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Combatants**

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# Unleashing the Dogs of War: Using Military Working Dogs to Apprehend Enemy Combatants

Major Charles T. Kirchmaier<sup>1</sup>

*In the El Anbar province of central Iraq, an infantry company conducts a mission rehearsal in preparation for a cordon and search operation to capture an enemy insurgent leader.<sup>2</sup> The operation will be conducted in a densely populated neighborhood within the city limits of Ar Ramadi. The company commander planning the operation is concerned about what actions can be taken if the insurgent leader attempts to escape capture. The Rules of Engagement (ROE) authorize the use of force, including deadly force, to be used against the targeted insurgent leader. However, if the insurgent leader successfully avoids capture, or is shot dead while trying to escape, the commander may lose an invaluable opportunity to gather battlefield intelligence against the insurgency.<sup>3</sup> The company commander is also concerned about the risks of controlling lethal fires in a populated urban area. To mitigate the risks of collateral damage and civilian casualties, the company commander submits a request to employ a non-lethal weapon for use during the capture mission.*

*Back at the brigade command post, the company commander's request to use a non-lethal weapon during the cordon and search operation is forwarded from the battalion commander to the brigade commander. The brigade commander has never received a request to deploy a non-lethal weapon in an offensive operation and contemplates the ramifications of granting his subordinate commander's request. The brigade commander recognizes that the requested "non-lethal weapon" has never been used against the enemy during offensive combat operations. After studying the request for several minutes, the brigade commander turns to his Command Judge Advocate (CJA) and asks, "Judge, can we use a dog to apprehend enemy combatants during a cordon and search operation?"*

## I. Introduction

Every weapon used on the battlefield is required to undergo a Department of Defense (DOD) legal review;<sup>4</sup> but what is a judge advocate (JA) supposed to do when a commander wants to use a military working dog (MWD) like a weapon? This article attempts to answer that question by examining whether using MWDs to apprehend enemy combatants complies with the law of war (LOW).<sup>5</sup> Employing a MWD like a non-lethal weapon to capture targeted enemy combatants is not an entirely fictional idea like the one depicted in the opening scenario.<sup>6</sup> The legality of using MWDs during offensive combat operations recently appeared as an issue on the U.S. Army War College's 2006 Key Strategic Issues List (KSIL), suggesting

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<sup>2</sup> See generally U.S. DEP'T OF ARMY, FIELD MANUAL 3-06.20, CORDON AND SEARCH: MULTI-SERVICE TACTICS, TECHNIQUES, AND PROCEDURES FOR CORDON AND SEARCH OPERATIONS (Apr. 2006).

<sup>3</sup> See, e.g., Lieutenant General David H. Petraeus, *Learning Counterinsurgency: Observations from Soldiering in Iraq*, MIL. REV., Jan.-Feb. 2006, at 6 (stressing the importance of developing actionable intelligence at the tactical level as instrumental to successfully fighting a counterinsurgency campaign).

<sup>4</sup> U.S. DEP'T OF DEFENSE, DIR. 5000.1, THE DEFENSE ACQUISITION SYSTEM para. E1.1.15 (12 May 2003) [hereinafter DOD DIR. 5000.1].

Legal Compliance. The acquisition and procurement of DoD weapons and weapon systems shall be consistent with all applicable domestic law and treaties and international agreements (for arms control agreements, see DoD Directive 2060.1, reference (1)), customary international law, and the law of armed conflict (also known as the laws and customs of war). An attorney authorized to conduct such legal reviews in the Department shall conduct the legal review of the intended acquisition of weapons or weapons systems.

*Id.*

<sup>5</sup> The DOD directive outlining the DOD Law of War Program defines the Law of War as:

That part of international law that regulates the conduct of armed hostilities. It is often called the law of armed conflict ("LOAC"). The law of war encompasses all international law for the conduct of hostilities binding on the United States or its individual citizens, including treaties and international agreements to which the United States is a party and applicable customary international law.

U.S. DEP'T OF DEFENSE, DIR. 2311.01E, DOD LAW OF WAR PROGRAM para. 3.1 (9 May 2006) [hereinafter DOD DIR. 2311.01E].

<sup>6</sup> See, e.g., R. Norman Moody, *Canines Crucial Part of War Effort*, FLA. TODAY, Apr. 26, 2005, available at <http://www.floridatoday.com> (ID: brv13254527) (last visited Oct. 24, 2006) (describing how an Air Force staff sergeant and his MWD tracked and captured enemy combatants during combat operations in Iraq) (copy on file with author).

a growing interest in expanding the use of MWDs on the battlefield.<sup>7</sup> Ongoing combat operations in Iraq and Afghanistan demonstrate the importance commanders place on using captured individuals to provide actionable intelligence for conducting follow-on operations.<sup>8</sup> However, several high-profile courts-martial concerning the use of MWDs should raise concerns about how MWDs are being employed during combat operations.<sup>9</sup> Of course, commanders also will have to consider a variety of non-legal factors including cultural considerations, public perceptions, and campaign objectives when determining whether using MWDs in offensive combat operations is prudent in a given situation. Nonetheless, the fundamental question with which JAs must contend is whether using a MWD team to apprehend an enemy combatant would violate the LOW.

This article introduces the LOW principles that form the underlying foundation for determining the legality of a particular means or method of warfare and examines the legality of using MWDs in offensive combat operations. The analytical framework used in DOD weapon reviews can be adapted to examine whether MWDs could be used in offensive combat operations.<sup>10</sup> Judge advocates are required to conduct DOD weapons reviews to ensure any weapon used by U.S. Armed Forces complies with the LOW and applicable DOD Directives.<sup>11</sup> There is no specified format for conducting a DOD weapons review, but there are common LOW principles that are usually found in them.<sup>12</sup> Accordingly, the first half of this article examines a MWD's capabilities, limitations, and historical use in combat.<sup>13</sup> The second half of this article examines how a MWD might be employed in light of applicable LOW principles reflected in customary international law<sup>14</sup> and binding U.S. treaty law.<sup>15</sup> If the LOW is not violated, then military commanders should be able to employ MWDs as non-lethal weapons systems during offensive combat operations to apprehend enemy combatants.<sup>16</sup>

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<sup>7</sup> See U.S. ARMY WAR COLLEGE KEY STRATEGIC ISSUES LIST 59 (Dr. Antulio J. Echevarria, II, ed., July 2006), available at <http://www.strategicstudiesinstitute.army.mil/pubs/display.cfm?pubID=722>.

<sup>8</sup> See *supra* note 3; see also Office of the White House Press Secretary, *President Discusses Creation of Military Commissions to Try Suspected Terrorists* (6 Sept. 2006), available at <http://www.whitehouse.gov/news/releases/2006/09/20060906-3.html> [hereinafter *Military Commissions*]. In a 2006 press briefing on the creation of Military Commissions, President George W. Bush outlined the importance of gaining intelligence from captured enemy combatants to thwart future terrorist plots:

In this new war, the most important source of information on where the terrorists are hiding and what they are planning is the terrorists, themselves. Captured terrorists have unique knowledge about how terrorist networks operate. They have knowledge of where their operatives are deployed, and knowledge about what plots are underway. This intelligence -- this is intelligence that cannot be found any other place. And our security depends on getting this kind of information. To win the war on terror, we must be able to detain, question, and, when appropriate, prosecute terrorists captured here in America, and on the battlefields around the world.

*Military Commissions, supra.*

<sup>9</sup> See Josh White, *Army Dog Handler Gets Six Months in Prison*, WASH. POST, at A15 (Mar. 23, 2006), available at <http://washingtonpost.com/wp-dyn/content/article/2006/03/22> (describing the court-martial sentence of an Army dog handler for maltreatment of detainees, among other charges, and allowing his MWD to be used as a means of intimidating and harassing detainees during interrogations); see also Josh White & Scott Higham, *Use of Dogs to Scare Prisoners Was Authorized*, WASH. POST, June 11, 2004, at A1 (reporting that senior ranking intelligence officers authorized military dog handlers to use MWDs to intimidate and harass detainees at Abu Ghraib prison during interrogation operations) (copy on file with author).

<sup>10</sup> See generally U.S. DEP'T OF ARMY, REG. 27-53, REVIEW OF LEGALITY OF WEAPONS UNDER INTERNATIONAL LAW (1 Jan. 1979) [hereinafter AR 27-53]; U.S. DEP'T OF AIR FORCE, INSTR. 51-402, WEAPONS REVIEW para. 1.2.2 (13 May 1994) [hereinafter AFI 51-402]; U.S. DEP'T OF NAVY, SEC'Y OF THE NAVY INSTR. 3300.1A, LAW OF ARMED CONFLICT (LAW OF WAR) PROGRAM TO ENSURE COMPLIANCE BY THE NAVAL ESTABLISHMENT (2 May 1980); U.S. MARINE CORPS, ORDER 3430.7, MARINE CORPS PROGRAM FOR THE USE AND ACQUISITION OF NON-LETHAL WEAPONS (31 July 1997) [hereinafter MCO 3430.7].

<sup>11</sup> See *supra* note 5 (noting that *DOD Dir. 2311.01E* requires legal reviews on all matters relating to "the development, acquisition, and procurement of weapons and weapon systems. . .").

<sup>12</sup> See, e.g., Major Donna Marie Verchio, *Just Say No! The StrUS Project: Well-Intentioned, But Unnecessary and Superfluous*, 51 A.F. L. REV. 183, 219 (2001) (describing how most DOD weapon reviews rely on a three-step analysis for determining the legality of a particular weapon including: (1) the weapon's mission and military advantage; (2) the weapon's "nature;" and (3) the "weapon's applicability (or non-applicability) to specific international law (law of war or arms control) rules or prohibitions"); see also Memorandum, Special Assistant for Law of War Matters, Office of the Judge Advocate General, U.S. Army, to Office of the Project Manager Mines, Countermine and Demolitions, Picatinny Arsenal, N.J., subject: Cartridge, 120MM, XM1028 Cartridge, Milestone C and Low Rate, Legal Review (15 Sept. 2004) [hereinafter XM1028 Cartridge Weapons Review] (on file with author).

<sup>13</sup> See Verchio, *supra* note 12, at 219.

<sup>14</sup> See CHAIRMAN, JOINT CHIEFS OF STAFF INSTR. 5810.01B, IMPLEMENTATION OF THE DOD LAW OF WAR PROGRAM para. 4.a. (25 Mar. 2002) (noting that U.S. forces will comply with the LOW during all armed conflicts, and "unless otherwise directed by competent authorities, will comply with the *principles* and spirit of the law of war during all other operations") (emphasis added).

<sup>15</sup> The U.S. Marine Corps requires that a non-lethal weapon comply with all provisions of international law. See MCO 3430.7, *supra* note 10, para. 4. Likewise, the Air Force requires a discussion on the relevant aspects of international treaty law. See AFI 51-402, *supra* note 10, para. 1.2.2.

<sup>16</sup> See generally Lieutenant Colonel James C. Duncan, *A Primer on the Employment of Nonlethal Weapons*, 45 NAV. L. REV. 1, 26-27 (1998) (noting that non-lethal weapons should undergo the same legal review requirements as lethal weapons systems).

## II. Military Working Dogs: Capabilities, Limitations, and Historical Use

### A. Capabilities and Limitations

The technical capabilities and limitations section of a weapons review usually discusses how a particular weapon functions to accomplish its purpose.<sup>17</sup> Examining how a MWD uses non-lethal force to apprehend an individual will provide valuable information about how that same dog might be employed as a non-lethal weapon to capture enemy combatants. As a logical starting point for this inquiry, JAs should first consider whether a MWD can even be compared to a weapon for purposes of conducting a legal review. The DOD defines non-lethal weapons as “weapons that are explicitly designed, and primarily employed so as to incapacitate personnel or materiel, while minimizing fatalities, permanent injury to personnel, and undesired damage to property and the environment.”<sup>18</sup> In contrast, the Army defines weapons as “all conventional arms, munitions, materiel, instruments, mechanisms, or devices which have an intended effect of injuring, destroying, or disabling enemy personnel, materiel, or property.”<sup>19</sup> By comparison, both the U.S. Army and U.S. Air Force MWD training manuals state that allowing a dog to bite during an apprehension is a non-lethal use of force.<sup>20</sup> The question posed in the opening scenario indicates that the MWD will be used to incapacitate enemy personnel while minimizing the potential for the occurrence of a fatal shooting incident during the mission. The MWD would therefore seem to fit the latter definition describing a non-lethal weapon; for purposes of this review, a MWD is likened to using a non-lethal weapon system to apprehend an enemy combatant.<sup>21</sup>

#### 1. Capabilities

Military working dog teams have special capabilities that have been employed effectively in law enforcement and combat operations.<sup>22</sup> The Air Force MWD manual describes the law enforcement capabilities of a MWD trained for patrol work as follows: “MWDs seek, detect, bite and hold, and guard suspects on command during law enforcement patrol activities. They deter attack and defend their handlers during threatening situations. They can assist in crowd control and confrontation management, as well as search for suspects indoors and outdoors.”<sup>23</sup> The Army’s MWD regulation notes the following about employing MWDs in combat patrol operations: “The patrol dog’s superior detection ability is especially useful at night or during periods of limited visibility. Patrol dogs can detect a fleeing person that a human could not detect and, if necessary, pursue, attack, and hold the fleeing person.”<sup>24</sup> The Army’s field manual on military police law and order operations states that MWDs are “highly useful in cordon and search operations” and “on the battlefield just as in a peacetime

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<sup>17</sup> See, e.g., W. Hays Parks, *Memorandum of Law: Review of Weapons in the Advanced Combat Rifle Program*, ARMY LAW., July 1990, at 18 [hereinafter Parks, *ACR Program Weapon Review*]; W. Hays Parks, *Joint Service Combat Shotgun Program*, ARMY LAW., Oct. 1997, at 16 [hereinafter Parks, *Joint Combat Shotgun Weapon Review*].

<sup>18</sup> See U.S. DEP’T OF DEFENSE, DIR. 3000.3, POLICY FOR NON-LETHAL WEAPONS para. 3.1 (9 July 1996) [hereinafter DOD DIR. 3000.3] (defining non-lethal weapons as “weapons that are explicitly designed, and primarily employed so as to incapacitate personnel or materiel, while minimizing fatalities, permanent injury to personnel, and undesired damage to property and the environment”).

<sup>19</sup> AR 27-53, *supra* note 10, para. 3.a. *But see* U.S. DEP’T OF DEFENSE, INSTR. 5525.10, USING MILITARY WORKING DOG TEAMS (MWDTS) TO SUPPORT LAW ENFORCEMENT AGENCIES IN COUNTERDRUG MISSIONS para. 4.2.1 (17 Sept. 1990) (stating the DOD view that MWDs are equipment and may be loaned out, with the MWD handler, to assist law enforcement officials); U.S. DEP’T OF AIR FORCE, JOINT INSTR. 23-224, DOD MILITARY WORKING DOG (MWD) PROGRAM para. 8 (1 Dec. 1990) [hereinafter AFJI 23-224] (noting that MWDs are designated as government property, branded for identification, and accounted for by an inventory manager). The DOD has designated the Air Force as the primary manager of the DOD MWD program. AFJI 23-224, *supra*, para. 2. As such, the Department of the Air Force is responsible for establishing DOD policies relating to the procurement, recruitment, training, and logistical management of MWD teams. *Id.*

<sup>20</sup> See, e.g., U.S. DEP’T OF ARMY, REG. 190-12, MILITARY WORKING DOGS para. 4-2.b (30 Sept. 1993) [hereinafter AR 190-12] (stating that, “[r]elease of a patrol dog to apprehend a suspect is a greater measure of force than use of an MP club, but less than deadly force because a patrol dog is trained to terminate an attack on voice command of its handler”); *see also* U.S. DEP’T OF AIR FORCE, INSTR. 31-202, MILITARY WORKING DOG PROGRAM para. 3.2 (1 Aug. 1999) [hereinafter AFI 31-202] (instructing that, “[r]elease of an MWD to bite or allowing it to bite while on leash, although considered use of force, is not considered use of deadly force”).

<sup>21</sup> See DOD DIR. 3000.3, *supra* note 18, para. 3.1 (defining non-lethal weapons as “weapons that are explicitly designed, and primarily employed so as to incapacitate personnel or materiel, while minimizing fatalities, permanent injury to personnel, and undesired damage to property and the environment”).

<sup>22</sup> See, e.g., Corporal Christi Prickett, *Military Working Dogs Essential Tool in Iraq Mission*, May 3, 2005, available at <http://www.usmc.mil/marinelink/mcn2000.nsf/0/91943E720D2572C585256FF6001A74E6?opendocument> (noting that the 2d Military Police Battalion, II Marine Expeditionary Force (FWD), has employed MWD teams to support entry control points, maneuver and mobility support operations, cordon and search missions, and main supply route security operations); *see also* Air Force News Service, *Air Force K-9 Dogs in Iraq*, Sept. 10, 2003, available at <http://usmilitary.about.com/cs/airforce/a/afk9dogs.htm> (describing the conduct of air-base defense and force protection operations with MWDs in support of Operation Iraqi Freedom).

<sup>23</sup> AFI 31-202, *supra* note 20, para. 8.1. *But see* U.S. DEP’T OF ARMY, FIELD MANUAL 19-10, MILITARY POLICE LAW AND ORDER OPERATIONS 114 (30 Sept. 1987) [hereinafter FM 19-10] (discouraging the use of patrol dog teams for direct confrontation with demonstrators).

<sup>24</sup> AR 190-12, *supra* note 20, para. 4-4.b.

environment, MWD teams are useful wherever the dogs' highly developed senses of smell and hearing can be used to detect the presence and location of otherwise invisible intruders or enemy."<sup>25</sup> The Marine Corps' warfighting publication on providing military police support to a Marine air-ground task force operation advises that MWDs are trained to "attack on command, cease attack on command, search buildings and open areas for criminal offenders, perform reliably off the leash, and work safely and effectively around people."<sup>26</sup> Thus, MWD teams have proven themselves to be quite skillful at locating and apprehending individuals with non-lethal force during law enforcement operations and combat support missions.

## 2. Limitations

The MWD does have operational limitations that may restrict how and where a dog may be employed on the battlefield. One of the most important limitations is the understanding that a MWD is usually trained to respond only to the commands of the dog's designated handler.<sup>27</sup> If the MWD's handler is seriously injured or killed during a combat mission, the dog cannot be transferred immediately over to another individual and be expected to carry out its mission.<sup>28</sup> Military working dog handlers maintain control over their dogs by using hand signals, voice commands, and physical restraint of the dogs.<sup>29</sup> Thus, a handler needs to maintain close physical proximity to the dog. If the MWD and its handler become separated, then the ability to control the dog becomes diminished, and the possibility of the MWD biting someone other than the intended target becomes more likely.<sup>30</sup> The Air Force MWD manual specifically warns a handler not to release his dog if the suspect being pursued is not in sight.<sup>31</sup> Likewise, MWD handlers are cautioned against releasing their dogs into angry crowds during riot control situations where the dogs could become agitated and possibly bite people.<sup>32</sup> Finally, extreme caution must be used if the MWD is released where children may be present.<sup>33</sup>

## B. Historical Use

Studying how a particular weapon has been employed historically in combat can yield valuable information for the legal review.<sup>34</sup> Specifically, JAs may gain some insight into the military necessity for implementing a particular means or method of warfare. Likewise, a state's practice of using a particular weapon on the battlefield could indicate whether a particular

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<sup>25</sup> FM 19-10, *supra* note 23, at 116.

<sup>26</sup> U.S. MARINE CORPS, MARINE CORPS WARFIGHTING PUB. 3-34.1, MILITARY POLICE SUPPORT OF THE MARINE AIR GROUND TASK FORCE E-1 (13 Oct. 2000) [hereinafter MCWP 3-34.1].

<sup>27</sup> *See, e.g.*, AR 190-12, *supra* note 20, para. 4.1.b ("Each MWD will have only one assigned handler so that the dog will maintain an aggressive attitude toward all other persons. A handler may be assigned to more than one dog; however, a dog will never be assigned to more than one handler."); *see also* U.S. DEP'T OF ARMY, PAM. 190-12, MILITARY WORKING DOG PROGRAM para. 1-19c (30 Sept. 1993) [hereinafter DA PAM. 190-12] ("The dog depends directly on the handler and, in keeping with the principle of one dog-one handler, the dog should never have to depend on anyone other than the assigned handler.").

<sup>28</sup> *See, e.g.*, MCWP 3-34.1, *supra* note 26, at E-2. The publication explains in relevant part,

Team members must know what to do if a handler is seriously wounded or killed. A dog that has worked closely with a team and has developed a tolerance for one or more of the team members will usually allow one of the members to return it to the kennel. If the MWD will not allow anyone near its handler, other handlers must be called in to assist.

*Id.*

<sup>29</sup> *See* AFI 31-202, *supra* note 20, para. 3.1-3.3 (discussing the importance of maintaining control over the MWD at all times); DA PAM. 190-12, *supra* note 27, para. 2-6.b.2 (instructing that prior to releasing a dog inside building or enclosed area, a handler should provide a warning that the dog may attack without warning and cautioning handlers to maintain voice control over the MWDs throughout the search).

<sup>30</sup> *See* DA PAM. 190-12, *supra* note 27, para. 2-2.b (warning that, "[h]andlers must avoid releasing the dog to attack until the danger to innocent persons can be eliminated or minimized"); *see also* MCWP 3-34.1, *supra* note 26, at E-4 (noting that a MWD should not be used to search an area until there is relative certainty that the area is clear of innocent people).

<sup>31</sup> AFI 31-202, *supra* note 20, para. 3.2.3.

<sup>32</sup> *Id.*; *see also* FM 19-10, *supra* note 23, at 114; DA PAM. 190-12, *supra* note 27, para. 2-17.a.(2)-(3) (observing that the "high levels of confusion and excitement" can make it difficult to control the dogs and warning that the MWD should never be released into a crowd of demonstrators).

<sup>33</sup> *See* AFI 31-202, *supra* note 20, para. 3.2.3 ("Handlers will not release MWDs in areas where children are present, except as a last resort short of deadly force."). Some researchers have noted that when dogs attack children the severity of the wounds are more likely to be greater than those sustained by an adult and it is likely that the children unknowingly provoked the dog to attack. *See, e.g.*, NAT'L CANINE RES. FOUND., FATAL DOG ATTACK STUDIES (2004), <http://ncrf2004.tripod.com/id8.html> (noting that adults are physically more capable of fending off a dog attack than are children).

<sup>34</sup> *See, e.g.*, Parks, *Joint Combat Shotgun Weapon Review*, *supra* note 17, at 16-17 (noting that history constitutes state practice and providing a historical overview of the shotgun's use in combat).

means or method of warfare has developed into a rule of customary international law.<sup>35</sup> The widespread use of dogs on the battlefield to perform certain combat functions suggests that using MWDs in combat has become a universally-accepted state practice.<sup>36</sup> Judge advocates should consider whether the acceptance of using MWDs on the battlefield in general might also extend to employing MWDs during offensive combat operations.

