), at <http://www.defenselink.mil/releases/2003/nr20031112-0635.html> (last visited May 20, 2005).

⁸¹ *See* DOD COMPREHENSIVE PLAN, *supra* note 50, at 6 (observing that future encroachment issues will significantly worsen from current conditions without competent management and extensive cooperation with “federal agencies, [s]tates, Native American tribes, local governments, host nations abroad, and non-governmental organizations”).

⁸² *See* STATE STRATEGIES, *supra* note 17 at 2.

A. Legislation Prohibiting Incompatible Land Uses

The most direct state action to combat encroachment stems from legislation that specifically targets land use in close proximity to military installations. For example, in 2000, Arizona enacted a law requiring “a political subdivision that has territory in the vicinity of a military airport or ancillary military facility” to “adopt comprehensive . . . plans . . . to assure development [that is] compatible” with the installation’s mission.⁸³ According to this statute:

Each political subdivision . . . shall adopt and enforce zoning regulations for property in the high noise or accident potential zone to assure development compatible with the high noise and accident potential generated by military airport and ancillary military facility operations that have or may have an adverse effect on public health and safety.⁸⁴

To further deter incompatible uses,⁸⁵ Arizona mandates that residential developers notify purchasers if property is located near a military airport.⁸⁶ In addition, Arizona’s Military Airport Land Exchange program facilitates the exchange of federal land in Arizona for private land located in a military airport’s surrounding areas.⁸⁷ Through this program, Arizona hopes to protect military airports from encroachment by encouraging the exchange of undeveloped land and land zoned for incompatible uses.⁸⁸ Washington has followed suit and prevents incompatible “development in the vicinity of a military installation.”⁸⁹

Likewise, Oklahoma authorizes municipalities containing “an active-duty United States military installation” to enact zoning ordinances prohibiting incompatible land uses within a five mile radius of the installation’s limits.⁹⁰ The state legislature identified incompatible uses as uses that (1) would be hazardous to aircraft operation, including aerial release of non-agricultural substances that “would impair visibility or . . . the operation of aircraft”; (2) produce light or electrical emissions that would impair pilot or aircraft operation; and (3) provide for the construction of any structure “within ten (10) feet of an aircraft approach [or] departure . . . surface.”⁹¹ However, under the statute, ordinances cannot proscribe single-family residential development on tracts greater than one acre within the target area.⁹² Significantly, any ordinance enacted must “be consistent with the most current recommendations” of the AICUZ,⁹³ yet another example of the cooperative relationship between communities and military installations.

⁸³ ARIZ. REV. STAT. § 28-8481(A) (2004).

⁸⁴ *Id.*

⁸⁵ See STATE STRATEGIES, *supra* note 17, at 3 (describing Arizona’s attempts to ensure that residential land use is compatible with the scope of military use).

⁸⁶ *Id.*; see also ARIZ. REV. STAT. § 28-8484 (2004) (requiring public real estate reports to indicate whether property is located near a military airport, and requiring maps created by the military to be publicly available that indicate whether “property is located in or outside of a territory in the vicinity of a military airport or in or outside a high noise or accident potential zone” to be publicly available).

⁸⁷ ARIZ. REV. STAT. § 37-1221 (2004). Arizona’s military airport land exchange section, established within the state’s land department, evaluates “the suitability of [private] property for exchange with federal land . . . coordinate[s] with federal agencies to identify federal lands that are available . . . for exchange, [and] prepare[s] an exchange proposal for the landowner’s review.” *Id.* § 37-1223 (2004).

⁸⁸ *Id.* § 37-1222; see also § 37-1201 (declaring that the legislature’s policy is to promote the preservation of military airports in [Arizona] by facilitating the conservation of open space around military airports . . . thereby protect[ing] and enhanc[ing] the irreplaceable economic benefit that military airports . . . contribute to the . . . state”).

⁸⁹ WASH. REV. CODE § 36.70A.530 (2004) (providing that “[a] comprehensive plan, [an] amendment to a plan, a development regulation or amendment to a development regulation, should not allow development in the vicinity of a military installation that is incompatible with the installation’s ability to carry out its mission requirements”).

⁹⁰ OKLA. STAT. ANN. tit. 11, § 43-101.1(A) (West 2004).

⁹¹ *Id.* § 43-101.1(B). Other incompatible uses include those that attract animals, expose people to loud noise, and “detract from the aesthetic appearance . . . of any entrance to the installation. *Id.*

⁹² *Id.* § 43-101.1(E). Nevertheless, residential construction on these tracts must comply with the state’s “Guidelines for the Sound Insulation of Residences Exposed to Aircraft Operations, Wyle Research Report WR 89-7.” *Id.*

⁹³ *Id.* § 43-101.1(D).

B. Regulation of Zoning and Planning Activities Near Military Installations

In a similar collaborative spirit, a number of states enacted legislation compelling local governments to confer with military installations within their respective jurisdictions when amending zoning ordinances. For instance, Georgia enacted a statute imposing special obligations on local governments considering a zoning proposal “involving land . . . adjacent to or within 3,000 feet of [a] military installation or within the 3,000-foot Clear Zone and Accident Prevention Zones” of the AICUZ.⁹⁴ Counties and municipalities must investigate the effects of the proposal on the use of land adjacent to the military installation and its compatibility with the installation’s operations.⁹⁵ The statute also provides that the planning department must request “a written recommendation and supporting facts relating to the use of the land being considered in the proposed zoning decision” from the installation at “least thirty days prior to the hearing.”⁹⁶

Washington similarly mandates that counties and cities entertaining amendments to the comprehensive plan or development regulations first consult with the commander of the military installation and allow sixty days for a response.⁹⁷ Virginia requires the local planning commission to notify the commander of an installation in the municipality’s jurisdiction ten days prior to a hearing on a “proposed comprehensive plan[,] . . . a proposed change in zoning map classification, or . . . an application for” a zoning variance when they involve land within 3000 feet of the installation’s boundary.⁹⁸ The commander may, during those ten days, “submit comments or recommendations” regarding the proposed action.⁹⁹

In Florida, the legislature has explicitly stated that it “finds it desirable for the local governments in the state to cooperate with military installations to encourage compatible land use, help prevent incompatible encroachment, and facilitate the continued presence of major military installations in [the] state.”¹⁰⁰ In pursuit of this objective, the legislature requires that counties with a military installation notify the installation’s officer in command of proposed changes or amendments “to comprehensive plans [or] . . . development regulations” potentially affecting “the intensity, density, or use of the land adjacent to or in close proximity to the military installation.”¹⁰¹ Naturally, the installation will be given an opportunity to comment on what, if any, impact the proposal will have on its mission, and the county is obliged to take its comments into consideration.¹⁰² Most significant about Florida’s statute is that, “to facilitate the exchange of information . . . , a representative of a military installation acting on behalf of all military installations within that jurisdiction shall be included as an ex officio, nonvoting member of the county’s or affected local government’s land planning or zoning board.”¹⁰³ This provision adds a wrinkle not yet seen in other legislative responses to encroachment.

Much like the aforementioned states, Texas requires that “defense communities”¹⁰⁴ solicit comments from the military installation if it is expected that a “proposed ordinance, rule, or plan” will impact the installation or its training activities.¹⁰⁵ Resembling Florida’s approach, Texas requires local governments to consider the installation’s comments prior to making a final determination on the proposal.¹⁰⁶ Texas also established a regime to assist local governments in responding to encroachment.¹⁰⁷ Specifically, local governments in Texas can apply to receive financial assistance from the military to develop goals and proposals for the future to address, among other things, “controlling [the] negative effects of future growth

⁹⁴ GA. CODE ANN. § 36-66-6(a) (2004).

⁹⁵ See *id.* § 36-66-6(b) (listing the issues that the planning department must investigate, including whether the proposed land use would adversely affect the installation’s mission or would create safety concerns).

⁹⁶ *Id.* at § 36-66-6(a).

⁹⁷ WASH. REV. CODE § 36.70A.530(5)(a) (2004).

⁹⁸ VA. CODE ANN. § 15.2-2204(D) (Michie 2004).

⁹⁹ *Id.*

¹⁰⁰ FLA. STAT. ANN. ch. 163.3175(1) (West 2004).

¹⁰¹ *Id.* § 163.3175(2).

¹⁰² *Id.* § 163.3175(4); see also § 163.3175(3) (listing examples of possible comments including whether the proposal is compatible with a JLUS, whether the “installation will be adversely affected by the” proposal, and whether the proposal is compatible with AICUZ).

¹⁰³ *Id.* § 163.3175(5).

¹⁰⁴ Texas defines “defense community” as “a political subdivision, including a municipality, county, or special district, that is adjacent to, is near, or encompasses any part of a defense base.” TEX. LOC. GOV’T CODE ANN. § 397.001 (2004).

¹⁰⁵ *Id.* § 397.005.

¹⁰⁶ *Id.*; FLA. STAT. ANN. § 163.3175(4) (West 2004).

¹⁰⁷ TEX. LOC. GOV’T CODE ANN. § 397.003 (2004).

of the defense community on the defense base and minimizing encroachment on military exercises or training activities connected to the base.”¹⁰⁸

C. Cooperative Relationships between States and Military Installations

In addition to legislative responses, a number of states have fostered cooperative relationships with military installations through the creation of military advisory boards and support offices. For instance, in 2004, Arizona’s Governor “created a permanent Military Affairs Commission” comprised of representatives from various branches of the military and local government officials.¹⁰⁹ The Commission’s objective is to monitor “developments regarding Arizona’s military installations and to make recommendations on executive, legislative and federal actions necessary to sustain and grow those installations.”¹¹⁰ On a more informal level, the Arizona Military Regional Compatibility Project organizes a variety of interested parties to solve land use compatibility issues to safeguard the state’s military airports.¹¹¹ Similarly, the Florida Defense Alliance, created in 1998, serves “as a non-profit partnership between” state and local government officials, “[l]egislators, [b]ase [c]ommanders, [c]ommunity [l]eaders, and [b]usiness [e]xecutives” with the goal of preserving training ranges to ensure military readiness.¹¹²

With the goal of improving the “mission value” of Georgia’s military installations, the Georgia Military Affairs Coordinating Committee provides services intended to reduce the strain of encroachment on those installations.¹¹³ In like manner, the North Carolina Advisory Commission on Military Affairs (“ACMA”) was created to “[d]evelop a strategic plan to provide initiatives to support the long-term viability” of military installations in North Carolina.¹¹⁴ The ACMA has also partnered with the National Governors Association in sponsoring a “multistakeholder conference on encroachment.”¹¹⁵ Finally, in 2004, California created the Office of Military and Aerospace Support (OMAS) to facilitate communication between military installations in California and state and local government offices.¹¹⁶ In addition to retention and conversion duties in connection with the upcoming round of base realignments and closures¹¹⁷, the OMAS is expected to assist in resolving disputes between the DOD and other state entities so that mission use of military bases is maximized.¹¹⁸

¹⁰⁸ *Id.* § 397.003(a)(1). Proposals can also address “which, if any, property and services in a region can be shared by the defense base and the defense community.” *Id.* § 397.003(a)(2).

¹⁰⁹ Press Release, State of Arizona, Governor Announces Permanent Military Affairs Commission (Mar. 2, 2004), at http://www.governor.state.az.us/press/0403/04_03_02.pdf (last visited May 20, 2005).

¹¹⁰ *Id.*

¹¹¹ STATE STRATEGIES, *supra* note 17, at 14 (noting that the group’s “members include local jurisdictions, military installation representatives, [and] landowners”).

¹¹² Enterprise Florida, Inc., *Florida Defense Alliance: Draft Strategic Plan*, Apr. 2004 at 2 (illustrating the extensive membership across the Florida state government), available at <http://www.floridadefense.org/documents/FLDefenseAllianceStrategicPlan.pdf> (last visited May 20, 2005).

¹¹³ Georgia Military Affairs Coordinating Committee, *Our Mission, Services We Provide*, at http://gmacc.georgia.gov/00/article/0,2086,1331549_0_117907_48,00.html (last visited Mar. 27, 2005). Services provided to improve mission value include “working to [r]educe [e]ncroachment[,] [i]mproving [p]oor [b]usiness [p]ractice[, and] [h]elping [t]o [a]pply [r]esources [t]o [i]mprove [i]nadequate [i]nfrastructure.” *Id.*

¹¹⁴ N.C. GEN. STAT. § 127C-4(2) (2004); see also STATE STRATEGIES, *supra* note 17, at 15 (noting the purpose of the ACMA as well as the diverse composition of its representatives).

¹¹⁵ STATE STRATEGIES, *supra* note 17, at 15.

¹¹⁶ See CAL. GOV’T CODE § 13998.5 (West 2004).

¹¹⁷ Base Realignment and Closure (BRAC) is the “congressionally authorized process [that the] DOD . . . uses to reorganize its military base structure to more efficiently and effectively support [United States] forces [and to] increase operational readiness.” Department of Defense, *BRAC 2005, Frequently Asked Questions*, available at <http://www.defenselink.mil/brac/faqs001.html> (last visited May, 20, 2005); 10 U.S.C. § 2687 (2000). Congress further established a commission to objectively review the list of military bases that the DOD recommends should be closed or realigned. Defense Base Closure and Realignment Commission, *About the Commission*, available at <http://www.brac.gov/about.asp> (last visited May 20, 2005); see also Dep’t of Def., Undersecretary of Def., *Memorandum For Infrastructure Executive Council Members, Infrastructure Steering Group Members, Joint Cross-Service Group Chairman, Subject: 2005 Base Closure and Realignment Selection Criteria*, Jan. 4, 2005 (listing the eight selection criteria the DOD must consider when evaluating which military bases to close or realign), available at http://www.brac.gov/docs/criteria_final_jan4_05.pdf (last visited, May 20, 2005).

¹¹⁸ CAL. GOV’T CODE § 13998.5 (a), (f).

IV. Why Do We Care About Encroachment?

The manifold efforts on the part of both the military and the states to counteract the deleterious effects of encroachment on the mission of military installations beg the question: why is encroachment such an important issue? For the military, two main reasons can be offered. First, and by far most pressing, is the concern for military readiness and its direct correlation to national security. A well-trained and ready force is the military's contribution to national security and encroachment impedes the military's fulfillment of its duties.¹¹⁹ While "[r]eadiness reporting can and should be improved to address the extent of training degradation due to encroachment,"¹²⁰ military officials believe encroachment has reduced military readiness.¹²¹ Military readiness is greatly influential to policymakers given the current deployment of forces in combat, and the prominence of terrorism on the domestic and foreign policy agendas.

Second, the round of base realignments and closures¹²² and the proposed movement of forces from Europe and Asia, highlight the significance of maintaining compatible land uses adjacent to military installations. Should encroachment continue to restrict training activities, military installations could be subject to closure.¹²³ For instance, in evaluating which installations to close or realign,¹²⁴ the DOD primarily considers "the availability and condition of land, facilities and associated airspace (including [suitable] training areas . . .) at both existing and potential receiving locations."¹²⁵ Moreover, on August 16, 2004, President Bush announced a plan to realign approximately seventy thousand military personnel, not to mention their families and other civilian employees, from overseas installations, particularly Germany and South Korea, to installations in the United States.¹²⁶ The influx of significant numbers of troops, families, and civilian employees is only likely to exacerbate the encroachment problem and increase the urgency for workable solutions.¹²⁷

As for states, the explanation for the attention being paid to encroachment essentially boils down to one thing: money. "Military installations are often critical to state economies, accounting for thousands of jobs and generating billions of dollars in economic activity and tax revenue."¹²⁸ Installations necessarily employ state residents to fill many roles, paying above-

¹¹⁹ See DOD COMPREHENSIVE PLAN, *supra* note 50, at 6 (explaining that for the DOD "[t]o provide ready military forces to meet our country's national security needs, our personnel must train as they would fight"); see *Constraints and Challenges Facing Military Test and Training Ranges: Hearing Before the Military Readiness Subcomm. of the House Armed Servs. Comm.*, 107th Cong. (2001) (statement of Mr. Joseph J. Angello, Jr., Acting Deputy Under Sec'y of Def. for Readiness) (stating "that developing sustainable ranges is necessary to our continued ability to test and train our forces, and to sustain the military readiness necessary to protect U.S. interests and defend our nation") available at <http://www.house.gov/hasc/openingstatementsandpressreleases/107thcongress/01-05-22angello.html> (last visited May 20, 2005); see *Hearings*, *supra* note 19, at 76 (statement of Lieutenant General Gary L. Ellis) (stating that "[t]he Army requires continuous, rigorous training to perform its . . . missions [and] the cumulative effects of encroachment are restricting [the army's] ability to train"). The military believes that "without live combat training, realistic combat training, not a patchwork workaround, but the things [the troops] have to execute in the operational world . . . [it] can't send [the troops] forward in good conscience to take up this burden they so generously volunteered to perform on [the military's] behalf." *Id.* at 32 (statement of Admiral William J. Fallon).

¹²⁰ *Holman Testimony*, *supra* note 9, at 12.

¹²¹ See STATE STRATEGIES, *supra* note 17, at 1 (noting that military "training [activities] can be postponed, restricted, or eliminated" due to encroaching communities); see also DOD LACKS A COMPREHENSIVE PLAN, *supra* note 12, at 9-13 (describing examples of how encroachment affects training capabilities at specific military installations).

¹²² On May 13, 2005, the Defense Base Closure and Realignment Commission received the DOD's list of bases that should be closed or realigned. Defense Base Closure and Realignment Commission, *Commission Process*, available at <http://www.brac.gov/process.asp> (last visited May 20, 2005). The Commission has until September 8, 2005 to conduct its evaluation and submit its report to the President, and the President has until September 23, 2005 "to forward the report to Congress or return it to the Commission for further evaluation." *Id.* (explaining that Congress must approve the Commission's report and enact a joint resolution before the bases can be closed or realigned).

¹²³ *Id.*

¹²⁴ See 10 U.S.C. § 2687 (2000) (describing additional measures to be complied with when base closure or realignment would affect at least three hundred civilian employees).

¹²⁵ Notice, Selection Criteria for Closing and Realigning Military Installations Inside the United States, 69 Fed. Reg. 6948 (Feb. 12, 2004).

¹²⁶ *Bush Announces Major Troop Realignment: Two U.S. Army Divisions to Leave Germany*, CNN.COM, Aug. 17, 2004, at <http://us.cnn.com/2004/ALLPOLITICS/08/16/bush.troops.home/> (last visited Apr. 18, 2005).

