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Lore of the Corps

Anatomy of a Court-Martial: The Trial and Execution of Private William Buckner in World War I

Fred L. Borch III
Regimental Historian & Archivist

“I am not guilty of raping Georgette Thieboux. She consented to the intercourse.”¹ These thirteen words, spoken by Private (PVT) William Buckner late in the afternoon on 5 September 1918, could not save him from the fate that awaited him. A little more than twelve hours later, at 6 a.m. on 6 September, PVT Buckner “ascended the scaffold” that had been erected in a field near Arrentierres, France. A “black cap was placed on his head” and a noose placed around his neck.² Minutes later, he was dead. He was buried in France and is buried there still.

Accused of “forcibly and feloniously . . . having carnal knowledge of one Georgette Thieboux”³ on 2 July 1918, Buckner was tried by a general court-martial that began hearing evidence on 27 July—less than a month after the alleged offense. Found guilty on 30 July of raping this twenty-three-year-old French woman, the efficiency of the court-martial process, and the limited character of the appellate process, were such that Buckner’s capital sentence was carried out just five weeks after being announced in open court.⁴

What follows is an anatomy of a court-martial that was both typical and atypical for World War I. Typical in that the accused apparently had no legally qualified counsel to

defend him. Typical in that the capital offense of rape⁵ was heard by a general court-martial, and that the accused was one of a handful of African-American Soldiers tried and executed in Europe in World War I.⁶ But atypical in that a lawyer from the Judge Advocate General’s Department was present (though typical in that this lawyer was the prosecutor, that the other “judge advocates” present were from other branches of service, and that they may not have been lawyers at all).

Some facts were not in dispute. Both the accused and the victim testified that they had had sexual intercourse. This sex occurred in an oat field near the town of Arrentierres, about 9:30 p.m. on 2 July 1918. Private Buckner and Ms. Thieboux also agreed that they were not married.⁷ The problem for the accused was that the young French woman testified that the sex was against her will.⁸

¹ Letter from Captain Herbert E. Watkins, to Chief of Artillery, First Army, American Expeditionary Force (AEF), subject: Report of Execution of Private William Buckner (6 Sept. 1918) (on file with the Records of the Judge Advocate General, Record Group 153, Box 8942, General Courts-Martial 121766).

² *Id.* According to the report, the execution was not performed in full view of the company (as would normally have been the case), because of “military necessity.” As the execution took place during the allied “Hundred Days Offensive” that ended the war, this is unsurprising.

³ Under the Articles of War, rape was a criminal offense under Article 92. The 1917 *Manual for Courts-Martial (MCM)* defined it as “the having of unlawful carnal knowledge of a woman by force and without consent” (in keeping with the common law definition). This is why the specification uses the words “carnal knowledge” instead of “rape.” *MANUAL FOR COURTS-MARTIAL UNITED STATES 251 (1917)* [hereinafter 1917 *MCM*] (Punitive Articles (Rape)).

⁴ Under Article 92 of the Articles of War, “any person subject to military law” who was found guilty by a court-martial of “murder or rape” was required to be sentenced to either “death or imprisonment for life.” *Id.* at 248. Having found Private (PVT) Buckner guilty, the court chose the more severe punishment of death by hanging. Note that Article 92, which became effective on 29 August 1916, also provided that, in time of peace, no person could be court-martialed for a murder or rape committed “in the States of the Union and the District of Columbia.” *Id.* Of course, this provision did not apply to Buckner, because he was overseas and Congress had declared war.

⁵ Rape was a capital offense in many U.S. jurisdictions, including the military, until *Coker v. Georgia*. 433 U.S. 584 (1977). *Coker* held that the death penalty is “grossly disproportionate and excessive punishment for the rape of an adult woman,” and is “therefore forbidden by the Eighth Amendment as cruel and unusual punishment.” *Id.* at 592 (plurality opinion).

⁶ *Inquiry Gets Record of Army Executions*, N.Y. TIMES, Dec. 9, 1921, available at <http://query.nytimes.com/mem/archive-free/pdf?res=F60E17F83E5D14738DDDA00894DA415B818EF1D3>; see also JACK D. FONER, *BLACKS AND THE MILITARY IN AMERICAN HISTORY* 124 (1974). A number of Black Soldiers were also hanged in the United States after being convicted by courts-martial during World War I. See Fred L. Borch, *The Largest Murder Trial in the History of the United States: The Houston Riots Court-Martial of 1917*, ARMY LAW., Feb. 2011, at 1–3.

⁷ Under the Articles of War, marriage was a complete defense to rape (because an element of the crime was that the intercourse had to be “unlawful,” i.e., not between husband and wife). As a matter of law, a husband who forcibly and without consent had carnal knowledge of his wife was not guilty of rape. 1917 *MCM*, *supra* note 3, ch. XVII, sec. VI (Punitive Articles (Rape)). This was also the prevailing law in civilian jurisdictions. See *Criminal Responsibility of Husband for Rape, or Assault to Commit Rape, on Wife*, 18 A.L.R. 1063 (1922). The husband might still be guilty of assault, but not rape, of his wife. See *State v. Dowell*, 11 S.E. 525, 526 (N.C. 1890) (Merrimon, C.J., dissenting); *Bailey v. People*, 130 P. 832, 835–36 (Colo. 1913) (denying the right of a husband “to control the acts and will of his wife by physical force,” collecting cases). See also WILLIAM WINTHROP, *MILITARY LAW AND PRECEDENTS* 718 & n.52, 731 (2d ed. 1920) (open abuse, including assault, of a servicemember’s wife could be punished under the general article, or as conduct unbecoming an officer and gentleman).

⁸ Georgette Thieboux testified in French; her statements were translated into English by a French Army lieutenant who had been sworn as an interpreter. As shown below, her inability to speak English was a material issue at trial.

On 27 July 1918, Georgette Thieboux took the witness stand, swore to tell the truth, and then told the court members that she had been walking along the road when she was accosted by the accused, whom she had never seen before. He seized her and, despite her screams and struggles, threw her down, dragged her into the field, choked her, stuffed a handkerchief in her mouth, and then raped her. On cross-examination, she insisted that she had been raped and that while she did her “best to resist and defend myself . . . fear took my strength from me . . . I was afraid of only one thing, that he would kill me.”⁹ This testimony was important in light of the instructions on consent drawn from the 1917 *Manual for Courts-Martial (MCM)*. These were read to the court by Major (MAJ) Patrick J. Hurley, the Judge Advocate, who served both as prosecutor and legal advisor to the members-only court.¹⁰

There is no consent where . . . the woman is insensible . . . or where her apparent consent was extorted by violence to her person or fear of sudden violence. . . .

Mere verbal protestations and a pretense of resistance do not of course show a want of consent, but the contrary, and where a woman fails to take such measures to frustrate the execution of the man’s design as she is able to and are called for by the circumstances the same conclusion may be drawn. . . .

It has been said of this offense that “it is true that rape is a most detestable crime . . . but it must be remembered that it is an accusation easy to be made, hard to be proved, but harder

to be defended by the party accused, though innocent.”¹¹

A telling point for the defense came out on cross-examination, and the alleged victim’s prior sexual history was almost raised:

Q [by defense counsel]. Did the intercourse with the accused pain you?