The employment of MWDs in combat is well-recorded throughout American military history and can be traced as far back as the French and Indian wars.<sup>37</sup> In spite of Benjamin Franklin's advocacy for the use of dogs in combat, the U.S. military did not adopt a program to train MWDs for battlefield use until the outbreak of World War II (WWII).<sup>38</sup> By the time the United States entered WWII, Germany, France, Japan, Russia, and Great Britain all had adopted military training programs to employ dogs on the battlefield.<sup>39</sup> Since the end of WWII, the U.S. military has expanded widely the use of dogs on the battlefield.<sup>40</sup> A survey of the MWD doctrine and training manuals indicates that MWDs are employed in a variety of combat support operations including: area defense and perimeter security missions; early detection sensors during combat patrols; force protection and apprehension capabilities during EPW operations; and, detection, by use of a superior sense of smell of bombs and other types of explosive materials.<sup>41</sup>

Arguably, one of the most important functions MWD teams perform in combat is helping U.S. forces detect, find, and capture enemy combatants.<sup>42</sup> With the exception of an abandoned training program during WWII, MWDs have not been trained to conduct offensive combat operations against enemy combatants.<sup>43</sup> However, the U.S. military has trained and employed other animals to conduct offensive combat operations against enemy combatants during Operation Iraqi Freedom.

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<sup>35</sup> See Jean-Marie Henckaerts, *Study on Customary International Humanitarian Law: A Contribution to the Understanding of and Respect for the Rule of Law in Armed Conflict* 179-81, INT'L REV. OF THE RED CROSS, vol. 87, no. 857, Mar. 2005 (noting that State practice is derived from a State's physical acts and verbal acts, including the use of certain weapons and how a force conducts itself on the battlefield); see also Parks, *Joint Combat Shotgun Weapon Review*, *supra* note 17, at 17 (noting the substantial employment of shotgun weapons by several nations during combat operations and the corresponding lack of restrictions on their employment due to LOW concerns).

<sup>36</sup> See, e.g., Staff Sergeant Monica R. Garreau, *MP K-9s Enhance Force Protection Efforts*, ARMY NEWS SERV. (27 June 2004), available at [http://www4.army.mil/ocpa/read.php?story\\_id\\_key=6094](http://www4.army.mil/ocpa/read.php?story_id_key=6094); James Pettit & Captain Ronald J. Hughes, *Engineer Mine Detection Dogs*, 18 ENGINEER 34 (July–Sept. 2004); Specialist Cheryl Ransford, *Canine Units Issued New Protective Gear*, FREEDOM WATCH 8 (27 Feb. 2005) (copy on file with author); Corporal Paul Robbins Jr., *Taking a Bite Out of Ramadi*, MARINE CORPS NEWS (28 Sept. 2006), available at <http://www.usmc.mil/marinelink/mcn2000.nsf/homepage?readform> (story ID#: 20061029624); *Air Force K-9 Dogs in Iraq*, AIR FORCE NEWS SERV. (10 Sept. 2003), available at <http://usmilitary.about.com/cs/airforce/a/afk9dogs.htm>.

<sup>37</sup> See, e.g., MICHAEL G. LEMISH, *WAR DOGS: A HISTORY OF LOYALTY AND HEROISM* 6 (1999) (attributing early consideration to the use of dogs in combat to Benjamin Franklin). Around 1755, Colonel Benjamin Franklin wrote to Major Frank Read to encourage the use of dogs to defend the town of Reading, Pennsylvania, against an impending attack by natives and foreign insurgent forces:

Dogs should be used against the Indians. They should be large, strong, and fierce; and every dog led in a slip string, to prevent their tiring themselves by running out and in, and discovering the party by barking at squirrels, etc. Only when the party comes near thick woods and suspicious places they should turn out a dog or two to search them. In case of meeting a party of the enemy, the dogs are all then to be turned loose and set on. They will be fresher and finer for having been previously confined and will confound the enemy a good deal and be very serviceable. This was the Spanish method of guarding their marches.

*Id.* (citing to Fairfax Downey, *Dogs for Defense* 2 (1955)); see also Willard Sterne Randall, *Colonel Benjamin Franklin*, MIL. HIST. Q.: Q. J. OF MIL. HIST. 6 (Winter 2001) (copy on file with author).

<sup>38</sup> On 13 March 1942, the U.S. Army's Quartermaster General created the Canine (K-9) Corps. See OFFICE OF THE QUARTERMASTER GENERAL, U.S. ARMY, *FACT SHEET ON WAR DOGS* 4 (15 July 1948) (copy on file with author).

<sup>39</sup> See, e.g., Thomas F. Newton, *World War II Combat: Axis and Allies*, <http://community-2.webtv.net/Hahn-50thAP-K9/K9History21/> (last visited Oct. 23, 2006) (providing a compilation of primary and secondary historical sources relating to the use of dogs in combat during WWII).

<sup>40</sup> See, e.g., Maryann Mott, *Dogs of War: Inside the U.S. Military's Canine Corps*, NAT'L GEOGRAPHIC NEWS (Apr. 9, 2003), [http://news.nationalgeographic.com/news/2003/04/0409\\_030409\\_militarydogs.html](http://news.nationalgeographic.com/news/2003/04/0409_030409_militarydogs.html) (writing about the training of explosive detection and patrol dogs at Lackland Air Force Base, San Antonio, Texas).

<sup>41</sup> See, e.g., AFI 31-202, *supra* note 20, para. 8.4 ("MWDs are employed to provide enhanced patrol and detection capability to perimeter and point defense, as a sensor system, and drug and explosives detection."); DA PAM. 190-12, *supra* note 27, para. 2-26 (stating that in past combat operations, MWDs have provided early warning of imminent attacks, helped clear protected areas of hostile persons, explosives, and weapons after attacks); MCWP 3-34.1, *supra* note 26, at E-2 (instructing that a MWD's capabilities are used to enhance the security posture of a tactical patrol through the detection and location of enemy soldiers).

<sup>42</sup> See, e.g., Prickett, *supra* note 22; *Air Force K-9 Dogs in Iraq*, *supra* note 22.

<sup>43</sup> During WWII, the Army developed a program to train dogs to carry explosives strapped to their backs into enemy fortified bunkers. Though suicidal for the dogs, it was believed at the time that this method of warfare could potentially save thousands of American G.I.s lives during the Pacific campaign to end the war. LEMISH, *supra* note 37, at 89 (citing to a letter from Colonel William A. Borden, Office of the Chief of Staff, to Major General S.G. Henry, Director, New Developments Division, War Department Special Staff (8 Nov. 1943) (letter available in the National Archives at NARA RG407) (copy on file with author). Ironically, this same tactic may have been used against U.S. forces serving in Iraq. See *Dog Bomb Used Against U.S. Forces*, WASH. TIMES, Aug. 14, 2006, at 11 (reporting that an Iraqi insurgent group claimed responsibility for attacking U.S. forces near Baghdad by "setting off explosives attached to a dog").

Specifically, the U.S. Navy used sea lions in the Persian Gulf and dolphins in the Iraqi port of Umm Qasr to perform enemy swimmer interdiction missions.<sup>44</sup> The U.S. Navy developed a training program that taught these sea mammals to help Navy combat swimmers detect and apprehend enemy personnel using non-lethal force.<sup>45</sup> Like their sea mammal counterparts, MWDs might also be trained to assist U.S. forces in performing the mission of locating and apprehending enemy combatants on land.

For over sixty years, the U.S. military has relied on the invaluable service rendered by MWDs during numerous combat operations. While MWDs only have been employed in combat support roles, there is a growing body of evidence that suggests MWDs also could be used in direct combat action missions.<sup>46</sup> As demonstrated by the U.S. Navy's use of dolphins and sea lions to perform enemy swimmer interdiction missions, animals can be trained and relied upon to provide non-lethal force capabilities.<sup>47</sup> Likewise, MWDs could be trained to use non-lethal force to apprehend enemy combatants during offensive combat operations.

### III. Legal Obligations and LOW Considerations

Most JAs are familiar with the admonition that the means of injuring one's enemy are not unlimited.<sup>48</sup> This LOW requirement arises from customary international law, as expressed in Article 22, Hague Convention (IV) Respecting the Laws and Customs of War on Land, Annexed Regulations (HR), which states, "The right of belligerents to adopt means of injuring the enemy is not unlimited."<sup>49</sup> The Army's field manual on the laws of land warfare further clarifies this requirement: "The means [of warfare] employed are definitely restricted by international declarations, and conventions and by the laws and usages of war."<sup>50</sup> Even if MWDs are not considered weapons for purposes of conducting a DOD weapons review, JAs should still be prepared to render legal advice concerning LOW compliance before a MWD is employed as a non-lethal weapon.<sup>51</sup>

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<sup>44</sup> See Lieutenant Junior Grade Josh Frey, *Anti-Swimmer Dolphins Defending Persian Gulf Ports*, FLAGSHIP (Aug. 13, 2003), at [http://www.flagshipnews.com/archives\\_2003/aug212003\\_11.shtml](http://www.flagshipnews.com/archives_2003/aug212003_11.shtml). The U.S. Navy's sea lion swimmer interdiction program, known officially as the Shallow Water Intruder Detection System program, has been described as follows:

The sea lions are trained to detect swimmers or divers approaching military ships or piers. The animals carry a clamp in their mouths. They approach the swimmer quietly from behind and attach the clamp, which is connected to a rope, to the swimmer's leg. With the person restrained, sailors aboard ships can pull the swimmer out of the water.

*Id.*; see also Scott Simon, *Marine Mammals on Active Duty: Navy Uses Dolphins, Sea Lions to Patrol Waters in Persian Gulf*, NAT'L PUB. RADIO (Mar. 29, 2003), at <http://www.npr.org/templates/story/story.php?storyId=1211780> (describing the U.S. Navy's use of sea lions and dolphins to perform enemy swimmer interdiction missions in Bahrain and the Iraqi port of Umm Qasr). The United States may not be the only nation that has trained sea mammals to perform enemy swimmer interdiction missions. See, e.g., *Iran Buys Kamikaze Dolphins*, BBC WORLD NEWS (Mar. 8, 2000), available at [http://news.bbc.co.uk/2/hi/world/middle\\_east/670551.stm](http://news.bbc.co.uk/2/hi/world/middle_east/670551.stm) (describing how dolphins that were sold to Iran had been trained by the former Soviet Union's military to attack enemy frogmen).

<sup>45</sup> See U.S. Dep't of Navy, U.S. Navy Marine Mammal Program, <http://www.spawar.navy.mil/sandiego/technology/mammals> (last visited Oct. 23, 2006) (describing the U.S. Navy programs to employ marine mammals in a variety of combat roles including: mine hunting, force protection, object recovery, fleet support, and enemy swimmer interdiction). Sea mammals reportedly have superior sensory capabilities that make them well-suited for the enemy-swimmer interdiction missions. *Id.*; see also Donna Leinwand, *Sea Lions Called to Duty in Persian Gulf*, USA TODAY, Feb. 17, 2003, at A7, available at [http://www.usatoday.com/news/world/iraq/2003-02-16-sealions-usat\\_x.htm](http://www.usatoday.com/news/world/iraq/2003-02-16-sealions-usat_x.htm).

<sup>46</sup> See, e.g., R. Norman Moody, *Florida-Based Military Dogs Do Heroic Work In War Zone*, FLA. TODAY, May 9, 2005, available at <http://www.floridatoday.com/apps/pbcs.dll/article?AID=/20050426/NEWS01/504260331/1006> (last visited Mar. 28, 2006) (describing how a MWD apprehended two men in southern Iraq who were attempting to avoid capture). According to an Israeli Defense Force (IDF) website, the IDF has employed MWDs against enemy combatants during counter-terrorism missions in the Occupied Territories and Lebanon. See The Israeli Special Forces Database, Unit Oket'z Attack Palga, at <http://www.isayeret.com/units/land/special/7142/attack.htm> (last visited Mar. 18, 2004) (on file with author) (providing an overview of Unit 7142's history and operational capabilities).

<sup>47</sup> See, e.g., Frey, *supra* note 44.

<sup>48</sup> See U.S. DEP'T OF ARMY, FIELD MANUAL 27-10, THE LAW OF LAND WARFARE para. 33.a (18 July 1956) [hereinafter FM 27-10].

<sup>49</sup> See Hague Convention (IV) Respecting the Laws and Customs of War on Land, Annexed Regulations art. 22, Oct. 18, 1907, 36 Stat. 2277, T.S. No. 539 [hereinafter HR IV], reprinted in INT'L & OPERATIONAL LAW DEP'T, THE JUDGE ADVOCATE GENERAL'S LEGAL CENTER AND SCHOOL, U.S. ARMY, LAW OF WAR DOCUMENTARY SUPPLEMENT 152 (2006). The Army's field manual on the laws of land warfare notes that HR IV is "declaratory of the customary law of war," and is therefore applicable to all States. FM 27-10, *supra* note 48, para. 6; see also FRITS KALSHOVEN & LIESBETH ZEGVELD, CONSTRAINTS ON THE WAGING OF WAR: AN INTRODUCTION TO INTERNATIONAL HUMANITARIAN LAW 41 (2001) (noting that the underlying principle of HR art. 22 was reaffirmed in Resolution XXVIII of the Twentieth International Conference of the Red Cross and Red Crescent (Vienna, 1965) and subsequently, in 1968, in Resolution 2444 (XXIII) of the United Nations General Assembly).

<sup>50</sup> See FM 27-10, *supra* note 48, para. 33.b.

<sup>51</sup> See DOD DIR. 2311.01E, *supra* note 5, para. 5.3.1 (prescribing to the head of the DOD components that "qualified legal advisers are immediately available at all levels of command to provide advice about law of war compliance during planning and execution of exercises and operations. . ."); see also

Judge advocates must provide commanders with legal advice regarding the legality of employing a particular means of warfare based on applicable LOW principles and binding international treaty obligations.<sup>52</sup> The first LOW principle requires that commanders refrain from employing weapons that are calculated to cause superfluous or unnecessary injury.<sup>53</sup> The second principle requires that commanders refrain from using a weapon that would cause suffering beyond what is required by military necessity.<sup>54</sup> The third LOW principle reflects the belief that commanders shall only employ weapons or weapon systems at valid military objectives.<sup>55</sup> If a means of warfare does not cause unnecessary suffering, and is only calculated for use against enemy combatants, then JAs should consider whether there are any treaty-based prohibitions or restrictions on using a particular weapon or tactic.<sup>56</sup>

## A. Unnecessary Suffering

The first LOW principle for consideration prohibits the employment of weapons that are calculated to cause unnecessary suffering.<sup>57</sup> This prohibition is recognized as a reflection of customary international law,<sup>58</sup> however, there is no universally agreed upon test for determining whether a particular weapon causes unnecessary suffering.<sup>59</sup> The LOW acknowledges that some amount of suffering is an acceptable consequence resulting from lawful combatants engaging in legitimate forms of warfare.<sup>60</sup> A weapons review should view a weapon's characteristics in light of its ability to inflict injury in excess of the military advantage expected to be gained from the weapon's use.<sup>61</sup> A JA would therefore determine whether employing a

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U.S. DEP'T OF ARMY, FIELD MANUAL 90-40, MULTISERVICE PROCEDURES FOR THE TACTICAL EMPLOYMENT OF NONLETHAL WEAPONS V-1 (6 Oct. 1998) [hereinafter FM 90-40]. The Army field manual states, in relevant part:

Nonlethal methods and capabilities may include the use of common materials and existing systems that were not designed as non-lethal weapons, but they can achieve the desired result of minimizing fatalities, permanent injury to personnel and undesired damage to property and the environment.

FM 90-40, *supra*, at V-1.

<sup>52</sup> *Id.*

<sup>53</sup> HR IV, *supra* note 49, art. 23(e) (forbidding the “employment of arms, projectiles, or material *calculated* to cause unnecessary suffering”) (emphasis added); *see also* Protocol Additional to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims of International Armed Conflicts art. 35(2), *adopted* June 8, 1977, 1125 U.N.T.S. 3 [hereinafter AP I] (prohibiting the employment of weapons, projectiles and material and *methods* of warfare of a nature to cause superfluous injury or unnecessary suffering) (emphasis added). Additional Protocol I, Article 35(2), essentially restates HR IV, art. 23(e), but adds the requirement forbidding the use of certain “methods” of warfare while simultaneously dropping the element of intent reflected in the term “calculated.”

<sup>54</sup> *See, e.g.*, Parks, *ACR Program Weapon Review*, *supra* note 17, at 19 (explaining that the LOW requires that commanders refrain from using weapons that are calculated to induce suffering “beyond that required by military necessity”).

<sup>55</sup> *See* Major Geoffrey Corn, Int'l and Operational Law Note, *Principle 2: Distinction*, ARMY LAW., Aug. 1998, at 36 (explaining that the LOW principle of distinction is not articulated in either the HR or the Geneva Conventions (GC), but rather AP I, art. 48); *see also* AP I, *supra* note 53, art. 48. Additional Protocol I states,

In order to ensure respect for and protection of the civilian population and civilian objects, the Parties to the conflict shall at all times distinguish between the civilian population and combatants and between civilian objects and military objectives and accordingly shall direct their operations only against military objectives.

*Id.*

<sup>56</sup> *See* MCO 3430.7 *supra* note 10, para. 4a; *see also* AFI 51-402, *supra* note 10, para. 1.2.2.

<sup>57</sup> *See* HR IV, *supra* note 49 (citing art. 23c and the prohibition on employing arms calculated to cause unnecessary suffering); *see also* MCO 3430.7, *supra* note 10, para. 4.a (stating that nonlethal weapons must also “prevent the infliction of unnecessary suffering”).

<sup>58</sup> *See* JEAN-MARIE HENCKAERTS & LOUISE DOSWALD-BECK, CUSTOMARY INTERNATIONAL HUMANITARIAN LAW, VOLUME I: RULE 70, at 237 (2005) (noting agreement amongst nation States that any weapon whose employment causes suffering that serves no military purpose violates this rule of customary international law); *see also* Parks, *Joint Combat Shotgun Weapon Review*, *supra* note 17, at 18 (arguing that while the term “superfluous injury” is often substituted for “unnecessary suffering,” the former is a more authentic translation of the French text—“*propres a causer des maux superflus*,” which is used in art. 23(e), HR IV).

<sup>59</sup> HENCKAERTS & DOSWALD-BECK, *supra* note 58, at 240 (noting the difference in views “on how it can actually be determined that a weapon causes superfluous injury or unnecessary suffering”).

<sup>60</sup> *See* Parks, *Joint Combat Shotgun Weapon Review*, *supra* note 17, at 19 (noting that the LOW prohibition against causing unnecessary suffering is an acknowledgement that the LOW “recognizes as legitimate necessary suffering in combat”).

<sup>61</sup> *See* Major Geoffrey Corn, Int'l & Operational Law Note, *Principle 4: Preventing Unnecessary Suffering*, ARMY LAW., Nov. 1998, at 50-52 (explaining that the principle of unnecessary suffering must be balanced against the principle of military necessity); *see also* Memorandum, Office of the Staff Judge Advocate, United States Air Force, to the Judge Advocate, Army Material Command, subject: Requested Legal Review of the M26 Advanced Taser, at 5 (8 Jan. 2002) [hereinafter M26 Advanced Taser Weapons Review] (stating that a weapon may cause unnecessary suffering if the injury or death to combatants is disproportionate to the military advantage to be gained from using the weapon) (copy on file with author). The memorandum states that the M26 Advanced Taser Weapon review was coordinated with the Staff Judge Advocate to the Commandant of the Marine Corps and the Offices of the Judge Advocates General of the Army and Navy. *Id.*

MWD like a non-lethal weapon to apprehend an enemy combatant might result in an injury or suffering that would be disproportionate to the military advantage expected to be gained by the dog's use.<sup>62</sup>

A MWD can perform an apprehension by the less forceful method of finding and barking at an individual's location or by finding and biting an individual until the MWD handler commands the dog to release the individual.<sup>63</sup> If a MWD is employed using the "bite and hold" method of apprehension, then the dog should bite only once to establish a firm grip on the individual the dog is apprehending.<sup>64</sup> If the detainee attempts to break the MWD's bite-grip, then the dog likely would attempt to reestablish its hold by biting the detainee again.<sup>65</sup> This second scenario increases the likelihood that a MWD might inflict multiple bite wounds on the detainee. While the infliction of multiple bite wounds may cause some concern about the infliction of unnecessary suffering to effect an apprehension, there are other legitimate weapon systems that also cause multiple wounding effects when employed against valid military objectives (e.g., the combat shotgun, fragmentation grenade, and claymore mine).<sup>66</sup> Thus, it appears that if a MWD were employed like a non-lethal weapon against a valid military object, then a MWD is not likely to cause suffering beyond what is militarily necessary to apprehend an enemy combatant.

## B. Military Necessity

The second LOW principle requires commanders to refrain from employing methods, tactics, and means of warfare that are deemed to be unnecessary.<sup>67</sup> As discussed in the previous section, military commanders must inflict only that measure of suffering required by military necessity to achieve a valid military objective.<sup>68</sup> Justification for using a weapon requires a valid military purpose or necessity for employing the weapon.<sup>69</sup> Military commanders should be cautioned that the military necessity principle does not excuse taking actions or employing a means of warfare that would otherwise violate the LOW.<sup>70</sup> Additionally, a JA should also take into account the stated or proposed necessity for using a weapon and compare it with other comparable weapons already in use on the battlefield.<sup>71</sup>

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<sup>62</sup> See also HENCKAERTS & DOSWALD-BECK, *supra* note 58, at 240 (noting that many States follow the rule that determining whether a means of warfare causes unnecessary suffering or superfluous injury requires "that a balance be struck between military necessity, on the one hand, and the expected injury or suffering inflicted on a person, on the other hand, and that excessive injury or suffering, i.e., that which is out of proportion to the military advantage sought, therefore violates the rule").

<sup>63</sup> See *United States Department of Justice (DOJ) and International Association of Chiefs of Police (IACP) Recommendations on Police Service Dogs*, <http://www.policecanines.com/documents/doj.htm> (last visited Apr. 25, 2006) [hereinafter Justice Department Memo] (providing a recommendation to the City of Cincinnati, OH, and Prince George's County, MD, that each police agency should adopt a "find and bark" policy over "bite and hold"). *But see* Charlie Mesloh, Excerpts from *An Overview of Canine Apprehension Methodologies and Their Relationship to Bite Ratio* (Apr. 17, 2003), available at <http://www.k9fleck.org/biteratios.htm> (last visited Oct. 23, 2006) (arguing that canines that are trained to "find and bark" are less likely to look to their dog handlers for control while executing an apprehension).

<sup>64</sup> See also Jack L. Stump, MD, FAAEM, FACEP, *Animal Bites*, eMEDICINE, <http://www.emedicine.com/emerg/topic60.htm> (last visited Oct. 23, 2006) (noting that the bite of a dog can yield between 150-450 pounds of pressure per square inch, depending on the dog and its training).

<sup>65</sup> See, e.g., Douglas U. Rosenthal, *When K-9s Cause Chaos—An Examination of Police Dog Policies and Their Liabilities*, 11 N.Y.L. SCH. J. HUM. RTS. 279, 280 (1993-1994) (providing a survey of several U.S. court cases examining whether using a dog to apprehend an individual constitutes an excessive use of force).

<sup>66</sup> See Parks, *Joint Combat Shotgun Weapon Review*, *supra* note 17, at 21 (noting that various lawful fragmentation munitions, including the shotgun and fragmentation grenade, are used throughout the world's armies).

<sup>67</sup> See, e.g., Burrus M. Carnahan, *Lincoln, Lieber and the Laws of War: The Origins and Limits of the Principle of Military Necessity*, 92 AM. J. INT'L L. 213, 216 (1998) (noting that Article 14 of the Lieber Code authorized Union Army commanders during the U.S. Civil War to use, "those measures which are indispensable for securing the end of the war, and which are lawful according to the modern law and usages of war.").