¹²⁷ For example, it is estimated that Texas's Fort Bliss will triple in size as a result of the overseas troop realignment. *Bliss Could Triple in Size*, ARMY TIMES, Feb. 14, 2005, available at <http://www.armytimes.com/story.php?f=1-292925-659130.php> (last visited Apr. 17, 2005). Although Fort Bliss has the capacity to accommodate twenty thousand troops, the troop realignment will have an impact on military land use as approximately one hundred thousand dependants will be returning to the United States with the realigned troops. *Id.*; see Eric Schmitt, *States and Communities Battling Another Round of Base Closings*, N.Y. TIMES, Mar. 20, 2005 at 1.

¹²⁸ STATE STRATEGIES, *supra* note 17, at 2. For instance, the twenty-one military installations in Florida generate \$44 billion a year for the state, ranked third behind tourism and agriculture. Schmitt, *supra* note 126.

average salaries.¹²⁹ These employees, whether military or civilian, are likely to spend their money at area businesses, thus generating considerable revenue for local economies.¹³⁰ In addition, the military consistently contracts with the local private sector for goods and services.¹³¹ The state, of course, also maintains an interest in protecting its citizens from a diminution in property value and quality of life brought on by military training exercises. To be sure, states are interested in ensuring the readiness of the troops for purposes of national security, but the primacy of economic and quality of life interests is readily apparent. Creating a hospitable environment in which military installations can thrive is crucial to sustaining the installation and abating the risk of a future closure.

Conclusion

The encroachment of urban and suburban communities on military installations is no longer a marginal land use issue. The devotion of time and resources by the various stakeholders toward resolution of the problem alone demonstrates this fact. Although the interests of the stakeholders are diverse, ranging from the promotion of national security to the protection of the environment and preservation of a state's economic base, the issue of encroachment is recognized as a significant threat necessitating attention. Similarly, while the proposed solutions to the harmful effects of encroachment vary from state to state and installation to installation, the modus operandi of encouraging collaboration between the stakeholders is shared in common. With no panacea for encroachment seemingly in sight, and with the prospect of a natural worsening of the problem commensurate with sprawl, the solution will likely continue to emphasize effective management of land uses around military installations through broad cooperation.

¹²⁹ STATE STRATEGIES, *supra* note 17, at 2.

¹³⁰ *Id.*

¹³¹ *Id.* (goods and service can include "construction, manufacturing, equipment, materials, transportation, communications, and health and food services").

Communications Assistance for Law Enforcement Act (CALEA)

*Lieutenant Commander Andrew Henderson**

*In investigating terrorism, espionage, and other serious crimes, electronic surveillance is not only one of the most effective tools government has, but often the only effective tool.*¹

Introduction

The rapidly changing landscape of telecommunication technologies and the introduction of digitally-based services and features have impeded law enforcement's ability to consistently effectuate court-authorized electronic surveillance.² This impedance hinders law enforcement's ability to protect communities nationwide from the harms inflicted by organized crime and terrorism.³ In response to this threat and in the interests of public safety and national security,⁴ the Federal Communications Commission (FCC) recently adopted a rule "establishing that providers of facilities-based Internet access services and providers of interconnected voice over Internet Protocol (VoIP)⁵ services . . . must comply with the Communications Assistance for Law Enforcement Act (CALEA)."⁶

As Senator John McCain noted, "[s]ince [VoIP] is a breakthrough technology, there's going to be a lot of china broken [in crafting legislation]."⁷ It is therefore perhaps not surprising that not everyone is happy with the FCC ruling. Industry, for example, has contested both the authority of the FCC "to extend CALEA to the broadband Internet"⁸ and the imposition of government control over the design of software applications and electronic devices.⁹ Colleges and universities fear the high costs the ruling will levy on them as service providers.¹⁰ The American Civil Liberties Union (ACLU) has voiced concerns over the ruling's effects on personal privacy.¹¹ A review of both the law and the policy behind the FCC ruling, however, shows the decision to be legally sound, procedurally valid, and grounded in sound policy designed to lawfully protect national security.

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¹ *Law Enforcement Access to Digital Communication: Hearing Before the Subcomm. on Telecomm. and the Internet of the H. Comm. on Energy and Commerce*, 108th Cong. (2004) [hereinafter Parsky Statement (House)] (statement of Laura H. Parsky, Deputy Ass't Att'y Gen. Crim. Div., U.S. Dep't of Just.).

² See Implementation of Section 109 of the Communications Assistance for Law Enforcement Act, 62 Fed. Reg. 13,307 (Mar. 20, 1997) (codified at 28 C.F.R. pt. 100 (2006)).

³ See *The VOIP Regulatory Freedom Act of 2004: Hearing on S. 2281 Before the S. Comm. on Commerce, Science, and Transportation*, 108th Cong. (June 16, 2004) [hereinafter Parsky Statement (Senate)] (statement of Laura H. Parsky, Deputy Ass't Att'y Gen. Crim. Div., U.S. Dep't of Just.).

⁴ See Communications Assistance for Law Enforcement Act and Broadband Access and Services, 70 Fed. Reg. 59,664, 59,667 (Oct. 13, 2005) (to be codified at 47 C.F.R. pt. 64) [hereinafter FCC Ruling].

⁵ Voice Over Internet Protocol (VoIP), also known as IP or Internet telephony, converts voice to data that is routed through the Internet, like e-mail, via broadband networks. See What's VoIP?, http://www.vonage.com/help_vonage.php (last visited Mar. 28, 2006).

⁶ FCC Ruling, *supra* note 4, at 59,664.

⁷ *The VOIP Regulatory Freedom Act of 2004: Hearing on S. 2281 Before the S. Comm. on Commerce, Science, and Transportation*, 108th Cong. (2004) (statement of Sen. John McCain, Chairman, S. Comm. on Commerce, Science and Transportation).

⁸ *Id.* (statement of James X. Dempsey, Exec. Dir., Ctr. For Democracy and Technology) [hereinafter Dempsey Statement (Senate)].

⁹ See Marcia Coyle, *Tapping the Net; FCC Ruling That Broadband Services Accommodate Wiretaps in Their Designs Likely To Go To Court*, MIAMI DAILY BUS. REV., Aug. 18, 2005, at 9.

¹⁰ See Sam Dillon & Stephen Labaton, *Colleges Oppose Call to Upgrade Online Systems*, N.Y. TIMES, Oct. 23, 2005, at A1.

¹¹ See Coyle, *supra* note 9, at 9.

CALEA

The legal structure for electronic surveillance originated with the seminal Supreme Court case of *United States v. Katz*.¹² In *Katz*, the Court held for the first time that government interceptions of telephone conversations are regulated by the Fourth Amendment.¹³ In the wake of *Katz*, Congress set rules for intercepting telephone calls through the Omnibus Crime Control and Safe Streets Act of 1968, Title III.¹⁴ In 1970, Congress clarified the law, directing that a court order “should, at the request of the officer applying for authority, direct the provider to furnish the applicant with the necessary ‘information, facilities and technical assistance.’”¹⁵

In 1994, Congress enacted CALEA¹⁶ to address the rapidly changing face of telecommunication technology and to “extend and clarify the previous obligations of telecommunications service providers to assist law enforcement with electronic surveillance orders.”¹⁷ To effectuate this intent, CALEA requires telecommunications carriers “to ensure that their equipment, facilities, and services adhere to standards that enable law enforcement to pursue call intercepts, pen registers, and trap and trace technologies for surveillance.”¹⁸

Federal Communications Commission Implementation

The CALEA gives the FCC broad discretion in defining which persons or entities are governed by the statute. Specifically, the FCC may find a provider (person or entity) to be a “telecommunications carrier” when its provision of “wire or electronic communication switching or transmission service . . . is a replacement for a substantial portion of the local telephone exchange service and that it is in the public interest to deem such a person or entity to be a telecommunications carrier. . . .”¹⁹ Specifically exempted, however, are persons or entities engaged in “information services,” which the statute defines as “generating, acquiring, storing, transforming, processing, retrieving, utilizing, or making available information via telecommunications.”²⁰

Utilizing the authority vested by CALEA, the FCC recently determined that the statute applied to some non-traditional telecommunications service providers: Broadband Internet Access Services and VoIP Services.²¹ In both cases, the FCC applied a three-prong test. First, the FCC found that both service providers provided a switching or transmission functionality.²² Second, it determined the providers replaced a substantial portion of the local telephone exchange service.²³ Third, the FCC specifically found a public interest in favor of such a determination, weighing “the effect on competition, the development and provision of new technologies and services, and public safety and national security.”²⁴

¹² 389 U.S. 347 (1967).

¹³ See CALEA Implementation Section – Federal Bureau of Investigation, *Communications Assistance for Law Enforcement Act (CALEA)*, http://www.doj.gov/criminal/cybercrime/usamay2001_4.htm (last visited Mar. 20, 2006).

¹⁴ Omnibus Crime Control and Safe Street Act of 1968, Pub. L. No. 90-351, 82 Stat. 197 (codified as amended at 18 U.S.C.S. §§ 2510-22 (LEXIS 2006).

¹⁵ See 18 U.S.C.S. § 2518 (LEXIS 2005).

¹⁶ 47 U.S.C.S. §§ 1001-1021.

¹⁷ Christopher Guttman-McCabe et al., *Homeland Security and Wireless Telecommunications: The Continuing Evolution of Regulation*, 57 FED. COMM. L. J. 413 (2005).

¹⁸ *Id.*

¹⁹ 47 U.S.C.S. § 1001.

²⁰ *Id.*

²¹ See Communications Assistance for Law Enforcement Act and Broadband Access and Services, 70 Fed. Reg. 59,664, 59,667-68 (Oct. 13, 2005) (to be codified at 47 C.F.R. pt. 64).

²² See *id.* at 59,666—59,668.

²³ See *id.*

²⁴ See *id.*

The FCC also specifically found that the CALEA Information Services Exclusion²⁵ did not apply to either type of provider. In its determination, the FCC found that while many providers offer both telecommunications and information services, CALEA did not require the classification of an integrated service offering as solely one or the other.²⁶ The additional provision of information services, in other words, does not preclude the application of CALEA to a provider of telecommunications services.

Public Concerns

Federal Communication Commission Authority

The focus of industry arguments against the FCC's authority to bring Broadband and VoIP providers under CALEA revolve around interpretations of legislative intent gleaned from congressional committee reports from the early 1990s. Thus the Internet, some industry leaders argue, was clearly seen as an information service to be excluded by CALEA.²⁷ "The FCC," said one legal analyst, "is legislating, not interpreting."²⁸

This rationale fails for two reasons. First, from a practical standpoint, though experiments began as early as 1974, commercially viable VoIP did not exist when CALEA was drafted.²⁹ Congress, however, drafted CALEA with foresight, and the statute "requires that, as new technologies are developed, providers act responsibly by engineering their systems in a way that allows law enforcement to execute court-ordered electronic surveillance."³⁰

Second, Congress expressly provided the FCC with the authority to find that providers of wire or electronic switching could ultimately become telecommunications carriers in the event that they replaced substantial portions of the local telephone exchange service. Critics do not appear to have attacked either of the first two prongs utilized in the FCC decision, namely that these services provide switching/transmission features and that they replace substantial portions of the local telephone service. Their focus instead is a narrowly tailored attack on the public policy prong—specifically, government involvement in design and cost allocations.

Government Involvement in Design

The industry concern is that the requirement to produce a "surveillance-ready cell phone"³¹ and other such equipment is, in effect, the intrusion of law enforcement into the "design of applications and devices."³² Such government involvement is contrary to public policy, it is reasoned, because "[t]he tremendous economic growth that has accompanied the Internet's rise would not have happened if everything had been forced to get approval of a government agency."³³ Or as Christopher Calabrese of the ACLU's Technology and Liberty Project laments, "it could give the FBI a sort of check on the expansion of communications technology in the U.S. if they can pre-vet and say you have to be CALEA-compliant. . . ."³⁴

²⁵ 47 U.S.C.S. § 1002(b)(2). The Communications Assistance for Law Enforcement Act specifically waives compliance requirements for information services or "equipment, facilities, or services that support the transport or switching of communications for private networks or for the sole purpose of interconnecting telecommunications carriers." *Id.*

²⁶ *See id.* at 59,666.

²⁷ *See* Dempsey Statement (Senate), *supra* note 8.

²⁸ Coyle, *supra* note 9 (quoting Susan Crawford, "cyber law scholar," Yesheva University's Benjamin N. Cardozo School of Law).

²⁹ *See* E-mail from Jeff Pulver, Vonage Founder, to Andrew H. Henderson (author) (Mar. 29, 2006) (on file with author).

³⁰ Parsky Statement (House), *supra* note 1.

³¹ Coyle, *supra* note 9, at 9.

³² *Id.*

³³ *Id.* (quoting Susan Crawford, "cyber law scholar," Yesheva University's Benjamin N. Cardozo School of Law).

³⁴ *Id.*

The CALEA, however, makes no claim on design specifics—but rather on end-state performance. And there are no statutory requirements that new technology be vetted through federal law enforcement prior to production. On the contrary, law enforcement is barred from dictating design specifics, as CALEA “does not authorize any law enforcement agency or officer . . . to require any specific design. . . to be adopted by any provider [or] manufacturer, . . .’ and it does not authorize any law enforcement agency or officer ‘to prohibit the adoption of any equipment, facility, service, or feature by any provider . . . [or] manufacturer.’”³⁵

Further, CALEA has been around since 1994—it is only the application of CALEA to Broadband and VoIP providers that is recent. The worst-case scenario painted by its critics makes no showing of how the telecommunications industry has been technologically stymied by the FBI over the last eleven years. One might argue it has instead thrived.

Costs of Implementation

Another great concern about the application of CALEA to Broadband and VoIP providers is cost. Universities alone claim it would cost them \$7 billion to become CALEA-compliant under the new FCC policy, deeming it “the mother of all unfunded mandates.”³⁶ The formula for the derivation of this figure is unclear, but it rings somewhat far-fetched. In the first place, government officials do not expect costs to be particularly high for universities because the FCC order “did not require surveillance of networks that permit students and faculty to communicate only among themselves, like intranet services.”³⁷

In addition, the FCC is considering whether to exempt educational institutions from some of the law’s provisions;³⁸ however, it seems unlikely the \$7 billion worst-case scenario has factored in CALEA’s protective provisions. First of all, CALEA “allows carriers to seek a determination of whether implementation of a CALEA solution is ‘reasonably achievable’ in light of costs and other issues.”³⁹ It does not, therefore, allow law enforcement to place a blanket demand on carriers to meet some arbitrary gold standard. Secondly, while CALEA expects industry to bear the cost of ensuring that new equipment meets the legislated requirements, the statute “provides that the Federal government will pay carriers for just and reasonable costs incurred in modifying existing equipment, services or features to comply with the capability requirements . . . [and for] expansions in capacity to accommodate law enforcement needs.”⁴⁰ As many carriers have been reimbursed by the federal government for various CALEA costs to date,⁴¹ panic appears at best premature.

Privacy

Finally, there is the argument that CALEA erodes constitutional protections and threatens individual privacy rights. But “nothing in CALEA gives law enforcement the authority to conduct any surveillance. [It] is about the practical necessity of implementing existing lawful authority, not expanding authority.”⁴² On the contrary, the statute protects privacy. First, it protects the privacy of other system users by requiring that service providers be able to readily separate the communications of a particular subscriber whose communications law enforcement has a court order to intercept.⁴³ Second, “CALEA requires that a service provider be able to separate call-identifying information from the content of communications. This protects the call content from law enforcement access where law enforcement only had legal grounds to obtain the call-identifying

³⁵ Parsky Statement (House), *supra* note 1 (quoting CALEA Section 103, 47 U.S.C. § 1002(b)(1) (LEXIS 2006)).

³⁶ Dillon & Labaton, *supra* note 10, at A1 (quoting Terry W. Hartle, Senior Vice President, American Council on Education).

³⁷ *Id.*

³⁸ *See id.*

³⁹ Parsky Statement (House), *supra* note 1.

⁴⁰ H.R. REP. NO. 103-827, pt. 1 (1994).

⁴¹ *See* Ted Hearn, *Taming Cyberterrorists Via Broadband; FCC Puts Internet-based Services Into The CALEA Camp*, MULTICHANNEL NEWS, Aug. 16, 1994, at 20.

⁴² Parsky Statement (Senate), *supra* note 3.

⁴³ *See* Parsky Statement (House), *supra* note 1.

information.”⁴⁴ This allows law enforcement to pinpoint its searches and prevents unnecessary “rummaging” through protected communications.

CALEA Applicability

Department of Defense

The federal government, and particularly the Department of Defense (DOD), owns an expansive broadband computer network. Do the new CALEA regulations apply to its systems? According to cyber attorney Fran Walterhouse, Principal Legal Advisor for Computer Crime at the U.S. Army Criminal Investigation Command, the present DOD stance is that “communications carrier” refers to “a common carrier for hire or otherwise on a commercial basis available to the public.”⁴⁵ While this interpretation seems to make sense, it is not specifically expressed as such in the statute. Further, if in fact university systems are ultimately determined to fall within the purview of CALEA, might not DOD systems, too, be regulated? Given the newness of the FCC ruling, this issue has yet to be broached officially.

European Economic Union

Lastly, it is important to remember that in our global economy, the hardware, software, and even actual service providers may not originate on U.S. soil. With no European “FCC” to take the lead overseas,⁴⁶ the extent to which CALEA may be applied extraterritorially is unclear. Thus, while the United States may be able to ban the import of phones, switches, or routers that are not CALEA-compliant, it may be considerably more difficult to enact a search warrant, for example, on a call placed through a foreign-based VoIP or Broadband provider.

Conclusions

The recent FCC ruling on CALEA was specifically premised on the “protection of public safety and national security.”⁴⁷ The CALEA is over a decade old and has helped law enforcement arrest over 54,000 suspects since it was enacted.⁴⁸ It is a vital component in the war on terror, as “the cell structure and worldwide scope of modern terrorist groups make electronic surveillance essential to uncovering these lethal networks before they strike us in ever more devastating ways.”⁴⁹ It does not afford law enforcement any additional search authority and merely expands existing statutory requirements to advancing technology. While there may be some legitimate concerns regarding cost of implementation, there are protective measures in the statute to ensure carriers do not bear a disproportionate burden. Although cost is not irrelevant, on balance with the global dangers the United States faces today, it seems the least of our worries.

⁴⁴ *Id.*

⁴⁵ E-mail from Fran Walterhouse, Principal Legal Advisor for Computer Crime, U.S. Army Criminal Investigation Command, to Andrew H. Henderson (author) (Nov. 9, 2005) (on file with author).