A. I never felt anything.

Q. This had never happened to you before?

Prosecution: I believe we should give the defense the widest latitude in examining the witness, but this is getting into a personal matter, the bearing of which, on this case, I do not understand. However, I will not object if counsel considers the virginity of the witness a matter of importance in this case.

Defense: I withdraw the question.¹²

To corroborate Mmse. Thieboux’s testimony, MAJ Hurley called two French soldiers as witnesses. These men testified that they had been walking along the road when they heard some screams. They then saw the accused and Ms. Thieboux coming out of the oat field. When she saw them, the two Frenchmen testified that she ran toward them and exclaimed, “Kill him, he has raped me.” They further testified that she was agitated, “looked like a mad woman,” and that her clothing was disheveled. Hurley also called a local French gendarme to the stand. The gendarme testified that Ms. Thieboux reported the rape to the police authorities the following morning and that, when they examined the crime scene, the gendarmes had found the alleged victim’s hair comb, breast pin, and the heel of her shoe.¹³ Major Hurley also provided Mmse. Thieboux’s bloody clothes for

⁹ Record of Trial at 15–16, *United States v. William Buckner* (Courts-Martial No. 121766) [hereinafter *Buckner ROT*].

¹⁰ 1917 *MCM*, *supra* note 3, at 47–49. The Judge Advocate of a court-martial (or Trial Judge Advocate) served both as prosecutor and legal advisor to the court, which consisted of commissioned officers only. Enlisted panels and Military Judges did not yet exist. Major Hurley’s “assistant judge advocate,” First Lieutenant (1LT) Lee C. Knotts, was a Coast Artillery officer. *Buckner ROT*, *supra* note 9, at 2. Major Hurley is listed as a member of the Judge Advocate Reserve Corps; whether 1LT Knotts or Private Buckner’s defense counsel had any legal background is unclear from the record. According to Major General (MG) E.H. Crowder, Judge Advocate General of the Army in 1919, “[w]hile no direct proof by statistics can be adduced, it is common knowledge that the commanding generals in the assignment of counsel . . . have sought to utilize the services of those officers who have already had legal experience.” U.S. ARMY OFFICE OF THE JUDGE ADVOCATE GENERAL, *MILITARY JUSTICE DURING THE WAR: A LETTER FROM THE JUDGE ADVOCATE GENERAL OF THE ARMY TO THE SECRETARY OF WAR 28* (1919) [hereinafter *CROWDER*]. According to MG Crowder, the trial judge advocate was normally not a lawyer from the Judge Advocate General’s Department “except in a few special cases.” *Id.* at 27. The *MCM* did not require the trial judge advocate to be a lawyer, but did require that the judge advocate of a general court-martial have experience as a court member or assistant judge advocate. 1917 *MCM*, *supra* note 3, at 47–48.

¹¹ *Buckner ROT*, *supra* note 9, at 6 (quoting 1917 *MCM*, *supra* note 3, at 252). The defense explicitly relied on these instructions in making the case for consent. *Id.* at 152. The instructions on rape were read to the court-martial *before* any evidence was taken, and were less than a page in length. *Id.* at 6. There were no opening statements; after the Judge Advocate read the charge and the instructions, the president of the court-martial instructed him to “plead the case,” and testimony began.

¹² *Id.* at 16. Under the rape instructions read by the Judge Advocate, Mmse. Thieboux’s sexual past would not have been a defense to rape, since “the offense may be committed on a female of any age, on a man’s mistress, or on a common harlot.” *Id.* at 6. However, over half a century before “rape shield” rules, it might have been allowed to show Mmse. Thieboux’s general propensity to have sex with near-strangers, or even with black men in particular. *See Story v. State*, 59 So. 480, 482–83 (Ala. 1912) (*Story* overturned the conviction of a black man for raping a white prostitute, because the defense had not been allowed to introduce evidence that the prostitute had a reputation for consorting with black men; its brief but explicit discussion of relations between the “dominant” and “inferior” races must be read to be believed.).

¹³ *Buckner ROT*, *supra* note 9, at 21–22, 51–52.

the court's examination (though he did not enter them as exhibits, because they would not travel well with a paper record). Moreover, one of Private Buckner's comrades testified that Private Buckner had boasted about "doing business" with a lady he met on the road, and that this lady had run away, but that he had caught her and dragged her into a wheat field before he "did business to her."¹⁴

Nineteen-year old PVT Buckner told a radically different story. He had only been in the Army since February 1918, and after completing basic training had been assigned to the 313th Labor Battalion of the American Expeditionary Force (AEF) in France.¹⁵ After being called to the stand, Buckner testified that he had met Georgette Thieboux at a grocery store and that they had later met several times. They had drunk wine together and also exchanged gifts: she had given him her photograph and some prayer beads; he had given her his watch.

Private Buckner testified that he and Ms. Thieboux had had consensual sexual relations on 30 June and on 1 July, and had such relations again on 2 July. Specifically, he said he "had connection" with her three times in the oat field that day and that she had not struggled or screamed during the sex acts. But then things had gone awry. Said Buckner: "When we got through she caught me by the arm and she had my watch and she broke a minute hand off it. Then I took the watch away from her."¹⁶ As this was the watch that Buckner had previously given to her, "she got mad." After telling him "me and you are finish," Ms. Thieboux left the oat field and, once on the road, told two French soldiers walking nearby that she had been raped. Buckner also testified that shortly after his arrest on 5 July, he had gone with Captain (CPT) R. B. Parker, his defense counsel, to see MAJ Hurley. Private Buckner had then told Hurley the whole story of his relationship with Georgette Thieboux. The three Soldiers—Buckner, Parker, and Hurley—had visited the town and other locations where the accused said he had met the victim and had relations with her.¹⁷

In rebuttal, the prosecution called witnesses who testified that Mmse. Thieboux could not have been with the accused on 30 June and 1 July—because she was at her parents' home and at the residence of her sister. Contradicting Private Buckner's testimony that he had

conversed with Mmse. Thieboux in English on these prior occasions, several French witnesses (including her father) testified that she spoke no English; her father also testified that she had never possessed the prayer beads Private Buckner claimed to have gotten from her. The picture he claimed to have gotten from her was damaged, was inscribed "modern dancers" (Mmse. Thieboux worked in a dry goods store), and could not be identified as hers in court, though a friend of Private Buckner said it had previously depicted Mmse. Thieboux. No witnesses corroborated their prior meetings. The sister of the owner of the café where Private Buckner said Mmse. Thieboux had given him wine testified that he, Private Buckner, had been there on the day of the incident, but that Mmse. Thieboux had not been with him. The alleged victim's parents and the town's mayor also testified "as to her deplorable conditions at the time she reached her home" after the alleged rape.¹⁸

At the close of the evidence, both sides presented argument. Captain Parker, the defense counsel, went first. He argued a number of factors that, he stressed, indicated consent. When the gendarmes first saw PVT Buckner and Mmse. Thieboux together, they appeared to be talking together, until she saw them. Mmse. Thieboux had testified that her clothes had gotten bloody during a struggle with the accused, and that she thought most of the blood was his. But there were "no marks of any character on the accused," there was "not a spot of blood" on his clothes (either the ones he wore or the ones in his barracks bag), and his clothes were not torn: evidence that there had not been a struggle. She claimed to have "felt nothing" during repeated forcible intercourse. The defense counsel pointed out several inconsistencies in the prosecution evidence (such as differing accounts of what Mmse. Thieboux did after PVT Buckner left the scene), and reminded the court of PVT Buckner's conduct in speaking freely to the prosecutor and showing him where the intercourse had taken place. The defense counsel closed with the following statement:

In summing up, I would say, that it is the opinion and the firm belief of the counsel for the defense that the one who has made the accusation, Georgette Thieboux, who has accused William Buckner, made no resistance but consented to intercourse with him. And so we firmly believe, after working upon this case, that William Buckner is not guilty of the charge.¹⁹

As for the prosecution, MAJ Hurley argued that since the accused admitted that he had sexual intercourse with Ms. Thieboux, "the only element of rape left to be proved is that

¹⁴ *Id.* at 45.