<sup>68</sup> See JEAN PICTET, *HUMANITARIAN LAW AND THE PROTECTION OF WAR VICTIMS* 32 (1975) (observing that, "[T]he old rule of war 'do as much harm to your enemy as you can' has been replaced by the new law: do not inflict more harm on your enemy than the purpose of the war demands."); see also FM 27-10, *supra* note 48, para. 2(a) (noting that one of the fundamental purposes of the Law of War is to protect "both combatants and noncombatants from unnecessary suffering").

<sup>69</sup> See AP I, *supra* note 53, art. 52(2) (defining a military objective as, "[T]hose objects which by their nature, location, purpose or use make an effective contribution to military action and whose total or partial destruction, capture, or neutralization, in the circumstances ruling at the time, offers a definite military advantage.").

<sup>70</sup> See FM 27-10, *supra* note 48, para. 3(a) (providing that, "[m]ilitary necessity has been generally rejected as a defense for acts forbidden by the customary and conventional laws of war inasmuch as the latter have been developed and framed with consideration for the concept of military necessity."). Thus, military necessity does not provide justification for conducting warfare that is considered illegal by universally recognized standards of customary international law or binding treaty law.

<sup>71</sup> See, e.g., Parks, *Joint Combat Shotgun Weapon Review*, *supra* note 17, at 19 (stating that the balancing test necessary to determine a weapon's legality requires that the weapon's effects must be compared to other comparable weapons already in use on the battlefield and the military necessity for the weapon under consideration).

The requirement to conduct combat operations in urbanized areas significantly increases the likelihood of lethal encounters with non-combatants.<sup>72</sup> During cordon and search operations, like those regularly being conducted in Afghanistan and Iraq, close quarters combat is being conducted in populated areas.<sup>73</sup> When these operations are conducted in populated areas, it is not unusual for U.S. forces to witness several individuals running away from the designated military objective.<sup>74</sup> Due to errors in human judgment or unfortunate circumstances, it is possible for a fleeing civilian to be mistaken for a suspected enemy combatant.<sup>75</sup> Providing military commanders with a non-lethal force option to capture or detain an enemy combatant will likely mitigate the risk of an accidental or mistaken shooting of a non-combatant. Using a MWD team to apprehend an enemy combatant gives commanders a viable, non-lethal option for apprehension and validates a legitimate military necessity for their employment.<sup>76</sup>

Using a MWD team is arguably more efficient and effective than other comparable weapons that could be employed to apprehend an enemy combatant.<sup>77</sup> Commanders currently have the capability of employing less-than-lethal munitions and weapons systems to effect an apprehension.<sup>78</sup> A conventional weapon, like a combat shotgun, can be employed using non-lethal munitions. However, even the use of non-lethal munitions may result in the infliction of permanent injury or death.<sup>79</sup> Another alternative to using lethal force is the employment of a non-lethal weapons system like the M26 Advanced Taser.<sup>80</sup> The M26 taser is a non-lethal weapon system capable of delivering 50,000 volts of electricity onto a person's body in order to temporarily incapacitate the targeted individual.<sup>81</sup> The M26 taser operates by shooting two needle-tipped prongs twenty-one feet through the air to reach the intended target.<sup>82</sup> The M26 taser is capable of being fired only once; so, if the shooter misses the intended target, there is no mechanism to immediately rearm the taser so that it may be fired again.<sup>83</sup> There is also the potential for a taser to trigger cardiac arrest and death.<sup>84</sup> In contrast, a MWD has no such limitations. The MWD will go farther than the twenty-one foot restriction of the M26 taser and does not pose the same lethality concerns as employing non-lethal munitions from less than twenty feet.<sup>85</sup> Another advantage the MWD team has is that once a MWD is released to

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<sup>72</sup> See FM 90-40, *supra* note 51, at I-2; see also COUNCIL ON FOREIGN RELATIONS, NONLETHAL WEAPONS AND CAPABILITIES 2 (2004) [hereinafter NONLETHAL WEAPONS AND CAPABILITIES REPORT] (stating that nonlethal weapons are particularly appropriate for stability and support operations like those in Iraq and describing how a U.S. Soldier shot and killed the chairman of the U.S. appointed municipal council in Sadr City as a debacle).

<sup>73</sup> See, e.g., *Lessons Learned: Infantry Squad Tactics in Military Operations in Urban Terrain During Operation Phantom Fury in Fallujah, Iraq* (Feb. 12, 2005), available at <http://www.blackwaterusa.com/btw2005/articles/041805aar.html> (last visited Oct. 23, 2006) (reprinting a collection of first person interviews of several Marine infantrymen who participated in close quarters battle during Operation Phantom Fury in Fallujah Iraq). The article was produced as part of the U.S. Marine Corps Lessons Learned (MCLL) program.

<sup>74</sup> The slang term "squirters" has entered into the military's lexicon to describe individuals who attempt to run away from a military objective as it is being sealed off by security elements during cordon and search operations. (The individuals are attempting to "squirt" off of the objective as the security cordon encircles around it.) See, e.g., Max Boot, *Reconstructing Iraq: With the Marines in the South and 101st in the North*, WKLY. STANDARD (15 Sept. 2003), available at [http://www.weeklystandard.com/Utilities/printer\\_preview.asp?idArticle=3078&R=ED861C8](http://www.weeklystandard.com/Utilities/printer_preview.asp?idArticle=3078&R=ED861C8) (last visited Oct. 23, 2006) (describing how "Force Recon Marines, riding in two Humvees, were supposed to conduct the raid. Three light armored vehicles went along to "sanitize" the perimeter and deal with any "squirters").

<sup>75</sup> See, e.g., NONLETHAL WEAPONS AND CAPABILITIES REPORT, *supra* note 72, at 10 (observing that during combat operations in Iraq, insurgents would purposely immerse themselves into the civilian population knowing that U.S. military commanders were reluctant to respond with overwhelming lethal force due to the risks of killing innocent non-combatants).

<sup>76</sup> See, e.g., AR 190-12, *supra* note 20, para. 4-4.b (declaring that patrol dogs can detect a fleeing person that a human could not detect and, if necessary, pursue, attack, and hold the fleeing person); see also U.S. DEP'T OF ARMY, REG. 190-14, CARRYING OF FIREARMS AND USE OF FORCE FOR LAW ENFORCEMENT AND SECURITY DUTIES para. 3.1.b.(5) (12 Mar. 1993) (listing MWDs as a measure of non-lethal use to be employed prior to the use of deadly force); MCO 3430.7, *supra* note 10, para. 4.c (noting that non-lethal weapons provide commanders an alternative for taking military action where "the use of deadly force is not the preferred option").

<sup>77</sup> See, e.g., NONLETHAL WEAPONS AND CAPABILITIES REPORT, *supra* note 72, at 2 (stating that nonlethal weapons are particularly appropriate for use in stability and support operations like those being conducted in Iraq). The report goes on to argue that a military force "using nonlethal weapons and capabilities has the potential of achieving combat and support goals more effectively than would a force employing only lethal means." *Id.*

<sup>78</sup> See, e.g., FM 90-40, *supra* note 51, at V-2, tbl. V-1 (noting that the combat shotgun can employ non-lethal munitions such as the twelve-gauge bean bag round and twelve-gauge rubber bullet round).

<sup>79</sup> *Id.* (warning that less-than-lethal munitions should not be employed at ranges less than twenty feet due to their potential for producing a fatality).

<sup>80</sup> See M26 Advanced Taser Weapons Review, *supra* note 61, at 2 (describing the capabilities of the M26 Advanced Taser).

<sup>81</sup> *Id.*

<sup>82</sup> *Id.*

<sup>83</sup> *Id.* However, the M26 Advanced Taser can be configured like a stun gun which would likely permit multiple uses if the user is able to press the electrical probes against the targeted individual's body. *Id.* at 3.

<sup>84</sup> See, e.g., Amnesty International, *Excessive and Lethal Force? Amnesty International's Concerns About Deaths and Ill-treatment Involving Police Use of Tasers* (Nov. 30, 2004), available at <http://web.amnesty.org/library/index/engamr511392004> (last visited Oct. 23, 2006) (providing an overview and discussion of several instances where taser use resulted in the death of an individual being apprehended).

<sup>85</sup> See *supra* note 79.

conduct an apprehension, the MWD handler can immediately halt and redirect the dog if necessary. Neither the M26 taser or the employment of non-lethal munitions offers the advantage of calling off the use of force once it has been put in motion.

The effect of employing a MWD team to apprehend and detain enemy combatants will not be excessive in relation to the anticipated military advantage that will be gained by the team's utilization. As noted above, using a MWD is arguably more efficient and effective at capturing and detaining an enemy combatant than any other available means. The MWD is trained so that its effects are neither per se superfluous nor unnecessary when used to apprehend an enemy combatant. Indeed, a MWD's injurious effects are relatively minor compared to those of other available non-lethal weapons like the M26 taser or the use of non-lethal munitions.

### C. Distinction

The third LOW principle requires military commanders to refrain from launching attacks that cannot be directed towards a military objective.<sup>86</sup> In a study of customary international humanitarian law, the International Committee of the Red Cross (ICRC) asserts that "the use of weapons which are by nature indiscriminate is prohibited."<sup>87</sup> The ICRC further suggest that the measure for determining whether a weapon is indiscriminate is based on two criteria.<sup>88</sup> The first criterion requires that a weapon be capable of being targeted at a military objective.<sup>89</sup> The second criterion requires that a weapon's effects must be capable of limitation as required by international law.<sup>90</sup> Judge advocates should also consider whether a MWD is capable of being targeted at enemy combatants and whether the MWD can be controlled or limited so as not to be indiscriminate in its effects.<sup>91</sup>

A MWD satisfies the first ICRC indiscriminate weapon criterion because a MWD is capable of being directed to apprehend only an enemy combatant that has been designated by a dog handler. The MWD undergoes special training to reinforce the proper response from the dog so that it will only apprehend an individual after being instructed to do so on command.<sup>92</sup> A MWD relies on the dog handler's visual and verbal commands to properly identify and designate an individual targeted for apprehension.<sup>93</sup> Since the MWD would be released only by a trained handler, operating under appropriate release guidelines, at a legitimate military objective, it is unlikely that a MWD would be used indiscriminately to attack non-combatants.

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<sup>86</sup> See, e.g., Corn, *supra* note 55, at 35 (noting that the application of destructive military force is limited to the greatest extent possible to only those people, places, or things categorized as legitimate targets as the result of the existence of a state of hostilities).

<sup>87</sup> See HENCKAERTS & DOSWALD-BECK, *supra* note 58, at 3 (claiming that state practice establishes the LOW principle of distinction as applicable in both international and non-international conflicts). Doctor Jakob Kellenberger, President, International Committee of the Red Cross, states, in his foreword to the Henckaerts and Doswald-Beck study, the ICRC's belief that the work presented by the authors is an "accurate assessment of the current state of customary international humanitarian law." *Id.* at xi; see also AP I, *supra* note 53, art. 51(4) (prohibiting the use of weapons that are "of a nature to strike military objectives and civilians or civilian objects without distinction"); Michael J. Matheson, Remarks at the Sixth Annual American Red Cross-Washington College of Law Conference on International Humanitarian Law: A Workshop on Customary International Law and the 1977 Protocols Additional to the 1949 Geneva Conventions, 2 AM. U.J. INT'L L. & POL'Y 419, 420 (1987), reprinted in INT'L & OPERATIONAL LAW DEP'T, THE JUDGE ADVOCATE GENERAL'S SCHOOL, U.S. ARMY, LAW OF WAR DOCUMENTARY SUPPLEMENT 385 (2006) (expressing the view that Article 51's prohibition against attacking or threatening violence against civilian populations or individuals reflects international customary law). Mr. Matheson clarifies that the United States does not support those portions of Additional Protocol I, within Articles 51 and elsewhere, that prohibit the use of reprisals because an outright ban on the use of reprisals does not reflect customary international law. *Id.* At the time of his remarks, Mr. Matheson served as the Deputy Legal Advisor, U.S. Department of State. *Id.*

<sup>88</sup> See HENCKAERTS & DOSWALD-BECK, *supra* note 58, at 247.

<sup>89</sup> *Id.* (stating that the first criterion is articulated in AP I art. 51(4)(b), prohibiting the use of weapons that cannot be directed at a specific military objective).

<sup>90</sup> *Id.* (stating that the second criterion is articulated in AP I art. 51(4)(c), prohibiting the employment of weapons "the effects of which cannot be limited as required by the Protocol").

<sup>91</sup> See M26 Advanced Taser Weapons Review, *supra* note 61, at 6 (suggesting that determining whether a weapon is capable of being controlled so as to be directed against a lawful target must be addressed in any weapons review). But see AFI 51-402, *supra* note 10, para. 1.2.2 (requiring only that a weapon review include, as a "minimum," a discussion on the relevant aspects of international law).

<sup>92</sup> See AFI 31-202, *supra* note 20, para. 8.1 (noting that MWDs, "seek, detect, bite and hold, and guard suspects on command during law enforcement patrol activities"); see also DA PAM. 190-12, *supra* note 27, para. 1-10 (stating, "[p]atrol dogs also are trained to apprehend suspects at or near a crime scene, stop those who may attempt to escape, and to protect their handlers from harm").

<sup>93</sup> See DA PAM. 190-12, *supra* note 27, para. 3-12.b (providing a description of how a dog handler employs a MWD to apprehend an individual).

Under the second ICRC indiscriminate weapon criterion, the effects of the MWD can be sufficiently controlled or limited so as not to violate international law. Current Army and Air Force doctrine cautions dog handlers that due care must be given when a MWD is released to apprehend an individual.<sup>94</sup> The U.S. Air Force adds a further safeguard by directing dog handlers not to unleash a MWD until the handler has verified that the MWD correctly recognizes the target to be pursued and apprehended.<sup>95</sup> Similarly, the U.S. Marine Corps cautions dog handlers to exercise caution when using a MWD to search an area where innocent persons may be present.<sup>96</sup> While there are employment considerations that may influence how an MWD is employed in a given situation, there is no evidence to suggest that a MWD would be as likely or more likely to bite noncombatants under appropriate release criteria.<sup>97</sup> The military commander who chooses to employ MWD teams to apprehend and detain enemy combatants can establish employment guidelines or restrictions to minimize the risks to civilians during combat operations.<sup>98</sup> Once unleashed, a MWD does not become an independent force that can no longer be controlled by the dog's handler.<sup>99</sup> On the contrary, the duration and intensity of an apprehension applied by a MWD to an enemy combatant can be regulated by a dog handler so as to not be indiscriminate.

#### D. International Treaty Obligations

In the final part of the legal analysis, JAs should survey the body of binding international treaty law to determine whether the United States is a party to any treaty that would prohibit the use of MWDs as means of non-lethal force to detain suspected enemy combatants.<sup>100</sup> Determining the impact of treaty law on a particular means of warfare arises from the understanding that binding international treaty obligations “must be observed by both military and civilian personnel with the same strict regard for both the letter and spirit of the law which is required with respect to the Constitution and statutes enacted in pursuance thereof.”<sup>101</sup> A survey of applicable treaty law reveals that the United States is not a party to any treaty that prohibits the use of animals or MWDs as a means of warfare.<sup>102</sup> Likewise, there are no prohibitions imposed on the United States by international treaty law that restrict using MWDs as a non-lethal weapon to apprehend enemy combatants.<sup>103</sup> Therefore, there should be no objection based on any binding treaty obligations to the employment of MWDs during offensive combat operations.

#### IV. Conclusion

During combat operations in Iraq and Afghanistan, enemy combatants will purposely immerse themselves into the civilian population knowing of U.S. military commanders' reluctance to respond with overwhelming lethal force when innocent non-combatants may be killed. As a result, commanders will seek ways to neutralize the enemy's advantage while minimizing the potential for alienating a local populace. Employing a MWD to apprehend an enemy combatant may provide commanders with a non-lethal alternative to the use of lethal force in difficult situations where the risk to non-combatants is high. Judge advocates have a duty to conduct a thorough legal analysis before a MWD is employed to apprehend an enemy combatant. Conducting a legal analysis based on relevant LOW principles and international treaty law will enable the

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<sup>94</sup> *Id.* para. 202.b (warning MWD handlers to consider the presence of “innocent” people who may inadvertently become the subject of an attack); *see also* AFI 31-202, *supra* note 20, para. 3.2.1 (warning that a MWD should only be released after it has identified the same target as the handler).

<sup>95</sup> *See* AFI 31-202, *supra* note 20, para. 3.2.1.

<sup>96</sup> *See* MCWP 3-34.1, *supra* note 26, at E-4 (suggesting that a MWD should not be used to search an area until there is relative certainty that the area is clear of innocent people).

<sup>97</sup> *See, e.g.,* Charles Mesloh, *An Examination of Police Canine Use of Force in the State of Florida*, at 59 (2003), available at [http://www.uspcak9.com/training/florida\\_study.pdf](http://www.uspcak9.com/training/florida_study.pdf) (comparing canine employment methods and demonstrating that working dogs are capable of being trained to look to their handler for guidance on what to do after they are unleashed). A MWD could be similarly trained to regulate the duration and intensity of a “bite and hold” as directed by the dog handler.

<sup>98</sup> *See, e.g.,* DA PAM. 190-12, *supra* note 27, para. 2-6.b.2 (instructing that prior to releasing a dog inside building or enclosed area, handlers should provide a warning that the dog may attack without warning and cautioning handlers to maintain voice control over the MWD throughout the search).

<sup>99</sup> *See id.* para. 3-12 (listing the critical training requirements for ensuring a MWD only employs controlled aggression).

<sup>100</sup> *See, e.g.,* M26 Advanced Taser Weapons Review, *supra* note 61, at 4-5 (describing the lack of prohibition on tasers imposed by customary international law and discussing whether the weapon falls within the scope of several U.S. treaty obligations).

<sup>101</sup> FM 27-10, *supra* note 48, para. 7.b (explaining that under the U.S. Constitution, article VI, clause 2, treaties to which the United States is a party, “constitute part of the supreme Law of the Land”).

<sup>102</sup> The Department of State maintains a list of all treaties to which the United States is a party. *See, e.g.,* *Treaties in Force: A List of Treaties and Other International Agreements of the United States in Force as of January 1, 2006*, available at <http://www.state.gov/s/l/treaty/treaties/> (last visited Oct. 18, 2006).

<sup>103</sup> *Id.*

commander to make an informed decision about the limitations of using a MWD during offensive combat operations. After conducting a thorough analysis of the relevant LOW principles and binding treaty law, the JA should be able to recommend using a MWD as a lawful means of non-lethal force to apprehend an enemy combatant.

# Operation Hammurabi Information Technology: Metrics Analysis Report for Baghdad Courts

*Lieutenant Colonel William McQuade<sup>1</sup>*

## Introduction

As part of the effort to modernize Iraqi court facilities after the war, Multi-National Division – Baghdad (MND-B) supplied local courts in the Baghdad area with computers, Internet service, and computer training for court personnel as part of its Operation Hammurabi project. This project began during Operation Iraqi Freedom (OIF) II when the First Cavalry Division (1CD) was a part of MND-B. The project was expanded during OIF III after the Third Infantry Division (3ID) replaced 1CD. To gain insight into the efficacy of Operation Hammurabi, during OIF III the MND-B Governorate Support Team (GST) Justice Section, which has spearheaded much of Operation Hammurabi's information technology effort, began obtaining metric data to determine the impact the Operation Hammurabi information technology effort is having on the Iraqi court system in the Baghdad area. The GST accomplished this by having Iraqi attorneys who are working for the GST visit a majority of the courts in the Baghdad area to obtain the desired metric data and provide it to the GST Justice Section for analysis. Trends from five sets of data obtained over a six month period (July-December 2005) indicate that Operation Hammurabi is achieving a positive effect.

## Background

Operation Hammurabi is a Rule of Law project formulated and operated by MND-B.<sup>2</sup> Part of Operation Hammurabi included installing computers and providing Internet service, computer maintenance, and facility upgrades at several Baghdad area court facilities beginning in late 2004.<sup>3</sup> Multi-National Division – Baghdad also began providing computer training to judges and court staff personnel beginning in the spring of 2005. The Department of State's International Narcotics and Law Enforcement division and MND-B Commander's Emergency Response Program (CERP) provided funding for this Iraqi court effort.<sup>4</sup> Multi-National Division – Baghdad's project intent is to help facilitate achieving desired division-level Rule of Law effects such as creating a more stable governance environment, facilitating local citizens' access to the courts, and marginalizing the insurgency.<sup>5</sup> In addition, the project is intended to be the first step toward the International Narcotics and Law Enforcement division's Iraq Justice Integration Project, which envisions connecting the court, police, and prison facilities by the use of computers, Internet access, and case tracking software so that an individual can be tracked throughout the entire system, from arrest until release from custody or confinement.<sup>6</sup> It is noteworthy that International Narcotics and Law Enforcement division funding for Internet service and computer maintenance at the court facilities terminated as of 1 November 2005 with the expectation that the Higher Juridical Council, which is the body governing the courts, would sustain this effort with their own resources.<sup>7</sup> As will be discussed below, the Higher Juridical

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<sup>1</sup> Leader, Team 6, 174th Legal Support Organization, 81st Regional Readiness Command. The author served with the 3rd Infantry Division Office of the Staff Judge Advocate (OSJA) as the Chief, Justice Section, Governorate Support Team, Multi-National Division – Baghdad during Operation Iraqi Freedom III. Original work on Operation Hammurabi, of which the subject matter of this article is based, was initiated under Operation Iraqi Freedom II, when the Multi-National Division – Baghdad Justice Chief was Major (MAJ) Jeffrey Spears (OSJA, 1st Cavalry Division). Significant assistance in all aspects of the Operation Hammurabi court metrics project was provided by First Lieutenant Jason Wong (OSJA, 3ID). The project was under the direction and guidance of Colonel (COL) William Hudson, SJA, 3ID. The nine Iraqi liaison attorneys who assisted with this project were instrumental in obtaining the necessary data to analyze the success of the operation. Their identities are, however, undisclosed for their safety. Much of the information contained in this article is based on the author's recent professional experiences as the Chief, Justice Section, Governorate Support Team, Multi-National Division – Baghdad during Operation Iraqi Freedom III, from January 2005 – January 2006 [hereinafter Professional Experiences].

<sup>2</sup> Operation Hammurabi began under 1CD with efforts by MAJ Jeffrey Spears, the 1CD GST Justice Chief, but was substantially expanded when 3ID replaced 1CD in February 2005. This project is part of an overarching Rule of Law program established as part of the reconstruction of Iraq after the recent war.

<sup>3</sup> The fourteen court facilities include Khark, Rusafa, Khadimiya, Bayaa, Karada, New Baghdad, Sadr City (Al Thawra), Adhamiya, Al Zahoor, Mahmudiya, Abu Ghraib, and Medain.

<sup>4</sup> Donated computer hardware was installed during OIF II, and 1CD selected contractors to provide computer maintenance, Internet service, and computer training using International Narcotics and Law Enforcement funding (contract #s JCCI/PCO W914NS-04-M-9080 (maintenance/Internet service) and JCCI/PCO W91GY0-06-M-0006 (computer training)). Commander's Emergency Response Program funds have been used to supplement and expand upon the original scope of the project.

<sup>5</sup> Multi-National Division – Baghdad's Operation Hammurabi implemented a portion of the International Narcotics and Law Enforcement division's 1994 Rule of Law Framework Working Document (ROLFWD), which provided a general scheme for developing the overall rule of law strategy for Iraq.

<sup>6</sup> The Iraq Justice Integration Project essentially formalized the ROLFWD as incorporated by an interagency and joint US-Iraqi working group.