⁴⁶ See Axel Spies, *Telecom In Europe: Disharmonies In The Regulatory Concert—Swindler Berlin LLP*, MONDAQ BUS. BRIEFING, Oct. 24, 2005.

⁴⁷ Communications Assistance for Law Enforcement Act and Broadband Access and Services, 70 Fed. Reg. 59,664, 59,664 (Oct. 13, 2005) (to be codified at 47 C.F.R. pt. 64).

⁴⁸ See Parsky Statement (House), *supra* note 1.

⁴⁹ *Id.*

Collateral Investigations

Cindy Gleisberg*

This article is intended to assist practitioners involved in the Army's collateral investigation process. The article should be used in conjunction with Army Regulation (AR) 15-6 and Department of the Army (DA) Pamphlet 385-40 for Army accident investigations. This article should be used as a guide but does not supersede any regulations, official pamphlets, or local standing operating procedures (SOP).

Contents of this article are intended for both aviation and non-aviation (ground) accidents. Unless otherwise stated, information pertains to either type of accident. Where necessary, differences have been delineated.

Introduction to Collateral Investigations

When an Army accident occurs, commanders often will need to initiate multiple investigations to completely research and document the events surrounding the accident. The potential investigations include the safety investigation, financial liability investigation for property loss (FLIPL), line of duty (LOD) investigation, criminal investigation, and collateral investigation. The safety investigation is conducted solely for accident prevention purposes.¹ The purposes of the FLIPL, LOD, and criminal investigations are well-known. The collateral investigation's purpose, however, is not always as clear. The regulatory purpose of the collateral investigation is to make a record of the facts for use in litigation, claims, and other administrative and disciplinary actions.² If thorough in scope, the collateral investigation report can have far-reaching implications for the Army at large.

Collateral investigations are conducted independently and apart from the accident investigation. They are initiated and conducted by local commands as required by *Department of Defense Instruction (DODI) 6055.7*³ and *AR 385-40*⁴ and are governed by the procedures in *AR 15-6*⁵ and *AR 27-20*.⁶ Although *AR 385-40* suggests that most collateral investigations will follow the procedures of *AR 27-20*,⁷ historically most collateral investigating officers have relied on the procedures in *AR 15-6*. When determining which regulation will govern, practitioners should consider whether or not the accident constitutes a potentially compensable event (PCE) within the meaning of *AR 27-20*.⁸ If there is no PCE, *AR 15-6* should be used. If a PCE is involved and adverse administrative action is likely, the command may elect to conduct an investigation under both *AR 15-6* and *AR 27-20*. Collateral investigations require timely access to all appropriate information. This article was written to provide basic information specific to initiating and conducting a technically intensive investigation into such matters as why a complex piece of military machinery malfunctioned or was misused or why the operators made errors that led to a severe injury, fatality, or destruction of equipment.

Army Regulation 385-40 and *DA Pamphlet 385-40*⁹ provide excellent guidance for the conduct of safety investigations. Additionally, the Combat Readiness Center published a *Centralized Accident Investigators Handbook (CAI Handbook)*, which provides practical insight into the application of those publications.¹⁰ Since the process used by safety investigators requires the methodical gathering and reviewing of evidence, the safety investigation process could also be beneficial to collateral investigators. In an effort to improve the collateral process, portions of the *CAI Handbook* are summarized here, with amendments necessary to cover the scope and purpose of the collateral investigation.

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¹ *Id.* para. 1-7 a & b.

² U.S. DEP'T OF ARMY, REG. 385-40, ACCIDENT REPORTING AND RECORDS para. 1-7 (1 Nov. 1994) [hereinafter *AR 385-40*].

³ U.S. DEP'T OF DEFENSE INSTR. 6055.7, ACCIDENT INVESTIGATION, REPORTING, AND RECORD KEEPING (3 Oct. 2000).

⁴ *AR 385-40*, *supra* note 1, para. 1-8c.

⁵ U.S. DEP'T OF ARMY, REG. 15-6, PROCEDURE FOR INVESTIGATING OFFICERS AND BOARDS OF OFFICERS (30 Sept. 1996) [hereinafter *AR 15-6*].

⁶ U.S. DEP'T OF ARMY, REG. 27-20, CLAIMS (1 Aug. 2003) [hereinafter *AR 27-20*].

⁷ *AR 385-40*, *supra* note 1, para. 1-8d (stating "[t]he investigation will usually use the procedures in *AR 27-20* because most will involve potential claims. If that regulation is not applicable, the procedures in *AR 15-6* for informal investigations will be followed.").

⁸ *AR 27-20*, *supra* note 6, paras. 2-2, 13-1.

⁹ U.S. DEP'T OF ARMY, PAM. 385-40, ACCIDENT REPORTING AND RECORDS (1 Nov. 1994) [hereinafter *DA PAM. 385-40*].

¹⁰ U.S. DEP'T OF ARMY, CENTRALIZED ACCIDENT INVESTIGATION (CAI) HANDBOOK (Sept. 2002), available at <https://crc.army.mil/tools/applications/ground/caihandbook.pdf> [hereinafter *CAI HANDBOOK*].

Why the Army Needs Better Collateral Investigations

Over the course of the past decade, public interest in military operations, including accidents, has increased. With the added public interest, members of Congress have increased their demands for in-depth information on the cause of many Army accidents. Occasionally, because of the external pressure to provide information, the Department of Defense's (DOD) policy for handling safety and legal investigations separately has been compromised.¹¹ Generally, this happens in only the most high-profile accidents.

Two examples stand out. The first example involved the mid-air collision of two Blackhawk helicopters, which resulted in the death of six Soldiers, injury to five others, and destruction of both aircraft. In that accident, the aircraft were flying a night mission in forecasted deteriorating weather conditions. The mission plan was changed to adjust the direction of flight and landing order due to wind conditions and requirements of the ground commander. The safety investigation and the collateral investigation reports initially differed as to whether the accident was the result of weather or poor pilot decisions given the forecasted conditions. The appointing authority rejected the collateral investigating officer's (IO) findings and twice returned the report for the IO to rewrite his findings. Based on the IO's third set of findings, the battalion commander, who was in charge of the mission, was relieved. An Inspector General's investigation was initiated based on the appearance that the appointing authority used the safety investigation to redirect the collateral IO to a finding that adversely affected the battalion commander. Such a cross-leveling of findings and analysis would be a violation of DOD and Army guidance.¹²

Another problematic investigation involved a fixed-wing accident with twenty-one resulting fatalities. Again, the safety and collateral boards' findings differed as to whether or not adverse weather caused the accident, or the pilots' failure to properly plan for the forecasted weather was the cause of the catastrophe. The appointing authority in that accident requested the collateral IO to reevaluate the evidence and adjust his findings and asked the Safety Center to have experienced investigators review the collateral IO's finding to see if they were supported by credible evidence. Although DOD's regulatory guidance does not prohibit safety investigators from receiving findings from collateral investigations, the motivation behind the appointing authority's request seemed to be a desire to deconflict the findings of the two reports. Such an effort is in direct opposition to the guidance in *AR 385-40*, paragraph 1-8a, which states that the collateral investigation is to be conducted "independently and apart from other types of accident investigations."¹³

By attempting to reconcile the findings of the two investigations, the appointing authorities delayed the acceptance of the collateral reports and, thus, delayed the release of causal information to the public and to Congress. These accidents occurred prior to the publication of *AR 600-34*,¹⁴ which requires a strict timeline for completion of the collateral investigation report so that the report can be used to brief the servicemember's next of kin after a fatal training accident.

In both of these examples, the appointing authorities were disturbed by the disparate findings of the two boards. The rationale for the safety boards' findings were well understood and supported by the published guidance. Since the collateral investigation guidance is limited, however, the collateral IOs failed to comprehend the role of the weather in the planning process and solely applied the impact of the conditions at the time of the accident. Had the collateral IOs received training or had a better understanding of the depth to which they should have probed during the investigation, they likely would have uncovered the underlying events that allowed the poor weather to have a negative effect on the missions.

Providing sound collateral investigations is "essential for the protection of the privileges afforded to accident investigation reports, as they ensure there is an alternative source of evidence for use in legal and administrative proceedings."¹⁵ Maintaining the judicially created privilege for safety reports is an essential part of DOD's accident prevention programs and, thus, an essential part of national security. This article attempts to provide guidance to future collateral IOs to avoid similar issues.

¹¹ Under *AR 385-40*, para. 1-8b, safety personnel (the Combat Readiness Center) "will not conduct, review, evaluate, assist with, or maintain on file the collateral investigation." *AR 385-40*, *supra* note 1, para. 1-8b.

¹² See DOD INSTR. 6055.7, *supra* note 3, paras. E.4.4.1, E.4.4.2, & E.4.5.3.1; *AR 385-40*, *supra* note 1, paras. 1-8a, 1-10, and 1-11f(3).

¹³ *AR 385-40*, *supra* note 1, para. 1-8(a).

¹⁴ U.S. DEP'T OF ARMY, REG. 600-34, FATAL TRAINING/OPERATIONAL ACCIDENT PRESENTATIONS TO THE NEXT OF KIN (2 Jan. 2003).

¹⁵ *AR 385-40*, *supra* note 1, para. 1-8a.

When Must a Collateral Investigation be Conducted?

A collateral investigation is required for Class A accidents¹⁶ or when directed by the supporting staff judge advocate.¹⁷ In addition to those required by the regulation, a commander may conduct a collateral investigation into the circumstances of any other accident if his personnel, equipment, or operations were involved.

The Collateral Investigation Board

One of the command's first challenges when conducting a collateral investigation is assembling the investigation board. While many commands may use only one investigator, accidents are often complex and require experts from various fields. Board members are normally provided by the Installation Commander where the accident occurred, but to avoid conflicts of interest, some members may be required to travel from other locations. Board member selection, notification, and travel may require several days. Whatever the circumstances, the board president and recorder must develop a plan to gain control of board members and advisors immediately upon arrival.

Appointing the Board

Army Regulation 15-6, paragraph 2-1, delineates who has authority to appoint an investigative board. The majority of accidents will require a general court-martial convening authority to appoint the board.¹⁸ The collateral board president must be a commissioned officer, warrant officer, or DA civilian employee permanently assigned to a position graded as a General Schedule, Level 13 (GS-13) or above.¹⁹ For most *AR 15-6* investigations, all voting members of the board must meet those same requirements. *Army Regulation 15-6*, however, provides an exception that applies to most accident investigations. The exception permits "persons with special technical knowledge [to] be appointed as voting members."²⁰ If the investigation involves a designated respondent,²¹ however, the person with special technical knowledge can serve only as an advisory member without a vote.²²

With one exception, the investigating officer or voting member(s) of a board must be senior to any person²³ whose conduct or duty performance may be investigated or against whom adverse findings or recommendations may be made.²⁴ In addition to grade requirements, there are additional requirements for a safety investigation that can be applied to a collateral

¹⁶ A Class A accident is an accident involving one or more fatalities, injury resulting in permanent total disability, or more than \$1 million in property damage. *Id.* para. 2-2.

¹⁷ *Id.* para. 1-8a. Paragraph 1-8c requires a collateral investigation for all Class A accidents (an accident involving one or more fatalities or more than \$1 million in property damage) when directed by the command's staff judge advocate (SJA) or legal counsel in accordance with the claims regulation (*AR 27-20*) for those accidents where there is a potential claim or litigation for or against the government or a government contractor, and for accidents with a high degree of public interest or anticipated disciplinary or adverse administrative action.

¹⁸ *AR 15-6*, *supra* note 5, para. 2-1a.3 (requiring that a general court-martial convening authority appoint the board, regardless of procedures used, "for incidents resulting in property damage of \$1,000,000 or more, the loss or destruction of an Army aircraft or missile, an injury and/or illness resulting in, or likely to result in, permanent total disability, or the death of one or more persons").

¹⁹ "Investigating officers and board members shall be those persons who, in the opinion of the appointing authority, are best qualified for the duty by reason of their education, training, experience, length of service and temperament." *Id.* para. 2-1c.

²⁰ *Id.* para. 5-1e.

²¹ *Id.* para. 1-7. "In formal investigations, the appointing authority may designate one or more persons as respondents in the investigation. Such a designation has significant procedural implications." *Id.* para. 5-4a.

A respondent may be designated when the appointing authority desires to provide a hearing for a person with a direct interest in the proceedings. The mere fact that an adverse finding may be made or adverse action recommended against a person, however, does not mean that he or she should be designated a respondent. The appointing authority decides whether to designate a person as a respondent except where designation of a respondent is — (1) Directed by authorities senior to the appointing authority; or (2) Required by other regulations or directives or where procedural protections available only to a respondent under [AR 15-6] are mandated by other regulations or directives.

Id.

²² *Id.* para. 2-1c(2).

²³ *Id.* paras. 2-1c(3)(b), 2-1c(3)(c) (outlining scenarios for handling the possibility that the board members will discover that the completion of the investigation requires them to review the performance of duty of a person senior to him). To avoid having to appoint new members late in the process, select senior personnel early.

²⁴ *Id.* para. 2-1c(3).

investigation to help the investigation run smoothly. Safety investigators must be from units or organizations other than the accountable organization, and they must be familiar with the type of operation involved in the accident.²⁵ In addition, safety investigators may not have an interest in the accident that may bias the outcome of the investigation.²⁶ Although AR 15-6 does not require it, collateral investigators should be chosen using the same restrictions.

Recommended Board Members and Qualifications

Each accident presents different needs, but frequently the board will need assistance from one or more of the following people:

- a. **Equipment/Task Subject Matter Expert (SME).** An officer or senior noncommissioned officer (NCO) who is currently serving in a capacity that requires conducting or overseeing the type of mission or task that was being performed when the accident occurred.
- b. **Vehicle/Equipment Maintenance Personnel.** An officer, warrant officer, senior NCO, or a DoD civilian, who is currently serving in a capacity that requires performance (or oversight) of the maintenance of the type of vehicle or equipment involved in the accident.
- c. **Instructor Pilot (IP).** An individual holding the necessary and current qualifications and serving as an instructor pilot or a standardization instructor pilot. If the accident occurred during instrument meteorological conditions (IMC) or inadvertent IMC flight, the IP should also be a qualified and current instrument flight examiner (IFE).
- d. **Maintenance Test Pilot (MTP).** A qualified and current maintenance test pilot or maintenance flight examiner (MFE) of the type of aircraft involved in the accident.
- e. **Technical Inspector (TI).** A warrant officer, NCO, or DOD civilian who is serving in a TI position with direct oversight of maintenance of the type of aircraft or equipment involved in the accident.
- f. **Medical Officer.** A doctor or physician assistant who is currently serving in that capacity. In aviation accidents involving personal injuries, problems with personal protective equipment, egress from the aircraft, MEDEVAC (medical evacuation), rescue or survival, a flight surgeon is required

Immediate Actions After Board Appointment

Before going to the accident scene, the collateral investigation board should consider whether or not the accident involved composite or other hazardous materials and ensure the appropriate precautions are taken prior to and while visiting the site.

Accidents involving composite materials that fragment or burn upon impact may pose a significant health threat to investigators. The primary threats are inhalation and dermal exposure to fragmented materials. The aircraft and vehicles that contain a potentially damaging quantity of composite materials include, but are not limited to: UH-1, AH-1, AH-64, CH-47D, OH-58D, RAH-66, UH-60, V-22, HMMWV, M-1 Abrams, M-2/M-3 Bradley, M-9 ACE, M-109 Howitzer, and M-113 APC.²⁷

If the board suspects they have a health or safety threat from the accident site, they should seek assistance from the installation safety team to learn how to protect themselves.²⁸

²⁵ AR 385-40, *supra* note 1, para. 4-2c(1)).

²⁶ *Id.* para. 4-2a(1)).

²⁷ CAI HANDBOOK, *supra* note 10, at S-3a.

²⁸ See, e.g., U.S. DEP'T OF ARMY, REG. 11-34, THE ARMY RESPIRATORY PROTECTION PROGRAM (15 Feb. 1990); U.S. DEP'T OF ARMY, REG. 385-10, THE ARMY SAFETY PROGRAM (29 Feb. 2000); U.S. DEP'T OF DEFENSE, INSTR. 6055.1, DOD OCCUPATIONAL SAFETY AND HEALTH PROGRAM (19 Aug. 1999); see also Respiratory Protection, 29 C.F.R. § 1910.134 (2005); Bloodborne Pathogens, 29 C.F.R. § 1910.1030 (2005).

The next step for the board is to visit the accident site.²⁹ When feasible, the board should visit the site at the same time of day as when the accident occurred and under the same or similar conditions. Doing so will give the investigators a more accurate picture of the existing environmental conditions at the time of the accident (e.g., glare, traffic, and road conditions). Upon arrival at the accident site, members of the board should make a controlled access point (ensuring the site, including ground scarring or marking, is not disturbed) to get a mental picture of the physical layout.

The safety board has priority over the accident scene.³⁰ Often, the safety board will deploy from the Combat Readiness Center at Fort Rucker and, thus, not arrive for several days. In such a case, the collateral board must gain control of the accident site and record any perishable evidence. On-site unit safety personnel will usually attempt to preserve the site to the greatest degree possible; however, well-intentioned, but uninformed senior officers and other interested personnel often feel the need to personally inspect the scene and may inadvertently destroy evidence in the process.

Installation Support Responsibilities

Once the board has completed its initial survey of the accident site, it should focus on gathering equipment necessary to more thoroughly review the accident site. Every unit should have a pre-accident plan that delineates post-accident responsibilities.³¹ Aviation units are *required* to have such a plan.³² The plan should assign personnel to implement accident site security measures and to immediately begin to secure data after completing emergency response actions. Collateral boards should review the plan to identify which installation personnel may have already gathered necessary information and items and collateral investigation legal advisors should obtain a copy of the pre-accident plan to assist them in guiding the board's composition.

Points of contact for assistance to the collateral board should be identified. The types of support will differ depending on the type of accident. The collateral investigator can informally consult with anyone with special expertise.³³ Those experts, however, do not need to be appointed as board members.³⁴

Recommended Equipment and Facilities

Commands should properly equip collateral investigators to complete their task. In addition to traditional office supplies, boards may need more specialized equipment, depending on the type or nature of the accident.³⁵ Commands should also provide the collateral board a quiet meeting room with sufficient tables and chairs and at least two telephone lines.

The Basics of Conducting a Collateral Investigation

Once the collateral board has the personnel and equipment necessary to complete its task, the real work will begin. It is important for board members to remember that the purpose of a collateral investigation is to "obtain and preserve all

²⁹ In the event of an accident on a public roadway where the scene has been cleared away, investigators should maximize local resources such as state, local, or military police reports and site diagrams.