¹⁵ About 200,000 African-American Soldiers served in the American Expeditionary Force (AEF), of whom 160,000 served as laborers in the Service of Supplies. "They worked night and day, twelve to sixteen hours at a stretch, performing many difficult and necessary tasks." Those in labor battalions, like PVT Buckner, "built and repaired roads, railroads, and warehouses and performed general fatigue duty." FONER, *supra* note 6, at 121.

¹⁶ Buckner ROT, *supra* note 9, at 110.

¹⁷ *Id.* at 103–12.

¹⁸ *Id.* at 155–56. This article can give only highlights from the evidence. In all, twenty-five witnesses testified, and the verbatim transcript fills 187 legal-sized pages.

¹⁹ *Id.* at 153–54.

the carnal knowledge was had by force and without the consent of Georgette Thieboux.” In Hurley’s view, the evidence he had introduced – particularly her screams during the incident and her conduct right after – showed that “she was assaulted forcefully and violently” and that the “uncorroborated word of the accused” was the only evidence to the contrary.²⁰

Having heard the witnesses, and having had an opportunity to evaluate their credibility under oath, the thirteen members of the court closed for deliberation.²¹ When they reconvened, they found the accused guilty as charged. After MAJ Hurley stated that “he had no evidence of previous convictions” of the accused to submit as evidence, the court closed to vote on a sentence. When the panel members reconvened, Colonel Edward P. O’Hern, the president of the court-martial, announced that PVT William Buckner was “to be hanged by the neck until dead” and that “two thirds of the members of the court concurred in the sentence.”²²

Under the Articles of War and the 1917 *MCM*, there was no requirement for PVT Buckner to be represented by a lawyer. Rather, Article 17 stated that “the accused shall have the right to be represented before the court by counsel of his own selection of his defense, if such counsel be reasonably available” (“counsel” in this context did not imply “legally trained counsel”). However, the prosecutor, MAJ Hurley, was an attorney and a member of the Judge Advocate General’s Department (JAGD) and that may explain why Buckner had two counsel representing him: Captain R. B. Parker and First Lieutenant (ILT) A. C. Oliver. Interestingly, CPT Parker was a Medical Reserve Corps officer and ILT Oliver was an Army chaplain (both were present for the execution, and ILT Oliver gave PVT Buckner his last spiritual comfort). Although the Judge Advocate was charged with the duty of prosecuting a case, the 1917 *MCM* also required him to “do his utmost to preserve the whole truth of the matter in question,” and to

²⁰ *Id.* at 155. Like most lawyers faced with inconsistencies in their own sides’ testimony, MAJ Hurley had a rehearsed argument as to how common this is in human affairs: “It would be passing strange if such minor conflicts did not exist. The four Gospels are in hopeless conflict on certain minor details, but they all corroborate the salient facts of the incident concerning which they were written.” *Id.* at 154.

²¹ Convened by Special Orders No. 173, Headquarters Army Artillery, 1st Army, dated 26 July 1918, the court consisted of thirteen officers: two colonels, one lieutenant colonel, two majors, two captains, five first lieutenants and one second lieutenant. Buckner ROT, *supra* note 9, allied papers. The large number of panel members was not an accident, as Article 5 of the Articles of War stated that while a general court-martial “may consist of any number of officers from five to thirteen,” it should “not consist of less than thirteen when that number can be convened without manifest injury to the service.” Given that PVT Buckner was facing the death penalty, the convening authority likely believed that having thirteen court members was prudent. 1917 *MCM*, *supra* note 3, Articles of War, art. 5.

²² Buckner ROT, *supra* note 9, at 157.

“oppose every attempt to suppress facts or to distort them.”²³ In keeping with this duty, MAJ Hurley raised almost no objections to the defense conduct of the case – preferring a polite inquiry about the relevance of Mmse. Thieboux’s virginity, to which the defense responded by withdrawing the question.

Was there sufficient evidence to find the accused guilty as charged? The accused having admitted under oath that he had had sexual intercourse with the victim, the only element in dispute was whether the sex was by force and without consent. Since the victim was adamant that she had been raped, and there was considerable evidence of “fresh complaint,” the court members had enough evidence before them. Ultimately, they weighed the credibility of the French victim against the American accused in making their decision. Doubtless the corroborating details for her story—such as the screams, the blood, his admissions to a fellow Soldier, and the locals’ insistence that she spoke no English—assisted them in making this determination; as did the comparative lack of corroboration for his story.

What about the defense? Was it adequate? The apparent lack of legally trained defense counsel meant that the accused was at a serious disadvantage at trial—a disadvantage amplified by the fact that the prosecutor was a lawyer and judge advocate. But the two defense counsel mounted a spirited defense, which included a vigorous cross-examination of the victim that highlighted inconsistencies in her testimony. Their arguments were cogent, making a logical, fact-based argument for consent in the face of a strong prosecution case. It is difficult to imagine how their strategy could have been much improved, even by seasoned defense counsel. Private Buckner had already admitted the sex to a fellow Soldier, so having him keep quiet and fighting the identification case would not likely have helped.²⁴ The defense’s decision to bring MAJ Hurley along while investigating the case in town seems strange, but is understandable under the circumstances. CPT Parker’s client had presumably told him the tale of the prior

²³ 1917 *MCM*, *supra* note 3, at 49. Major General Crowder also stated that a trial judge advocate was supposed “to conduct the prosecution, not indeed with the ruthless partisanship frequently to be observed in civil prosecuting attorneys, yet with the thoroughness suitable to the proper performance of his duties.” CROWDER, *supra* note 10, at 27. See also WINTHROP, *supra* note 7, at 185 (discussing qualifications of the trial judge advocate: “While an officer may readily make himself familiar with the routine of the prosecution of a brief and simple trial, a special training and a considerable body of legal knowledge are required . . . in a case of real difficulty and importance”).

²⁴ Had the accused kept quiet from the beginning, the dynamics of the case might have changed dramatically. On cross-examination, Mmse. Thieboux admitted that she had not looked at her assailant’s face, stating, “He was so ugly that I would not look at him . . . I say he is ugly because he is a [negro] and [negroes] are disgusting.” Buckner ROT, *supra* note 9, at 14. While she had later picked him out of his all-black unit a few days later, the alleged attack occurred in the evening, the gendarmes who saw PVT Buckner were not able to identify him, he was not arrested until three days later, and a serious case for doubt might have been made.

relationship, and said where the witnesses were who would back him up. If they *had* backed him up in front of MAJ Hurley, the entire prosecution might have been dropped. When they did not, the defense was still able to argue that Private Buckner's cooperative behavior bespoke his innocence.²⁵

In the wake of the disastrous Houston Riots court-martial, the promulgation of General Orders No. 7 meant that Buckner's case was reviewed for legal sufficiency by a Board of Review consisting of three senior judge advocates in the Office of the Acting Judge Advocate General (JAG) for the AEF in Europe.²⁶ After the convening authority approved the sentence on 8 August 1918, Buckner's case was forwarded to the AEF commander, General John J. Pershing, for action. Under Article 48, only Pershing could confirm the death sentence and, while Pershing did confirm the sentence on 17 August 1918, it was held in abeyance pending review by the Board.