<sup>7</sup> See Professional Experiences, *supra* note 1 (recalling contract JCCI/PCO W914NS-04-M-9080 and discussions between 3ID GST and Department of State personnel in the fall of 2005).

Council does not seem to have provided any funds to sustain Internet service or computer maintenance at the various court facilities in Baghdad.

Each court facility contains a variety of court types. These types include Family, First Instance (Civil), Criminal Investigative, Misdemeanor, and Felony courts.<sup>8</sup> Two court facilities also have appellate courts co-located with the lower level courts.<sup>9</sup> As a means of determining the success of the project and to provide information regarding future allocation of effort and resources, MND-B Office of the Staff Judge Advocate decided to begin tracking certain metrics that will provide insight into the effect Operation Hammurabi is having on the Iraqi court system in Baghdad.<sup>10</sup> Because of the slowly evolving court system in the current Iraqi environment, it was further decided that metric data need only be collected approximately once per month.<sup>11</sup> Nine Iraqi liaison attorneys who were Department of State contractor employees assigned to work with the GST Justice Section collected the metric data. The attorneys were generally assigned to conduct observations in different courts, although in a few cases two attorneys assist with the same court complex due to the high level of activity at the court facility. The attorneys were given two weeks to conduct their observations.<sup>12</sup> Three courts were considered too dangerous for the attorneys to conduct observations due to insurgent activities. These courts, therefore, were deleted from the list of courts to be scrutinized.<sup>13</sup>

The data collection task was developed in June 2005 and ready for implementation by July 2005. The first set of data was obtained in mid-July 2005; the second set in late August—beginning September 2005; and the third through fifth sets in mid-month for October - December 2005 (totaling a six month period). The data was based on in-person court visits by the Iraqi attorneys. The attorneys were directed to visit each court and view cases for at least three hours. They were further directed to follow-up their observations with interviews of the judges and court staff to obtain anecdotal information. They recorded their data on worksheets, which was then entered by GST Justice Section personnel onto Microsoft Excel computer spreadsheets to facilitate later review, comparison, and analysis.<sup>14</sup>

The following analysis does not address all of the data collected by the attorneys. Further, much of the discussion in this article is based upon an analysis of the aggregate data from the courts because the intent of this report is to cover some of the most important areas that can provide general trends regarding the Operation Hammurabi's overall effectiveness in the Iraqi court system. Because a review of the data spreadsheets for the various courts can provide more detailed information regarding each individual court, as well as provide additional data not included in this report, future studies may be able to use the data for a more targeted analysis.<sup>15</sup> Finally, a summary of the numerical data addressed in this article is included in Appendix A. The computer spreadsheet data is the source of the summary, which is the basis for the graphs referenced in this article.

### Information Technology

A snapshot of the status and trends in the computer technology area can be seen in Figure 1. The figure depicts in graphical form eight of the most important metrics that provide insight into information technology (IT) development and progress. As seen from the graph, there is a general positive overall trend in all areas, including computer training, computer

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<sup>8</sup> According to members of the Iraqi Bar Association, who serve as liaison attorneys to the GST, New Baghdad, Adhamiya, and Al-Zahoor court facilities do not have felony courts. A thorough history and description of the Iraqi judiciary can be found in *Judicial System in Iraq*. JUDGE MEDHAT MAHMOUD, JUDICIAL SYSTEM IN IRAQ (Baghdad, 2004) (Judge Medhat Mahmoud is the President of the Iraqi Council of Judges and Chief Justice of the Iraqi Supreme Court).

<sup>9</sup> These two courts include the Khark and Rusafa court complexes.

<sup>10</sup> This decision followed extensive discussions between the GST Justice Chief and the MND-B Staff Judge Advocate (COL William Hudson) in the spring/early summer of 2005.

<sup>11</sup> *Id.*

<sup>12</sup> The author formulated the overall data collection and analysis plan, which was approved by the OIF III MND-B Staff Judge Advocate, COL William Hudson. The author developed the plan in close coordination with the Iraqi liaison attorneys who worked with the GST Justice Section

<sup>13</sup> A determination to eliminate the courts was made following discussions between the GST Justice Chief and the GST Iraqi liaison attorneys. The following three courts were deleted from the list: Abu Ghraib, Medain, and Mahmudiya. One liaison attorney offered to call court personnel at the Mahmudiya facility each month to obtain the information, but since such information was not based on personal observations, it was not included in the statistical analysis for this project.

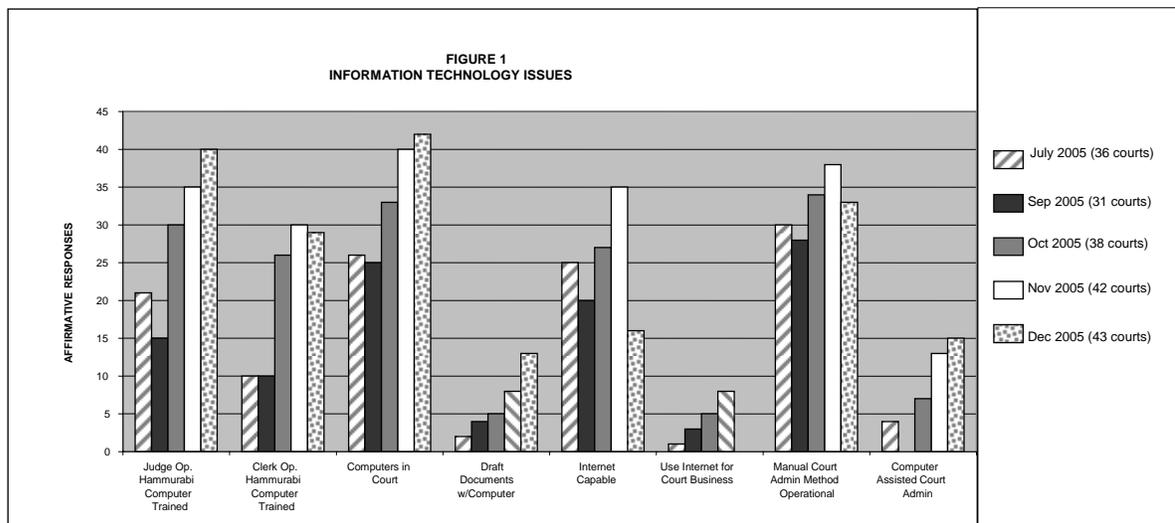
<sup>14</sup> Data collection procedures, data sheets (in the form of questionnaires to be used by the Iraqi liaison attorneys during their court observations), and spreadsheets to incorporate the data were developed by the author, 1LT Jason Wong, and COL William Hudson and his OSJA staff in the spring of 2005.

<sup>15</sup> Although the older data worksheets were destroyed to save file space, all of the data has been captured on the spreadsheets, which are located with the primary court metrics file in the GST Justice Section office in Baghdad, Iraq, and are available for review.

and Internet capability, and computer and Internet usage. A sudden drop in Internet capability, however, in the December data can be attributed to the expiration of an MND-B contract to provide Internet service and computer maintenance. In addition, the Higher Juridical Council stated its intent to provide only select courts with Internet service in the foreseeable future.<sup>16</sup> The information regarding manual court administration methods was added to enable a comparison to the number of courts using computers to assist with court administration.

As seen in Figure 1, there was a tremendous increase in the number of judges and clerks who reported having received computer training through Operation Hammurabi. This increase can be partly attributed to the on-going training effort throughout OIF III under a computer training contract.<sup>17</sup> Another likely reason for the substantial jump in trained personnel is because the Iraqi Chief Judge (currently Judge Medhat Mahmoud) and the Chief Appellate Judges (currently Adnan and Amer) recently directed the lower court judges to take the training opportunity more seriously and ensure as many personnel as possible attend. This direction by the judges resulted from a meeting the GST Justice Section had with the judges in which they were notified that the training contractor reported that many court personnel failed the training classes due to absences.<sup>18</sup>

Regarding the use of information technology equipment for court business, Figure 1 shows that although the number of courts using computers to draft documents and assist with court administration and using the Internet for research and other court business is still small, the overall increases since the first set of data was recorded is impressive. The number of courts using computers to draft documents increased by 650% (from two to thirteen), and the number of courts using computers to assist with court administration increased by 375% (from four to fifteen). The number of courts using the Internet to conduct court business improved by 800% (from one to eight) through November of 2005 until Internet service was disrupted. Iraqi courts still have a long way to go since, over *forty* courts are included in the project, but the trend is quite favorable. The results indicate that court personnel increasingly recognize the value of using computers and the Internet for court work. The data in Figure 1 concerning the number of courts using a manual court administrations method (averaging thirty-three over the five sets of data) provides a reference to compare with the number of courts using computers to assist with court administration.



Although Figure 1 shows the number of courts that reported having computers increased over the three-month period, many of the courts have only a few computers to serve many personnel. In fact, Iraqi courts have an average of only three computers that are shared by all employees, and some courts have only one computer or no computers at all.<sup>19</sup> Court staff made many anecdotal comments, which are included in the data worksheets, expressing an interest in using computers for court duties but currently being unable to do so because of an insufficient number of computers in the courts. As a result, if additional computers are provided to the courts, the numbers of courts using them for court-related business will likely increase. Anecdotal comments obtained during the December 2005 observation period indicated that at least a few courts have begun obtaining some additional computers but not nearly enough to ensure easy computer access for all employees.

<sup>16</sup> See *supra* note 7.

<sup>17</sup> See Professional Experiences, *supra* note 1.

<sup>18</sup> The author, along with Department of Justice personnel, met with Baghdad-based Iraqi judges on a routine basis to discuss a variety of current judicial matters.

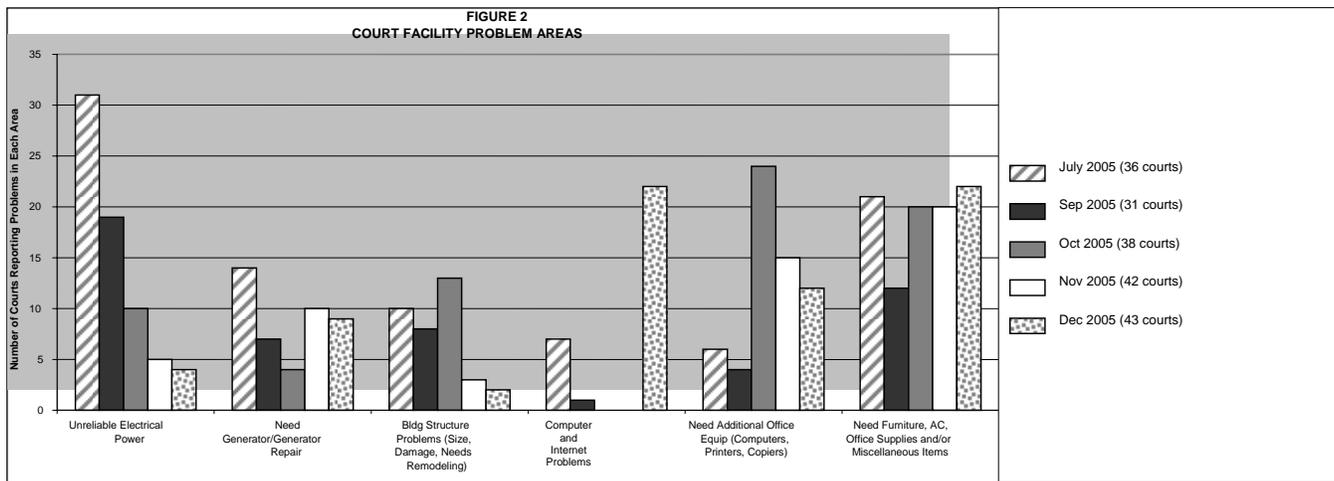
<sup>19</sup> The lack of computers was determined by data obtained during court observations and discussions with court personnel conducted by GST Iraqi liaison attorneys.

Figure 1 also appears to indicate a monthly variation in the number of courts having Internet service. In fact, as noted above, all of the courts had Internet service until November 2005. However, even during the period in which MND-B provided Internet service, there were still occasional service disruptions due to equipment difficulties. The fluctuations in Internet service observed in Figure 1 for July to November of 2005 likely indicate the number of courts experiencing service difficulties at the time the observations were made. In discussions between the GST Justice Chief and Chief Judge Medhat, the Iraqi Chief Judge of the Higher Juridical Council, Chief Judge Medhat indicated that he currently has additional funds to expend for information technology purposes but will limit Internet service to only a few courts because of his perception that the Internet is not used much for court purposes.<sup>20</sup> It is expected that future MND-B Office of the Staff Judge Advocate personnel will meet with Chief Judge Medhat to recommend that he continue Internet service to all courts because many were just beginning to use the service for court-related purposes when the service was terminated.<sup>21</sup>

Finally, as with all the data comparisons noted in this report, it should be remembered that a partial reason for differences in monthly data can be attributed to a fluctuation in the number of courts reporting during each observation period. During the first period, thirty-six courts reported data; during the second period, the number of courts reporting fell to thirty-one; during the third period, the number of courts reporting increased to thirty-eight; during the fourth period, the number of courts reporting increased to forty-two; and during the fifth period, the number of courts reporting reached forty-three. These fluctuations were due to the following: (1) difficulties some of the attorneys had in receiving court permission to obtain the data from a specific judge; (2) confusion among the attorneys regarding who was responsible for obtaining data for each court; and (3) visiting only one of multiple court buildings for a given court facility. Over time these problem areas were resolved so that the December 2005 data represents virtually all courts readily accessible to the observers. Eliminating reporting obstacles should result in a more stable number of courts reporting in the future, as indicated by the similarity in the numbers obtained between the fourth and fifth data sets.

### Court Facilities

In addition to obtaining data regarding information technology, GST Justice Section also obtained a variety of data about the court facility. This data included anecdotal information from court personnel regarding court buildings, utilities, office equipment, and other items of concern. Figure 2 shows a graphical representation of the areas of concern about court facilities expressed by the judges and staff.



Two primary areas of continued concern for the court infrastructure are unreliable grid electricity and the lack of working generators. As seen in Figure 2, problems in these areas are being remedied. The number of courts complaining of a lack of reliable power declined from thirty-one to four (an eighty-seven percent decrease) over the three-month period,

<sup>20</sup> The author and Department of Justice personnel met often with Chief Judge Medhat to discuss judicial matters of common interest, including Operation Hammurabi. As the Iraqi Chief Judge, Medhat approved implementation of Operation Hammurabi and requested periodic feedback on its progress. He also provided support to Operation Hammurabi through directives to the lower courts to cooperate with GST Justice Section personnel and their Iraqi liaison attorneys.

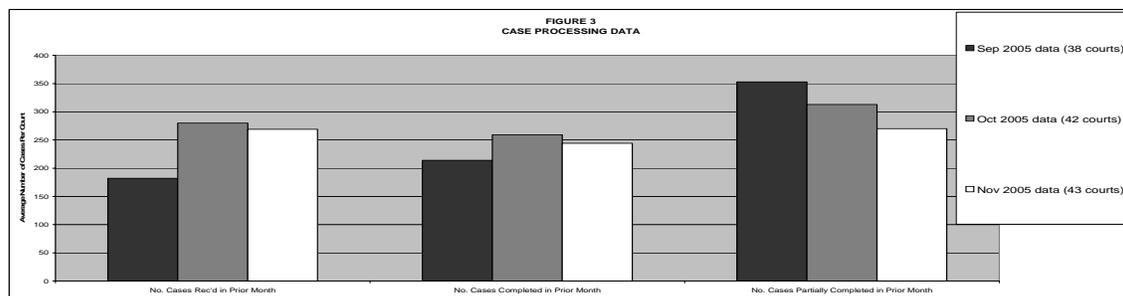
<sup>21</sup> Due to the transition between 3ID and 4th Infantry Division in the December 2005 through January 2006 timeframe, GST Justice Section personnel were unable to review the final findings with Chief Judge Medhat. During discussions with replacement personnel, the author recommended they meet with Chief Judge Medhat to discuss thoroughly the results of the metrics analysis and to recommend that he support funding Internet access to all Baghdad courts.

while the number of courts reporting either a lack of a generator or a need for generator repair declined from fourteen to nine (a thirty-six percent decrease). These declines are likely due to the following: (1) a combination of Coalition efforts to improve grid electrical power; (2) a decrease in electrical power requirements as air conditioning demands decreased due to seasonal temperature drops; and (3) efforts by the MND-B and the High Juridical Council<sup>22</sup> to assist courts in obtaining generators. Note, however, that generator problems began resurfacing during November and December of 2005. This increase was likely attributable to maintenance requirements and fuel issues, the latter becoming more prominent as the cost of fuel spiked significantly over the period.<sup>23</sup>

Another area that formerly represented a significant problem in the Iraqi court system was computer and Internet maintenance. Although the Coalition had a contractor providing computer maintenance and Internet service for Iraqi courts until 31 October 2005,<sup>24</sup> the GST Justice Section received continuous complaints by court personnel about computer and Internet problems.<sup>25</sup> It was not until mid-November 2005; however, that the contractor actually stopped providing the Internet service to the courts. As seen in Figure 2, computer complaints dropped dramatically over the first four-month period (from seven to zero complaints). This drop in computer equipment complaints was likely due to continued pressure on the maintenance contractor to comply with the contract, as well as court personnel knowing how to remedy minor computer and Internet equipment problems themselves after having received computer training. In addition, no complaints about Internet service were reported during that three-month period. In December, however, twenty courts reported losing Internet capability and two reported computer maintenance problems. Complaints about Internet capability will likely continue unless the Higher Juridical Council makes a serious effort to provide the requested services or some other outside entity (e.g., MND-B) again provides it for the courts.

It is instructive to note that there has been a significant increase in the demand for more information technology equipment. As seen in Figure 2, such requests jumped from six in July to twenty-four in October before dropping to twelve in December. This spike may be partially due to court personnel becoming more familiar with computers and their advantages. As the employees' familiarity increases, they would logically demand more equipment to enhance their information technology capability. As noted earlier, this notion is supported by the anecdotal data from many court staff personnel, who noted that while they are enthusiastic about using computers, they are unable to use computers to do their office work because of computer shortages at the courts. In addition to a request for more computers, many courts also reported a desire to obtain photocopiers and additional scanners and printers. Further anecdotal evidence obtained by the GST Iraqi liaison attorneys during their court observations confirms that the Higher Juridical Council did in fact place additional computers in some courts. This is the likely cause of the decrease in requests for additional computer hardware over the last two reporting periods.

Finally, as essential services, such as electricity and certain basic office equipment, become more available, it is logical for the court staff to adjust their focus to secondary needs such as better furniture and air conditioning systems and more office supplies. This change in focus is reflected in Figure 2.



<sup>22</sup> The High Juridical Council is an independent ministry level government agency that governs the Iraqi court system, including the disbursement of funds to the various courts for approved projects. As head of the High Juridical Council, Chief Judge Medhat has tremendous influence on the judiciary budget and is, therefore, the main contact between the GST and the Iraqi judiciary for such matters.

<sup>23</sup> During the fall and winter of 2005, the Iraqi government took steps to increase the price of petroleum-based fuels by reducing government subsidies. See, e.g., *Minister goes in Iraq Oil Crisis*, BBC NEWS, Dec. 30, 2005, [http://news.bbc.co.uk/2/hi/middle\\_east/4569360.stm](http://news.bbc.co.uk/2/hi/middle_east/4569360.stm).

<sup>24</sup> See Professional Experiences, *supra* note 1.

<sup>25</sup> Court personnel contacted the GST Iraqi liaison attorneys to forward their complaints to the author, who served as the Contracting Officer's Technical Representative (COTR) for the contract.

## Case Processing Data

The first set of court case processing data gathered by the GST Iraqi attorneys was obtained in October 2005. The attorneys gathered additional court case processing data for the last two reporting periods. This data is graphically represented in Figure 3. The data is based on a review of court records for the calendar month prior to the attorney's visit. The data is limited to the following three categories: (1) the number of cases logged into the court for the prior month; (2) the number of cases the court completed during the prior month; and (3) the number of cases the court partially completed during the prior month. As can be seen in Figure 3, there is some variance in the sets of data, but it is likely that the Operation Hammurabi tools have not had any discernible impact to date.

The Iraqi liaison attorneys obtained the data from the written court records provided to them by court personnel. A study of the underlying data, however, indicates that some of the data is suspect. This conclusion is based on the reasonableness of some of the numbers obtained by the attorneys. For example, looking at the September data, the Karkh Family Court reported receiving 380 cases, while the New Baghdad court reported receiving 817. As another example, while the Karada Investigative Criminal Court reported completing 167 cases during September, the Bayaa Investigative court reported completing 2,308. Such disparities bring into question the accuracy of some of the reported data. One reason for the unusually high numbers obtained from some courts, however, could be explained by an additional use of the case processing data: it is provided each month to the Iraqi Judicial Review Committee, which uses the data to assess each judge's performance for that month. It is also possible that some judges may be exaggerating their data to improve the appearance of their court's performance.<sup>26</sup> As more sets of case management data are received and the GST Iraqi liaison attorneys continue to try to verify the accuracy of the source data, it may be possible to sift through the data to eliminate the more suspect data and thereby obtain a more accurate view of case processing. As the case processing data becomes more accurate, it may be possible to better gauge the impact the Operation Hammurabi project is having on the court system case processing, even before court administration software is introduced to the courts pursuant to the Department of State's International Narcotics and Law Enforcement division's sponsored Iraq Justice Integration Project.

## Conclusions

Based upon the five sets of data obtained to date from an average of thirty-eight Baghdad area courts per set (at nine court facilities), several conclusions can be drawn. First, Operation Hammurabi is providing a distinct and positive impact on the courts, thereby facilitating the Rule of Law effort in Iraq. This positive impact furthers MND-B Office of the Staff Judge Advocate's goal of affecting the division's Rule of Law battle space by achieving such desired effects as creating a more stable governance environment and facilitating local citizens' access to the courts, which achieves more support for the current government and marginalizes the insurgency. Successfully modernizing the court system aids in achieving these desired effects.

Second, it is evident from the data that there is still substantial work to be done before achieving the desired end-state of preparing the court facilities and personnel for the Iraq Justice Integration Project. But the success achieved to date for the Operation Hammurabi project indicates that the court system will soon be able to move to the next step in integrating the courts, police, and prisons. As of this date, the next planned step is to obtain a court administration software program and establish a pilot program using the court administration software in a court facility in Baghdad to prove its capabilities and to begin training court personnel in its usage.

Third, as Coalition forces begin to reduce funding for these Rule of Law projects, relying instead on Iraqi funding, MND-B must continue to monitor and assist the courts to ensure continued success. For that reason, it is necessary to continue conducting the observations, which will provide a means of gauging whether the Iraqi's are successfully funding and managing the projects. For example, during Operation Hammurabi Coalition forces ceased funding court computer maintenance and Internet service on 1 November 2005 due to direction from the Department of State. However, by continuing the court observations, MND-B was able to observe that the Higher Juridical Council has not yet successfully taken over funding and managing those services. This issue should continue to be a topic of discussion between MND-B Judge Advocates and Iraqi judges, including Chief Judge Medhat and Chief Appellate Judges Adnan and Amer. In addition, future metric data will provide insight as to whether the Higher Juridical Council favorably addresses the various court requests for additional office equipment, furniture, and other items noted during the observations.

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<sup>26</sup> According to the GST Iraqi liaison attorneys, the court case processing records provided to them are handwritten and the information contained therein has historically been suspect. Additional sources of error may be inadequate recordkeeping quality control practices and a non-uniform practice of what data is to be included in each category. These discrepancies make a fair comparison of the data among the various courts difficult. There is currently no means to verify the accuracy of the court records provided to the liaison attorneys.