³⁰ AR 385-40, *supra* note 1, para. 1-8.

³¹ U.S. DEP'T OF ARMY, PAM. 385-1, SMALL UNIT OFFICER/NCO GUIDE para. 5-2 & app. B (20 Nov. 2001).

³² U.S. DEP'T OF ARMY, REG. 385-95, ARMY AVIATION ACCIDENT PREVENTION para. 2-3 (10 Dec. 1999).

³³ Typically, the board will need the following aides: (1) Engineer. Surveying and mapping the debris pattern, preparing the required sketches, etc. (2) Local Training Support Center (TSC) representatives. Photo, audio, video, and graphic art assistance. (3) Public Affairs Officer (PAO). Handling press representatives and public information releases. (4) Hospital commander. Treatment and examination of personnel, identification of fatalities, provision of facilities and support for conducting autopsies, lab support, and other medical support as necessary, (e.g., the preparation and shipment of body fluid samples and specimens to the Armed Forces Institute of Pathology (AFIP) for analysis). (5) Provost Marshal. Providing guards, traffic control, and site security. (6) Weather officer. Obtaining complete weather information, to include graphic snapshots, if available, for the time and location of the accident. (7) Maintenance support facility commander. Recovery of wreckage, disassembly, and removal of components, and preparation for shipment of items selected for teardown analysis. Also, preparation of estimated cost of damage (ECOD) to assist in establishing pecuniary liability. (8) Transportation officer. Assistance with transportation to and from the accident site and expeditious shipment of components selected for teardown analysis.

³⁴ AR 15-6, *supra* note 5, para. 4-1.

³⁵ Examples of the types of supplies and equipment a collateral board may need include the following: (1) two easels with pads of paper; (2) laptop computer; (3) digital camera; (4) 35mm camera and film; (5) cellular phone; (6) global positioning system; (7) micro-cassette tape recorder and tapes; (8) magnetic compass; (9) inclinometer; (10) laser rangefinder; (11) tape measurer (steel, 100"); (12) multi-tool similar to a Gerber or Leatherman; (13) hearing and eye protection; (14) flashlight; (15) Tyvek-like protective suit and high-efficiency respirator; (16) composite materials and blood borne pathogen safety kit (when composite materials are present or suspected); (17) batteries; (18) marking flags; and (19) paint pens.

available evidence for use in litigation, claims, disciplinary action, or adverse administrative actions.”³⁶ Many collateral investigations stop once the board determines what happened in an accident and recommend action against the driver or the pilot. While it is often easy to determine what happened in an accident—for example, the driver went too fast around a turn or a pilot flew too close to the trees—a thorough investigation should go beyond what happened and address why the driver was driving too fast or why the pilot flew too close to the trees.

The investigative procedure used during collateral investigations should be the “3W” approach: What happened, Why it happened, and What to do about it.³⁷ The “3W” approach reveals adverse interactions between man, machine, and environment that caused or contributed to the accident.³⁸

(1) *What happened.* Identify key factors (human, materiel, environmental) that caused or contributed to the accident. In the case of injuries, explain how the injuries occurred.

(2) *Why it happened.* Identify the system inadequacy(ies) that permitted the error to occur, the materiel to fail, or the environment to become a factor in the accident. After determining the root causes or system inadequacies, the board should examine each cause or inadequacy and determine if the source was in the Doctrine, Organization, Training, Material, Leadership, Personnel, and Facilities (DOTMLPF) capabilities or processes (e.g., the unit was set up for failure because of Army-level decisions. If root causes or system inadequacies can be attributed to DOTMLPF, the board should consider Army-level recommendations targeting the DOTMLPF domain. For example, a training failure is identified at the unit-level; however, the source of that training failure may be at the Army level.³⁹ Identifying and resolving root causes or system inadequacies are the keys to preventing future accidents.⁴⁰

(3) *What to do about it.* Identify the recommended actions and the proponent activity or lowest level of command most responsible for taking action to correct the root causes or system inadequacies (both at the unit and, if applicable, Army levels). It is important to provide the local commander with recommendations to address his local situation, but it is equally important to provide the Army Chief of Staff with recommendations to address Army-wide hazards. Unlike the safety board, the collateral board can and, where appropriate, should recommend adverse administrative or punitive action be taken against individuals who failed to perform or negligently performed their duties.⁴¹ Rarely have collateral reports gone beyond the equipment operator, but when decision-makers at higher levels make decisions that adversely impact the safety of our Soldiers, they, too, should be held accountable for their decisions.

Conclusion

The collateral investigation is essential to holding Soldiers and civilians accountable for actions or inactions that lead to the death or injury of Soldiers. This article only covers the basics of initiating a collateral investigation. *Department of the Army Pamphlet 385-40* is an invaluable resource to learn more about how to plan and execute the data collection portion of the investigation, what to look for at the accident scene, and how to interview witnesses. It further explains how to evaluate the environmental and materiel information. Readers should also consult the *CAI Handbook*, which expands on the pamphlet’s discussion of the data analysis process and includes tips on dealing with the media, Criminal Investigation Division, and next of kin. If you have any questions about the contents of this article, please contact the Combat Readiness Center legal department.

³⁶ AR 385-40, *supra* note 1, para. 1-8.a.

³⁷ DA PAM. 385-40, *supra* note 9, para. 1-5 & fig. 1-1

³⁸ *Id.* para.1-5.

³⁹ For example, the unit’s back-to-back deployments did not allow sufficient time for training.

⁴⁰ Although one may argue that preventing future accidents is the purpose of the safety investigation rather than the collateral investigation, both can and should serve a vital role in accident reduction.

⁴¹ See DA PAM. 385-40, *supra* note 9, para. 2-8g(4) (prohibiting recommendations for punitive or administrative actions in safety board findings). See AR 15-6, *supra* note 5, para. 3-10 (providing guidance on collateral board findings).

Note from the Field

Operational Contract and Fiscal Law: Practice Tips

*Lieutenant Colonel Brian Godard, Lieutenant Colonel Tom Modeszto, Major Michael Mueller, and Mr. Karl Ellcessor**

Introduction

The practice tips contained in this note are a compilation of observations, lessons learned, and common-sense advice provided by judge advocates who recently deployed in a contract/fiscal law attorney position to Iraq or Afghanistan. The tips are intended to offer judge advocates easy-to-read advice that may not be found in more formal publications or instruction.

Tip # 1: “Work” Your Predecessor

Don't be surprised to find that your limited contract or fiscal law training and experience make you a prized, if not unique, commodity. A judge advocate with contract or fiscal law exposure or training is key to working contract actions that are vital to operational needs. As a theater matures, improvements in contracting will follow; however, adequate staff tracking processes or controls may not be in place to take full advantage of lessons learned. Soon after you are notified of a pending deployment, communicate with your predecessor as frequently as possible to get a sense of the substance and flow of work. Furthermore, overlap is essential to become acquainted with the mission and to intelligently review your predecessor's files. Finally, use the overlap to have your predecessor introduce you to other staffs and their key members.

Tip # 2: Overcome Challenges to Consistency

Prepare for disjointed tours with other staff personnel (both within and outside of your office) when dealing with a Joint Command. For example, it is not unusual for joint offices to have personnel who are deployed on four-, six-, nine-, or twelve-month tours, depending on the service branch, duty status (active duty, reserve, or guard), or country of service of the staff member involved. This wide variance in deployment tours is just one more reason to ensure that there are adequate staff action tracking systems and controls in place. Moreover, don't focus only on your office. To reduce the inherent confusion associated with personnel turnover, encourage other staff offices to implement effective tracking systems to systemically monitor and control staff actions. This is especially important for the staff sections with which judge advocates frequently coordinate actions (e.g., J-4 (Logistics); J-6 (Communication)¹; J-7 (Engineers); and J-8 (Comptroller)).

Tip # 3: Prevent Forum Shopping, “He said what?!!!!”

Don't be surprised if the different staff sections (J-1 to J-8) find your arrival an opportune time to revisit issues that your predecessors have already addressed. This is more likely to occur if an earlier opinion did not match the staff officer's wishes. An opposite approach, which is just as likely to lead to an incorrect fiscal law approach, is interpreting a previous opinion far more broadly than was originally intended. Judge advocates must be prepared to never answer a question “on the fly” and to try to contact their predecessors to find out the “rest of the story” behind the earlier opinion.

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¹ This staff section can assist you with setting up a retrievable data and file system.

Tip # 4: Go Beyond the Basics

When addressing fiscal issues unique to deployment operations, you will likely have to “drill down” into the underlying intent of fiscal rules, policies, or laws. For fiscal rules and restrictions, the key to determining legislative intent is thorough research of Senate and House Reports.² This review will allow you to fully understand the rationale behind the rules, policies, and laws. For most actions, this understanding will help you get to “yes.” If, however, the answer is “no,” going beyond the basics will allow you to place your opinion in context, provide a thorough explanation of why the answer is “no,” and perhaps suggest an alternative. This holistic approach will enhance customer understanding, inspire confidence in your advice, and cultivate a relationship of trust, which is absolutely essential in the high stakes environment of deployments.

Tip # 5: It’s Not a Sprint. It’s a Marathon

Remember to pace yourself and develop a sane, daily routine that keeps you “intellectually fresh.” The hours in a deployed environment are exceptionally long, and “burning out” in the first month will help no one, least of all you.

The fiscal and contract operational tempo (OPTEMPO) in a deployed environment ranges from continuous waves to tsunamis. You should concentrate on understanding your supervisor’s priorities, which will focus you on the issues that need immediate attention. Often, Staff Judge Advocates (SJAs) will hold an office meeting after staff meetings with the Commanding General so that everyone in the office understands the commander’s priorities. If the SJA does not hold such meetings, then suggest that he do so.

Prioritize, prioritize, prioritize. Every action is hot. That said, what is hot now, may not be as hot as something else an hour from now. Keep on top of constantly shifting priorities. Be prepared for some high priority actions to vaporize—it is not uncommon to put in a lot of work on an action that later may no longer be needed. Still, in such a case, retain your work product; the same issue may arise later.

Organize, organize, organize. As discussed above, establish a way to keep track of all actions. Electronic files and resources are helpful. Be sure to back-up frequently. Scanned documents are a must.

Tip # 6: A Physical Training (PT) Routine Is Essential

Do not fall into the trap of “I’m too busy to work out.” Physical training can help boost productivity by reducing stress and building endurance. In addition, a PT routine helps to clear one’s head, which often enhances the ability to work complicated problems and devise an appropriate solution. Last, but not least, PT improves the ability to work long hours with limited or no sleep.

Tip # 7: Know Your Teammates

The J-8 (comptroller), J-4 (logistics), and J-7 (engineering) all serve as critical sources of information. Much of your work will involve construction and generic nation-building. Early on, a judge advocate should take the initiative to reach out and meet these staff officers and offer to assist project officers and review project submissions in advance.

Become “locked at the hip” with key personnel in your organization as well as the other staff sections. Know who the most productive and knowledgeable people are and work with them to assist the less productive or less knowledgeable. By ingratiating yourself to the other staff sections and assisting them with their issues in advance, you will build bonds, open lines of communication, and learn about how other staffs conduct business.

Network with other judge advocates, both in-theater and reachback sources, to include your predecessors.³

² Many of these references can be found through the U.S. Army Fiscal Law Website, on the JAGCNET, <https://www.jagcnet.army.mil/fiscallaw>.

³ Along this line, the Office of the Judge Advocate General Contract and Fiscal Law Division has established the Fiscal Law Reachback Group, a highly responsive group of contract and fiscal law experts from throughout the JAG Corps. The Reachback Group can be contacted via the Army Fiscal Law Website and the Contract and Fiscal Law Division.

Tip # 8: Understand Your Client's Mission

Understand your client's mission and how you can best support that mission. Prepare before deploying. Although you may deploy in a contract and fiscal role, do not focus solely on that one discipline. A great starting point for a general understanding of other deployment issues is the *Operational Law Handbook*⁴ (don't leave home without it!).

Tip # 9: Participate in Construction-Related Military Decision Making Process (MDMP)⁵

Given the overall importance nation-building frequently has to mission success, always take the time to review construction project diagrams. Beyond the fiscal law review, you should ensure that the submissions make sense. Examine the doors, windows, plumbing (sewage), wiring, and electrical power source. The Department of Public Works, J-7 personnel, or an Engineer Brigade Construction Management Services Division are the best resources for explaining these diagrams. "Dumb check" the plans. For example, plumbing is great . . . if you have a sewer system.

Tip # 10: Get Military Gear that Fits

Make sure military gear fits properly before deploying. Do not be rushed, and try on everything. Most clerks at the central issuing facility are very experienced and can be helpful, but remember that each piece of gear or clothing will fit each individual differently. The gear you are issued will be worn all day, everyday. For example, one judge advocate encountered a clerk who tried to give him the wrong size desert camouflage pants, based on the clerk's understanding of what size pant goes with the size of top. Also, do not assume that the sizes are consistent—a size eight in one brand of boots may be a size nine in another.

Tip # 11: Pack or Ask for Comfort Items

With all the concentration on military equipment and the mission at hand, it may be easy to forget comfort items. Examples include pictures of family and friends, snack food, pillows, sheets, and towels. Comfort items are important sources of morale and should not be forgotten. Either pack comfort items with your gear or ask that they be mailed later.

Tip # 12: Handle Personal Affairs Before Deploying

This sounds obvious, but it needs to be said: take care of your personal matters *before* deploying. This may include one or all of the following: writing a will; setting up one or more powers of attorney; taking leave to see family or to just relax; setting up automatic payments for bills; ensuring other financial matters are taken care of; scheduling medical or dental appointments to resolve nagging ailments; and ensuring that your physical property, which may include your house and vehicle, is either secure or will be managed in your absence. During your deployment, you don't want the added stress of worrying about whether your family, financial matters, or property are properly taken care of.

Conclusion

The above comments reflect the experience of judge advocates who have deployed in support of demanding missions. The overall thrust of these remarks applies regardless of the legal topic. Indeed, they reflect a proactive attitude, pervasive throughout our JAG Corps, to work closely with commanders and staff to achieve mission success. Many times "problem-solving" extends well beyond legal issues to providing practical, no-kidding, "how do we get from here to there" advice. Although working in a deployed environment carries with it unique challenges, incorporating a few common-sense measures into your routine will enhance the overall quality of your deployment experience and the counsel you provide to your command.

⁴ INT'L & OPERATIONAL LAW DEP'T, THE JUDGE ADVOCATE GENERAL'S LEGAL CENTER AND SCHOOL, U.S. ARMY, JA 422, OPERATIONAL LAW HANDBOOK (2006). The *Operational Law Handbook* is available in hardback upon request from the Center for Law and Military Operations (CLAMO) or electronically at the CLAMO and U.S. Army Fiscal Law Websites.

⁵ See *id.* ch. 27.

TJAGLCS Practice Notes

Servicemembers Civil Relief Act

Staying Connected: “Home of Record” Not Always the Same as “Domicile” Under the Servicemembers Civil Relief Act’s Taxation Protections

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Most servicemembers are generally familiar with the rule under the Servicemembers Civil Relief Act¹ (SCRA) that military income is taxable only by the servicemember’s state of domicile and not by the state where the servicemember is assigned.² The rule derives from section 571 of the SCRA and its predecessor section under the venerable Soldiers’ and Sailors’ Civil Relief Act (SSCRA).³ Unfortunately, servicemembers and their family members frequently misunderstand the limited scope of taxation protections under the SCRA⁴ and fail to grasp the implications of wrongly applying ambiguous and confusing terminology such as “domicile”⁵ and “residence.”⁶ A recent case in the Oregon Tax Court demonstrates how servicemembers and the states do not always agree on the definitions and use of such terms⁷ and underscores the continuing need for servicemembers to consider the potential tax consequences of their connections and associations, or lack thereof, with their home state and their state of assignment.

In *Carr v. Department of Revenue*,⁸ the Oregon Tax Court held that a Navy servicemember was not relieved from responsibility to pay Oregon state income tax merely by asserting that his home of record⁹ with the Navy was in Nevada. In 1980, Senior Chief Martin Carr¹⁰ enlisted in the United States Navy and listed an address in Nevada as his home of record.¹¹ He continued to list Nevada as his home of record through twenty-five years of active duty service. From 1993 to 1996,

¹ 50 U.S.C.S. App. §§ 501-596 (LEXIS 2006).

² The rule stems from the joint application of two subsections of the SCRA found at 50 U.S.C.S. app. § 571(a) and (b). The first subsection essentially states that a servicemember neither acquires nor loses domicile for taxation purposes solely by being assigned to military duty outside his home state. The second subsection generally asserts the statutory “fiction” that a servicemember’s income is deemed earned in the state of domicile, even though the servicemember is performing duty in another state. The pertinent subsections are as follows:

(a) Residence or domicile. A servicemember shall neither lose nor acquire a residence or domicile for purposes of taxation with respect to the person, personal property, or income of the servicemember by reason of being absent or present in any tax jurisdiction of the United States solely in compliance with military orders.

(b) Military service compensation. Compensation of a servicemember for military service shall not be deemed to be income for services performed or from sources within a tax jurisdiction of the United States if the servicemember is not a resident or domiciliary of the jurisdiction in which the servicemember is serving in compliance with military orders.

³ Soldiers’ and Sailors’ Civil Relief Act, 50 U.S.C. app. §§ 501-594 (2000) (current version at 50 U.S.C.S. app. §§ 501-596 (LEXIS 2006)).

⁴ For example, servicemembers may wrongly believe that their military income is “exempt from all taxation, to include taxation by their state of domicile,” and that “the SCRA exempts their nonmilitary income from taxation.” See ADMINISTRATIVE & CIVIL LAW DEP’T, THE JUDGE ADVOCATE GENERAL’S LEGAL CENTER & SCHOOL, U.S. ARMY, JA 260, THE SERVICEMEMBERS CIVIL RELIEF ACT GUIDE 5-3 (Mar. 2006).

⁵ Domicile is defined as “[a] person’s true, fixed, principal, and permanent home, to which that person intends to return and remain, even though currently residing elsewhere.” BLACK’S LAW DICTIONARY 501 (7th ed. 1999).

⁶ Residence is defined as “[t]he place where one actually lives, as distinguished from a domicile.” BLACK’S LAW DICTIONARY 1310. Residence differs from domicile in that it usually does not require “an intent to make the place one’s home.” *Id.* On the other hand, the term “legal residence” is generally considered to be synonymous with domicile. See *id.* at 907; see also U.S. Dep’t of Defense, DD Form 2058, State of Legal Residence Certificate (Feb. 1977) [hereinafter DD Form 2058] (stating that the terms “legal residence” and “domicile” are essentially interchangeable).