The report of the three officers who reviewed the proceedings, signed by Brigadier General Edward A. Kreger,²⁷ the Acting JAG, is contained in the allied papers. This report cited several specific pieces of evidence that supported the verdict.²⁸ The Board of Review concluded that the "conflict of testimony" between Buckner and Thiebaut "presented a question for determination by the

²⁵ *Id.* at 152. A more cautious strategy would have been to distrust the client and talk to the witnesses *before* involving the prosecution, but this strategy would have had limited value. When the witnesses failed to back up the accused, the defense would still have been fighting a corroborated story with an uncorroborated one in the face of a damning admission by the client.

²⁶ War Dep't, Gen. Orders No. 7 (17 Jan. 1918). This general order required that any death sentence be suspended pending review of its legality in the Office of the Judge Advocate General, although the reviewing authority was free to disregard any opinion or advice resulting from such review. Given the distance of the AEF in France from Washington, D.C., Acting JAG Kreger established a three-man Board of Review for the AEF, and this body examined PVT Buckner's record.

²⁷ Edward A. Kreger had a remarkable career as an Army lawyer. Born in Iowa in May 1868, he was admitted to the Iowa state bar in the 1890s and practiced law until the Spanish American War. In May 1898, he entered the 52d Iowa Volunteer Infantry as a captain and subsequently saw combat against insurgents in the Philippine Insurrection. In February 1911, Kreger was appointed a major and judge advocate and his subsequent career reflected his amazing talents as a lawyer: Professor of Law at West Point; legal advisor in the Department of State and Justice of the Government of Cuba; Acting Judge Advocate General of the AEF in France; and Acting Judge Advocate General in Washington, D.C. Kreger was appointed The Judge Advocate General in 1928 and retired in 1931. He died in San Antonio, Texas, in May 1955. U.S. ARMY JUDGE ADVOCATE GENERAL'S CORPS, THE ARMY LAWYER 148-49 (1975).

²⁸ The allied papers also include a two-page review by MAJ Hurley for his commander, with arguments and page cites to the record for each item of evidence that supports the conviction, and this prosecution-oriented summary may have influenced the board. He appears to have done this in his capacity as staff judge advocate. See CROWDER, *supra* note 10, at 27. No brief for the defense (except the transcript of their closing argument) appears in the file.

court." The Board also found that the "record is without suggestion of substantial error, or of any irregularity justifying comment." Finally, the three judge advocates concluded that "the record in the case is legally sufficient to support the sentence adjudged, approved and confirmed."²⁹ Kreger's signature reflected that, as the senior ranking judge advocate in Europe, he concurred with the Board's opinion.

Measured by modern standards of due process, PVT Buckner's trial was seriously flawed. First, the prosecutor was a lawyer from the Judge Advocate General's Department while the defense counsel were not, such that MAJ Hurley was much more adept at trying courts-martial. As a military lawyer, Hurley doubtless had more credibility with the members than did his opponents.³⁰ Second, the death penalty was imposed by a less than unanimous vote and without evidence presented in extenuation or mitigation; and the case was prepared and tried at a breakneck pace that would be unthinkable for a capital case now. Third, the panel that heard the case consisted only of officers; the accused had no right to enlisted members. Fourth, there was no military judge (or other legally trained officer) to rule on evidentiary matters or otherwise ensure procedural due process at the trial; the panel received its instructions from the prosecutor. Fifth, while the accused's case was reviewed by a Board of Review, he did not have counsel representing him in that quasi-appellate forum, though the prosecutor's own review was before them. Nor did he have the opportunity, much less the right, to present evidence to that Board.³¹

These shortcomings aside, a final question remains. Was it possible for an African-American Soldier on trial for raping a white woman to get a full and fair hearing in the Army in 1918? After all, this was a racially segregated Army where racist attitudes toward Black Soldiers were official policy. Army Expeditionary Force authorities issued orders forbidding African-American Soldiers "from conversing or associating with French women, attending

²⁹ Since the Board had been created by a War Department regulation, its powers were advisory only; the Board did not have factfinding power (as do the courts of criminal appeals under Article 66, UCMJ) and a convening authority was under no obligation to follow any opinion issued by the Board.

³⁰ Major Hurley may have carried extra credibility for other reasons. His citation for the Distinguished Service Medal (when he was a lieutenant colonel) states that he also served as Judge Advocate, Adjutant General, and Inspector General for Army Artillery, 1st Army, during the war, and skillfully conducted negotiations between the AEF and the Grand Duchy of Luxembourg. He was awarded the Silver Star for gallantry in action on the last day of the war for "voluntarily making a reconnaissance under heavy enemy fire." *Hall of Valor: Patrick J. Hurley*, MILITARY TIMES, <http://militarytimes.com/citations-medals-awards/recipient.php?recipientid=17723> (last visited Dec. 5, 2011).

³¹ On the other hand, the instructions on rape, which required some kind of resistance by the victim to prove non-consent, and the rules of evidence, which did not exclude her sexual past, were friendlier to the defense than the current rules are.

social functions, or visiting French homes.”³² The French liaison officer at AEF headquarters advised his countrymen “to prevent any expression of intimacy between white women and black soldiers,” as this would “deeply affront white Americans.”³³ Given this racial climate, did the panel that heard PVT Buckner’s case weigh the evidence fairly? Would a white Soldier have been found guilty—and sentenced to death—under the same facts?

A sad postscript to this case is contained in the record’s allied papers: on 11 March 1919, Buckner’s mother wrote to the “Adjutant General, U.S. Army” about her son, whom she believed had been killed in action. She had expected to get some Army life insurance proceeds after her son had died but, as she wrote:

I have been informed . . . that the circumstances surrounding the death of my son . . . was such as to cancel the insurance. I wrote . . . and asked . . . to tell me the circumstances. In reply, they refer me to you.

Will you please write to me at once, telling me about it?

Yours truly,

Mary Buckner
316 Seventh Street
Henderson, Ky.

There is no record in the Buckner file of any reply to his mother.

Addendum to “Colonel Walter T. Tsukamoto: No Judge Advocate Loved America or the Army More” (The Army Lawyer, May 2011)

As a result of the publicity generated by this article, COL Tsukamoto’s family learned that he qualifies for the Congressional Gold Medal authorized for “Nisei Soldiers of World War II.” Tsukamoto is the first and only judge advocate in history whose service has been recognized with a Congressional Gold Medal.

More historical information can be found at

The Judge Advocate General’s Corps
Regimental History Website

Dedicated to the brave men and women who have served our Corps with honor, dedication, and distinction.

³² FONER, *supra* note 6, at 122.

³³ *Id.* Such racial attitudes were then common in the civilian world, see *Story v. State*, 59 So. 480, 482 (Ala. 1912), and perhaps even in France, as evinced by Mmse. Thieboux’s testimony that she found all black men “ugly” and “disgusting.”