Finally, although MND-B will transfer some project management and funding to the Higher Juridical Council, it will continue to play a significant role in other court-related projects. To succeed in those projects, it is critical to continue the court observations. Future data analysis will enable MND-B Office of the Staff Judge Advocate to discern whether changes need to be made in implementing those projects as well as to provide insight regarding how resources should be allocated.

OPERATION HAMMURABI COURT IT METRICS ANALYSIS  
28 December 2005

Total Courts Reporting	Set #1 (July 05)		Set #2 (Sep 05)		Set #3 (Oct 05)	
	Affirmative Responses	Negative Responses	Affirmative Responses	Negative Responses	Affirmative Responses	Negative Responses
Info. Technology Data						
Judge Op. Hammurabi Computer Trained	21	13	15	13	30	8
Clerk Op. Hammurabi Computer Trained	10	23	10	19	26	11
Computers in Court	26	10	25	3	33	4
Draft Documents w/Computer	2	30	4	27	5	32
Internet Capable	25	11	20	15	27	11
Use Internet for Court Business	1	32	3	28	5	33
Manual Court Admin Method Operational	30	5	28	3	34	4
Computer Assisted Court Admin	4	31	4	25	7	31
Court Case Flow						
No. Cases Rec'd in Prior Month	N/A	N/A	N/A	N/A	Number	Average/Court
No. Cases Completed in Prior Month	N/A	N/A	N/A	N/A	6926	182
No. Cases Partially Completed in Prior Month	N/A	N/A	N/A	N/A	8116	214
					13415	353
Problem Areas						
Unreliable Electrical Power	31	N/A	19	N/A	10	N/A
Need Generator/Generator Repair	14	N/A	7	N/A	4	N/A
Bldg Structure Problems (Size, Damage, Needs Remodeling)	10	N/A	8	N/A	13	N/A
Computer Problems	7	N/A	1	N/A	0	N/A
Need Additional Office Equip (Computers, Printers, Copiers)	6	N/A	4	N/A	24	N/A
Need Furniture, AC, Office Supplies and/or Miscellaneous Items	21	N/A	12	N/A	20	N/A
NOTES:						
1. Three judges (set #1) and six judges (set #2) received non-Operation Hammurabi computer training. Courts have multiple judges, so numbers will not necessarily match between sets.						
2. By data set #5, the average number of computers in each court was three.						
3. Documents include court decisions, transcript, letters, case docketing, and administrative functions.						
4. Some courts complained about equipment generally without providing specificity and others complain that they do not have enough computers, especially for clerks.						

Appendix A (continued)

Total Courts Reporting	Set #4 (Nov 05)		Set #5 (Dec 05)	
	42		43	
Info, Technology Data	Affirmative Responses	Negative Responses	Affirmative Responses	Negative Responses
Judge Op. Hammurabi Computer Trained	35	5	40	3
Clerk Op. Hammurabi Computer Trained	30	12	29	11
Computers in Court	40	2	42	1
Draft Documents w/Computer	8	34	13	30
Internet Capable	35	7	16	24
Use Internet for Court Business	8	34	0	43
Manual Court Admin Method Operational	38	4	33	9
Computer Assisted Court Admin	13	26	15	28
Court Case Flow	Number	Average/Court	Number	Average/Court
No. Cases Rec'd in Prior Month	11510	280	11582	269
No. Cases Completed in Prior Month	10624	259	10514	244
No. Cases Partially Completed in Prior Month	12841	313	11623	270
Problem Areas	Affirmative Responses		Affirmative Responses	
Unreliable Electrical Power	1 facility (4 courts) plus one other court	N/A	1 facility (4 courts)	N/A
Need Generator/Generator Repair	2 facilities (10 courts)	N/A	2 facilities (9 courts)	N/A
Bldg Structure Problems (Size, Damage, Needs Remodeling)	3	N/A	2	N/A
Computer Problems	0	N/A	2 (plus 5 facilities(20 courts) had no internet service	N/A
Need Additional Office Equip (Computers, Printers, Copiers)	15	N/A	12	N/A
Need Furniture, AC, Office Supplies and/or Miscellaneous Items	20	N/A	22	N/A
Notes (continued)				
6. In several cases, groups of courts within specific facilities are the ones who are using the computers and internet (i.e., Khark, Rusafa, Kadhamiya, and Al Bayaa).				
7. Only New Baghdad reported having no operable case filing system				
8. Case flow totals/averages are for all courts. Additional breakdown of numbers for each type of court should be considered for future analysis.				
9. In set #5, no clerks in Karada and Al Zohour had received any Hammurabi computer training.				
10. As of 1 November 2005, the Coalition stopped funding the internet service and computer maintenance for the Baghdad courts. The Higher Juridical Council is now responsible for those items and Chief Judge Medhat is aware of the situation and said the Higher Juridical Council would provide them.				

## Anatomy of a Random Court-Martial Panel

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### Introduction

Lieutenant General (LTG) Ricardo S. Sanchez selected a random court-martial panel for V Corps on 10 January 2005. This court-martial panel utilized a pool of 100 members who were selected using Article 25's best qualified criteria<sup>2</sup> but were randomly seated according to a unique, case-specific random number sequence (RNS).

Under the automatic replacement system, currently in use throughout the U.S. Army, the convening authority selects a standing court-martial panel that hears cases over a set period of time, for example six months.<sup>3</sup> The panel consists of primary and alternate members. Prior to each trial, the convening authority may excuse members for operational needs or any other reason.<sup>4</sup> Excused members are automatically replaced by alternate members. The alternate members always sit in the same designated order that was set by the convening authority when the panel was originally selected. Under this system, the same members tend to sit case after case.<sup>5</sup>

The V Corps randomly seated panel builds upon the automatic replacement system but eliminates the distinction between primary and alternate members. Instead, the convening authority selects a single pool of members. Prior to each trial, the convening authority excuses members in the same manner as described above.<sup>6</sup> The difference is that the remaining members sit according to an order, which is set at random, for each specific case. Under this system, different members sit in different combinations on every case.

This article discusses the policy and legal background pertaining to random panels, explains why the V Corps Commanding General chose to select a random court-martial panel, examines the mechanics used to select and seat this panel, reviews the trial judge's ruling in the first case tried before the random panel, and recounts the discussions that took place during the in-progress review of the new system. This article does not argue that the randomly seated panel is the best forum before which to try all military cases.<sup>7</sup> Rather, this article encourages judge advocates (JAs) to consider the V Corps method as a workable alternative to the automatic replacement system.

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<sup>2</sup> UCMJ art. 25(d)(2) (2005) ("When convening a court-martial, the convening authority shall detail as members thereof such members of the armed forces as, in his opinion, are best qualified for the duty by reason of age, education, training, experience, length of service, and judicial temperament.").

<sup>3</sup> See Craig S. Schwender, *One Potato, Two Potato . . . A Method to Select Court Members*, ARMY LAW., May 1984, at 12; Karen V. Johnson, *In His Opinion—A Convening Authority's Guide to the Selection of Panel Members*, ARMY LAW., Apr. 1989, at 43.

<sup>4</sup> MANUAL FOR COURTS-MARTIAL, UNITED STATES, R.C.M. 505(c) (2005) [hereinafter MCM].

<sup>5</sup> See Schwender, *supra* note 3, at 12.

<sup>6</sup> *Id.*

<sup>7</sup> There are many outstanding academic articles that debate the best method to select and seat court-martial panels. See, e.g., Major Christopher Behan, *In Defense of Convening Authority Selection and Appointment of Court-Martial Panel Members*, 176 MIL. L. REV. 190 (2003) (providing a comprehensive list of academic writings in this controversial area at footnote 25).

## Background

Criticism of the military's justice system is not new and can be especially harsh when military procedure diverges from civilian practice.<sup>8</sup> When the U.S. Congress enacted the Uniform Code of Military Justice (UCMJ)<sup>9</sup> in 1951, it required the President to prescribe rules of procedure and evidence at courts-martial, "which shall, so far as he considers practicable, apply the principles of law and the rules of evidence generally recognized in the trial of criminal cases in the U.S. district courts, but which may not be contrary to or inconsistent with this chapter."<sup>10</sup>

Congress chose not to mirror U.S. district court practices when it prescribed the method to convene, or call together, members for court-martial duty. In enacting Article 25, UCMJ, Congress mandated that convening authorities personally, rather than randomly, select panel members. Article 25 specifically requires convening authorities select only those members who, in the convening authority's opinion, are best qualified by virtue of their "age, education, training, experience, length of service, and judicial temperament."<sup>11</sup> Predictably, this divergence from civilian practice has generated heated debate.<sup>12</sup>

Military case law illustrates that convening authorities retain broad discretion in how to adhere to Article 25, UCMJ, when selecting the best qualified members. For example, "a commander is free to require representativeness in his court-martial panels and to insist that no important segment of the military community—such as blacks, Hispanics, or women—be excluded from service on court-martial panels."<sup>13</sup>

When reviewing a convening authority's selection of members, military courts look to the *motivation* of the convening authority in the court-martial selection process. The selection will not be disturbed by appellate courts unless the selection is based on rank;<sup>14</sup> based on non-Article 25 criteria, which was used as an unauthorized shortcut to exclude potential members;<sup>15</sup> or made with a view of achieving a particular result or a harsh sentence.<sup>16</sup>

The relevant military case law on the subject condones the use of randomly seated court-martial panels. The Court of Military Appeals (CMA), the predecessor to the military's highest court, which is now called the Court of Appeals for the Armed Forces (CAAF), has issued two published opinions relating to random panels. In *United States v. Smith*,<sup>17</sup> the CMA stated in dicta:

We are aware that at times there have been experiments in the armed services with some form of random selection of court-martial members. In view of [*United States v.*] *Crawford*, it would appear that even this method of selection is permissible if the convening authority decides to employ it in order to obtain representativeness in his court-martial panels and if he personally appoints the court members who have been randomly selected.<sup>18</sup>

In *United States v. Yager*,<sup>19</sup> the CMA dealt directly with the issue of a randomly selected military panel. In *Yager*, the accused was tried before a random panel. The defense challenged the categorical exclusion of Soldiers in the grade of E-3 and below and non-citizens of the United States as potential members for the panel. The CMA affirmed the case and, in

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<sup>8</sup> See, e.g., Arthur E. Farmer & Richard H. Wels, *Command Control—Or Military Justice?*, 24 N.Y.U. L.Q. REV. 263, 264 (1949).

<sup>9</sup> 10 U.S.C.S. §§ 801-946 (LEXIS 2006).

<sup>10</sup> UCMJ art. 36(a) (2005).

<sup>11</sup> *Id.* art. 25.

<sup>12</sup> See, e.g., Kenneth J. Hodson, *Courts-Martial and the Commander*, 10 SAN DIEGO L. REV. 51 (1972-1973) (advocating the removal of commanders from the court-martial member selection process and substituting random selection based on the American Bar Association Standards for Criminal Justice); see also Major Guy P. Glazier, *He Called for His Pipe and He Called for His Bowl, and He Called for His Members Three—Selection of Juries by the Sovereign: Impediment to Military Justice*, 157 MIL. L. REV. 1 (1998).

<sup>13</sup> *United States v. Smith*, 27 M.J. 242, 249 (1988).

<sup>14</sup> *United States v. Daigle*, 1 M.J. 139 (1988).

<sup>15</sup> *United States v. Crawford*, 35 C.M.R. 3 (C.M.A. 1964).

<sup>16</sup> *United States v. Lewis*, 46 M.J. 338 (1997).

<sup>17</sup> 27 M.J. 242 (1988).

<sup>18</sup> *Id.* at 249 (citation omitted).

<sup>19</sup> 7 M.J. 171 (1979).

doing so, the 1st Infantry Division and Fort Riley's random jury program.<sup>20</sup> Unfortunately, the opinion sheds little light on the mechanics used by the 1st Infantry Division to seat its random panel.<sup>21</sup>

In 1998, Congress directed the Secretary of Defense (SECDEF) to study alternate methods of panel selection.<sup>22</sup> This mandate required the SECDEF to develop and report on a random selection method of choosing members to serve on court-martial panels. The Department of Defense General Counsel requested that the Joint Service Committee (JSC)<sup>23</sup> conduct a study and prepare a report on random selection.<sup>24</sup> The JSC sought opinions from each service and reviewed random court-martial panel selection practices in Canada and the United Kingdom. After considering six alternatives, the JSC reported that the current practice "insures fair panels of court-martial members who are best qualified" and that there is "no evidence of systematic unfairness or unlawful command influence."<sup>25</sup>

In 2001, to commemorate the fiftieth anniversary of the UCMJ, the National Institute of Military Justice (NIMJ)<sup>26</sup> sponsored a commission to write a report on the state of military justice. Senior Judge Walter T. Cox, III, chaired this effort.<sup>27</sup> The commission's report is directly at odds with the JSC's conclusions on panel selection. The commission stated bluntly, "[t]here is no aspect of military criminal procedures that diverges further from civilian practice, or creates a greater impression of improper influence, than the antiquated process of panel selection."<sup>28</sup> The commission concluded, "[t]here is no reason to preserve a practice that creates such a strong impression of, and opportunity for, corruption of the trial process by commanders and staff judge advocates."<sup>29</sup> The commission called on Congress to immediately strip convening authorities of their authority to select panel members. The commission recommended that members of courts-martial "should be chosen at random from a list of eligible servicemembers prepared by the convening authority, taking into account operational needs as well as the limitations on rank, enlisted or officer status, and same-unit considerations currently followed in the selection of members."<sup>30</sup>

Five years have passed since the Cox Commission Report was sent to Congress, and there has been no legislative change. Does this mean that the policy considerations that might drive a change in this area are dormant or dead? Two recent cases from the CAAF indicate the opposite conclusion.

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<sup>20</sup> *Id.* at 173.

<sup>21</sup> In the opinion, the *Yager* court makes the following statement:

This appeal involves the validity of a random jury selection program established by the convening authority, 1st Infantry Division and Fort Riley, Fort Riley, Kansas. In accordance with procedures promulgated by a local directive . . . names for a list of prospective jurors were selected from personnel data files and placed on a "Master Juror List" and thereafter screened by having each individual whose name appeared on the list complete a questionnaire regarding qualifications to serve as a court-martial member. Upon completion of the screening process and the elimination of unqualified and exempt personnel, the remaining persons were considered "Qualified Jurors," and they were eligible for selection, at random, for court-martial duty. In cases involving enlisted accused who wished to have enlisted court members, the directive provided that each panel of jurors would be comprised of at least one-third enlisted personnel.

*Id.* at 171.

<sup>22</sup> See Strom Thurmond National Defense Authorization Act for Fiscal Year 1999, Pub. L. No. 105-261, § 1, 112 Stat. 1920 (1998).

<sup>23</sup> UCMJ art. 146 (defining the composition and role of the code committee); see also U.S. DEP'T OF DEFENSE, DIR. 5500.17, ROLE AND RESPONSIBILITIES OF THE JOINT SERVICE COMMITTEE (JSC) ON MILITARY JUSTICE, at A26 (2005) (designating the role and responsibilities of the Joint Service Committee).

<sup>24</sup> See the JOINT SERVICE COMMITTEE ON MILITARY JUSTICE, REPORT ON THE METHODS OF SELECTION OF MEMBERS OF THE ARMED FORCES TO SERVE ON COURT-MARTIAL (1999) [hereinafter JCS REPORT] (on file with the Office of The Judge Advocate General, U.S. Army).

<sup>25</sup> *Id.* at 45.

<sup>26</sup> The National Institute of Military Justice (NIMJ) is a private non-profit organization based in Washington, D.C. The NIMJ website is at <http://www.nimj.com> (last visited Sept. 6, 2006).

<sup>27</sup> Judge Cox was the Chief Judge of the CAAF. An Army veteran, he was a judge on the South Carolina Circuit Court and an Acting Associate Justice of the Supreme Court of South Carolina, before being appointed to the COMA, the predecessor to the CAAF. COX COMMISSION REPORT, *infra* note 19, at 4-5.

<sup>28</sup> NATIONAL INSTITUTE OF MILITARY JUSTICE, REPORT OF THE COMMISSION ON THE 50TH ANNIVERSARY OF THE UNIFORM CODE OF MILITARY JUSTICE (2001), available at [http://www.badc.org/html/militarylaw\\_cox.html](http://www.badc.org/html/militarylaw_cox.html) [hereinafter COX COMMISSION REPORT].

<sup>29</sup> *Id.*

<sup>30</sup> *Id.*

In *United States v. Wiesen*,<sup>31</sup> the military's highest appellate court used an implied bias theory to reverse a case where the senior officer on the panel supervised six of the ten members.<sup>32</sup> The three-judge majority concluded that "[w]here a panel member has a supervisory position over six of the other members, and the resulting seven members make up the two-thirds majority sufficient to convict, we are placing an intolerable strain on public perception of the military justice system."<sup>33</sup> The court held that "the military judge abused his discretion when he denied the challenge for cause against [the senior officer on the panel]."<sup>34</sup> Finding prejudice, the court reversed the Army Court of Criminal Appeals and set aside the findings and sentence.

By finding that the public would objectively view command relationships among members as unfair, the *Wiesen* court certainly expanded the doctrine of implied bias to include inter-panel chain-of-command issues. Some, however, view *Wiesen* as a direct attack on commanders' discretion to select panels. For example, in a spirited defense of the status quo, MAJ Chris Behan wrote:

There should be no doubt that the *Wiesen* majority intended to strike a blow at the convening authority's discretionary ability to appoint court-martial panel members. In the penultimate sentence of its per curiam denial of the government's petition for reconsideration, the majority wrote, "The issue is appropriately viewed in the context of public perceptions of a system in which the commander who exercises prosecutorial discretion is the official who selects and structures the panel that will hear the case." The *Wiesen* majority's true policy concern, then, hearkens back to the objections that Congress heard and considered when enacting the UCMJ over fifty years ago. Viewed in that context, *Wiesen* is a prime example of an activist appellate court arrogating to itself the power to change constitutionally sound legislation with which it does not agree.<sup>35</sup>

*United States v. James*<sup>36</sup> was similar to *Wiesen* in that the CAAF ruled on a *voir dire* issue that encroached upon the convening authority's responsibility and discretion to select panel members. The issue in *James* was whether the liberal grant mandate for causal challenges should apply equally to the government and defense.<sup>37</sup> The *James* court reasoned, "[u]nlike the convening authority, who has the opportunity to provide his input into the makeup of the panel through his power to detail 'such members of the armed forces as, in his opinion, are best qualified for the duty,' . . . the defendant has only one peremptory challenge at his or her disposal."<sup>38</sup> The court again relied on an implied bias theory announcing that the "liberal grant rule protects the 'perception or appearance of fairness of the military justice system. . . . Given the convening authority's broad power to appoint, we find no basis for application of the 'liberal grant' policy when a military judge is ruling on the Government's challenges for cause."<sup>39</sup> Like *Wiesen*, *James* was more an erosion rather than a direct attack on Article 25's dictate that commanders personally select military panel members. The court's implied bias theory certainly legitimizes the need to view the military system from the vantage point of civilian notions of due process and fundamental fairness.

### Change from Within

What motivated V Corps to randomly seat an Article 25 selected panel? First, the Staff Judge Advocate (SJA), Colonel (COL) Michele M. Miller, and the Commanding General, LTG Ricardo S. Sanchez, believed that the change would benefit Soldiers. At a minimum, by adapting a random seating system that more closely mirrored the popular American notion of

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<sup>31</sup> 56 M.J. 172 (2001).

<sup>32</sup> *Id.* at 177. Implied bias is an appearance test viewed through the objective eyes of the public, whereas actual bias is a credibility test viewed through the subjective eyes of the trial judge. In other words, implied bias equates to a military appellate court's objective estimate about the public's perception of the military justice system. *See, e.g.*, *United States v. Minyard*, 46 M.J. 229 (1997).

<sup>33</sup> *Id.* at 175.

<sup>34</sup> *Id.* at 172.

<sup>35</sup> Behan, *supra* note 7, at 275.

<sup>36</sup> 61 M.J. 132 (2005).

<sup>37</sup> *Id.* at 139.

<sup>38</sup> *Id.*

<sup>39</sup> *Id.*

how a fair trial should work, Soldiers' impressions of the military justice system would improve.<sup>40</sup> Second, by doing this from within, V Corps could control the details of execution and fine-tune the new process over time.

Negative media coverage and recent international developments in military law have the potential to fuel Congressional interest and could result in wholesale reform imposed from above. In the recent past, the popular media has paid considerable attention to the military justice system.<sup>41</sup> For example, in a *U.S. News and World Report* cover story, the author went far beyond focusing on the facts of sensational cases and commented on the mechanics of how the military handles justice.<sup>42</sup> In particular, the article gravitated to pretrial procedures, such as convening authority discretion to select panels, refer cases to the courts they select, bind the government to pretrial agreements, and take final action on the findings and sentences.<sup>43</sup> The recent past has also seen significant international developments in military law that may influence domestic developments.<sup>44</sup> Beginning in 1992, there have been major military justice reforms in both the United Kingdom<sup>45</sup> and Canada.<sup>46</sup> These changes were compelled by a series of cases in the European Court of Human Rights<sup>47</sup> and decisions of the Canadian Supreme Court and Court-Martial Appeal Court.<sup>48</sup> As a result, both nations have switched to randomly selected military court-martial panels.

In Canada's first random panel case, a central military office in Ottawa generated panel member lists from a world wide database.<sup>49</sup> One of the randomly selected members was stationed in Australia. To prosecute a relatively small barracks larceny case that was tried in Ottawa, the Canadian military had to fly the member half-way around the world to participate in the proceedings. No consideration was given to the specific member's geographic location or duty requirements. By cutting the command completely out of the panel selection and seating process, affected Canadian commanders could not exempt members of their commands from court-martial duty. While this system appeased civilian critics of the Canadian military justice system, it did not recognize the unique needs of a worldwide organization. By proactively making sensible changes from within, the United States military can avoid such illogical outcomes.

By testing the panel seating system within the framework of Article 25, V Corps sought to modernize military pretrial procedures while preserving the best aspects of the system—the commanding general or general court-martial convening authority (GCMCA) selection of a venire<sup>50</sup> of best qualified members and flexible rules for convening authority excusal of members for operational reasons or other good cause.<sup>51</sup> It was feared that turning a blind eye to the issues related to panel selection and seating might result in drastic changes forced upon the military without the luxury of fine-tuning the random selection process incrementally over time.<sup>52</sup>

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<sup>40</sup> The belief was that the proposed change would not impact the results of courts-martial because the automatic replacement system in use was being implemented in a fair manner. The big gain sought was to improve Soldiers' perceptions about the fundamental fairness of the military justice system.

<sup>41</sup> See, e.g., Beth Hillman, *Chains of Command: The U.S. Court-Martial Constricts the Rights of Soldiers—And That Needs to Change*, LEGAL AFFAIRS, May/June 2002, at 50-52.

<sup>42</sup> Edward T. Pound, *Unequal Justice*, U.S. NEWS & WORLD REP., Dec. 16, 2002, at 19-30.

<sup>43</sup> *Id.*

<sup>44</sup> Eugene R. Fidell, *A World-Wide Perspective on Change in Military Justice*, 48 A.F. L. REV. 195 (2000) (discussing world-wide changes in various military justice systems and suggesting that the UCMJ fall in with major world trends).

<sup>45</sup> Armed Forces Act 1996, ch. 46 (Eng.), available at <http://www.opsi.gov.uk/acts/acts1996/1996046.htm> (last visited Sept. 6, 2006).