⁷ For a detailed discussion of terms commonly used in the military such as “domicile,” “residence,” and “home of record,” and the consequences to servicemembers of the misuse of these terms, see Major Wendy P. Daknis, *Home Sweet Home: A Practical Approach to Domicile*, 177 MIL. L. REV. 49 (2003).

⁸ *Carr v. Dep’t of Revenue*, 2005 Or. Tax LEXIS 223 (Or. Tax 2005).

⁹ The term “home of record” is generally considered to have no legal significance. It is used to establish military travel and transportation allowances and is not to be confused with a servicemember’s state of legal residence or domicile. See DD Form 2058, *supra* note 6.

¹⁰ Senior Chief Carr’s full military rank is Senior Chief Petty Officer, which is equivalent to the military pay grade E-8.

¹¹ *Carr*, 2005 Or. Tax LEXIS, at *1.

Senior Chief Carr was assigned to duty in Portland, Oregon. In 1999, he was reassigned to Oregon, where he resided with his wife.¹² The Carrs' connections to Oregon included purchasing a home in the state in 2001 and registering their vehicles there.¹³ Senior Chief Carr was not registered to vote in Oregon, did not have an Oregon driver's license, and stated "unequivocally, and repeatedly" that he had no intention of making Oregon his domicile.¹⁴ Despite this, the State of Oregon assessed personal income taxes against Senior Chief Carr for the 2001, 2002, and 2003 tax years.¹⁵

At first glance, Senior Chief Carr's connections and associations with Oregon appear to be no different from the actions of thousands of servicemembers throughout the U.S. armed forces with regard to their host (duty) states. It is common for Soldiers, Sailors, Airmen, and Marines to purchase homes and register vehicles in their state of military assignment, but these servicemembers typically still consider themselves "domiciled" for military and tax purposes in their home state. Most of these servicemembers would also honestly assert that upon separating from the military, they intend to return to their home state. This "intention to return" is a key factor when evaluating where a servicemember is domiciled for purposes of the taxation protections of the SCRA. If the common definition of domicile includes an "intent to return and remain,"¹⁶ then the servicemember's stated "intention to return" (the presumptive equivalent of an "intention to remain") goes a long way to support the proposition that the servicemember is still domiciled in his home state. Further, purchasing homes and registering vehicles in the host state are not necessarily determinative. In fact, the Oregon Tax Court specifically stated that the acts of purchasing a home or registering a vehicle are not "conclusive in themselves" to establish that the servicemember had an intention to remain in the host state.¹⁷ So why, despite Senior Chief Carr's lack of stated intent to make Oregon his domicile and his relatively unremarkable connections to Oregon, did the court conclude that he was domiciled in Oregon?

In determining Senior Chief Carr's domicile, the decisive factor for the Oregon court was not his connections *to* Oregon, but rather his *lack of* connections to his purported home state of Nevada. The court found that Senior Chief Carr did not own property in Nevada, did not have a Nevada driver's license, did not vote in Nevada, did not register his vehicles in Nevada, had only some extended family members in Nevada, and did not "speak convincingly of an intention to return to Nevada."¹⁸ These points convinced the court that Senior Chief Carr and his wife had no current connection to the State of Nevada that would support his claim of Nevada domicile.¹⁹ Although the court acknowledged that the Carr's connections to Oregon were "by themselves equivocal,"²⁰ it stated that those connections (purchasing a home and registering vehicles) "stand . . . as the best indicators of that place which . . . Plaintiffs had the intention to return when they were absent."²¹

The teaching point for legal assistance attorneys advising servicemembers on these issues is that the "bare assertion"²² of a home of record address is not enough to establish *and maintain* domicile for purposes of taxation protection under the SCRA. Although a servicemember may have entered military service from a certain state and listed that state as the home of record for many years, those facts alone do not establish the servicemember's *current* domicile.²³ Similarly, because a servicemember adopted a new state of domicile during a previous military assignment does not mean that the state will *remain* the state of domicile for future assignments. States such as Oregon²⁴ will look at all of the servicemember's connections to determine which state is the "strongest of all their associations."²⁵ As a result, servicemembers seeking to

¹² Senior Chief Carr apparently remained assigned for military duty in Oregon as the case went up on appeal to the Oregon Tax Court.

¹³ *Carr*, 2005 Or. Tax LEXIS, at *2.

¹⁴ *Id.* at *1, *5.

¹⁵ *Id.* at *1.

¹⁶ BLACK'S LAW DICTIONARY 501 (7th ed. 1999). Also, the Supreme Court has defined domicile as: "A residence at a particular place accompanied with positive or presumptive proof of an intention to remain there for an unlimited time." *Mitchell v. United States*, 88 U.S. 350, 352 (1874).

¹⁷ *Carr*, 2005 Or. Tax LEXIS, at *6.

¹⁸ *Id.* at *5.

¹⁹ *Id.*

²⁰ *Id.*

²¹ *Id.* at *6.

²² *Id.*

²³ The *Carr* court emphasized that "a person can have only one domicile at a time." *Id.* at *5; see also *In re Estate of Jones*, 182 N.W. 227, 228 (Iowa 1921); RESTATEMENT (SECOND) OF CONFLICT OF LAWS § 11 (1971); BLACK'S LAW DICTIONARY 1310 (7th ed. 1999) (defining residence).

²⁴ The *Carr* court pointed out that other jurisdictions, such as New Jersey and Minnesota, have applied similar reasoning in evaluating whether a servicemember was domiciled in the state of assignment and not in the home state. *Carr*, 2005 Or. Tax LEXIS, at *6 (citing *Wolff v. Baldwin*, 9 N.J. Tax 11 (N.J. Tax Ct. 1986) and *U.S. v. Minnesota*, 97 F. Supp. 2d 973 (D. Minn. 2000)).

²⁵ *Carr*, 2005 Or. Tax LEXIS, at *5.

maintain a current state of domicile or acquire a new state of domicile would be wise to establish as many connections and associations with that state as possible.²⁶

²⁶ Common examples of the types of activities a servicemember should consider taking to establish and maintain domicile in a particular state include: purchasing land or a home in the state, registering to vote, registering vehicles, opening a bank or investment account in the state, obtaining a driver's license, joining a church or other service/fraternal organizations, and purchasing a burial plot. *See* Daknis, *supra* note 7, at 78 (providing these and other examples but emphasizing that the list is not exhaustive, and pointing out that the servicemember must also meet the threshold requirement of establishing a physical presence in the state).

Family Law Note

Recent Cases Regarding Division of Military Retired Pay When the Servicemember Elects to Receive Disability Compensation

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Family law practitioners should understand that the Uniformed Services Former Spouses' Protection Act (USFSPA)¹ permits states to divide servicemembers' disposable military retired pay² as marital property in a divorce and to pay a portion of that disposable retired pay to the members' former spouse. For example, a court order might provide that the former spouse is entitled to fifty percent of the servicemember's disposable military retired pay as part of a property division pursuant to a divorce. In this simple scenario, assuming the servicemember's disposable retired pay is \$2,000 per month, the court-ordered division requires the servicemember to pay \$1,000 per month to the former spouse.

Federal law, however, permits servicemembers to waive a portion of their disposable retired pay in exchange for a correspondingly equal amount of nontaxable³ disability compensation from the Veteran's Administration.⁴ The financial benefits to the servicemember of such a practice are obvious: receipt of nontaxable disability pay in return for waiving an equal portion of *taxable* military retired pay. Moreover, the U.S. Supreme Court has declared that state courts have no authority to treat the amount of disability payments that the servicemember elects to receive as marital property.⁵ The effect of the Supreme Court's holding is that the disability payments that the servicemember receives are his, exclusively.

In the above example, for instance, if the servicemember-recipient of \$2,000 in retired pay opted to receive \$600 of disability pay, his remaining disposable retired pay would be reduced to \$1,400 per month. Absent any provision in a court order or separation agreement that protects the former spouse's interest in her share of the servicemember's disposable retired pay, the effect of the Supreme Court's holding in *Mansell* would normally reduce the former spouse's monthly payment to only \$700.⁶

As most legal assistance practitioners understand, where the servicemember's military retired pay is divided under the terms of a separation agreement or court order, either of those documents are likely to contain an indemnity clause.⁷ The effect of such a clause, typically, is to preserve a former spouse's share of the servicemember's retired pay in the event the member chooses to accept disability compensation.⁸ When preserving the former spouse's "share," these indemnity clauses typically intend to preserve the *dollar amount*—rather than percentage amount—to which the former spouse remains entitled.

¹ 10 U.S.C. § 1408 (2000).

² "Disposable retired pay" includes a servicemember's gross retired pay less any amounts defined in 10 U.S.C. § 1408(a)(4). Section 1408(a)(4) includes recoupment by the government for overpayments, amounts of retired pay waived to receive disability pay, waiver of retired pay adjudged at court-martial, and Survivor Benefit Plan premiums. *Id.* § 1408(a)(4).

³ 38 U.S.C. § 3101(a).

⁴ 10 U.S.C. § 1408(a)(4)(B); *see also* *Mansell v. Mansell*, 490 U.S. 581, 583 (1989) (describing the procedure for waiving a portion of retirement pay in exchange for an equal amount of nontaxable disability compensation from the Veteran's Administration).

⁵ *Mansell*, 490 U.S. at 594-95.

⁶ This \$700 is arrived at by reducing the servicemember's disposable retired pay to \$1,400 and then allotting fifty percent of that amount to the former spouse in accordance with the terms of the hypothetical court order.

⁷ For example, the indemnity clause might contain language to the effect that, if the servicemember takes any action to decrease the amount of money payable to the former spouse (for instance, by application for or award of disability compensation), the servicemember must make payments directly to the spouse in an amount sufficient to compensate the spouse for the offsetting amount. *See generally* MARSHAL S. WILLICK, *MILITARY RETIREMENT BENEFITS IN DIVORCE* 230 (1998).

⁸ In some state court cases, where no indemnity clause protected the former spouse's entitlement to retired pay, the servicemember's unilateral action of reducing his disposable retired pay by accepting disability compensation left the former spouse without a financial remedy. *See, e.g.,* *Williams v. Williams*, No. COA04-21, 2004 N.C. App. LEXIS 2157 (N.C. Ct. App. 2004) (holding that the absence of a clause providing that the servicemember would indemnify his former spouse in the event he elected to reduce his disposable retired pay by receiving disability compensation left the former spouse without a financial remedy); *In re Marriage of Pierce*, 982 P.2d 995 (Kan. Ct. App. 1999) (refusing to require a servicemember to indemnify his former spouse with other assets after he reduced his disposable retired pay by electing to receive disability compensation because the couple's separation agreement contained no indemnity clause).

Several state court decisions from 2006 scrutinized *Mansell's* effect on former spouses, where servicemembers choose to waive a portion of their disposable retired pay in order to receive disability compensation. The following recent cases illuminate some general principles upon which state courts rely and of which legal assistance practitioners should take note when advising their clients. While several of these recent cases relied on the express terms of indemnity clauses contained in agreements or court orders, other cases addressed the effect on the former spouse when no indemnity clause purported to protect the former spouse's financial interests.

The Colorado Court of Appeals exercised its equitable powers, in the absence of an indemnity clause, to enforce the provisions of a separation agreement in order to preserve a former spouse's financial interests. In the case of *In re Warkocz*,⁹ the ex-wife of a servicemember appealed a lower court's refusal to enforce the provisions of a separation agreement into which the wife and servicemember had entered in 1996.¹⁰ The separation agreement provided that the wife would receive "22.5% of the service member's military retirement." The agreement apparently contained no specific indemnity clause¹¹ that would protect the former spouse's entitlement to retired pay should the servicemember choose to receive disability payments and thereby waive a portion of his retired pay. The servicemember, after retiring in May 2002, received a 40% disability rating and, predictably, waived a corresponding amount of his military retired pay.¹² In 2004, the ex-wife filed an action to collect \$5,000 in unpaid military retired pay.¹³ The servicemember, however, argued that in the absence of specific language in the separation agreement (i.e., an indemnity clause that protected the ex-wife's share of retired pay), the ex-wife was entitled only to a 22.5% share of the servicemember's reduced military retired pay.¹⁴

The lower court found that the separation agreement stated only a formulaic percentage (22.5%) of the servicemember's disposable retired pay that the ex-wife should receive, rather than a specific dollar amount.¹⁵ On appeal, the Court of Appeals of Colorado reversed, finding that the ex-wife should have continued to receive the same *dollar amount* of money she would have received if the servicemember had not applied for and received disability pay.¹⁶

The *Warkocz* court held that a court can equitably enforce the agreement of the parties, even in the absence of a specific indemnity clause that would preserve the former spouse's entitlement to a certain amount of the member's military retired pay.¹⁷ The court stated that "[m]any jurisdictions have recognized that the USFSPA does not limit the equitable authority of a state court to grant relief"¹⁸ when a member converts his military retired pay to disability pay. The court found that the economic consequences for the former spouse demand that courts consider the ramifications of the servicemember's action when crafting this equitable solution.¹⁹

The second case involves a court's reliance on the finality of court-ordered property division in a marital dissolution action. *Gurtz v. Gurtz*²⁰ addressed the effect of a servicemember's exercise of his right to receive disability payments and the resulting financial effects on his ex-wife. *Gurtz*, similar to *Warkocz*, involved the financial effects on a former spouse when the servicemember chose to receive disability pay and waive a portion of his military retired pay. Also similar to the facts in *Warkocz*, the facts in *Gurtz* revealed that no indemnity clause protected the ex-wife's entitlements to the servicemember's disposable retired pay in the event the servicemember chose to waive a portion of his military retired pay.

⁹ No. 04CA2031, 2006 Colo. App. LEXIS 480 (Colo. Ct. App. 2006).

¹⁰ *Id.* at *1.

¹¹ The court noted only that the separation agreement contained a "general indemnification clause," which apparently did not address specifically the contingency under which the servicemember opted to receive disability pay. *See id.* at *2.

¹² *Id.* at *2-3.

¹³ *Id.* at *3.

¹⁴ *Id.*

¹⁵ *Id.* The lower court concluded that ordering the member to continue to pay his ex-wife an amount of money equal to a *percentage share* of his military retired pay prior to his waiver of a portion of his retired pay would be impermissible. *Id.*

¹⁶ *Id.* at *5-6.

¹⁷ *Id.* at *7-8.

¹⁸ *Id.* at *7.

¹⁹ *Id.* at *9-10.

²⁰ No. 27134, 2006 Mo. App. LEXIS 312 (Mo. Ct. App. 2006).

In *Gurtz*, a 2002 court order required the servicemember to pay his ex-wife 42.5% of his “Military Retirement”²¹ as property, pursuant to their divorce. The servicemember had been adjudged 10% disabled, and as a result, received \$1,061 in disposable military retired pay.²² Accordingly, the servicemember paid his wife approximately \$451 each month—the 42.5% share pursuant to the court order.²³

In September 2004, however, the Department of Veteran’s Affairs notified the servicemember that his disability rating had increased to 60% disabled.²⁴ Predictably, the servicemember opted to waive his military retired pay in an amount that equaled the increased disability payments.²⁵ As a result, beginning in November 2004, the servicemember was to receive only \$350 in military retired pay, rather than the former amount of \$1,061.²⁶ In his petition for declaratory judgment to the court, the servicemember alleged that, as a result of his choice to receive disability compensation and thus reduce the amount of retired pay he would receive, he should only be required to pay his ex-wife \$149 per month.²⁷

The Missouri Court of Appeals refused to grant the servicemember’s request, finding that the previous distribution of the servicemember’s military retired pay, as part of the 2002 court-ordered property division, was not amendable.²⁸ Relying on Missouri caselaw principles of finality in matters affecting property division, the court declared that “the trial court’s marital property distribution contained in its dissolution decree became final.”²⁹ The court ultimately declared that “[o]nce it has been divided as part of a final decree, a pension may not be redivided after circumstances have changed.”³⁰

Several recent cases have also addressed the enforceability of express indemnity provisions affecting entitlement to military retired pay. *Poziombke v. Poziombke*,³¹ decided by the Virginia Court of Appeals, involved the interpretation and effect of an indemnity clause that purported to protect an ex-wife’s financial interests in a servicemember’s disposable military retired pay. The indemnity clause, included in the couple’s 1995 divorce decree, provided that the servicemember would “not take any action which would defeat, reduce, or limit [the ex-wife’s] right to receive her share of [the servicemember’s] military pension benefits.”³² The clause continued by providing that if the servicemember did take any such action, such as “waiving any portion of retired pay in order to receive increased disability pay,”³³ the servicemember would indemnify his ex-wife and pay directly to her “all sums reduced by such action.”³⁴

In June 1998, the servicemember retired and began paying to his wife approximately 28% of his disposable retirement pay each month under the terms of the 1995 dissolution order.³⁵ In October 1998, the servicemember opted to accept disability payments,³⁶ and in 2005, his ex-wife petitioned the court for payment of the amount of retired pay due to her, as a result of his waiver of retired pay.³⁷

²¹ *Id.* at *2.

²² *Id.*

²³ *Id.*

²⁴ *Id.* at *4.

²⁵ *Id.* at *3.

²⁶ *Id.*

²⁷ *Id.* This \$149 per month, the servicemember petitioned, equaled the court-ordered 42.5% share of his disposable retired pay that his ex-wife should receive after he reduced his disposable retired pay to \$350 per month. *Id.*

²⁸ *Id.* at *9.

²⁹ *Id.* (citing *Wandfluh v. Wandfluh*, 716 S.W.2d 420, 422 (Mo. Ct. App. 2003)).

³⁰ *Id.* (quoting *In re Marriage of Strassner*, 895 S.W.2d 614, 618 (Mo. Ct. App. 1995)).

³¹ No. 1150-05-1, 2006 Va. App. LEXIS 61 (Va. Ct. App. 2006).

³² *Id.* at *3.

³³ *Id.*

³⁴ *Id.* at *3-4.