Sentencing Credit: How to Set the Conditions for Success

Major M. Patrick Gordon*

*The presumption of innocence is one of the principles our Armed Forces exist to defend. The apprehension of Soldiers . . . in any manner designed to humiliate, ridicule or harass them is inconsistent with that principle and will not be tolerated.*¹

I. Introduction

You are a defense counsel stationed at Ft. Hidden Gem, Louisiana. The Senior Defense Counsel just detailed you a new client, Private (PVT) Joe Tentpeg. He shuffles into your office shackled at the waist and wearing a prison jumpsuit. You quickly discover that PVT Tentpeg was recently absent without leave (AWOL) for six months. The absence ended when he was stopped for speeding by the local police, who jailed him on a military warrant when they discovered he was AWOL. PVT Tentpeg spent a week in jail before his unit retrieved him a month ago. Since that time, PVT Tentpeg claims that he has spent every night in a supply room, has been restricted to the unit area, and has been required to sign in at the staff duty desk hourly. Private Tentpeg has not been paid since returning to the unit. Unfortunately, PVT Tentpeg was caught off-post this past weekend and is now facing court-martial for AWOL and breaking restriction.

Is PVT Tentpeg entitled to credit off any eventual court-martial sentence for what happened before trial? What type(s) of credit? How much? What steps should the defense counsel take? When? Conversely, if a trial counsel were handed this file, what steps should she take to address the issue?

It is remarkable how frequently counsel fail to recognize these questions or, at least, address them in a manner that will secure the best result for their clients. One need only review the case summaries on the military appellate court websites to quickly gain an appreciation of how many counsel critically under-serve their clients in this frequently encountered area of court-martial practice. For example, many times defense counsel fail to request appropriate sentencing credit at trial,² or the facts suggest that

government counsel could have mitigated or eliminated the issue if they had been more vigilant prior to trial. This primer seeks to prevent the reader from adding to this body of case law. First, the primer will examine the available sources of sentencing credit, in the context of cases illustrating how courts determine whether credit is awarded. At the same time, the primer will examine common issues with each type of sentencing credit, and what practical steps should be taken to set the conditions for success. Next, sentencing credit motion practice will be examined. Finally, the primer will provide practice tips for counsel, with the goal of stimulating advocates to move beyond merely reacting to issues and into a proactive mode that best serves the client,³ whether that be the Army or PVT Tentpeg.

II. Background

Formal sentencing credit has existed in the federal criminal justice system since 1960, when Congress passed an amendment to 18 U.S.C. § 3568, requiring that any person convicted of a criminal offense shall be given “credit toward service of his sentence for any days spent in custody prior to the imposition of sentence.”⁴ Congress expressly exempted courts-martial from the statute’s coverage, but in 1968 the Secretary of Defense promulgated Department of Defense Instruction 1325.4, which required that “[p]rocedures employed in the computation of [court-martial] sentences will be in conformity with those published by the Department of Justice,”⁵ presumably including 18 U.S.C. § 3568. Despite this apparent adoption of the statute, military courts did not grant formal sentencing credit until the 1984 case of *United States v. Allen*, which simply held that a servicemember would receive one day’s credit against his court-martial sentence for each day spent

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¹ *United States v. Stamper*, 39 M.J. 1097, 1100 (A.C.M.R. 1994) (quoting a policy letter written by General Crosbie E. Saint while serving as a division commander, following “an incident wherein a brigade-level commander publicly humiliated soldiers by a public and demeaning apprehension”).

² See, e.g., *United States v. Inong*, 58 M.J. 460, 461 (C.A.A.F. 2003) (accused alleged illegal pretrial punishment for the first time on appeal). *Inong* reversed long-standing precedent by holding that claims of illegal pretrial punishment are waived on appeal if not raised at trial. Citing a line of cases where claims of illegal pretrial punishment were raised for the first

time on appeal, the Court of Appeals for the Armed Forces (CAAF) explained that such a system was “unworkable” because usually a great deal of time had passed since trial and witnesses dissipated, making adjudication inefficient and difficult. *Id.* at 463–65. Thus, the onus is squarely upon trial defense counsel to thoroughly resolve any claims of illegal pretrial punishment at the trial stage.

³ See *United States v. Scalarone*, 54 M.J. 114, 119 (C.A.A.F. 2000) (Crawford, C.J., dissenting) (“Trial defense counsel are expected to be active advocates for their clients in the pretrial confinement determinations and throughout the duration of pretrial confinement.”).

⁴ This language is now found in 18 U.S.C. § 3585(b) (2006).

⁵ U.S. DEP’T OF DEF., INSTR. 1325.4, ADMINISTRATION OF MILITARY CORRECTIONAL FACILITIES AND CLEMENCY AND PAROLE AUTHORITY (Oct. 7, 1968).

in pretrial confinement. The *Allen* court reasoned that while Congress exempted 18 U.S.C. § 3568's applicability to courts-martial, the Secretary of Defense later adopted it, and thus military accused must be afforded the credit it provides.⁶

Prior to *Allen*, a military accused was not automatically entitled to any credit for pretrial confinement—he merely received “consideration” by the convening authority at post-trial action.⁷ Not surprisingly, this system of “consideration” was highly subjective and lent itself to a great deal of perceived and actual inequity in the treatment of servicemembers.⁸ The holding in *Allen* eliminated that inequity by establishing a clear-cut rule.

Since *Allen*, the courts and the Uniform Code of Military Justice (UCMJ) have set forth four other categories of sentencing credit (*Mason*, *Pierce*, Rule for Court-Martial (RCM) 305(k), and Article 13 credit), all centered upon the idea of ensuring that servicemembers are treated fairly and credited with any pretrial confinement or punishment. These categories of sentencing credit also serve as a mechanism whereby courts can hold the government accountable for mistreatment of the accused before trial. While the five categories of sentencing credit share a common purpose, each presents its own unique concerns and analytical framework. Thus, they will be examined in turn.

III. Categories of Sentencing Credit

A. Lawful Pretrial Confinement (*Allen* Credit)

As noted above, *United States v. Allen* held that military accused are entitled to day-for-day sentencing credit for lawful pretrial confinement served as a result of the offenses for which the sentence was imposed. *Allen* credit is calculated in a straightforward manner, with the accused receiving a day's credit for every day spent in lawful pretrial confinement. The day pretrial confinement is imposed counts as one day, even if the accused is not in pretrial

⁶ *United States v. Allen*, 17 M.J. 126, 128 (C.M.A. 1984). For more details of the history of sentence credit before *Allen*, see Major Michael L. Kanabrocki, *Revisiting United States v. Allen: Applying Civilian Pretrial Confinement Credit for Unrelated Offenses Against Court-Martial Sentences to Post-Trial Confinement Under 18 U.S.C. § 3585(b)(2)*, ARMY LAW., Aug. 2008, at 1, 4-5.

⁷ *United States v. Davidson*, 14 M.J. 81, 85-86 (C.M.A. 1982); *United States v. Blackwell*, 41 C.M.R. 196, 199 n.2 (C.M.A. 1970) (explaining that pretrial confinement credit “is a matter for the court-martial and the convening authority to consider in adjudging an appropriate sentence”).