<sup>46</sup> Act of Dec. 10, 1998, S.C. 1998, c. 35 (Can.), *proclaimed in force*, Stat. Inst. No. 99-74, 133 C. GAZ. 1959 (1999).

<sup>47</sup> *Findlay v. United Kingdom*, 24 Eur. Ct. H.R. 221 (1997) (invalidating the role of the convening authority in the British military justice system as a violation of the European Convention for the Protection of Human Rights and Fundamental Freedoms guarantee of an independent and impartial tribunal).

<sup>48</sup> *R. v. Genereux*, [1992] S.C.R. 259 (invalidating role of convening authority in Canadian military justice system as a violation of the Canadian Charter of Rights and Freedoms guarantee of an independent and impartial tribunal).

<sup>49</sup> The details of this case were told to the author by the Canadian member of the 50th Judge Advocate Officer Graduate Course, Lieutenant Colonel Robert Holland, who prosecuted Canada's first random panel case.

<sup>50</sup> Venire refers to the common law process by which jurors are summoned to try a case. See BLACK'S LAW DICTIONARY 862 (7th ed. 1999).

<sup>51</sup> MCM, *supra* note 5, R.C.M. 505 (c).

<sup>52</sup> Memorandum, MAJ Bradley J. Huestis, Chief, Criminal Law Division, V Corps, U.S. Army, to COL Michele M. Miller, Staff Judge Advocate, V Corps, U.S. Army, subject: Article 25 Randomly Seated Panel (29 Oct. 2004) (on file with author).

## The V Corps Random Panel System

Lieutenant General Sanchez, the V Corps GCMCA, selected the random panel members from nearly 500 nominees submitted to him by his subordinate commanders. His randomly seated court-martial panel was memorialized in Court-Martial Convening Order (CMCO) Number 3.<sup>53</sup> The panel had 100 members whom LTG Sanchez personally assigned a number, from 1 to 100. In selecting this panel, LTG Sanchez made the following statement:

I have selected these members using the selection criteria of Article 25, UCMJ. I selected panel members who were, in my opinion, best qualified for the duty based on their age, education, training, experience, length of service and judicial temperament, and no other criteria. I did not exclude soldiers of particular ranks from consideration, nor did I exclude anyone based upon gender or ethnic background.

I have selected a large pool of panel members, both officer and enlisted, from which panels for particular courts-martial will be randomly selected. This large pool of panel members ensures that more soldiers are actively involved in the military justice system, and that the military justice system in V Corps is as representative of the community as possible, while still adhering to the high standards of having the best qualified panel members under Article 25, UCMJ.<sup>54</sup>

In describing how this panel would be assembled, LTG Sanchez issued the following directive:

I have assigned each of the members that I have personally selected a number; officer members (1-50) and enlisted members (51-100). Before I review a case for possible referral to either a GCM or [special court-martial], the Staff Judge Advocate (SJA) will provide me a unique, case specific random number sequence (RNS). This 100 number RNS will be attached to the SJA's Article 34, UCMJ, pretrial advice.

General courts-martial will be assembled with ten members, and SPCM will be assembled with eight members. The first ten or eight officer members randomly selected by RNS order will sit as panel members, unless excused. The remaining officers will be available in RNS order as alternate members.

If enlisted members are required for a court-martial, the same process outlined above will be utilized, with the following variations. Using RNS order, the first five officer members and the first five enlisted members will sit as panel members for GCMs, the first four officer members and the first four enlisted members will sit as panel members for SPCMs, unless excused. All other officer and enlisted members will be available as alternate members in RNS order.<sup>55</sup>

When recommending a case for referral to the random panel, COL Miller, the V Corps SJA, provided LTG Sanchez with a unique, case specific 100-digit RNS. Colonel Miller logged on to Random.org<sup>56</sup> and generated a 100-number RNS. She printed, dated, and signed the two page printout in the presence of witnesses. She listed the document as an enclosure to her pretrial advice to the GCMCA, and included the following language:

Per your Selection of Court-Martial Panel Members for the V Corps Jurisdiction Memorandum, dated 10 January 2005, I have generated and enclosed the one, and only one, unique Random Number Sequence (RNS) for this case. I generated this RNS using the Random.org random number generator evaluated for use by the V Corps Science Advisor.<sup>57</sup>

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<sup>53</sup> Headquarters, V Corps, Heidelberg, Germany, Court-Martial Convening Order Number 3 (26 Jan. 2005) (on file with author).

<sup>54</sup> Memorandum, LTG Ricardo S. Sanchez, Commanding General, V Corps, U.S. Army, to COL Michele M. Miller, Staff Judge Advocate, V Corps, U.S. Army (Jan. 10, 2005) (on file with the author).

<sup>55</sup> *Id.*

<sup>56</sup> Random.org: True Random Number Service, <http://random.org/>. The Random.org website offers true random numbers, in real time, to anyone on the internet free of charge. It was built and is being maintained by Dr. Mads Haahr, Ph. D., Department of Computer Science, Trinity College, Dublin, Ireland.

<sup>57</sup> Memorandum, COL Michele M. Miller, Staff Judge Advocate, V Corps, U.S. Army, to LTG Ricardo S. Sanchez, Commanding General, V Corps, U.S. Army, subject: Advice on Disposition of Court-Martial Charges (5 Apr. 2005) (on file with author).

In his selection memorandum, LTG Sanchez had not specified how COL Miller should generate the RNS. Colonel Miller relied upon the recommendation of the V Corps science advisor, Mr. Robert Nestor, in selecting Random.org as her RNS generator. The RNS is at the heart of the V Corps randomly seated panel. The goal was to develop a transparent, simple, and truly random system to generate unique, case-specific RNS. Mr. Nestor stated:

A standard problem of courts at all levels is the selection of a panel of potential jurors from a jury pool, which is a list of people who are eligible to serve as jurors. The problem is to select N people out of the M possible people in a fair way. The V Corps Staff Judge Advocate (SJA) Office proposes to utilize the RNG [random number generator] located at internet website of “Random.com” to generate a group of N people out of the M people selected by the CG in accordance with Article 25 parameters. . . .

For the purpose of seating a jury panel from within a jury pool that was selected by the Commanding General (CG) of the V Corps, the use of the Random.org true RNG appears to be appropriate.

. . . .

Random.org is a true RNG that is nonlinear. It is not generated from a computer code. Access for generating a random sequence is publicly available and outside of the control of the authority responsible for selecting the jury pool. Each of the members in the jury pool can be given a number. This list can serve as the sample size. Using the “Randomized Sequence” option from the website, a series of randomly generated numbers can be produced that represent both the primary and alternate members of the jury panel.<sup>58</sup>

The RNS seating method is not unlike the standard primary or alternate member automatic replacement system used throughout the U.S. Army.<sup>59</sup> In fact, V Corps’ random panel is based upon the automatic or “bump-up” model of seating members. Below is a comparison of the automatic replacement system and the random system (differences are listed in italics):

Automatic Replacement System	<i>Random Seating System</i>
CA Requests Nominees	CA Requests Nominees
CA Selects Primaries IAW Art 25	CA Selects <i>a Pool of Members</i> IAW Art 25
CA Selects Alternates IAW Art 25	<i>N/A</i>
Charges Preferred	Charges Preferred
SJA Art 34 Advice	<i>Art 34 Advice and Random Number Sequence</i>
CA Refers Case	CA Refers Case
Accused Enters Plea/Forum	Accused Enters Plea/Forum
Members Request Excusal	Members Request Excusal
Members Viced & Alternates Sit	Members Viced & <i>Others Sit Based on RNS</i>
Voir Dire & Challenges	Voir Dire and Challenges
Trial	Trial

The V Corps random panel was designed to be a UCMJ-compliant system that comes, as close as possible to the American ideal of due process and justice. This novel system sought to adhere to the high standards of Article 25, UCMJ, while at the same closely mirroring trial procedures used in Federal district courts.<sup>60</sup> Lieutenant General Sanchez and COL Miller hoped to benefit V Corps Soldiers by implementing a system that was not only fair in practice, but also appeared on its face to be fair. The die was cast. The next step was to refer a case to trial before the random panel.

<sup>58</sup> Memorandum, Mr. Robert Nestor, V Corps Science Advisor, to COL Michele M. Miller, Staff Judge Advocate, V Corps, U.S. Army, subject: Evaluation of “Random.org” Random Number Generator (15 Jan. 2004) (on file with author).

<sup>59</sup> See Schwender, *supra* note 4, at 12; Johnson, *supra* note 4, at 43.

<sup>60</sup> This objective complies with the explicit statutory goal that trial by courts-martial mirror trial in civilian court as closely as possible. Congress expressed this goal in 10 U.S.C. § 836, by charging the President with prescribing rules for courts-martial that, “shall, so far as he considers practicable . . . apply the principles of law . . . generally recognized in the trial of criminal cases in the United States district courts[.]” 10 U.S.C.S. § 836 (LEXIS 2006).

## The Test Case: *United States v. Beatty*<sup>61</sup>

On 5 April 2005, LTG Sanchez accepted the recommendation of COL Miller to refer the charges and specifications against Private (PVT) E-2 Christopher L. Beatty, Jr., to trial by Special Court-Martial convened by CMCO Number 3. On 1 June 2005, the detailed trial judge, COL Denise Lind, heard motions in the case in Hanau, Germany. In a defense motion to dismiss for want of jurisdiction, the defense argued that the randomly seated panel lacked jurisdiction to try the accused because the court was improperly convened.<sup>62</sup> The government argued that the GCMCA had complied with Article 25, UCMJ, in convening the randomly seated panel.<sup>63</sup> In ruling that the court-martial convened by CMCO Number 3 was properly convened and had jurisdiction to try the accused,<sup>64</sup> COL Lind made fifteen distinct findings.

Colonel Lind stated that LTG Sanchez personally selected the 100 members listed on CMCO Number 3, in accordance with Article 25. Colonel Lind referred to LTG Sanchez's 10 January 2005 memorandum in which he instructed the SJA to provide him a unique, case specific RNS.<sup>65</sup> The SJA was to attach the RNS to the Article 34 pretrial advice. In the same memorandum, LTG Sanchez set forth procedures for seating of members using the RNS sequence, excusals, and replacement of excused members.<sup>66</sup>

Colonel Lind noted that although LTG Sanchez did not direct the SJA, COL Miller, to use Random.org or any other specific random member selection method, COL Miller was nevertheless following the GCMCA's instructions when she logged on to Random.org, selected the numbers 1 to 100 as a range, and executed the launch option, generating a two-page printout of 100 numbers in random order. In the presence of witnesses, COL Miller wrote "U.S. v. Beatty M. Miller" and "5 April '05" on the two-page RNS document. She enclosed the RNS document, CMCO Number 3, and the science advisor's evaluation with her Article 34, UCMJ, pretrial advice.<sup>67</sup>

Colonel Lind gave weight to the V Corps science advisor's examination of the website and written opinion concluding that the random sequence option from the website could produce a series of randomly generated numbers to randomly sequence the 100 members selected by LTG Sanchez. Colonel Lind found that LTG Sanchez did not delegate panel member selection to the SJA by utilizing the RNS process because LTG Sanchez had selected all 100 members on CMCO Number 3 using Article 25 criteria. Finally, COL Lind noted that prior to assembly, LTG Sanchez had the authority, under Article 25, to excuse any of the 100 selected panel members participating in this case. The vice order in *United States v. Beatty* was strikingly simple. The order simply excused all but the eight listed members who were randomly selected through the RNS process.<sup>68</sup>

After making her findings of fact, COL Lind announced, "the government has demonstrated by a preponderance of the evidence that LTG Sanchez properly referred this case to a panel of qualified members detailed in accordance with Article 25, Rule for Court-Martial 503(a), and applicable case law. Accordingly, the defense motion to dismiss for want of jurisdiction is denied."<sup>69</sup>

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<sup>61</sup> *United States v. Beatty* was the first case tried before the V Corps random panel convened by CMCO Number 3, dated 26 January 2005. The V Corps GCMCA referred fourteen courts-martial to trial before the first V Corps random panel court-martial. These fourteen cases include *United States v. Coursen* referred on 28 June 2005; *United States v. Rodriguez*, *United States v. Gulick*, *United States v. Kiezle*, and *United States v. Jones* referred on 15 July 2005; *United States v. Johnson*, *United States v. Rodriguez*, and *United States v. Swan* referred on 25 July 2005; *United States v. Post* referred on 11 August 2005; *United States v. Brown* referred on 13 September 2005; *United States v. Smith* and *United States v. Walker* referred on 20 October 2005; and *United States v. Wiesemann* referred on 10 November 2005.

<sup>62</sup> Defense Motion to Dismiss for Want of Jurisdiction, CPT William M. Helixon, Senior Defense Counsel, Region VII, U.S. Army, to COL Denise R. Lind, Military Judge, Fifth Judicial Circuit, U.S. Army (May 25, 2005) (on file with author).

<sup>63</sup> Government's Response to Defense Motion to Dismiss for Want of Jurisdiction, CPT Christopher B. Buchanan, Senior Trial Counsel, V Corps, U.S. Army, to COL Denise R. Lind, Military Judge, Fifth Judicial Circuit, U.S. Army (May 31, 2005) (on file with author).

<sup>64</sup> *United States v. Beatty* (V Corps Aug. 15, 2005) [hereinafter *Beatty* Record of Trial]. Record of Trial authenticated by COL Denise R. Lind, Military Judge, Fifth Judicial Circuit, U.S. Army (Aug. 15, 2005) (on file with the Office of the Staff Judge Advocate, V Corps).

<sup>65</sup> *Id.*

<sup>66</sup> *Id.*

<sup>67</sup> *Id.*

<sup>68</sup> *Id.*; see also MCM, *supra* note 5, R.C.M. 505(c)(1)(A), "[b]efore the court-martial is assembled, the convening authority may change the members of the court-martial without showing cause." Under the V Corps system, the GCMCA also delegated one-third excusal authority to the SJA.

<sup>69</sup> *Beatty* Record of Trial, *supra* note 75.

At trial, PVT Beatty faced four specifications of larceny for allegedly stealing postal money orders.<sup>70</sup> He pleaded guilty to the lesser included offense of wrongful appropriation on each specification.<sup>71</sup> Private Beatty selected members for the sentencing phase of the court-martial. The members sentenced PVT Beatty to reduction to the grade of E-1, forfeiture of \$335.00 pay per month for six months, confinement for 179 days, and a reprimand.<sup>72</sup>

### Deployment to Iraq and an In-Progress Review

Throughout 2005, V Corps was focused on preparing to deploy as the nucleus of the Multi-National Corps – Iraq (MNC-I) in January 2006. Prior to the deployment, one of the many legal issues needing resolution was how to best set up GCMCA jurisdictions in both Iraq and Germany. The designated rear-area SJA held an in-progress review of the V Corps random panel system as a preliminary step in determining the best way to convene and assemble courts-martial panels.<sup>73</sup>

The rear-area SJA who joined V Corps in the summer of 2005, wanted to know why the random panel was instituted. He also wanted to know the goals of putting the random panel into place. The answers ranged from idealistic to pragmatic. First and foremost, the rear-area SJA was told that it was simply the right thing to do—conform panel selection as nearly as possible to civilian practice, while remaining within the requirements of Article 25. The random system exposes more members to the experience of participating in the military justice system. Random seating gives all of the selected members an opportunity to serve on courts-martial. Under the traditional system of maintaining a primary list and alternate list, the members near the bottom of the alternate list rarely sit as members.<sup>74</sup>

On the practical side, it was explained that a large pool of members relieves the primary panel members of the duty of sitting on every case and spreads the responsibility amongst a large pool of eligible members. This sharing of responsibility helps avoid panel burnout that is experienced by a small group of primary members who are called upon, case after case. Due to the fact that statistically members would only sit on about one in ten cases, the GCMCA might have to select a panel only once a year. The GCMCA could also select his primary staff and commanders without fear of overtaxing his best and brightest with an onerous, time-consuming additional duty.<sup>75</sup>

Focusing on results, the rear-area SJA then asked for the top three positives and negatives that stemmed from the implementation of the random panel. Judge advocates and paralegals who had worked with the new system had differing views on the pros and cons of the randomly seated panel.<sup>76</sup>

As the current Chief of Military Justice, the author responded:

The V Corps random panel brought the military system more in line with the American ideal of justice. It relieved panel members of the duty of sitting on every case by spreading the responsibility amongst a pool of eligible members. It gave more members the experience of participating in the military justice system. On the down side, it created an increased logistical burden on the legal office. For example, there was a need to collect 100 questionnaires instead of 10 primary and 15 alternate questionnaires. There were also more members to track for excusals. We needed to litigate motions at trial in order to defend using a novel system.<sup>77</sup>

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<sup>70</sup> UCMJ art. 121 (2005).

<sup>71</sup> *Beatty Record of Trial*, *supra* note 75.

<sup>72</sup> *Id.*

<sup>73</sup> The goal of the in-progress review was to capture observations from the military justice managers, trial counsel, and paralegals who implemented the random seating system. Participants included the author, who was the chief of justice; the senior trial counsel, CPT Christopher B. Buchanan; trial counsel who had tried cases before traditional and random panels, CPT Gray B. Broughton and CPT Thomas E. Brzozowski; and the Criminal Law Division NCOIC, SFC Daryl Daniels and Pretrial NCOIC, SGT Chevaughn Gilbert.

<sup>74</sup> E-mail from CPT Gray B. Broughton, Trial Counsel, V Corps, U.S. Army, to LTC Norman F.J. Allen, III, Deputy Staff Judge Advocate, V Corps, U.S. Army (Dec. 6, 2005) (on file with author).

<sup>75</sup> *Id.*

<sup>76</sup> *Id.*

<sup>77</sup> *Id.*

The senior trial counsel felt that there was no opportunity for panels to develop a reputation as harsh or lenient. There was broader exposure of members to military justice. The senior trial counsel pointed out that V Corps had received endorsement at the trial court level. The negatives, however, included more difficulty with implementation, because the vice orders were done closer to trial. With 100 members, V Corps had incomplete receipt of member questionnaires. This made it more difficult for counsel to prepare for voir dire. Finally, due to the random nature of the seating, junior panels heard serious felony cases.<sup>78</sup>

Two attorneys who tried cases before traditional and random panels observed that there was a larger variety of panel members who had a fresh start on each case. It seemed that the panel was less likely to burn out, and the random system exposed more Soldiers to the military justice system. These attorneys also noted, however, that the panels were too junior. Logistically, they stated that the collection of member questionnaires required more paralegal work, and the process of notifying panel members and processing excusals caused vice orders to come in at the last minute. Initially member questionnaires were not being filled out in advance, but this improved over time.<sup>79</sup>

The paralegal noncommissioned officers charged with the behind-the-scenes management of the random selection system stated that they had a bigger pool of personnel to choose from to hear cases. One paralegal noted that the different combinations of members, who bring something different to the cases, meant that V Corps did not have the same members sitting for all general and special court-martials. Rather, V Corps now has the ability to seat panels for more than six months, without wearing out the primary panel members. The other paralegal was more specific about the logistical hurdles, finding that it was not easy to deal with 100 people, all with different personalities and different questions about mileage and lodging reimbursement. In addition, she noted the difficulty in having to repeatedly explain that the randomly selected panel members were personally selected for court-martial duty by the V Corps Commanding General, not the Judge Advocate General's office, and how important this duty is to good order and discipline within the Corps. Finally, both noncommissioned officers believed that the random selection process required more work to complete because once the computer randomly selected the order in which the panel members were to be called, the pretrial paralegal had to do a case specific roster. This process allowed more room for mistakes and, if the wrong panel members hear a case, such a mistake could invalidate a guilty finding.<sup>80</sup>

The officer in charge of the Darmstadt Legal Center, who opposed selecting another random panel, made the following observation:

Random panels are much more junior than with the regular selection and the more junior a panel, I believe the more defense friendly it will be. So, I actually find it highly ironic that the defense would object. Any time you have a first lieutenant as the board president, the government should be concerned. . . . I do think a junior panel is more like the civilian world, but I have concerns about violating Article 25. I do not think junior panels which have 1LTs, CW2s, and E5s, have the experience, age, education, length of service or judicial temperament to sit as best qualified members. They have simply not been around long enough.<sup>81</sup>

The rear-area SJA was concerned about the limited number of field grade panel members serving on the courts-martial tried in the four months he had been with V Corps.<sup>82</sup> He was specifically concerned that by using a random seating system, the GCMCA surrendered the ability to ensure a senior officer would serve as the president of each panel. In addition, based on the large number of deploying personnel, the rear-area SJA feared that the rear-area would not have a large enough pool of qualified personnel available from which to nominate and select a random panel.<sup>83</sup>

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<sup>78</sup> *Id.*

<sup>79</sup> *Id.*

<sup>80</sup> *Id.*

<sup>81</sup> *Id.*

<sup>82</sup> By rank CMCO Number 3 had the following composition: eight colonels, seven lieutenant colonels, eleven majors, twelve captains, four first lieutenants, one chief warrant officer-five, one chief warrant officer-four, four chief warrant officer-threes, two chief warrant officer-twos, three command sergeants major, five sergeants major, two first sergeants, eight master sergeants, fifteen sergeants first class, fifteen staff sergeants, and two sergeants. In future panels, the "juniorness" issue cited by the rear-area SJA could be addressed with more GCMCA focus on experience or other Article 25 criteria that favor selecting more senior members. This, however, cuts against the representativeness that LTG Sanchez sought in selecting his panel. As it stood, it was statistically possible for a V Corps random panel to seat with no member above the grade of first lieutenant or staff sergeant.

<sup>83</sup> Discussion with LTC Norman F.J. Allen, III, Acting Staff Judge Advocate, V Corps, U.S. Army, in Heidelberg, Germany (Dec. 19, 2005).

Based in part on the discussions generated by the in-progress review and in part on the limited number of rear-area personnel available for selection as members, the rear-area SJA recommended that the convening authority select a standing panel with an automatic replacement system for the rear-area.

### Conclusion

By testing a randomly seated panel system, LTG Sanchez took a calculated risk to benefit his command. By using a pool of qualified members and the RNS seating system, he was able to seat random panels while still adhering to the high standards of having the best qualified panel members in accordance with Article 25, UCMJ. By selecting a large pool of panel members from which panels for particular courts-martial were randomly seated, LTG Sanchez actively involved more of his Soldiers in the military justice system. These courts-martial panels were also more representative of the V Corps community. By taking this risk and implementing a new method of seating panels, LTG Sanchez and COL Miller were able to move the V Corps panel selection and seating systems closer to the American ideal of fairness and due process without adversely impacting the Corps' good order and discipline or military mission.

New methods always involve some risk, but with military justice, the rewards accrue to the Soldiers and commanders who deserve the very best legal system possible. While the debate about the best way to select and assemble panels is sure to continue, V Corps has blazed a possible way ahead. In the final analysis, if JAs and convening authorities are not willing to test the UCMJ with new ideas that promote fairness and justice, who will?<sup>84</sup>

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<sup>84</sup> Many thanks to the V Corps Commanding General, LTG Ricardo S. Sanchez, and the Staff Judge Advocate, COL Michele M. Miller, for taking a calculated risk in seizing the opportunity to improve the administration of military justice. Thanks also to the V Corps Deputy Staff Judge Advocate, LTC Richard C. Gross, the V Corps Senior Trial Counsel, MAJ Christopher G. Graveline, and to all the trial counsel and paralegals who enthusiastically supported this project. Thanks are also in order for the Acting Rear-area SJA, LTC Norman F.J. Allen, III, whose rational, analytical approach to sorting out the best course of action for seating panels in the rear is a model for all JAs to follow. Finally, the author gratefully thanks CPT Allison M. Tulud for editing early drafts of this article.