³⁵ *Id.* at *4. The court order required the servicemember to pay 28.3591% of his disposable retired pay. *Id.*

³⁶ *Id.* The wife showed that the total amount of disability payments that the servicemember received, and the corresponding amount of retired pay that he waived, from October 1998 to November 2004 equaled \$34,988. *Id.*

³⁷ *Id.* The ex-wife petitioned the court for 28% of the nearly \$35,000 in retired pay that the servicemember waived. *Id.*

In April 2005, the trial court ordered the servicemember to indemnify his ex-wife and pay to her the amount of money to which she would have been entitled, had he not elected to receive disability payments beginning in October 1998.³⁸ Citing the finality of the order dividing the couple's property in the 1995 divorce action, the court required the servicemember to indemnify the ex-wife; the court did not, however, require the servicemember to pay her directly from the disability benefits he received.³⁹

The servicemember appealed, arguing that absent an indemnity clause in a property settlement agreement—as opposed to one contained in a court order—federal law prohibits a court from ordering servicemembers not to take actions that have the effect of reducing a former spouse's entitlement to military retired pay.⁴⁰ The Virginia Court of Appeals rejected the servicemember's argument. In its opinion, the Virginia Court of Appeals declared that a court may order a servicemember to pay a sum *equivalent* to a percentage of military retired pay or disability pay, where an indemnification clause protects the former spouse's right to such an amount.⁴¹ The only caveat, the court declared, was the prohibition on ordering the servicemember to make such payments from the disability payments themselves.⁴²

The Texas Court of Appeals case of *Loria v. Loria*,⁴³ similar to the *Poziombke* decision, examined the validity of a court order that contained an indemnity clause. At issue in *Loria* was court-ordered indemnity language that provided that the servicemember agreed “not to pursue any course of action that would defeat [the spouse's] right to receive a portion of the disposable retired pay of [the servicemember].”⁴⁴ The clause further provided that the servicemember would not “take any action . . . so as to cause a limitation in the amount of the total disposable retired pay in which [the servicemember had] a vested interest.”⁴⁵ The indemnity clause further provided that if the servicemember took any action to reduce the amount of his disposable retired pay, he must pay directly to his ex-wife an amount equal to the amount of disposable retired pay that the court ordered paid to his ex-wife.⁴⁶

The servicemember objected to the court order, alleging that the language in the indemnity clause impermissibly proposed to divide any disability benefits he might elect to receive.⁴⁷ On appeal, the Texas Court of Appeals agreed with the servicemember, finding that the language “has the impermissible effect of precluding [the servicemember] from choosing, as is his right, to waive a portion of his retirement pay for disability.”⁴⁸

The full ramification of the *Loria* decision is unclear at this point. *Loria* represents a departure from the majority of state court decisions which, up to this point, permitted the indemnification of a former spouse on the theory that the servicemember remained free to waive retired pay in order to receive disability pay, so long as he paid to the former spouse the share that she otherwise would forfeit due to his actions. Numerous state courts have validated courts' indemnity provisions, finding that the requirement to make the former spouse “whole” did not impermissibly require the servicemember to pay the former spouse directly from the disability funds that the servicemember elected to receive.⁴⁹

Legal assistance practitioners who advise clients on the interplay between receipt of disability pay and military retired pay must ensure that they address the issue of indemnification. Practitioners must understand—or be prepared to research—the approach used by state courts in addressing the issue of indemnification of a former spouse. Practitioners must understand whether a state might enforce the original intent of a court order or agreement through the employment of

³⁸ *Id.* at *4-5.

³⁹ *Id.* at *5-6.

⁴⁰ *Id.* at *7.

⁴¹ *Id.* at *5-6.

⁴² *Id.* at *6.

⁴³ No. 01-05-00380-CV, 2006 Tex. App. LEXIS 322 (Tex. App. 2006).

⁴⁴ *Id.* at *2.

⁴⁵ *Id.* (emphasis in original).

⁴⁶ *Id.*

⁴⁷ *Id.* at *4.

⁴⁸ *Id.* at *6.

⁴⁹ See, e.g., *In re Gahagen*, No. 4-272/03-1731, 2004 Iowa App. LEXIS 926 (Iowa Ct. App. 2004); *Nelson v. Nelson*, 83 P.3d 889 (Okla. Civ. App. 2003); *Janovic v. Janovic*, 814 So.2d 1096 (Fla. Dist. Ct. App. 2002).

equitable remedies when no indemnity clause exists.⁵⁰ The better practice, of course, is to ensure that an indemnity clause specifically protects the former spouse's entitlement to retired pay in the event the servicemember reduces his disposable retired pay by electing to receive disability compensation. Finally, practitioners must understand which state courts might order the servicemember to make the former spouse whole by indemnifying the former spouse from funds other than the disability pay that the servicemember elects to receive.⁵¹

⁵⁰ See, e.g., *Surratt v. Surratt*, 148 S.W.3d 761 (Ark. Ct. App. 2004); *Black v. Black*, 842 A.2d 1280 (Me. 2004); *Whitfield v. Whitfield*, 862 A.2d 1187 (N.J. Super. Ct. App. Div. 2004).

⁵¹ See generally ADMINISTRATIVE & CIVIL LAW DEP'T, THE JUDGE ADVOCATE GENERAL'S SCHOOL, U.S. ARMY, JA 274, UNIFORMED SERVICES FORMER SPOUSES' PROTECTION ACT (Nov. 2005) (examining state courts' treatment of indemnity clauses and the interplay between waiver of military retired pay and the receipt of disability pay).

Book Review

GENERAL GEORGE WASHINGTON: A MILITARY LIFE¹

REVIEWED BY MAJOR SEAN M. CONDRON²

Every American knows that General George Washington was both the Commander-in-Chief of the Continental Army during the American Revolution and the first President of the United States, but few know our founding father's full military history. For instance, few Americans know that George Washington commanded a Virginia militia force³ and that he surrendered to a French-Indian force at Fort Mifflin in 1777.⁴ Even fewer know that, after serving eight years as the President of the United States, George Washington returned to military service as the Commander-in-Chief of the Army at President John Adams's request during the Quasi-War with France from 1798-1799.⁵ *General George Washington* examines Washington's "wartime experiences from the 1750s to the 1790s" and evaluates "his qualities and defects as a strategist, tactician, administrator, and leader of men."⁶ *General George Washington* provides an informative and captivating look into the military life of one of the greatest figures in American history.

The author, Edward Lengel, does not simply offer a blow-by-blow account of the battles and engagements in which George Washington took part, but rather examines his development as a military officer,⁷ his military decisions on the field of battle,⁸ his leadership abilities,⁹ and his secrets to success during the American Revolution.¹⁰ *General George Washington*

begins with a young man venting his urge for military distinction on the American frontier, and ends with that man, now an old soldier, betraying the trust of a loyal friend and comrade from his writing desk at Mount Vernon. Between these episodes appears a man of many contradictions: one who, though brave, once fled in fear of his life; who went to war out of idealism and made victory more difficult with his prejudice; who showed remarkable perseverance and patience but rushed impetuously into battle, who failed to win the respect of his soldiers in battle but won it in camp; who conquered and blundered, was vindictive and fair, kind and cruel.¹¹

Edward Lengel delves into George Washington's military history to illustrate Washington as a man who, unlike General Robert E. Lee, was not a tactical genius, but rather a well-rounded military leader who understood the administrative and political requirements necessary for a major military force's success.¹² The author portrays George Washington as a human being, capable of making mistakes, but bringing just the right education, experience, skills, and intellect to bear at the precise moment in history for the new American nation.¹³ George Washington was not necessarily a battlefield hero, but rather a national savior.¹⁴

¹ EDWARD G. LENGEL, *GENERAL GEORGE WASHINGTON: A MILITARY LIFE* (2005).

² U.S. Army. Written while assigned as a student, 54th Judge Advocate Officer Graduate Course, The Judge Advocate General's Legal Center and School, U.S. Army, Charlottesville, Virginia.

³ See LENGEL, *supra* note 1, at 40.

⁴ *Id.* at 44-45.

⁵ *Id.* at 358-60.

⁶ *Id.* at xi.

⁷ See *id.* at 40, 51, 63, 80.

⁸ See *id.* at 366, 368.

⁹ See *id.* at 368-69.

¹⁰ See *id.* at 363-71.

¹¹ *Id.* at xii.

¹² See *id.*

¹³ See *id.* at 370.

¹⁴ See *id.* at 371.

General George Washington is a valuable tool for judge advocates seeking a better understanding of effective leadership and the profession of arms in America. To appreciate fully the lessons of the book, the reader must understand the composition of a profession. A profession requires “organization of the occupation, extensive education of its members, service to society, and shared ethics.”¹⁵ George Washington saw the value of a standing, professional Army¹⁶ and was instrumental in laying the initial foundation for the profession of arms in the United States.¹⁷ The author also does an outstanding job using the life experiences of George Washington to show his evolution into an effective leader.¹⁸

Unlike previous books written about George Washington’s military life,¹⁹ Edward Lengel was able to draw upon his research of the largest collection of documents relating to George Washington in the nation.²⁰ The author is not only an associate professor of history at the University of Virginia, but he is also an Associate Editor for *The Papers of George Washington*.²¹ This position has provided him access to “some 135,000 documents, including letters written to and from Washington; his diaries, accounts, school exercises, and miscellaneous personal papers; and reports, returns, and other administrative materials relating to [George Washington’s] careers in the military and in politics.”²² Although many authors have written on the military and political life of George Washington, this is the first book that analyzes his military life after considering the vast collection of documents in *The Papers of George Washington*.²³ This unique insight into George Washington’s personal thoughts and ideas during his military campaigns makes this book stand out from the vast collection of other books written about his military life.²⁴

General George Washington uses a chronological approach to follow George Washington’s life from birth until death, focusing almost exclusively on his military life.²⁵ The book begins by providing insight into George Washington’s motivation to seek military service and into his experiences on the field of battle. Lawrence Washington, George Washington’s half-brother, was a major influence in George Washington’s life and his mentor during George Washington’s early military development.²⁶ Lawrence passed away in 1752 at the age of thirty-four, leaving a gaping hole in George Washington’s life.²⁷ George Washington was twenty-years old at the time and never again had a significant mentor or father figure to guide him in his budding military life.²⁸

¹⁵ Don M. Snider, *The U.S. Army as Profession, in THE FUTURE OF THE ARMY PROFESSION* 16 (Lloyd J. Matthews ed., 2d ed., 2005).

¹⁶ See LENGEL, *supra* note 1, at 353.

¹⁷ See *id.* at 354.

¹⁸ See *id.* at 368-70.

¹⁹ See *id.* at xi-xii.

²⁰ *Id.* at 419.

²¹ *Id.* at inside flap; see also *THE PAPERS OF GEORGE WASHINGTON, 1748-1799* (Donald Jackson ed., 1969). *The Papers of George Washington* is a project that Donald Jackson began in 1969 to accumulate documents relating to George Washington. LENGEL, *supra* note 1, at xiii. The project is currently ongoing. *Id.* The editors of the project have completed and published fifty-two volumes of Washington’s documents. *Id.* The project intends to complete and publish an additional forty volumes. *Id.*

²² LENGEL, *supra* note 1, at xiii.

²³ See *id.* at xi-xii.

²⁴ See *id.* See generally MASON LOCKE WEEMS, *LIFE AND MEMORABLE ACTIONS OF GEORGE WASHINGTON* (1800); JOHN MARSHALL, *THE LIFE OF GEORGE WASHINGTON* (1804-07); HENRY B. CARRINGTON, *WASHINGTON, THE SOLDIER* (1899); THOMAS G. FROTHINGHAM, *WASHINGTON: COMMANDER IN CHIEF* (1930); RUPERT HUGHES, *GEORGE WASHINGTON: THE SAVIOR OF THE STATES* (1930); 1-7 DOUGLAS SOUTHALL FREEMAN, *GEORGE WASHINGTON: A BIOGRAPHY* (1948-57); JAMES T. FLEXNER, *GEORGE WASHINGTON IN THE AMERICAN REVOLUTION* (1968); JOHN R. ALDEN, *GEORGE WASHINGTON: A BIOGRAPHY* (1984); RICHARD BROOKHISER, *FOUNDING FATHER: REDISCOVERING GEORGE WASHINGTON* (1996); E. HARRISON CLARK, *ALL CLOUDLESS GLORY: THE LIFE OF GEORGE WASHINGTON* (1995-96); WILLARD S. RANDALL, *GEORGE WASHINGTON: A LIFE* (1997); RICHARD N. SMITH, *PATRIARCH: GEORGE WASHINGTON AND THE NEW AMERICAN NATION* (1993); JOSEPH J. ELLIS, *HIS EXCELLENCY: GEORGE WASHINGTON* (2004).

²⁵ The book spends very little time discussing the period from 1759 to mid-1775 when George Washington developed his political career during the years between the French and Indian War and the Revolutionary War. See LENGEL, *supra* note 1, at 81-86 (spending only six pages on a period spanning more than a quarter of his life). The book also spends very little time discussing the period from 1784 to mid-1798 when George Washington returned to life as a landowner at Mount Vernon and served as the first President of the United States. See *id.* at 351-58 (spending only eight pages on this important and significant period of George Washington’s life as the first President of the United States).

²⁶ See *id.* at 8.

²⁷ *Id.* at 16-17.

²⁸ See *id.* George Washington’s father passed away in 1743. *Id.* at 7.

The book examines George Washington's involvement in the Ohio River valley and the French and Indian War, a period lasting from 1753 to 1758.²⁹ George Washington gained an understanding of effective leadership during this period and an appreciation for having a professional, well-trained military.³⁰ This understanding and appreciation came from both his command experience³¹ and his personal observation of other's command experiences.³² In 1759, George Washington resigned his commission and entered politics.³³ In 1775, however, the Continental Congress called him into service once again.³⁴ The period of time leading up to his appointment as Commander-in-Chief of the Continental Army in 1775 is particularly interesting because few Americans know the details about Washington's early military life.

The bulk of the book focuses on General George Washington's time as the Commander-in-Chief of the Continental Army during the American Revolution. *General George Washington* weaves an intriguing tale of harrowing success for the Continental Army. Edward Lengel traces General Washington's wartime experience starting with his assumption of command on a battlefield outside Boston in 1775,³⁵ and turning to George Washington's subsequent defeats on Long Island³⁶ and Manhattan Island.³⁷ The story continues with his campaigns in New Jersey³⁸ and his defeats at both Brandywine³⁹ and Germantown,⁴⁰ which led to the British capture of Philadelphia.⁴¹ The author spends some time on the grueling winter at Valley Forge where George Washington used his effective leadership to save the Continental Army.⁴² The elements, disease, and lack of supplies almost destroyed the Continental Army at Valley Forge, but George Washington micromanaged the camp administration, finding innovative techniques to provide better shelters, stave off disease, and acquire food and clothing for his men.⁴³ The book then discusses the battle of Monmouth that ended in a draw⁴⁴ and finally covers the groundwork that George Washington laid⁴⁵ for the eventual victory at the Battle of Yorktown.⁴⁶ The book leaves the reader on the edge of his seat, yearning to hear how each subsequent battle unfolds. Edward Lengel's use of effective transitions between chapters, and even between sections within each chapter, adds to the suspense.

Although the suspense builds during the execution of the Revolutionary War effort, it tapers off in the last two chapters, which focus on General Washington's departure from military service⁴⁷ and his subsequent return as Commander-in-Chief at the request of President John Adams.⁴⁸ The author wraps up with a summation of General Washington's military life.⁴⁹

General Washington's ultimate success was less a result of his abilities on the battlefield and more a factor of his administrative acumen and leadership abilities off the battlefield.⁵⁰ Under the command of General Washington, the

²⁹ See *id.* at 19, 32, 51-53, 63, 74-76.

³⁰ See *id.* at 78-80.

³¹ See *id.* at 40, 63.

³² See *id.* at 51, 80.

³³ *Id.* at 76-77.

³⁴ See *id.* at 87-88.

³⁵ *Id.* at 105.

³⁶ *Id.* at 147.

³⁷ *Id.* at 167-68.

³⁸ *Id.* at 169-71, 180, 202.

³⁹ *Id.* at 241-42.

⁴⁰ *Id.* at 259.

⁴¹ *Id.* at 264.

⁴² *Id.* at 267.

⁴³ See *id.* at 273-74.

⁴⁴ *Id.* at 305.

⁴⁵ See *id.* at 333-35.

⁴⁶ *Id.* at 342.

⁴⁷ *Id.* at 352.

⁴⁸ *Id.* at 360.

⁴⁹ *Id.* at 365-71.

Continental Army suffered far more military defeats than successes on the battlefield.⁵¹ Although brave⁵² and decisive under fire,⁵³ George Washington benefited extensively from good luck and poor decisions by his British adversaries.⁵⁴ George Washington's heroic leadership, micromanagement, and persistence off the battlefield led to the military victory at the Battle of Yorktown and the eventual withdrawal of the British Army from the United States.⁵⁵

General George Washington is an interesting book about one of the most important men in the history of the United States. The reader, however, must be aware that the book has some limitations. Although well-researched, containing an extensive bibliography⁵⁶ and 368 footnotes,⁵⁷ the method of citation is confusing and lacks the detail and sometimes the necessary authority to assist the reader with his own additional research on the topic. For example, during George Washington's early military adventures in the Ohio River valley, he commanded a small force that ambushed a French scouting party led by Ensign Joseph Coulon de Villiers, sieur de Jumonville.⁵⁸ The ambush resulted in the death of ten to twelve French soldiers and the wounding of two more.⁵⁹ After the ambush, while George Washington was reading a letter concerning diplomatic matters sent by the French commander in the area, an Indian accompanying Washington's force murdered the ensign.⁶⁰ Edward Lengel argues that the ambush was not a massacre and that George Washington never recorded his response to the murder of Ensign Jumonville.⁶¹ The author does not provide any footnotes to support these conclusions. For such a significant event in the military life of George Washington, his first engagement on the field of battle, the author fails to convince the reader why he should be believed. This is only one example of the poor documentation contained in the book. Although the author clearly had access to extensive documentation, his minimal use of footnotes limit the book's use for additional research.

Another problem with the book is the lack of detail, which sometimes leads to confusion. After George Washington's surrender at Fort Mifflin, the French kept several prisoners, including Captain Robert Stobo.⁶² The French hoped to exchange these prisoners for French prisoners held by the Virginians.⁶³ The author explains that Captain Stobo remained a prisoner of the French, but in the same sentence the author states that Captain Stobo somehow managed to smuggle a map of Fort Mifflin back to Virginia.⁶⁴ Did Captain Stobo escape? Did the French exchange Captain Stobo? Did the French release or parole Captain Stobo for good will reasons? The lack of detail at this point and others in the book is confusing. These episodes are rare, however, and do not cause a major distraction from the flow of the book.

As with most military history books, battlefield maps are an absolute must to understand troop movements fully, but *General George Washington* sometimes fails to deliver a good map at the right time during the story. For example, in the fall of 1776, following the Continental Army's defeat at Harlem Heights on Manhattan Island, the British chased the Continental Army off the island into upstate New York.⁶⁵ The book does not contain a map showing the movements in upstate New York, making it difficult to understand where Throg's Head and White Plains are located in relationship to the battle at

⁵⁰ *See id.*

⁵¹ *See id.* at 365-66.