⁸ See *Allen*, 17 M.J. at 129. In his concurring opinion, Chief Judge Everett lists “several benefits” that the rule set forth in *Allen* confers, namely: (1) it ensures court-martial accused who have served pretrial confinement are treated equally with defendants tried in Federal District Court; (2) it confirms that combined pretrial and posttrial confinement does not exceed the maximum authorized confinement; and (3) it eliminates uncertainty about the consideration afforded pretrial confinement by sentencing and convening authorities.

confinement the entire day. The day sentence is imposed is not counted, as any confinement served on this day instead counts as a day of post-trial confinement.⁹ When the pretrial confinement credit exceeds the adjudged period of confinement,¹⁰ the court is not required to award any credit for the excess pretrial confinement.¹¹

The Court of Appeals of the Armed Forces (CAAF) recently expanded the scope of *Allen* credit to provide day-for-day sentencing credit not only for pretrial confinement spent as a result of the court-martial charges, but also for any civilian pretrial confinement served as a result of another offense, for which sentencing credit had not otherwise been awarded.¹² Thus, the general rule is that an accused will be credited for all lawful pretrial confinement served, which has not otherwise been credited to another sentence. The lesson is clear: a judge should never refrain from awarding credit based on the belief that the accused will obtain it at a later trial.¹³

B. Restriction Tantamount to Confinement (*Mason* Credit)

Mason credit is another judicially created sentencing credit that provides day-for-day credit when an accused's pretrial liberty is restricted so much that the restrictions have the same effect as pretrial confinement.¹⁴ This “restriction

⁹ *United States v. DeLeon*, 53 M.J. 658, 660 (A. Ct. Crim. App. 2000) (holding that “any part of a day in pretrial confinement must be calculated as a full day for purposes of pretrial confinement credit under *Allen* except where a day of pretrial confinement is also the day the sentence is imposed”).

¹⁰ In the author's experience, this scenario most frequently occurs when an accused spends several months in pretrial confinement awaiting trial on serious charges, and shortly before trial the prosecution case deteriorates. This usually results in the parties entering into a plea agreement whereby the accused pleads guilty to relatively minor offenses that do not call for lengthy confinement (e.g., accused pleads guilty to indecent acts instead of rape). Consequently, the accused serves more pretrial confinement than can be offset by the sentence. An administrative separation in lieu of court-martial is also a frequent outcome under these circumstances.

¹¹ *United States v. Smith*, 56 M.J. 290, 293 (C.A.A.F. 2002) (Where the accused served ninety-four days of lawful pretrial confinement, but was sentenced to no confinement, the court held that there were no grounds for applying pretrial confinement credit to any other element of the sentence, stating that “there is no legal requirement that appellant be given credit for his pretrial confinement.”). The rule is different for *illegal* pretrial confinement. See *infra* Part III.C.2.

¹² *United States v. Goodwin*, No. 20080463, 2009 WL 6827248 (A. Ct. Crim. App. Feb. 18, 2009) (citing *United States v. Gogue*, 67 M.J. 169 (C.A.A.F. 2008) (order, no published opinion)); *United States v. Yanger*, 68 M.J. 540, 542 (C.G. Ct. Crim. App. 2009).

¹³ See, e.g., *United States v. Gardner*, No. 200900545, 2010 WL 2990756, at *2 (N-M. Ct. Crim. App. July 29, 2010) (holding that the military judge erred by not crediting the accused with thirty-five days of pretrial confinement credit for an uncharged offense, where the military judge speculated “at his peril” that the accused would receive the credit at a future trial that never occurred).

¹⁴ *United States v. Mason*, 19 M.J. 274 (C.M.A. 1985) (summary disposition).

tantamount to confinement” is calculated as is *Allen* credit, one day of credit per day of restriction.¹⁵ *Mason* credit is much more frequently litigated, however, as parties often disagree as to what is tantamount to confinement. Restraint that is not tantamount to confinement does not trigger credit, but must still be listed in Box 8 of DD Form 458 (charge sheet) and given appropriate consideration by the sentencing authority and convening authority upon action.¹⁶

When determining whether *Mason* credit is warranted, courts consider where the accused’s pretrial circumstances fall on the spectrum between “restraint” and “confinement.”¹⁷ When the restrictions are equivalent to confinement, *Mason* credit is awarded.¹⁸ This is an intensely factual determination based upon the totality of the circumstances,¹⁹ such as the nature and scope of the restraint, types of duties performed (or prohibition against performing regular duties), and the degree of privacy enjoyed within the area of restraint. Courts will also look to the conditions which might affect those factors, such as whether the accused was required to sign in periodically; whether escorts were required to leave the restricted area; whether and to what degree visitation and outside communication was allowed; the availability of religious, recreational, educational, and other support facilities; the location of the accused’s sleeping accommodations; and whether the accused was allowed to use his personal property (e.g., whether the accused could wear civilian clothing).²⁰ Courts perform a similar analysis when identifying whether restraint has been imposed for speedy trial purposes,²¹ and counsel must consider both confinement

credit and speedy trial issues when analyzing the accused’s pretrial restrictions.

1. What Restrictions are Tantamount to Confinement?

There are few bright-line rules for *Mason* credit because the restrictions are viewed under the totality of the circumstances.²² Counsel must therefore carefully discover and document all curtailments of liberty and why they were imposed, and then determine whether they are the functional equivalent of being in jail. For example, locking a Soldier in a room twenty-four hours a day with a guard posted is almost certainly tantamount to confinement, while revoking a Soldier’s off-post pass privileges (with no other restrictions) will probably not reap any credit.²³ As a rule, pretrial restrictions must be heavy to merit *Mason* credit. Sign-in requirements are not likely to trigger *Mason* credit unless they have the practical effect of tethering the Soldier to the staff duty desk (e.g., signing in more than once an hour for most or all of the waking hours).²⁴ Restriction to

¹⁵ *United States v. Chapa*, 53 M.J. 769, 772 (A. Ct. Crim. App. 2000).

¹⁶ *See United States v. Smith*, 20 M.J. 528, 533 (A.C.M.R. 1985) (“[W]hen an accused has been subjected to any form of pretrial restraint, the government must disclose this fact on the record.”). Rule for Court-Martial (RCM) 304 defines the types of pretrial restraint (i.e., conditions on liberty, restriction in lieu of arrest, arrest, and confinement) and the rules under which they may be imposed. MANUAL FOR COURTS-MARTIAL, UNITED STATES, R.C.M. 304 (2008) [hereinafter MCM].

¹⁷ *Smith*, 20 M.J. at 531; *see also United States v. King*, 58 M.J. 110, 113 n.2 (C.A.A.F. 2003) (holding that “[p]retrial restriction that is not tantamount to confinement is permissible under Rule for Court-Martial 304(a)(2) . . . and does not give rise to credit against confinement”).

¹⁸ *Smith*, 20 M.J. at 531 (“If the level of restraint falls so close to the ‘confinement’ end of the spectrum as to be tantamount thereto, an appellant is entitled to appropriate and meaningful credit against his sentence.”).

¹⁹ *Id.* at 530.

²⁰ *Id.* at 531.