## Setting Conditions for Success: Seven Simple Rules for New Staff Officers

Lieutenant Colonel Mike Ryan<sup>1</sup>

*Far and away the best prize that life has to offer is the chance to work hard at work worth doing.*  
—Theodore Roosevelt<sup>2</sup>

### Introduction

In my article *Azimuth, Distance and Checkpoints: Thoughts on Leadership, Professionalism, and Soldiering for Judge Advocates (JAs)*, I offered ten simple rules designed to help new JAs become better leaders.<sup>3</sup> This article follows the same general format, offering seven rules with accompanying thoughts and suggestions to help new JAs become more effective staff officers.

The information presented in this article is not doctrine nor is it revolutionary. If you have served as a staff officer for any length of time, you probably have already learned many of these lessons. As with the *Azimuth* article, my intent is to share lessons learned with fellow Soldiers. I hope the ideas and information in this article are helpful and that they make your life as a staff officer and a military professional a little bit easier.

### Seven Simple Rules for Staff Officers

#### *Rule #1: Understand, and Be Proud of, Your Role as a Staff Officer*

While there are a number of important leadership positions in the Judge Advocate General's Corps (JAGC), there are only three genuine *command* billets for active duty JAs.<sup>4</sup> Thus, as a JA, you will likely spend your entire career as a staff officer.<sup>5</sup> Because of this, it is essential that you approach your duties from the right premise: *there is nothing wrong with being a staff officer*.

This notion is not easy for everyone to accept. Indeed, some staff officers seem almost apologetic about being a part of the Army.<sup>6</sup> To some extent, this attitude is understandable. Most Soldiers prefer to be where the action is, and military culture is rife with jokes and derisive comments about “pencil pushers” and “staff weenies.” While this attitude may be prevalent, that does not mean you have to buy into it. Like every Soldier, you play an important role in the success of the Army. No matter what you do, your position is unique; a position that can only be filled by someone with your particular mix of training, education, and experience. Your work as a staff officer sets conditions for the ultimate success of the organization. Be proud of your role, and never apologize to anyone for the special expertise you bring to the fight.

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<sup>1</sup> Director, Future Concepts, The Judge Advocate General's Legal Center and School, Charlottesville, Virginia. The author wishes to thank the following individuals for their assistance and insights during the preparation of this article: Colonel (Retired) David Graham, Colonel Pete Cullen, Lieutenant Colonel Mike Lacey, and Major Carlos Santiago.

<sup>2</sup> Theodore Roosevelt, Speech at Syracuse, New York (Sept. 7, 1903), available at <http://kenfran.tripod.com/teddy.htm>.

<sup>3</sup> Lieutenant Colonel Mike Ryan, *Azimuth, Distance, and Checkpoints: Thoughts on Leadership, Professionalism, and Soldiering*, ARMY LAW., Aug. 2005, at 40.

<sup>4</sup> Command billets for active duty JAs include the following: Commander, U.S. Army Legal Services Agency; Commander, U.S. Army Claims Service; and Commander, The Judge Advocate General's Legal Center and School.

<sup>5</sup> Even so-called “line” officers will spend the majority of their careers as staff officers. For example, a combat arms officer will be lucky if, during a twenty-year career, he spends a year as a platoon leader, two years as a company commander, and two years as a battalion commander. Only a select few officers will serve as Brigade Commanders; fewer still will be promoted beyond the rank of colonel and serve in command billets as general officers.

<sup>6</sup> As the Senior Observer/Controller at The Joint Readiness Training Center from 2000 through 2003, I directly observed JAs during twenty-one rotational exercises. A number of these officers were relatively new to the Army and many seemed markedly uncomfortable with their role as the lawyer on the battle staff. Often, their unease manifested itself in various forms of self-deprecation.

## *Rule #2: Be Brief, Be Brilliant, Be Gone*

To be an effective staff officer, you must understand that you are one of several people whose job it is to present information to the commander and other key decision-makers each day. It is imperative, therefore, that you learn to say what you need to say—both in writing and in person—in as succinct a manner as possible. There is an old Army adage that says, to be a successful staff officer, you must learn to do three things: *be brief, be brilliant, and be gone*.

This concept is sometimes difficult for JAs—especially those who recently graduated from law school. From the outset, law students are told by professors that the student’s conclusions are rarely important. What matters on a law school test is the student’s ability to spot issues and to explain (often in great detail) how they arrived at their conclusions. It is no surprise then that when asked to prepare written products, many new JAs write lengthy dissertations discussing not only the applicable law, but also the litany of potential issues involved in the matter. Likewise, because they have been trained to be zealous oral advocates, new JAs can sometimes turn simple oral briefs into prolonged oral arguments.

If you are a new JA, try to guard against these tendencies. When preparing briefings or written products, remind yourself to be direct. Identify the specific issue or problem you have been asked to address, briefly discuss the facts or law bearing on the problem, and give a recommendation. If you are preparing a formal, written product, comply with relevant provisions of *Army Regulation (AR) 25-50*.<sup>7</sup> If the person you prepared the product for is forced to focus on the minutia of spacing and punctuation, he cannot concentrate on the substantive content of your product.

Whether you are presenting a briefing or drafting a written review, keep it short and simple. To cut to the heart of the matter, many staff officers find it useful to follow the *bottom line up front* (BLUF) methodology.<sup>8</sup> Commanders and supervisors are busy people. Most have neither the time nor the inclination to read or listen to a detailed discussion of issues. Be prepared to discuss how you reached your conclusions, but do not go into detail unless you are asked to do so. As a staff officer, your job is to provide the commander with the information necessary for him to make a decision. Providing information in a straightforward and efficient manner will best assist the commander or supervisor whom you are advising.

## *Rule #3: Develop and Follow a Standard Briefing Methodology*

Briefings are the stock-in-trade of the staff officer. At the risk of overstating the obvious, when presenting a briefing, be brief! Your task is not to impress your listeners with your oratory skills—it is to present them with information that either enhances their understanding of a situation (an information briefing) or allows them to make an informed decision (a decision briefing).<sup>9</sup> To be brief and brilliant, you should develop and follow a simple briefing methodology—a format for presenting the material and a set of guidelines to which you adhere when presenting the briefing.

There are numerous sources that provide briefing formats.<sup>10</sup> Some organizations also have their own formats. The suggestions in the following section are by no means the official school solution; rather, they are simply tactics and techniques that have proven successful for me in a variety of situations.

### **Suggested Briefing Format**

#### *Briefing Purpose*

Begin with an introduction stating the purpose of the briefing. For example, “Good Morning, Sir, this is an information briefing. The purpose is to provide you with information regarding . . .” or “Good afternoon, Ma’am, this is a decision brief. I will present you with recommended courses of action (COAs), and at the end of the brief, I will ask you to choose one.”

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<sup>7</sup> U.S. DEP’T OF ARMY, REG. 25-50, PREPARING AND MANAGING CORRESPONDENCE (3 June 2002).

<sup>8</sup> When using this approach, the briefer or author lists the essential conclusion in one short sentence in the first part of a briefing or as the initial line of a written product.

<sup>9</sup> U.S. DEP’T OF ARMY, FIELD MANUAL 101-5, STAFF ORGANIZATION AND OPERATIONS APP. E (31 May 1997).

<sup>10</sup> For the best official source for Army officers, see U.S. DEP’T OF ARMY, FIELD MANUAL 5-0, ARMY PLANNING AND ORDERS PRODUCTION app. B (Jan. 2005).

### *Background and Context*

After your introduction, provide some background or context to the brief. Such background or context may include a chronology of the events that precipitated the briefing or a restatement of the original tasking.

### *Relevant Information*

Consider this the body of the brief—where you discuss the details of the issue, problem, or situation at hand. Your discussion should be framed with a view toward your ultimate purpose—*informing the listener or helping him make a decision*. In a decision brief, you should discuss proposed COAs for solving the problem. The key to this section is to stay focused on *only* those things that the person you are briefing needs to know.

### *Recommendations and the Way Ahead*

After presenting the relevant information, bring the brief to a close. If it is a decision brief, then you should offer recommendations. If you have presented various COAs, then recommend the one you think is best and explain why. If you presented your COAs in order of preference, then list a few of the pros and cons of each COA. Explaining *why* you are recommending a certain COA is the most important part of the briefing. Whether you are presenting a decision or an information brief, you should outline the way ahead by listing upcoming events, milestones, or activities that directly affect the issue you just briefed.

### *Conclusion and Questions*

Always end your briefing with a short conclusory statement, such as “Subject to your questions or guidance, Sir, this concludes my brief.” This will be a clear signal to your listener that you are finished. It will also provide the listener an opportunity to ask questions, make decisions, and offer guidance.

### *Review Guidance, Directions, or Due-Outs*

Once the person you are briefing has made a decision or issued guidance, make sure you conduct a quick review while he is still present. It only takes a moment, and it may save you hours of wasted time. You do not need to rehash the briefing—simply review your notes and restate the decision or guidance you received: “To recap, Sir, here is what I understand you want me to do. . . .”

## **Miscellaneous Briefing Tips**

### *Practice Your Briefing Out Loud*

Always practice important briefings out loud before presenting them. Practicing will give you a feel for how long the briefing will take and help you get comfortable with your material. Similarly, when possible you should watch experienced staff officers brief and learn from their techniques.

### *Know Your Briefing Material*

No matter who you are briefing, never try to wing it. Along the same lines, never tap dance when confronted with a tough question. If you don't know the answer, then tell the questioner that you will research the issue and provide him an answer later.

### *Number Your Slides*

This simple tip will help you immensely. When your slides are numbered it is much easier to focus the listener and guide him through the brief. Most importantly, numbered slides help you get back on track after questions or digressions.

### *Never Read Slides Verbatim*

Rather than reading directly from your slides, determine in advance one or two key points or takeaways from each slide. As you brief, direct the listener's attention to the slide number and state your point accordingly. For example, "Sir, slide number 6 shows you key facts bearing on the problem; the important point here is. . ."

### *Put Detailed Information in Back-Up Slides*

Do not overwhelm your listener with too much information. Unless they are absolutely necessary, place charts, numbers, spreadsheets, or similar information in back-up slides at the end of the briefing. If necessary, the person you are briefing can look at the back-up slides later. If questions arise during the briefing, then you can direct the questioner to the appropriate back-up slides.

### *Interact with Your Listener*

Being a military professional does not require you to be an automaton. Whether you are briefing a lieutenant colonel or a lieutenant general, be yourself and interact with your listener. Try to relax, look your listener in the eye, and speak in simple terms. You can even smile when appropriate. A word of caution; however, is to never get cute. Trying to be funny during a briefing is rarely, if ever, a good idea.

### *Rule #4: Coordinate and Synchronize Your Efforts with Other Staff Sections*

A staff is a team. The team's goal is mission success. Accordingly, everything you do as a staff officer should be directed toward the success of the team *as a whole*. Failing to coordinate your efforts with your teammates is not only counterproductive; it is a breach of military protocol. It is, therefore, absolutely imperative that you learn to properly synchronize your efforts with the efforts of the other staff sections.

How do you do this? The first step for new JAs is to learn what the other staff sections do. Your supervisor and your more experienced co-workers can help you with this; however, the best way to learn their missions is to visit the other staff sections and talk to the people who work there. Ask people in these sections to explain to you what they do and how their section contributes to the organization's mission. You might be surprised by how enthusiastic most people are when it comes to talking about their work. With your supervisor's and your co-workers' help and through personal relationships you build with people from other staff sections, it will not be long before you develop a good sense of what actions need to be coordinated with the personnel assigned to the various staff sections within your particular organization.

As a general rule, when in doubt; coordinate. If the appropriate individuals in the other staff sections have no comment or no input relevant for your action, they will concur and move on. Conversely, if you *fail* to coordinate an action that is in another staff section's lane, then you are guaranteed to ruffle feathers and create bad will.

On this subject, another good rule of thumb is to never depend solely on e-mail to coordinate important actions unless it is absolutely unavoidable. Hitting the send button does not mean an action is coordinated or completed. One of the commanders for whom I worked had a list of ten commandments for the Regiment. Among the ten commandments was to never assume e-mail is read. This commandment is a key point for staff officers to remember. Keep in mind that, in most cases, "I sent an e-mail" is not an appropriate response when you are asked for the status of an action. As was mentioned above, if you are working an action or a project that requires input or participation from others, take the time to talk to them face-to-face or, at a minimum, by telephone. This practice not only makes for a better work product; it helps build better working relationships with your teammates in the long run.

### *Rule #5: Do Not Bring a Decision-Maker a Problem Without a Proposed Solution*

It is the responsibility of your supervisor, your commander, and other key leaders to offer guidance and direction to the organization. In large measure, they will do this by resolving problems and making decisions. To facilitate this process, try not to bring your decision-maker a problem without also providing a recommended solution.

This rule is particularly important for JAs. As discussed in rule number one, lawyers are formally trained to spot issues and identify problems. As staff officers, however, we must learn to take the extra step of offering proposed solutions to the issues or problems we spot. It does no good, for example, to simply tell the commander that an action is illegal or contrary to regulations. What he needs to know is whether there is a way to legally, morally, and ethically accomplish his goal or to get to “yes.” If not, he needs to know if there are other acceptable alternative courses of action. In short, no matter how big or how small the problem, the ethics and ethos of the military profession demand that an officer do more than simply identify the problem. You owe it to your leaders to—as the saying goes—“be part of the solution.” Finally, before proposing a solution, make sure you adhere to rule number 4. Whatever course of action you recommend, ensure it has been coordinated in advance with the appropriate staff section(s).

Your responsibility does not end when your recommended solution is adopted. When the leadership of your organization decides to pursue a course of action that you have recommended, it is incumbent upon you to monitor the situation and ensure the details are implemented in accordance with the decision maker’s intent. If the solution involves a long-term project, then you should plan on providing periodic updates (often called *in progress reviews* or IPRs) that outline the project’s progress. When IPRs will be necessary, make sure your proposed solution includes a proposed IPR schedule.

#### *Rule #6: Attitude Is Everything*

Staff work can sometimes be frustrating. There will be times when you work diligently on a briefing or project, only to have it cancelled at the last minute. You may work for a supervisor who gives you vague guidance or who is constantly changing the organization’s focus. Last minute projects, “hot” missions, and short suspense dates are all part of the day-to-day life of a staff officer. As elementary as it may sound, the best way to deal with these frustrations is to keep a positive outlook. For the staff officer, attitude is everything.

Maintaining a positive outlook starts with remaining flexible. Change is an immutable characteristic of staff work, and you will be much happier if you accept and embrace this fact. Second, try not to become too emotionally attached to projects. While your work is important, it should never determine your attitude about life; nor should it negatively affect your relationships with your co-workers. If you get upset or take things personally when a superior makes changes or gives you a new priority, then you are destined to be unhappy at work.

More often than not, people get angry or upset about work-related issues when they invest ego and emotion in their work. If you see yourself headed in this direction, then consider the following advice of the former Chairman of the Joint Chiefs of Staff, General Colin Powell: “Avoid having your ego so close to your position that, when your position falls, your ego goes with it.”<sup>11</sup> Finally, keep your sense of humor. Humor is a critical “safety valve” in stressful situations, and the ability to laugh at things, especially yourself, is a key component of a positive attitude.

#### *Rule #7: Pay Attention to Detail*

The last rule is simple, but critically important: pay attention to detail. As a staff officer, this concept must be your lodestar. By its very nature, staff work is detail oriented, and making sure the i’s are dotted and the t’s are crossed is one of the things you get paid to do as a staff officer. It is not glamorous, but it is undeniably necessary. The commander and other important decision-makers that you work for will be counting on you to attend to the small details so that they can make the big decisions.

Does this mean you should expect to be perfect? Certainly not. Everyone makes mistakes; you will, too. Rather than striving for perfection, your goal should be to minimize your mistakes by committing yourself to paying attention to detail. Small mistakes such as spelling or typographical errors in written products or briefing slides may seem like no big deal, but, when repeated often enough, they will damage your professional credibility. Similarly, it is extremely embarrassing when your supervisor finds a mistake in correspondence you have prepared for his signature.

While these kinds of mistakes are awkward when they happen to you personally, their effects are magnified manifold when they put your commander or your supervisor in a bad position. If you are preparing products for someone else’s signature or materials they will use to brief, then pay extremely close attention to their contents. Never set your superiors up for failure or embarrassment by providing them with products that contain mistakes or inaccuracies.

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<sup>11</sup> COLIN POWELL, MY AMERICAN JOURNEY 614 (2003).

There are a variety of techniques to help you avoid most mistakes: always have someone else proofread important products; if it is a high-profile project, have two or three people look it over. Use your computer's spelling and grammar check features. Some even find it helpful to read key documents or important briefing slides out loud to ensure they make sense. If you are dealing with numbers and arithmetic, then use a calculator. Finally, if you routinely use certain computer programs, such as (Excel or PowerPoint), for your job, take the time to learn their capabilities. All the jokes about "Powerpoint Rangers" aside, the truth is you can be more effective to your organization and, ultimately, can contribute more to mission accomplishment when you are able to create and present accurate, professional-looking products that clearly communicate important ideas and concepts.

### **Conclusion**

Every Soldier has a job to do. As a staff officer, yours is to use your intelligence and initiative, coupled with your unique mix of education, training, and experience to help your organization succeed. Be proud of your role, and approach your duties as a staff officer with a positive, professional attitude. If you do, you will help set conditions for the success of your organization and ultimately, for the success of the Army as a whole.

## Book Review

### GUESTS OF THE AYATOLLAH: THE FIRST BATTLE IN AMERICA'S WAR WITH MILITANT ISLAM

MAJOR PATRICK D. PFLAUM\*

*Now the country is run by a bunch of kids, and this is regrettable.*<sup>1</sup>

*The Iranian nation will not accept for one moment any bullying, invasion and violation of its rights.*<sup>2</sup>

#### I. Introduction

It was an otherwise typical morning on 4 November 1979 at the American Embassy in Tehran, the capital city of Iran.<sup>3</sup> State Department officials, Central Intelligence Agency [CIA] officers, and members of the various branches of the Armed Forces were preparing for yet another day of work in the tumultuous country.<sup>4</sup> Despite the continuing specter of Iranian unrest, the rising tide of anger toward America, and President Jimmy Carter's prescient question to his staff in October concerning what he should do if the embassy was overrun and taken hostage, neither the embassy staff nor anyone else in the Iranian or American governments, knew what was about to happen.<sup>5</sup> A small band of revolutionaries driven by zealous idealism—mostly students from various universities in Iran calling themselves “Muslim Students Following the Imam's Line”—would incite a riot and storm the American Embassy.<sup>6</sup> This group would hold fifty-two Americans hostage for more than a year and take center stage in a global standoff between the United States and Iran.<sup>7</sup>

Compiled from an impressive collection of official government documents, first-person interviews, news coverage, personal letters, diary entries, and memoirs of the events, *Guests of the Ayatollah: The First Battle in America's War With Militant Islam*<sup>8</sup> chronicles the 444 days that these Americans were held hostage in Iran.<sup>9</sup> Although it is certainly not the first book about the Iran hostage crisis, *Guests of the Ayatollah* provides a comprehensive description of the events that unfolded during those 444 days.<sup>10</sup> While the book is lengthy and laden with the author's palpable disdain for the Iranians involved in the incident, *Guests of the Ayatollah* is a superb account of the crisis and provides valuable insight into the experiences of the hostages, the mindset of the extreme Islamic fundamentalists responsible for the seizing them, and the difficulties in diplomatic dealings with a country with such a militant Islamic faction. Published at a time when Iran is making headlines for its tough talk, its bid to pursue nuclear technology, and its continued religious extremism, Mark Bowden's timing is impeccable.<sup>11</sup>

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<sup>1</sup> MARK BOWDEN, GUESTS OF THE AYATOLLAH: THE FIRST BATTLE IN AMERICA'S WAR WITH MILITANT ISLAM 372 (2006) (quoting former Iranian Prime Minister Mehdi Barzagan during the hostage crisis).

<sup>2</sup> Dafna Linzer, *Iran Defies Deadline on Nuclear Program; U.S. to Press U.N. to Impose Sanctions*, WASH. POST, Sept. 1, 2006, at A1 (quoting current Iranian President Mahmoud Ahmadinejad in 2006).

<sup>3</sup> BOWDEN, *supra* note 1, at 16–27.

<sup>4</sup> *Id.*

<sup>5</sup> *Id.* at 19.

<sup>6</sup> *Id.* at 9–13.

<sup>7</sup> *Id.* at 5.

<sup>8</sup> *Id.*

<sup>9</sup> *Id.* at 643–56.

<sup>10</sup> The *Source Notes* indicate the author relied on fifty books, publications, and film documentaries. *See id.* at 643–46. The crisis was also the subject of two books in 2004. *See* DAVID R. FARBER, TAKEN HOSTAGE: THE HOSTAGE CRISIS AND AMERICA'S FIRST ENCOUNTER WITH RADICAL ISLAM (2004); DAVID HARRIS, THE CRISIS: THE PRESIDENT, THE PROPHET, AND THE SHAH—1979 AND THE COMING OF RADICAL ISLAM (2004).

<sup>11</sup> *See, e.g., Ahmadinejad Calls for University Purge*, CNN, Sept. 5, 2006, <http://www.cnn.com/2006/WORLD/meast/09/05/iran.universities.ap/index.html>; Linzer, *supra* note 2, at A1; *Iran President Refuses to Budge*, CNN, Sept. 1, 2006, <http://www.cnn.com/WORLD/meast/09/01/iran.deadline/index.html>; Molly Moore & Thomas E. Ricks, *Iranian Leader Warns U.S. of Reprisal; Khamenei Is Defiant Ahead of U.N. Report*, WASH. POST, Apr. 27, 2006, at A1.

## II. Two Governments, an Ayatollah, Sixty-Six Hostages, and Their Captors

Touted as a “master of narrative journalism,”<sup>12</sup> author Mark Bowden covers every imaginable aspect of the crisis between 4 November 1979 and 21 January 1981, describing the actions, thoughts, and emotions of the hostages, their families, the captors, the Iranian leadership, and many in the United States government. The comprehensive approach of *Guests of the Ayatollah* is the most remarkable aspect of this book. The author’s purpose is stated clearly at outset—he is seeking to explain why the crisis happened and why it unfolded as it did.<sup>13</sup> In this respect, Bowden is quite successful. Through impressive research and a journalist’s touch, he artfully explores the causes of the embassy invasion, the plight of the hostages, the personality of the captors, the nature of their cause, and the struggle to resolve the crisis and bring the hostages home safely.