⁵² *Id.* at 368.

⁵³ *Id.* at 370.

⁵⁴ *Id.* at 366.

⁵⁵ *See id.* at 369.

⁵⁶ There are thirteen pages in the bibliography. *Id.* at 420-34.

⁵⁷ *Id.* at 368.

⁵⁸ *Id.* at 34, 37-38.

⁵⁹ *Id.* at 37.

⁶⁰ *Id.* at 38.

⁶¹ *Id.* at 37-38.

⁶² *Id.* at 45.

⁶³ *Id.* at 44.

⁶⁴ *Id.* at 50.

⁶⁵ *Id.* at 160.

Harlem Heights. On other occasions, maps are missing important information, mislabeled, or simply out of place.⁶⁶ One example occurs during the discussion of the military campaign in New Jersey in 1776.⁶⁷ There is a map titled “New Jersey Campaigns 1776-78.”⁶⁸ However, the map shows the routes traced by the British and American forces during the last half of June 1778.⁶⁹ Crossed sabers at Trenton and Princeton, the site of two battles fought around the end of 1776, are the only indications on the map of any action in the New Jersey campaign of 1776.⁷⁰ The author fails to show the route the British and American forces followed in the New Jersey campaign of 1776. The better solution would have been to use two separate maps to show the movement of the forces in New Jersey during 1776 and 1778. Luckily, the major battles have detailed maps showing troop movements and formations, preventing the reader from becoming confused about critical military engagements.

Although *General George Washington* has some weaknesses, the author successfully evaluates George Washington’s “qualities and defects” during his military adventures.⁷¹ By the end of the book, the reader can fully understand that George Washington was not a tactical genius on the field of battle, but he was a superb leader and the right man for the job during the Revolutionary War.⁷² The author spends a great deal of time in the final chapter supporting his conclusion that “[n]obody – not Nathanael Greene or Henry Knox, and certainly not Thomas Jefferson, Benjamin Franklin, or John Adams – united the military, political, and personal skills that made Washington unique.”⁷³ Unlike earlier books that stretch the facts and portray General Washington as a superb military tactician, *General George Washington* is a more factual examination of the life of George Washington.⁷⁴ In the end, the author supports the same conclusions as in earlier books—George Washington was an indispensable American hero. Edward Lengel, however, arrives at that conclusion with an insightful and reasoned look at George Washington’s military experience and the reasons for his success.⁷⁵ Effective judge advocates must have a good understanding of the military profession and at least some knowledge of military history. Commanders expect this from all officers, regardless of branch. This book is worthwhile reading for judge advocates and other military officers because George Washington was such an important person in the military history of the nation and established the foundation for the current military profession in the United States.

⁶⁶ On page 130, the author provides a map of Long Island. *Id.* at 130. In the accompanying text, the author discusses the military defenses of New York City, to include those on Staten Island; however, the map showing the defenses of New York City does not include Staten Island, so it is difficult to visualize the defenses around the city as discussed in the text. *Id.* at 129.

⁶⁷ *See id.* at 169-171.

⁶⁸ *Id.* at 174.

⁶⁹ *Id.*

⁷⁰ *See id.*

⁷¹ *See id.* at xi.

⁷² *See id.* at 370-71.

⁷³ *Id.* at 370.

⁷⁴ *See id.* at x-xi.

⁷⁵ *See id.*

CLE News

1. Resident Course Quotas

a. Attendance at resident continuing legal education (CLE) courses at The Judge Advocate General's Legal Center and School, U.S. Army (TJAGLCS), is restricted to students who have confirmed reservations. Reservations for TJAGSA CLE courses are managed by the Army Training Requirements and Resources System (ATRRS), the Army-wide automated training system. If you do not have a confirmed reservation in ATRRS, attendance is prohibited.

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

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

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

Go to Self Service, My Education. Scroll to Globe Icon (not the AARTS Transcript Services). Go to ATRRS On-line, Student Menu, Individual Training Record. The training record with reservations and completions will be visible.

If you do not see a particular entry for a course that you are registered for or have completed, see your local ATRRS Quota Manager or Training Coordinator for an update or correction.

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

2. TJAGLCS CLE Course Schedule (June 2006 - October 2007) (<http://www.jagcnet.army.mil/JAGCNETINTERNET/HOMEPAGES/AC/TJAGSAWEB.NSF/Main?OpenFrameset> (click on Courses, Course Schedule))

ATTRS. No.	Course Title	Dates
GENERAL		
5-27-C22	55th Graduate Course	14 Aug 06 – 24 May 07
5-27-C22	56th Graduate Course	13 Aug 07 – 23 May 08
5-27-C20	171st JA Officer Basic Course	22 Oct – 3 Nov 06 (BOLC III) Ft. Lee 3 Nov 06 – 31 Jan 07 (BOLC III) TJAGSA
5-27-C20	172d JA Officer Basic Course	4 – 16 Feb 07 (BOLC III) Ft. Lee 16 Feb – 2 May 07 (BOLC III) TJAGSA
5-27-C20	173d JA Officer Basic Course	1 – 13 Jul 07 (BOLC III) Ft. Lee 13 – Jul – 26 Sep 07 (BOLC III) TJAGSA (Tentative)
5F-F70	38th Methods of Instruction Course	26 – 27 Jul 07
5F-F1	193d Senior Officers Legal Orientation Course	11 – 15 Sep 06
5F-F1	194th Senior Officers Legal Orientation Course	13 – 17 Nov 06
5F-F1	195th Senior Officers Legal Orientation Course	29 Jan – 2 Feb 07

5F-F1	196th Senior Officers Legal Orientation Course	26 – 30 Mar 07
5F-F1	197th Senior Officers Legal Orientation Course	11 – 15 Jun 07
5F-F1	198th Senior Officers Legal Orientation Course	10 – 14 Sep 07
5F-F3	13th RC General Officers Legal Orientation Course	14 – 16 Feb 07
5F-F52	37th Staff Judge Advocate Course	4 – 8 Jun 07
5F-F52-S	10th Staff Judge Advocate Team Leadership Course	4 – 6 Jun 07
5F-F55	2007 JAOAC (Phase II)	7 – 19 Jan 07
5F-JAG	2007 JAG Annual CLE Workshop	1 – 5 Oct 07
JARC-181	2007 JA Professional Recruiting Seminar	17 – 20 Jul 07
NCO ACADEMY COURSES		
512-27D30 (Phase 2)	6th Paralegal Specialist BNCOC	11 Sep – 6 Oct 06
512-27D30 (Phase 2)	001-07 Paralegal Specialist BNCOC	6 Nov – 8 Dec 06
512-27D30 (Phase 2)	002-07 Paralegal Specialist BNCOC	28 Jan – 2 Mar 07
512-27D30 (Phase 2)	003-07 Paralegal Specialist BNCOC	2 Apr – 4 May 07
512-27D30 (Phase 2)	004-07 Paralegal Specialist BNCOC	2 Apr – 4 May 07
512-27D30 (Phase 2)	005-07 Paralegal Specialist BNCOC	11 Jun – 13 Jul 07
512-27D30 (Phase 2)	006-07 Paralegal Specialist BNCOC	13 Aug – 14 Sep 07
512-27D40 (Phase 2)	001-07 Paralegal Specialist ANCOC	6 Nov – 8 Dec 06
512-27D40 (Phase 2)	002-07 Paralegal Specialist ANCOC	28 Jan – 2 Mar 07
512-27D40 (Phase 2)	003-07 Paralegal Specialist ANCOC	11 Jun – 13 Jul 07
512-27D40 (Phase 2)	004-07 Paralegal Specialist ANCOC	13 Aug – 14 Sep 07
WARRANT OFFICER COURSES		
7A-270A1	18th Legal Administrators Course	2 – 6 Apr 07
7A-270A2	8th JA Warrant Officer Advanced Course	9 Jul – 3 Aug 07
7A-270A0	14th JA Warrant Officer Basic Course	29 May – 22 Jun 07
ENLISTED COURSES		
5F-F58	2007 Paralegal Sergeants Major Symposium	5 – 9 Feb 07

512-27DC5	21st Court Reporter Course	31 Jul – 29 Sep 06
512-27DC5	22d Court Reporter Course	29 Jan – 30 Mar 07
512-27DC5	23d Court Reporter Course	23 Apr – 22 Jun 07
512-27DC5	24th Court Reporter Course	30 Jul – 28 Sep 07
512-27DC6	7th Court Reporting Symposium	30 Oct – 3 Nov 06
512-27DC6	8th Court Reporting Symposium	29 Oct – 3 Nov 07
512-27D/20/30	18th Law for Paralegal NCOs Course	26 – 30 Mar 07
512-27D/40/50	16th Senior Paralegal Course	5 – 9 Mar 07
512-27D-CLNCO	9th Chief Paralegal/BCT NCO Course	5 – 9 Mar 07
ADMINISTRATIVE AND CIVIL LAW		
5F-F21	5th Advanced Law of Federal Employment Course	18 – 20 Oct 06
5F-F21	6th Advanced Law of Federal Employment Course	17 – 19 Oct 07
5F-F22	60th Law of Federal Employment Course	16 – 20 Oct 06
5F-F22	61st Law of Federal Employment Course	15 – 19 Oct 07
5F-F23	59th Legal Assistance Course	30 Oct – 3 Nov 06
5F-F23	60th Legal Assistance Course	7 – 11 May 07
5F-F23	61st Legal Assistance Course	29 Oct – 2 Nov 07
5F-F24	31st Admin Law for Military Installations Course	19 – 23 Mar 07
5F-F28	2006 Income Tax Course	11 – 15 Dec 06
5F-F29	25th Federal Litigation Course	30 Jul – 3 Aug 07
5F-F202	5th Ethics Counselors Course	23 – 27 Apr 07
5F-F23E	2006 USAREUR Legal Assistance CLE	23 – 27 Oct 06
5F-F23E	2007 USAREUR Legal Assistance CLE	22 – 26 Oct 07
5F-F24E	2006 USAREUR Administrative Law CLE	18 – 22 Sep 06
5F-F24E	2007 USAREUR Administrative Law CLE	17 – 21 Sep 07
5F-F26E	2006 USAREUR Claims Course	16 – 20 Oct 06
5F-F26E	2007 USAREUR Claims Course	15 – 19 Oct 07
5F-F28E	2006 USAREUR Income Tax CLE	4 – 8 Dec 06
5F-F28P	2007 PACOM Income Tax CLE	6 – 9 Nov 06
5F-F28H	2006 HAWAII Income Tax CLE	13 – 17 Nov 06

CONTRACT AND FISCAL LAW		
5F-F10	157th Contract Attorneys Course	12 – 20 Mar 07
5F-F11	2006 Government Contract Law Symposium	5 – 8 Dec 06
5F-F12	75th Fiscal Law Course	23 – 27 Oct 06
5F-F12	76th Fiscal Law Course	30 Apr – 4 May 07
5F-F13	3d Operational Contracting Course	21 – 23 Mar 07
5F-F102	6th Contract Litigation Course	9 – 13 Apr 07
5F-F15E	2007 USAREUR Contract & Fiscal Law CLE	13 – 16 Feb 07
N/A	2007 Maxwell AFB Fiscal Law Course	5 – 8 Feb 07
5F-F14	Comptrollers Accreditation Fiscal Law Course (Washington, DC)	16 – 19 Jan 07
5F-F14	Comptrollers Accreditation Fiscal Law Course (Yuma, AZ)	22 – 26 Jan 07
5F-F14	Comptrollers Accreditation Fiscal Law Course (Ft. Monmouth, NJ)	5 – 8 Jun 07
CRIMINAL LAW		
5F-F33	50th Military Judge Course	23 Apr – 11 May 07
5F-F34	26th Criminal Law Advocacy Course	11 – 22 Sep 06
5F-F34	27th Criminal Law Advocacy Course	5 – 16 Feb 07
5F-F34	28th Criminal Law Advocacy Course	10 – 21 Sep 07
5F-F35	30th Criminal Law New Developments Course	6 – 9 Nov 06
5F-301	10th Advanced Advocacy Training	29 May – 1 Jun 07
5F-F35E	2007 USAREUR Criminal Law CLE	29 Jan – 2 Feb 07
INTERNATIONAL AND OPERATIONAL LAW		
5F-F42	3d Advanced Intelligence Law Course	27 – 29 Jul 07
	48th Operational Law Course	30 Jul – 10 Aug 07
5F-F42	87th Law of War Course	29 Jan – 2 Feb 07
5F-F42	88th Law of War Course	9 – 13 Jul 07
5F-F44	2d Legal Aspects of Information Operations Course	16 – 20 Jul 07
5F-F45	6th Domestic Operational Law Course	13 Nov – 17 Nov 06
5F-F45	7th Domestic Operational Law Course	29 Oct – 2 Nov 07
5F-F47	47th Operational Law Course	26 Feb – 9 Mar 07

5F-F47	48th Operational Law Course	6 – 17 Aug 07
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3. Naval Justice School and FY 2007 Course Schedule

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

Naval Justice School Newport, RI		
CDP	Course Title	Dates
0257	Lawyer Course (040) Lawyer Course (010) Lawyer Course (020) Lawyer Course (030) Lawyer Course (040)	7 Aug – 6 Oct 06 16 Oct – 15 Dec 06 22 Jan – 23 Mar 07 4 Jun – 3 Aug 07 13 Aug – 12 Oct 07
BOLT	BOLT (010) BOLT (010) BOLT (020) BOLT (020) BOLT (030) BOLT (030)	10 – 13 Oct 06 (USMC) 10 – 13 Oct 06 (NJS) 26 – 30 Mar 07 (USMC) 26 – 30 Mar 07 (NJS) 6 – 10 Aug 07 (USMC) 6 – 10 Aug 07 (NJS)
961F	Coast Guard Judge Advocate Course (010)	10 – 13 Oct 06
900B	Reserve Lawyer Course (020) Reserve Lawyer Course (010) Reserve Lawyer Course (020)	11 – 15 Sep 06 7 – 11 May 07 10 – 14 Sep 07
914L	Law of Naval Operations (020) Law of Naval Operations (Reservists) (010) Law of Naval Operations (Reservists) (020)	18 – 22 Sep 06 14 – 18 May 07 17 – 21 May 07
850T	SJA/E-Law Course (010) SJA/E-Law Course (020)	29 May – 8 Jun 07 6 – 17 Aug 07
850V	Law of Military Operations (010)	11 – 22 Jun 07
786R	Advanced SJA/Ethics (010) Advanced SJA/Ethics (020)	26 – 30 Mar 07 (San Diego) 16 – 20 Apr 07 (Norfolk)
748K	National Institute of Trial Advocacy (010) National Institute of Trial Advocacy (020)	23 – 27 Oct 06 (Camp Lejeune) 14 – 18 May 07 (San Diego)
0258	Senior Officer (070) Senior Officer (010) Senior Officer (020) Senior Officer (030) Senior Officer (040) Senior Officer (050) Senior Officer (060)	25 – 29 Sep 06 (New Port) 30 Oct – 3 Nov 06 (New Port) 8 – 12 Jan 07 (New Port) 12 – 16 Mar 07 (New Port) 7 – 11 May 07 (New Port) 23 – 27 Jul 07 (New Port) 24 – 28 Sep 07 (New Port)
4048	Estate Planning (010)	23 – 27 Jul 07
No CDP	Prosecuting Trial Enhancement Training (010)	22 – 26 Jan 07

7487	Family Law/Consumer Law (010)	16 – 20 Apr 07
7485	Litigating National Security (010)	5 – 7 Mar 07
748B	Naval Legal Service Command Senior Officer Leadership (010)	20 – 31 Aug 07
2205	Defense Trial Enhancement (010)	8 – 12 Jan 07
3938	Computer Crimes (010)	21 – 25 May 07 (Norfolk)
961D	Military Law Update Workshop (Officer) (010) Military Law Update Workshop (Officer) (020)	TBD TBD
961M	Effective Courtroom Communications (010) Effective Courtroom Communications (020)	4 – 8 Dec 06 (Jacksonville) 26 – 30 Mar 07 (San Diego)
961J	Defending Complex Cases (010)	16 – 20 Jul 07
525N	Prosecuting Complex Cases (010)	9 – 13 Jul 07
2622	Senior Officer (Fleet) (010) Senior Officer (Fleet) (020) Senior Officer (Fleet) (030) Senior Officer (Fleet) (040) Senior Officer (Fleet) (050) Senior Officer (Fleet) (060) Senior Officer (Fleet) (070) Senior Officer (Fleet) (080) Senior Officer (Fleet) (090) Senior Officer (Fleet) (100) Senior Officer (Fleet) (110) Senior Officer (Fleet) (120) Senior Officer (Fleet) (130)	13 – 17 Nov 06 (Pensacola, FL) 11 – 15 Dec 06 (Pensacola, FL) 29 Jan – 2 Feb 07 (Yokosuka, Japan) 5 Feb – 9 Feb 07 (Okinawa, Japan) 12 – 16 Feb 07 (Pensacola, FL) 26 – 30 Mar 07 (Pensacola, FL) 2 – 6 Apr 07 (Quantico, VA) 9 – 13 Apr 07 (Camp Lejeune, NC) 23 – 27 Apr 07 (Pensacola, FL) 23 – 27 Apr 07 (Naples, Italy) 4 – 8 Jun 07 (Pensacola, FL) 9 – 13 Jul 07 (Pensacola, FL) 27 – 31 Aug 07 (Pensacola, FL)
961A	Continuing Legal Education (PACOM) (010) Continuing Legal Education (EUCOM) (020)	29 – 30 Jan 07 (Yokosuka, Japan) 23 – 24 Apr 07 (Naples, Italy)
7878	Legal Assistance Paralegal Course (010)	16 Apr – 20 Apr 07
3090	Legalman Course (010) Legalman Course (020)	16 Jan – 30 Mar 07 16 Apr – 29 Jun 07
932V	Coast Guard Legal Technician Course (010)	10 – 21 Sep 06
846L	Senior Legalman Leadership Course (010)	23 – 27 Jul 07
049N	Reserve Legalman Course (Phase I) (010)	9 – 20 Apr 07
056L	Reserve Legalman Course (Phase II) (010)	23 Apr – 4 May 07
846M	Reserve Legalman Course (Phase III) (010)	7 – 18 May 07
5764	LN/Legal Specialist Mid-Career Course (010) LN/Legal Specialist Mid Career Course (020)	16 – 27 Oct 06 17 – 28 Sep 07