²¹ *Id.* at 530 (observing that “[m]any cases addressing this issue concern restriction as the equivalent of pretrial confinement for speedy trial purposes”). There are four “speedy trial” provisions in military jurisprudence—the RCM 707 “120 day” rule, Article 10, Uniform Code of Military Justice (UCMJ), and case law based on the Fifth and Sixth Amendments to the United States Constitution. The RCM 707 “120-day” speedy trial clock starts when the accused is subjected to pretrial of charges, entry onto active duty, arrest, restriction in lieu of arrest, or pretrial confinement. MCM, *supra* note 16, R.C.M. 707. The Sixth Amendment speedy trial guarantee is triggered by the same events, but is not tied to the 120-clock and is not subject to the time exclusions of RCM 707. *See United*

States v. Grom, 21 M.J. 53, 55–56 (C.M.A. 1985). Article 10 is triggered when the accused is placed under pretrial arrest or confinement. *United States v. Schuber*, 70 M.J. 181, 184 (C.A.A.F. 2011). Of these three, note that Article 10 has the most stringent standard and the court may find a violation of Article 10 even before 120 days have elapsed, if the government has not moved the case along with “reasonable diligence.” *See MCM, supra* note 16, art. 10; *United States v. Simmons*, No. 20070486, 2009 WL 6835721 (A. Ct. Crim. App. Aug. 12, 2009) (In a detailed opinion that eviscerated several excuses for pretrial delay, the court found the military judge erred when he failed to dismiss the charges with prejudice for a violation of Article 10.). Note also that the remedy for an Article 10 or Sixth Amendment violation is dismissal with prejudice, while an RCM 707 violation may be remedied by a dismissal with or without prejudice. *See id.*; *United States v. Dooley*, 61 M.J. 258 (C.A.A.F. 2005) (discussing whether dismissal with or without prejudice was appropriate for a case where the military judge found an RCM 707 violation). Fifth Amendment speedy trial case law is sparse, and is not triggered by restraint or confinement, but rather by deliberate governmental delays that prejudice the accused’s ability to mount a defense. *See United States v. Vogan*, 35 M.J. 32, 33–34 (C.M.A. 1992).

²² *Smith*, 20 M.J. at 530 (“The determination [of] whether the conditions of restriction are tantamount to confinement must be based on the totality of the conditions imposed.”). In *United States v. Gregory*, 21 M.J. 952, 956 n.12 (A.C.M.R. 1986), *overruled on other grounds*, *United States v. Rendon*, 58 M.J. 221, 225 (C.A.A.F. 2003), the Army Court of Criminal Review cited three cases as examples to help courts determine whether restriction was tantamount to confinement: *Smith*; *Washington v. Greenwald*, 20 M.J. 699 (A.C.M.R. 1985), discussed *infra* note 23, and *Wiggins v. Greenwald*, 20 M.J. 823 (A.C.M.R. 1985).

²³ *See Smith*, 20 M.J. at 530; *United States v. King*, 58 M.J. 110, 113 n.2 (C.A.A.F. 2003) (holding that “[p]retrial restriction that is not tantamount to confinement is permissible under Rule for Court-Martial 304(a)(2) . . . and does not give rise to credit against confinement”), *abrogated on other grounds*, *United States v. Rendon*, 58 M.J. 221, 225 (C.A.A.F. 2003).

²⁴ *See, e.g., Washington v. Greenwald*, 20 M.J. 699 (A.C.M.R. 1985) (holding that pretrial restriction was not tantamount to confinement where accused was restricted to the company area, place of duty, dining facility, and chaplain’s office; performed regular duties; restricted to barracks room after 2200; hourly sign-in requirement when not on duty; had access to rest of post without escort during duty hours or with escort after duty hours); *but see Smith*, 20 M.J. at 528 (Trial court found restriction tantamount to confinement where accused was restricted to barracks unless escorted, prohibited from performing normal duties, required to sign in every thirty

the unit area (workplace, dining facility, company area, barracks, chaplain's office), and other parts of post with an escort, will rarely be found to be tantamount to confinement.²⁵ Permitting the accused to wear the normal duty uniform and perform rank- and MOS-appropriate work weighs against awarding *Mason* credit.²⁶ Restrictions are measured against "the circumstances of duty at [the Soldier's] time and place," so that even stricter restrictions may not be tantamount to confinement in a deployed environment.²⁷

2. Pretrial Admission to Mental Health or Drug Treatment Facility

The accused is sometimes admitted to a mental health or drug treatment facility before trial. Often, he is locked inside the facility twenty-four hours a day. When this occurs, the question arises whether the accused is entitled to *Mason* credit. Generally, courts do not grant *Mason* credit for time spent at such a facility absent unusual circumstances, e.g., an accused is given a choice between

minutes during non-duty hours, and remain in his barracks room after 2200; compare *United States v. Guerrero*, 28 M.J. 223, 225 (C.M.A. 1989) (denying sentencing credit for a Soldier required to sign in every thirty minutes at the charge of quarters desk, among other restrictions). Although not explicitly stated, the *Guerrero* court appears to have denied sentencing credit relief because the issue was essentially waived at trial. Indeed, the court summarily denied credit without any factual analysis but, rather, noted that Private First Class Guerrero first raised the matter on appeal and that at trial, his defense counsel asserted the opposite, stating that "we do not claim it was tantamount to confinement." *Guerrero*, 28 M.J. at 225.

²⁵ This is true even if the accused is reassigned to a special unit that processes servicemembers pending adverse action. See, e.g., *United States v. Gerwick*, No. 200900547, 2010 WL 2600636 (N-M. Ct. Crim. App. June 29, 2010) (declining to award *Mason* credit where the appellant was assigned pretrial to the Barracks Support Platoon, wherein he performed daily details and was restricted to the barracks area except for one hour per day); *United States v. Delano*, No. 37126, 2008 WL 5333565 (A.F. Ct. Crim. App. Dec. 22, 2008) (no *Mason* credit for appellant who assigned pretrial to the "Transition Flight"); *United States v. Glaze*, No. S31588, 2009 WL 2997009, at *5 (A.F. Ct. Crim. App. Sept. 14, 1999) (Another "Transition Flight" case where the court found the circumstances to be non-creditable "conditions on liberty" or "administrative restraint" under RCM 304(h)). Even considering the foregoing, defense counsel should nevertheless consider requesting sentencing credit for accused who are restricted to an area that is so limited in amenities that the accused's daily life is practically equivalent to being in jail, or significantly different from that of other servicemembers in the unit.

²⁶ See, e.g., *Greenwald*, 20 M.J. at 699 (holding that pretrial restriction was not tantamount to confinement where accused was restricted to the company area, place of duty, dining facility, and chaplain's office; performed regular duties; restricted to barracks room after 2200; hourly sign-in requirement when not on duty; had access to rest of post without escort during duty hours or with escort after duty hours).

²⁷ See *United States v. Richardson*, 34 M.J. 1015, 1016-17 (A.C.M.R. 1992). In that case, a Soldier deployed to Saudia Arabia for Operation Desert Storm was ordered to stay in his Platoon Sergeant's tent, and not to leave it without a noncommissioned escort. He was disarmed and prevented from performing normal duties, though he was still allowed to go to the dining facility and post exchange. The court found these restrictions not to be tantamount to confinement "under the circumstances of duty at that time and place."

inpatient drug rehabilitation or pretrial confinement²⁸; accused is sent to an inpatient mental health facility by civilian law enforcement personnel for military offenses and the unit does not immediately take charge of the accused.²⁹ Otherwise, the CAAF has declared that "[t]he assistance one receives during an inpatient drug treatment program is far different than the physical restraint imposed when an individual is placed in pretrial confinement."³⁰

C. Rule for Court-Martial 305(k) Credit

Rule for Court-Martial 305 sets forth the process by which an accused is ordered into pretrial confinement. The U.S. Armed Forces, like American society as a whole, have a general aversion to confining individuals before they have been adjudged guilty and sentenced.³¹ Also, military pretrial confinement does not allow bail, and so is rightly held to a stricter standard than its civilian counterpart.³² Thus, RCM 305 requires a series of reviews of the pretrial confinement decision to ensure servicemembers are confined before trial only when absolutely necessary.³³ These reviews are required when a servicemember is placed into military pretrial confinement,³⁴ or confined by civilian authorities solely for a military offense and with the notice and approval of military authorities.³⁵ When the government fails to scrupulously follow these procedures, RCM 305(k) provides a remedy in the form of sentencing credit.