The volume of sources the author consulted is significant and an indicator of the overall quality of this work. Most commendable, perhaps, are his efforts to find and interview the Iranian actors in the saga. Mark Bowden very easily could have relied on previously published materials and interviews with those hostages still living; however, he appears to have made a significant effort to gather material from those directly involved in the crisis. As a result of this effort, *Guests of the Ayatollah* includes material from interviews with at least twenty-one Iranians.<sup>14</sup> Thanks to the quality of the research, *Guests of the Ayatollah* effectively explains the root causes of the rift between Iran and the United States, the motives behind the embassy seizure, and the myriad of factors that led to the standoff between the United States and Iran. What emerges is the United States striking inability to anticipate such an event. According to the author, “In retrospect, it was all too predictable.”<sup>15</sup> Bowden describes the almost negligent failure of those in the United States government to grasp the unrest in Iran, the threat to the embassy, and the need for caution.<sup>16</sup> He correctly asks, “[H]ow could they have been so blind?”<sup>17</sup>

Predictably, the focus of *Guests of the Ayatollah* is on the hostages, and the author’s goal—“reconstruct[ing] their experiences”—is artfully achieved.<sup>18</sup> When anger and scorn failed to dissuade the overwhelming mass of invaders,<sup>19</sup> the Americans at the embassy quickly found themselves at the mercy of their captors, facing interrogations, assaults, threats, mock executions, discomfort, injury, isolation, boredom, and illness.<sup>20</sup> Bowden’s vivid description of their ordeal is captivating. Using graphic descriptions and even a bit of humor, the author conveys the appalling story of these hostages with tremendous power.<sup>21</sup>

In describing the hostages’ experiences, the author colorfully emphasizes the naiveté of their student captors. The hostages had the upper-hand in nearly all of the interrogations and were often shocked at the ineptitude of the Iranians they encountered.<sup>22</sup> Though unable to escape, the hostages were able to resist interrogations, steal weapons, hide radios,

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<sup>12</sup> Linda Robinson, *The Fugitive*, N.Y. TIMES, June 17, 2001, sec. 7, at 18 (reviewing Mark Bowden, *Killing Pablo: The Hunt for the World’s Greatest Outlaw (2001)* (book review)). Mark Bowden’s other books include *Our Finest Day* (2002), *Finders Keepers* (2002), *Black Hawk Down: A Story of Modern War* (1999), *Bringing the Heat* (1994), and *Doctor Dealer* (1987).

<sup>13</sup> BOWDEN, *supra* note 1, at 5.

<sup>14</sup> *Id.* at 644. Conspicuously absent, though, is an interview with current Iranian President Mahmoud Ahmadinejad. After his election in June 2005, several former hostages identified President Ahmadinejad as one of their captors. See *5 Americans Say Iran’s New Chief Was ’79 Captor*, N.Y. TIMES, June 30, 2005, at A6. Although President Ahmadinejad denies involvement, Bowden concludes that “Ahmadinejad was one of the central players in the group that seized the embassy and held hostages.” BOWDEN, *supra* note 1, at 615.

<sup>15</sup> BOWDEN, *supra* note 1, at 4.

<sup>16</sup> For example, the CIA cell at the embassy had only three officers, none of whom spoke Farsi. *Id.* at 17. In addition, it can be argued that the embassy should have been closed prior to admitting the Shah into the United States, a move many knew would be unpopular in Iran. *Id.* at 190, 213–14.

<sup>17</sup> *Id.* at 313 (summarizing the thoughts of hostage John W. Limbert Jr., an embassy official).

<sup>18</sup> *Id.* at 597 (stating, “My goal was to reconstruct their experience as they lived it.”).

<sup>19</sup> See, e.g., *id.* at 32 (quoting hostage Barry Rosen as saying to the invaders, “You have no right to set foot in here, any of you. You are violating diplomatic immunity. It is totally illegal.”).

<sup>20</sup> See *id.* at 235, 282–83, 347–51, 383–84, 603.

<sup>21</sup> See, e.g., *id.* at 320 (describing the actions of Marine Sergeant Billy Gallegos during an interrogation).

<sup>22</sup> *Id.* at 312.

effectively communicate, tease the guards openly, and demand comforts.<sup>23</sup> By contrasting the naïve zealotry of the captors with their world-savvy hostages, the author makes the injustice of the hostage crisis readily apparent.<sup>24</sup>

Finally, *Guests of the Ayatollah* describes the thoughts and actions of yet another hostage of the crisis. President Carter lost the 1980 election to President Ronald Reagan in large part because of the crisis and the failed Delta Force rescue mission in April 1980, and he is an easy scapegoat.<sup>25</sup> Mark Bowden, however, effectively explains the complexity of the situation that President Carter faced, the grave consequences of his many options, and the vigor of the proponents and opponents of each option. In negotiating with a country like Iran at this point in their history, one can only commiserate with President Carter when he said, “My political future might well be determined by irrational people on the other side of the world over whom I have no control.”<sup>26</sup> While President Carter’s patience, willingness to delay military action until all other options were exhausted, and willingness to bargain with the leadership of Iran ultimately made him look weak, especially when compared with the fiery rhetoric of President Reagan, he was ultimately successful and able to secure the safe return of all of the hostages.<sup>27</sup> All in all, the author’s portrayal of President Carter is remarkably fair.

### III. Negative Aspects of *Guests of the Ayatollah*

Despite these highlights, a few issues detracted from the overall value of the *Guests of the Ayatollah*. Mark Bowden is a journalist, and this book appears to be intended to be a good read rather than a strictly historical text.<sup>28</sup> His use of quotes and his citation format severely limit the scholarly value of this book. Bowden selected an endnote format and includes in each endnote a list of the sources from which his passages originated. This style makes it extraordinarily difficult to discern the source of many of the quotations. In numerous instances throughout the book, the author reports an exchange of dialogue using quotations, and many times this dialogue is reconstructed from interviews and memoirs.<sup>29</sup> By using quotes without direct citations, the reader frequently has to wonder whether a particular quote is what was actually said, what an individual remembers being said, or what the author has concluded was said based on his research.<sup>30</sup> As such, the scholarly value of the text is limited.

Mark Bowden also sacrifices some credibility and deflates some of the power of this story in the epilogue. The last section of the book provides additional information about several important individuals after the crisis concluded. However, in three chapters titled, *The Land of the Bordbari*, *The Gerogan-Girha*, and *Yeah George Bush!*, the author almost seems to be trying to promote anti-Iranian sentiment. In *The Land of the Bordbari*, Bowden describes his trip to Iran and provides his assessment on the present state of affairs in an effort to discern whether the 1979 revolution was successful.<sup>31</sup> Addressing infrastructure, traffic, governance, population, and the hostage crisis itself, Bowden paints a dim view of the present state of Iran.<sup>32</sup> While the purpose of this chapter in the epilogue is clear, it unfortunately comes across as an irrelevant diatribe.

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<sup>23</sup> *Id.* at 207, 321, 490, 507, 525, 530 (describing the playful theft of a guard’s six-shooter, the use of a secret stolen radio, the passing of notes between hostages, the colorful names that some Marines called their captors, hostage Kathryn Koob’s demand for undergarments, and the hostages’ demands to go outside).

<sup>24</sup> *See, e.g., id.* at 305, 312. Bowden’s account of a conversation between hostage Bill Daugherty and Nilufar Ebtekar, a female English-speaking revolutionary, is remarkable. *See id.* at 310; *see generally id.* at 160-61, 246 (providing background information on Ebtekar).

<sup>25</sup> *Id.* at 464, 596.

<sup>26</sup> *Id.* at 556.

<sup>27</sup> *Id.* at 563. On the day after President Reagan’s inauguration, President Carter stated the following: “Our nation acted as a great nation ought to act, not only with justified outrage at a despicable and illegal act, not only with courage and conviction, but with constant purpose and constant restraint in the face of severe provocation.” Art Harris, *Jimmy Carter Ends His Presidency with a Flurry and a Flourish; Coming Home to Plains, Graciously*, WASH. POST, Jan. 21, 1981, at A28.

<sup>28</sup> *See Guests of the Ayatollah: The First Battle in America’s War with Militant Islam* Webpage, [http://www.theguestsoftheayatollah.com/grove\\_atlantic\\_authorbio.html](http://www.theguestsoftheayatollah.com/grove_atlantic_authorbio.html) (last visited Sept. 17, 2006).

<sup>29</sup> *See, e.g., BOWDEN, supra* note 1, at 319, 652 (providing an example of dialogue that is apparently reconstructed from a discussion among Marines). *See generally id.* at 647–56 (containing the references for the various quotes used throughout the book).

<sup>30</sup> This technique is apparently a characteristic of this author’s writing and was praised by a reviewer of another one of his books. *See* Robinson, *supra* note 12 (reviewing *Killing Pablo: The Hunt for the World’s Greatest Outlaw*).

<sup>31</sup> BOWDEN, *supra* note 1, at 605.

<sup>32</sup> *Id.*

In *The Gerogan-Girha*, Mark Bowden describes his interviews with several key individuals involved in the seizure of the embassy.<sup>33</sup> The point of this chapter is to report the present feelings about the event in Iran.<sup>34</sup> Unfortunately, Bowden's manner appears confrontational, and he seems to be bragging about his verbal sparring matches with several of the Iranians he interviewed.<sup>35</sup> In the final chapter, the author concludes by recounting a story about his recent visit to the grounds of the former American Embassy where several Iranian soldiers tasked to guard the former embassy approach him and say through a translator, "Yeah George Bush!"<sup>36</sup> The inclusion of this encounter is obviously a reflection of Bowden's own nationalism and is also of questionable relevance. Taken together, these chapters are laden with Bowden's obvious disdain for the Iranian government and those involved in the hostage crisis. While understandable, Bowden's viewpoint unfortunately detracts from the power of his description of the hostage crisis and the weight that the incident has on its own merits. Throughout the bulk of the text, the author provides numerous examples of irony, naiveté, and hypocrisy during the course of the ordeal, enabling readers to divine the injustice and criminality of this incident without Bowden's personal commentary at the end. By so bluntly stating his negative personal opinions about the country and the cause behind the embassy takeover in an epilogue, the author compromises the overall value of his work and reveals that his chronicle may not be as objective as it may initially appear.

#### IV. Importance for the Global War on Terror

Despite these shortcomings, Bowden's re-telling of this saga provides several lessons at a time when the United States finds itself in nearly constant conflict with extreme Islamic fundamentalism. First, *Guests of the Ayatollah* provides remarkable insight into the blind zealotry and internal discord of one extreme Islamic fundamentalist movement. An understanding of the power of these forces is critical to dealings between the United States, Iran, and other Islamic countries. *Guests of the Ayatollah* demonstrates that, in some cases, the hatred against the United States is based on propaganda and misinformation, and these opinions are not easily changed.<sup>37</sup> Second, this book demonstrates the vital role of special operations forces in the modern world. During the crisis, the only real military option for President Carter was a special operations rescue mission, and the United States lacked capabilities on par with British and German special operation commands.<sup>38</sup> Despite extensive planning and rehearsal, the failure of the rescue mission tied President Carter's hands diplomatically and gave Iran a massive morale windfall.<sup>39</sup>

Third, *Guests of the Ayatollah* shows that restraint and diplomacy are still effective means of resolving issues of this magnitude. Although the United States made many painful concessions to resolve the crisis, President Carter's measured approach ultimately worked and not one hostage was killed.<sup>40</sup> Fourth, Bowden's work offers a compelling case study of human behavior in captivity. Servicemembers can benefit from an understanding of not just how one might behave when in the hands of unpredictable captors, but also how United States detainees might think and behave. Finally, Bowden's thorough coverage of the crisis allows a critical analysis of the actions of President Carter, embassy chargé d'affaires Bruce Laingen, Delta Force commander Colonel James Beckwith, and the leadership of Iran. This was indeed a crisis, with tremendously complex issues and numerous lives at stake. Leaders at all levels confronted uncertainty, risk, and failure throughout the ordeal. By enabling the reader to study the thoughts and actions of the various players in the crisis, *Guests of the Ayatollah* offers a bounty of lessons.

#### V. Conclusion

Mark Bowden's *Guests of the Ayatollah* is not the first study of this event and with the twenty-seventh anniversary of the hostage crisis approaching, one might wonder why the author chose to revisit an incident that occurred so long ago. The title itself provides that answer—it was America's first battle against militant Islam; a war that continues today. In this first

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<sup>33</sup> See *id.* at 615–31. "Gerogan-Girha" is the Farsi term for "hostage takers." *Id.*

<sup>34</sup> See *id.* at 616.

<sup>35</sup> See, e.g., *id.* at 618.

<sup>36</sup> *Id.* at 636–37.

<sup>37</sup> See, e.g., *id.* at 305, 312, 399, 501.

<sup>38</sup> *Id.* at 113.

<sup>39</sup> *Id.* at 479, 550.

<sup>40</sup> *Id.* at 576–77, 595.

battle, America found itself surprised, unprepared, and naïve in dealing with Iran. As the United States continues to face conflict with Islamic fundamentalism, *Guests of the Ayatollah* is a vivid documentary of that first battle. Throughout the book, the author provides valuable insight into the mindset of the extreme Islamic fundamentalists responsible for the seizure of the embassy and the difficulties in dealing with militant Islam, either in true battle or in diplomacy. While the book is more journalistic than scholarly and is colored by the author's obvious feelings about the captors and their cause, *Guests of the Ayatollah* is a compelling chronicle of the hostages' 444 days and the challenges America faced in confronting the crisis. As Iran continues to appear in headlines around the globe, *Guests of the Ayatollah* is truly a worthwhile and timely read.

## 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 ATTRS 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 ATTRS 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 ATTRS 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
<b>GENERAL</b>		
5-27-C22	55th Graduate Course	14 Aug 06 – 24 May 07
5-27-C22	56th Graduate Course	13 Aug 07 – 22 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	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
<b>NCO ACADEMY COURSES</b>		
512-27D30 (Phase 2)	Paralegal Specialist BNCOC	28 Jan – 2 Mar 07
512-27D30 (Phase 2)	Paralegal Specialist BNCOC	2 Apr – 4 May 07
512-27D30 (Phase 2)	Paralegal Specialist BNCOC	2 Apr – 4 May 07
512-27D30 (Phase 2)	Paralegal Specialist BNCOC	11 Jun – 13 Jul 07
512-27D30 (Phase 2)	Paralegal Specialist BNCOC	13 Aug – 14 Sep 07
512-27D40 (Phase 2)	Paralegal Specialist ANCOG	28 Jan – 2 Mar 07
512-27D40 (Phase 2)	Paralegal Specialist ANCOG	11 Jun – 13 Jul 07
512-27D40 (Phase 2)	Paralegal Specialist ANCOG	13 Aug – 14 Sep 07
<b>WARRANT OFFICER COURSES</b>		
7A-270A1	18th Legal Administrators Course	2 – 6 Apr 07
7A-270A2	8th JA Warrant Officer Advanced Course	16 Jul – 3 Aug 07
7A-270A0	14th JA Warrant Officer Basic Course	29 May – 22 Jun 07
<b>ENLISTED COURSES</b>		
5F-F58	2007 Sergeants Major Symposium	5 – 9 Feb 07
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	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	18 – 22 Jun 07

512-27D-CLNCO	9th Chief Paralegal/BCT NCO Course	5 – 9 Mar 07
<b>ADMINISTRATIVE AND CIVIL LAW</b>		
5F-F21	6th Advanced Law of Federal Employment Course	17 – 19 Oct 07
5F-F22	61st Law of Federal Employment Course	15 – 19 Oct 07
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-F29	25th Federal Litigation Course	30 Jul – 3 Aug 07
5F-F202	5th Ethics Counselors Course	16 – 20 Apr 07
5F-F23E	2007 USAREUR Legal Assistance CLE	22 – 26 Oct 07
5F-F24E	2007 USAREUR Administrative Law CLE	17 – 21 Sep 07
5F-F26E	2007 USAREUR Claims Course	15 – 19 Oct 07

<b>CONTRACT AND FISCAL LAW</b>		
5F-F10	157th Contract Attorneys Course	5 – 13 Mar 07
	158th Contract Attorneys Course	23 Jul – 3 Aug 07
5F-F12	76th Fiscal Law Course	30 Apr – 4 May 07
5F-F13	3d Operational Contracting Course	14 – 16 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 Distance Learning Fiscal Law	6 – 9 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
<b>CRIMINAL LAW</b>		
5F-F33	50th Military Judge Course	23 Apr – 11 May 07
5F-F34	27th Criminal Law Advocacy Course	5 – 16 Feb 07
5F-F34	28th Criminal Law Advocacy Course	10 – 21 Sep 07

5F-301	10th Advanced Advocacy Training	29 May – 1 Jun 07
5F-F35E	2007 USAREUR Criminal Law CLE	29 Jan – 2 Feb 07
<b>INTERNATIONAL AND OPERATIONAL LAW</b>		
5F-F42	3d Advanced Intelligence Law Course	27 – 29 Jun 07
	48th Operational Law Course	30 Jul – 10 Aug 07
5F-F42	88th Law of War Course	9 – 13 Jul 07
5F-F44	2d Information Operations Course	16 – 20 Jul 07
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	30 Jul – 10 Aug 07

### 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.

<b>Naval Justice School Newport, RI</b>		
<b>CDP</b>	<b>Course Title</b>	<b>Dates</b>
0257	Lawyer Course (020) Lawyer Course (030) Lawyer Course (040)	22 Jan – 23 Mar 07 4 Jun – 3 Aug 07 13 Aug – 12 Oct 07
BOLT	BOLT (020) BOLT (020) BOLT (030) BOLT (030)	26 – 30 Mar 07 (USMC) 26 – 30 Mar 07 (NJS) 6 – 10 Aug 07 (USMC) 6 – 10 Aug 07 (NJS)
900B	Reserve Lawyer Course (010) Reserve Lawyer Course (020)	7 – 11 May 07 10 – 14 Sep 07
914L	Law of Naval Operations (Reservists) (010) Law of Naval Operations (Reservists) (020)	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)
	National Institute of Trial Advocacy (020)	14 – 18 May 07 (San Diego)
0258	Senior Officer (020) Senior Officer (030)	8 – 12 Jan 07 (New Port) 12 – 16 Mar 07 (New Port)

	Senior Officer (040) Senior Officer (050) Senior Officer (060)	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 (020)	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) (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)	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 (EUCOM) (020)	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
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 (020)	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 (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)	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)
<b>Naval Justice School Detachment Norfolk, VA</b>		
0376	Legal Officer Course (040) Legal Officer Course (050) Legal Officer Course (060) Legal Officer Course (070) Legal Officer Course (080)	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 (040) Legal Clerk Course (050) Legal Clerk Course (060) Legal Clerk Course (070) Legal Clerk Course (080)	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 (030) Senior Officer Course (040) Senior Officer Course (050) Senior Officer Course (060) Senior Officer Course (070)	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

<b>Naval Justice School Detachment San Diego, CA</b>		
947H	Legal Officer Course (040) Legal Officer Course (050) Legal Officer Course (060) Legal Officer Course (070) Legal Officer Course (080)	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 (050) Legal Clerk Course (060) Legal Clerk Course (070) Legal Clerk Course (080)	2 – 13 Apr 07 7 – 18 May 07 11 – 22 Jun 07 30 Jul – 10 Aug 07
3759	Senior Officer Course (030) Senior Officer Course (040) Senior Officer Course (050) Senior Officer Course (060) Senior Officer Course (070) Senior Officer Course (080)	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)
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.

<b>Air Force Judge Advocate General School Maxwell AFB, AL</b>	
<b>Course Title</b>	<b>Dates</b>
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 2008

The suspense for submission of all RC-JAOAC Phase I (Correspondence Phase) materials is **NLT 2400, 1 November 2007**, for those judge advocates who desire to attend Phase II (Resident Phase) at TJAGLCS in January 2008. This requirement includes submission of all JA 151, Fundamentals of Military Writing, exercises.

This requirement is particularly critical for some officers. The 2008 JAOAC will be held in January 2008 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 2007). If the student receives notice of the need to re-do any examination or exercise after 1 October 2007, 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 2007 will not be cleared to attend the 2008 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 regarding attendance at Phase II (Residence Phase) or completion of Phase I writing exercises, contact LTC Jeff Sexton, commercial telephone (434) 971-3357, or e-mail [jeffrey.sexton@hqda.army.mil](mailto:jeffrey.sexton@hqda.army.mil).

For system or help desk issues regarding JAOAC or any on-line or correspondence course material, please contact the Distance Learning Department at [jagc.training@hqda.army.mil](mailto:jagc.training@hqda.army.mil) or commercial telephone (434) 971-3153.

## 7. Mandatory Continuing Legal Education Jurisdiction and Reporting Dates

<b>Jurisdiction</b>	<b>Reporting Month</b>
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 On-Site Continuing Legal Education Training and Workshop Schedule (2006-2007).

Date	Unit/Location	ATTRS Course Number	Topic	POC
24-25 Feb 07	174th LSO Buena Vista (Orlando), FL	Class: 005	International & Operational Law Contract & Fiscal Law	MSG Timothy Stewart (305) 779-4022 tim.stewart@us.army.mil
3-4 Mar 07	10th LSO Ft. Belvoir, VA	Class: 006	Contract & Fiscal Law Administrative & Civil Law/Legal Assistance	MAJ Arthur Kaff (703) 588-6762 arthur.kaff@us.army.mil
10-11 Mar 07	63d RRC/78th LSO Anaheim, CA	Class: 007	Contract & Fiscal Law Criminal Law	MAJ DeEte Loeffler (619) 241-6966 deette.loeffler@us.army.mil
17-18 Mar 07	Wisconsin NG JAG/Paralegal Readiness Conference Fort McCoy, WI	NA	TCAP; Ethics and Deployment After Action Reports	MAJ David Dziobkowski (608)242-3073 david.dziobkowski@wimadi.ang.af.mil
20-22 Apr 07	90th RRC Tulsa, OK	Class: 008	Criminal Law Administrative & Civil Law/Legal Assistance	LTC Baucum Fulk (501) 771-8765 baucum.fulk@us.army.mil
28-29 Apr 07	Indiana ARNG Indianapolis, IN	Class: 009	Contract & Fiscal Law Administrative & Civil Law/Legal Assistance	LTC Brian Dickerson (317) 247-3491 brian.c.dickerson@in.ngb.army.mil
4-6 May 07	213th LSO Atlanta, GA	Class: 010	International & Operational Law Contract & Fiscal Law	LTC Robin Allen (404) 562-9583 allen.robin@epamail.epa.gov
4-6 May 07	89th RRC Kansas City, KS	Class: 014	Criminal Law; International & Operational Law (law of War, deployment Contracting)	LTC Ismael Sanabria (316) 681-1759, ext. 1341 Ismael.sanabria@usar.army.mil
19-20 May 07	139th LSO Nashville, TN	Class: 011	Contract & Fiscal Law Criminal Law	LTC Kymberly Haas (615) 256-3148 attorneykhaas@aol.com
19-20 May 07	91st LSO Oak Brook, IL	Class: 012	International & Operational Law Administrative & Civil Law/Legal Assistance	CPT Bradley Olson (309) 782-3361 bradley.olson@us.army.mil
22-24 Jun 07	94th RRC Boston/Devins, MA	Class: 013	International & Operational Law Administrative & Civil Law/Legal Assistance	CPT Susan Lynch (978) 784-3933 susan.lynch@usar.army.mil

### 2. 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](http://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](mailto: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.

## 3. 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.

#### **4. 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*.

#### **5. 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](mailto: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.

#### **6. 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.

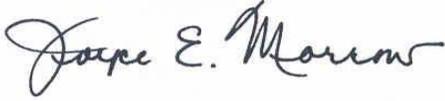
Point of contact is Mrs. Dottie Evans, The Judge Advocate General's School, U.S. Army, ATTN: CTR-MO, 600 Massie Road, Charlottesville, Virginia 22903-1781. Telephone DSN: 521-3278, commercial: (434) 971-3278, or e-mail at [Dottie.Evans@hqda.army.mil](mailto:Dottie.Evans@hqda.army.mil).



By Order of the Secretary of the Army:

**PETER J. SCHOOMAKER**  
*General, United States Army*  
*Chief of Staff*

Official:



**JOYCE E. MORROW**  
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*Secretary of the Army*  
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Department of the Army  
The Judge Advocate General's Legal Center & School  
U.S. Army  
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