961G	Military Law Update Workshop (Enlisted) (010) Military Law Update Workshop (Enlisted) (020)	TBD TBD
4040	Paralegal Research & Writing (010) Paralegal Research & Writing (020) Paralegal Research & Writing (030)	19 – 30 Mar 07 (Newport) 7 – 18 May 07 (Norfolk) 16 – 27 Jul 07 (San Diego)
4046	SJA Legalman (020)	29 May – 7 Jun 07 (Newport)
627S	Senior Enlisted Leadership Course (010) Senior Enlisted Leadership Course (020) Senior Enlisted Leadership Course (030) Senior Enlisted Leadership Course (040) Senior Enlisted Leadership Course (050) Senior Enlisted Leadership Course (060) Senior Enlisted Leadership Course (070) Senior Enlisted Leadership Course (080) Senior Enlisted Leadership Course (090) Senior Enlisted Leadership Course (100) Senior Enlisted Leadership Course (110) Senior Enlisted Leadership Course (120) Senior Enlisted Leadership Course (130) Senior Enlisted Leadership Course (140) Senior Enlisted Leadership Course (150) Senior Enlisted Leadership Course (160) Senior Enlisted Leadership Course (170) Senior Enlisted Leadership Course (180)	11 – 13 Oct 06 (Norfolk) 23 – 25 Oct 06 (San Diego) 8 – 10 Nov 06 (Norfolk) 10 – 12 Jan 07 (Mayport) 29 – 31 Jan 07 (Pendleton) 30 Jan – 1 Feb 07 (Yokosuka, Japan) 6 – 8 Feb 07 (Okinawa, Japan) 21 – 23 Feb 07 (Norfolk) 20 – 22 Mar 07 (San Diego) 28 – 30 Mar 07 (Norfolk) 25 – 27 Apr 07 (Norfolk) 24 – 26 Apr 07 (Bremerton) 1 – 3 May 07 (San Diego) 23 – 25 May 07 (Norfolk) 17 – 19 Jul 07 (San Diego) 18 – 20 Jul 07 (Great Lakes) 15 – 17 Aug 07 (Norfolk) 28 – 30 Aug 07 (Pendleton)
Naval Justice School Detachment Norfolk, VA		
0376	Legal Officer Course (010) Legal Officer Course (020) Legal Officer Course (030) Legal Officer Course (040) Legal Officer Course (050) Legal Officer Course (060) Legal Officer Course (070) Legal Officer Course (080)	16 Oct – 3 Nov 06 27 Nov – 15 Dec 06 29 Jan – 16 Feb 07 5 – 23 Mar 07 30 Apr – 18 May 07 4 – 22 Jun 07 23 Jul – 10 Aug 07 10 – 28 Sep 07
0379	Legal Clerk Course (080) Legal Clerk Course (010) Legal Clerk Course (020) Legal Clerk Course (030) Legal Clerk Course (040) Legal Clerk Course (050) Legal Clerk Course (060) Legal Clerk Course (070) Legal Clerk Course (080)	11 – 22 Sep 06 16 – 27 Oct 06 4 – 15 Dec 06 22 Jan – 2 Feb 07 5 – 16 Mar 07 2 – 13 Apr 07 4 – 15 Jun 07 30 Jul – 10 Aug 07 10 – 21 Sep 07
3760	Senior Officer Course (010) Senior Officer Course (020) Senior Officer Course (030) Senior Officer Course (040) Senior Officer Course (050) Senior Officer Course (060) Senior Officer Course (070)	13 – 17 Nov 06 8 – 12 Jan 07 (Mayport) 26 Feb – 2 Mar 07 2 – 6 Apr 07 25 – 29 Jun 07 16 – 20 Jul 07 (Great Lakes) 27 – 31 Aug 07

4046	Military Justice Course for SJA/Convening Authority/Shipboard Legalmen (030)	18 – 29 Jun 07
Naval Justice School Detachment San Diego, CA		
947H	Legal Officer Course (010) Legal Officer Course (020) Legal Officer Course (030) Legal Officer Course (040) Legal Officer Course (050) Legal Officer Course (060) Legal Officer Course (070) Legal Officer Course (080)	2 – 20 Oct 06 27 Nov – 15 Dec 06 8 – 26 Jan 07 26 Feb – 16 Mar 07 7 – 25 May 07 11 – 29 Jun 07 30 Jul – 17 Aug 07 10 – 28 Sep 07
947J	Legal Clerk Course (010) Legal Clerk Course (020) Legal Clerk Course (030) Legal Clerk Course (040) Legal Clerk Course (050) Legal Clerk Course (060) Legal Clerk Course (070) Legal Clerk Course (080)	2 – 13 Oct 06 6 – 17 Nov 06 27 Nov – 8 Dec 06 8 – 19 Jan 07 2 – 13 Apr 07 7 – 18 May 07 11 – 22 Jun 07 30 Jul – 10 Aug 07
3759	Senior Officer Course (090) Senior Officer Course (010) Senior Officer Course (020) Senior Officer Course (030) Senior Officer Course (040) Senior Officer Course (050) Senior Officer Course (060) Senior Officer Course (070) Senior Officer Course (080)	11 – 15 Sep 06 (Pendleton) 30 Oct – 3 Nov 06 (San Diego) 29 Jan – 2 Feb 07 (Pendleton) 12 – 16 Feb 07 (San Diego) 2 – 6 Apr 07 (San Diego) 23 – 27 Apr 07 (Bremerton) 4 – 8 Jun 07 (San Diego) 20 – 24 Aug 07 (San Diego) 27 – 31 Aug 07 (Pendleton)
2205	CA Legal Assistance Course (010)	5 – 9 Feb 07 (San Diego)
4046	Military Justice Course for SJA/Convening Authority/Shipboard Legalmen (010)	26 Feb – 9 Mar 07

4. Air Force Judge Advocate General School Fiscal Year 2007 Course Schedule

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

Air Force Judge Advocate General School Maxwell AFB, AL	
Course Title	Dates
Federal Employee Labor Law Course, Class 07-A	2 – 6 Oct 06
Paralegal Apprenticeship Course, Class 07-01	2 Oct – 15 Nov 06

Judge Advocate Staff Officer Course, Class 07-A	10 Oct – 14 Dec 06
Paralegal Craftsman Course, Class 07-01	16 Oct – 21 Nov 06
Advanced Environmental Law Course, Class 07-A (Off-Site Wash DC Location)	30 – 31 Oct 06
Deployed Fiscal Law & Contingency Contracting Course, Class 07-A	28 Nov – 1 Dec 06
Paralegal Apprentice Course, Class 07-02	8 Jan – 21 Feb 07
Claims & Tort Litigation Course, Class 07-A	8 – 12 Jan 07
Air National Guard Annual Survey of the Law, Class 07-A & B (Off-Site)	19 – 20 Jan 07
Air Force Reserve Annual Survey of the Law, Class 07-A & B (Off-Site)	19 – 20 Jan 07
Computer Legal Issues Course, Class 07-A	22 – 26 Jan 07
Legal Aspects of Information Operations Law Course, Class 07-A	22 – 24 Jan 07
Trial & Defense Advocacy Course, Class 07-A	29 Jan – 9 Feb 07
Total Air Force Operations Law Course, Class 07-A	9 – 11 Feb 07
Homeland Defense Course, Class 07-A	12 – 16 Feb 07
Fiscal Law Course (DL), Class 07-A	12 – 16 Feb 07
Paralegal Craftsman Course, Class 07-02	13 Feb – 20 Mar 07
Judge Advocate Staff Officer Course, Class 07-B	20 Feb – 20 Apr 07
Paralegal Apprentice Course, Class 07-03	2 Mar – 13 Apr 07
Environmental Law Update Course (DL), Class 07-A	26 – 30 Mar 07
Paralegal Craftsman Course, Class 07-003	2 Apr – 4 May 07
Interservice Military Judges' Seminar, Class 07-A	10 – 13 Apr 07
Advanced Trial Advocacy Course, Class 07-A	23 – 27 Apr 07
Paralegal Apprentice Course, Class 07-04	22 Apr – 5 Jun 07
Environmental Law Course , Class 07-A	30 Apr – 4 May 07
Reserve Forces Judge Advocate Course, Class 07-A	7 – 11 May 07
Reserve Forces Paralegal Course, Class 07-A	7 – 18 May 07
Operations Law Course, Class 07-A	14 – 24 May 07
Military Justice Administration Course, Class 07-A	21 – 25 May 07
Accident Investigation Board Legal Advisors' Course, Class 07-A	4 – 8 Jun 07
Staff Judge Advocate Course, Class 07-A	11 – 22 Jun 07

Law Office Management Course, Class 07-A	11 – 22 Jun 07
Paralegal Apprentice Course, Class 07-05	18 Jun – 31 Jul 07
Advanced Labor & Employment Law Course, Class 07-A	25 – 29 Jun 07
Negotiation and Appropriate Dispute Resolution Course, Class 07-A	9 – 13 Jul 07
Judge Advocate Staff Officer Course, Class 07-C	16 Jul – 14 Sep 07
Paralegal Craftsman Course, Class 07-04	7 Aug – 11 Sep 07
Paralegal Apprentice Course, Class 07-06	13 Aug – 25 Sep 07
Reserve Forces Judge Advocate Course, Class 07-B	27 – 31 Aug 07
Trial & Defense Advocacy Course, Class 07-B	17 – 28 Sep 07
Legal Aspects of Sexual Assault Workshop, Class 07-A	25 – 27 Sep 07

5. Civilian-Sponsored CLE Courses

For addresses and detailed information, see the March 2006 issue of *The Army Lawyer*.

6. Phase I (Correspondence Phase), Deadline for RC-JAOAC 2007

The suspense for submission of all RC-JAOAC Phase I (Correspondence Phase) materials is ***NLT 2400, 1 November 2006***, for those judge advocates who desire to attend Phase II (Resident Phase) at TJAGLCS in January 2007. This requirement includes submission of all JA 151, Fundamentals of Military Writing, exercises.

This requirement is particularly critical for some officers. The 2007 JAOAC will be held in January 2007 and is a prerequisite for most judge advocate captains to be promoted to major.

A judge advocate who is required to retake any subcourse examinations or “re-do” any writing exercises must submit the examination or writing exercise to the Non-Resident Instruction Branch, TJAGLCS, for grading by the same deadline (1 November 2006). If the student receives notice of the need to re-do any examination or exercise after 1 October 2006, the notice will contain a suspense date for completion of the work.

Judge advocates who fail to complete Phase I correspondence courses and writing exercises by 1 November 2006 will not be cleared to attend the 2007 JAOAC. If you have not received written notification of completion of Phase I of JAOAC, you are not eligible to attend the resident phase.

If you have any additional questions, contact LTC Jeff Sexton, commercial telephone (434) 971-3357, or e-mail jeffrey.sexton@hqda.army.mil

7. Mandatory Continuing Legal Education Jurisdiction and Reporting Dates

Jurisdiction	Reporting Month
Alabama**	31 December annually
Arizona	15 September annually
Arkansas	30 June annually

California*	1 February annually
Colorado	Anytime within three-year period
Delaware	Period ends 31 December; confirmation required by 1 February if compliance required; if attorney is admitted in even-numbered year, period ends in even-numbered year, etc.
Florida**	Assigned month every three years
Georgia	31 January annually
Idaho	31 December, every third year, depending on year of admission
Indiana	31 December annually
Iowa	1 March annually
Kansas	Thirty days after program, hours must be completed in compliance period 1 July to June 30
Kentucky	10 August; completion required by 30 June
Louisiana**	31 January annually; credits must be earned by 31 December
Maine**	31 July annually
Minnesota	30 August annually
Mississippi**	15 August annually; 1 August to 31 July reporting period
Missouri	31 July annually; reporting year from 1 July to 30 June
Montana	1 April annually
Nevada	1 March annually
New Hampshire**	1 August annually; 1 July to 30 June reporting year
New Mexico	30 April annually; 1 January to 31 December reporting year
New York*	Every two years within thirty days after the attorney's birthday
North Carolina**	28 February annually

North Dakota	31 July annually for year ending 30 June
Ohio*	31 January biennially
Oklahoma**	15 February annually
Oregon	Period end 31 December; due 31 January
Pennsylvania**	Group 1: 30 April Group 2: 31 August Group 3: 31 December
Rhode Island	30 June annually
South Carolina**	1 January annually
Tennessee*	1 March annually
Texas	Minimum credits must be completed and reported by last day of birth month each year
Utah	31 January annually
Vermont	2 July annually
Virginia	31 October Completion Deadline; 15 December reporting deadline
Washington	31 January triennially
West Virginia	31 July biennially; reporting period ends 30 June
Wisconsin*	1 February biennially; period ends 31 December
Wyoming	30 January annually

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

**Must declare exemption.

Current Materials of Interest

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

Each year, TJAGSA publishes deskbooks and materials to support resident course instruction. Much of this material is useful to judge advocates and government civilian attorneys who are unable to attend courses in their practice areas, and TJAGSA receives many requests each year for these materials. Because the distribution of these materials is not in its mission, TJAGSA does not have the resources to provide these publications.

To provide another avenue of availability, some of this material is available through the Defense Technical Information Center (DTIC). An office may obtain this material through the installation library. Most libraries are DTIC users and would be happy to identify and order requested material. If the library is not registered with the DTIC, the requesting person's office/organization may register for the DTIC's services.

If only unclassified information is required, simply call the DTIC Registration Branch and register over the phone at (703) 767-8273, DSN 427-8273. If access to classified information is needed, then a registration form must be obtained, completed, and sent to the Defense Technical Information Center, 8725 John J. Kingman Road, Suite 0944, Fort Belvoir, Virginia 22060-6218; telephone (commercial) (703) 767-8273, (DSN) 427-8273, toll-free 1-800-225-DTIC, menu selection 2, option 1; fax (commercial) (703) 767-8228; fax (DSN) 426-8228; or e-mail to reghelp@dtic.mil.

If there is a recurring need for information on a particular subject, the requesting person may want to subscribe to the Current Awareness Bibliography (CAB) Service. The CAB is a profile-based product, which will alert the requestor, on a biweekly basis, to the documents that have been entered into the Technical Reports Database which meet his profile parameters. This bibliography is available electronically via e-mail at no cost or in hard copy at an annual cost of \$25 per profile. Contact DTIC at www.dtic.mil/dtic/current.html.

Prices for the reports fall into one of the following four categories, depending on the number of pages: \$7, \$12, \$42, and \$122. The DTIC also supplies reports in electronic formats. Prices may be subject to change at any time. Lawyers, however, who need specific documents for a case may obtain them at no cost.

For the products and services requested, one may pay either by establishing a DTIC deposit account with the

National Technical Information Service (NTIS) or by using a VISA, MasterCard, or American Express credit

card. Information on establishing an NTIS credit card will be included in the user packet.

There is also a DTIC Home Page at <http://www.dtic.mil> to browse through the listing of citations to unclassified/unlimited documents that have been entered into the Technical Reports Database within the last twenty-five years to get a better idea of the type of information that is available. The complete collection includes limited and classified documents as well, but those are not available on the web.

Those who wish to receive more information about the DTIC or have any questions should call the Product and Services Branch at (703)767-8267, (DSN) 427-8267, or toll-free 1-800-225-DTIC, menu selection 6, option 1; or send an e-mail to bcorders@dtic.mil.

Contract Law

AD A301096	Government Contract Law Deskbook, vol. 1, JA-501-1-95.
AD A301095	Government Contract Law Deskbook, vol. 2, JA-501-2-95.
AD A265777	Fiscal Law Course Deskbook, JA-506-93.

Legal Assistance

A384333	Servicemembers Civil Relief Act Guide, JA-260 (2006).
AD A333321	Real Property Guide—Legal Assistance, JA-261 (1997).
AD A326002	Wills Guide, JA-262 (1997).
AD A346757	Family Law Guide, JA 263 (1998).
AD A384376	Consumer Law Deskbook, JA 265 (2004).
AD A372624	Legal Assistance Worldwide Directory, JA-267 (1999).
AD A360700	Tax Information Series, JA 269 (2002).

AD A350513 Uniformed Services Employment and Reemployment Rights Act (USAERRA), JA 270, Vol. I (2006).

AD A350514 Uniformed Services Employment and Reemployment Rights Act (USAERRA), JA 270, Vol. II (2006).

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

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

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

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

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

Administrative and Civil Law

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

AD A327379 Military Personnel Law, JA 215 (1997).

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

AD A452516 Environmental Law Deskbook, JA-234 (2006).

AD A377491 Government Information Practices, JA-235 (2000).

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

AD A332865 AR 15-6 Investigations, JA-281 (1998).

Labor Law

AD A360707 The Law of Federal Employment, JA-210 (2000).

AD A360707 The Law of Federal Labor-Management Relations, JA-211 (2001).

Criminal Law

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

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

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

International and Operational Law

AD A377522 Operational Law Handbook, JA-422 (2005).

* Indicates new publication or revised edition.
 ** Indicates new publication or revised edition pending inclusion in the DTIC database.

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

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

b. Access to the JAGCNet:

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

- (a) Active U.S. Army JAG Corps personnel;
- (b) Reserve and National Guard U.S. Army JAG Corps personnel;
- (c) Civilian employees (U.S. Army) JAG Corps personnel;
- (d) FLEP students;
- (e) Affiliated (U.S. Navy, U.S. Marine Corps, U.S. Air Force, U.S. Coast Guard) DOD personnel

assigned to a branch of the JAG Corps; and, other personnel within the DOD legal community.

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

LAAWSXXI@jagc-smtp.army.mil

c. How to log on to JAGCNet:

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

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

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

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

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

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

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

3. TJAGSA Publications Available Through the LAAWS XXI JAGCNet

For detailed information of TJAGLCS Publications available through the LAAWS XXI JAGCNet, see the March 2006, issue of *The Army Lawyer*.

4. TJAGLCS Legal Technology Management Office (LTMO)

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

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

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

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

5. The Army Law Library Service

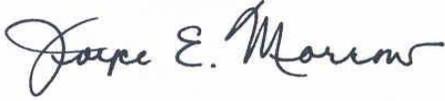
Per *Army Regulation 27-1*, paragraph 12-11, the Army Law Library Service (ALLS) must be notified before any redistribution of ALLS-purchased law library materials. Posting such a notification in the ALLS FORUM of JAGCNet satisfies this regulatory requirement as well as alerting other librarians that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

Point of contact is Mrs. Dottie Evans, The Judge Advocate General's School, U.S. Army, ATTN: CTR-MO, 600 Massie Road, Charlottesville, Virginia 22903-1781. Telephone DSN: 521-3278, commercial: (434) 971-3278, or e-mail at Dottie.Evans@hqda.army.mil.

By Order of the Secretary of the Army:

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