²⁸ *United States v. Regan*, 62 M.J. 299, 302 (C.A.A.F. 2006) (affirming trial court that granted *Mason* credit where the accused's commander gave her a choice between an inpatient drug rehabilitation program and pretrial confinement, but declined to grant additional RCM 305(k) credit for additional restrictions imposed by the hospital that served a legitimate medical purpose).

²⁹ *United States v. Torres*, No. 31551, 1995 WL 788700 (A.F. Ct. Crim. App. Dec. 13, 1995).

³⁰ *Regan*, 62 M.J. at 302.

³¹ MCM, *supra* note 16, R.C.M. 305, at A21-16. When drafting RCM 305, "[t]he Working Group proceeded from the premise that no person should be confined unnecessarily." The analysis also explains that the pretrial confinement review process was "weighed in striking a balance between individual liberty and protection of society." See also *United States v. Heard*, 3 M.J. 14, 20 (C.M.A. 1977) ("[U]nless confinement prior to trial is compelled by a legitimate and pressing social need sufficient to overwhelm the individual's right to freedom . . . restrictions unnecessary to meet that need are in the nature of intolerable, unlawful punishment. Thus, the Government must make a strong showing that its reason for incarcerating an accused prior to his trial on the charged offense reaches such a level, for otherwise the right to be free must be paramount.").

³² *Courtney v. Williams*, 1 M.J. 267, 270-71 (C.M.A. 1976).

³³ MCM, *supra* note 15, R.C.M. 305.

³⁴ *Id.* Restrictions tantamount to confinement do not trigger the requirements of RCM 305(k), unless they involve actual physical restraint. *United States v. Rendon*, 58 M.J. 221, 224 (C.A.A.F. 2003); Major Elizabeth A. Harvey, *Sentencing Credit for Pretrial Restriction*, ARMY LAW., Oct. 2008, at 27, 39-41.

³⁵ *United States v. Lamb*, 47 M.J. 384, 385 (C.A.A.F. 1998).

1. Types of Rule for Court-Martial 305(k) Credit

There are two types of RCM 305(k) credit. The first is a remedy for the government's noncompliance with sections (f), (h), (i), and (j) of RCM 305 (i.e., the procedural rights related to the pretrial confinement decision). This type provides one day's credit for each day of confinement served as a result of the noncompliance,³⁶ even if multiple sections are simultaneously violated.³⁷ All RCM 305(k) credit is awarded in addition to any *Allen* or *Mason* credit.³⁸

Second, the military judge may award additional credit for "each day of pretrial confinement that involves an abuse of discretion or unusually harsh circumstances."³⁹ The amount of credit awarded is left to the discretion of the military judge, who may award multiple days' credit for each day of confinement in egregious cases⁴⁰ or less than a day's credit for each day of a less serious violation.⁴¹ While this credit has some overlap with Article 13 credit (illegal pretrial punishment), which will be discussed in the next section, it is most frequently asserted when the government violates its own regulations to the detriment of the pretrial confinee. The CAAF set forth the guidelines for such a scenario in *United States v. Adcock*⁴² and recently reaffirmed

³⁶ The credit applies to the sentence of confinement first. If the credit exceeds the sentence to confinement, any remaining credit "shall be applied against hard labor without confinement, restriction, fine, and forfeiture of pay, in that order, using the conversion formula under R.C.M. 1003(b)(6) and (7)." MCM, *supra* note 15, R.C.M. 305(k).

³⁷ *United States v. Plowman*, 53 M.J. 511, 514 (N-M. Ct. Crim. App. 2000) (reasoning that multiple simultaneous violations do not warrant multiple days of credit for each day spent in pretrial confinement because "[n]oncompliance with separate requirements occurring simultaneously does not cause the accused to spend multiple days confined for each instance of noncompliance"); *see also United States v. Neece*, No. 20020090, 2004 WL 5866702 at *3 (A. Ct. Crim. App. 2004) (following holding of *Plowman*).

³⁸ MCM, *supra* note 15, at A21-16 (RCM 305 analysis).

³⁹ *Id.* R.C.M. 305(k).

⁴⁰ *Id.*; *see infra* note 54 and accompanying text.

⁴¹ Rule for Court-Martial 305(k) gives the military judge great deference in determining the appropriate amount of credit to award, stating generally that "[t]he military judge may order additional credit for each day of pretrial confinement that involves an abuse of discretion or unusually harsh circumstances." MCM, *supra* note 15, R.C.M. 305(k). While the rule does not appear to contemplate awarding a partial day's credit for a minor violation, courts will often award a few day's credit for a less serious violation that persists over a long period of time. For example, the author served as defense counsel in a case where the accused was not paid for several months, and therefore requested sentencing credit. The military judge awarded ten days' credit to remedy the deficiency, under the rationale that the initial failure to pay the accused was an honest mistake made without punitive intent, but the problem should have eventually been remedied after repeated requests to do so. *United States v. Puerto* (Maneuver Center of Excellence, Fort Benning, Georgia, Dec. 16, 2009). Thus, government counsel should consider arguing that a few day's credit is adequate to remedy a minor violation that persists over a long period of time.

⁴² 65 M.J. 18, 22-24 (C.A.A.F. 2007).

them in *United States v. Williams*.⁴³ In *Adcock*, the accused (an Air Force officer) was held before trial in a civilian facility because there was no military confinement facility nearby. Conditions there did not conform to the Air Force Instruction governing pretrial confinement. For example, the pretrial confinee was not permitted to wear her uniform and rank, she was commingled with post-trial confinees, and she suffered other deprivations in violation of the Air Force Instruction.⁴⁴ The trial court refused credit under RCM 305(k),⁴⁵ but, the CAAF reversed, holding that:

Violations of service regulations prescribing pretrial confinement conditions provide a basis for a military judge, in his or her discretion, to grant additional credit under the criteria of R.C.M. 305(k). *They do not independently trigger a per se right* to such credit enforceable by the servicemember. Accordingly, a military judge should consider violations of service regulations as a basis for pretrial confinement credit under R.C.M. 305(k) when those regulations reflect a long-standing concern for the prevention of pretrial punishment and the protection of servicemembers' rights.⁴⁶

⁴³ 68 M.J. 252, 256 (C.A.A.F. 2010) (emphasizing that "[i]t is well-settled that a government agency must abide by its own rules and regulations where the underlying purpose of such regulations is the protection of personal liberties or interests," while reiterating that "confinement in violation of service regulations does not create a per se right to sentencing credit under the UCMJ") (quoting *United States v. Dillard*, 8 M.J. 213 (C.M.A.1980), *in turn quoting United States v. Russo*, 1 M.J. 134, 135 (C.M.A. 1975) (further citations omitted)).

⁴⁴ *Adcock*, 65 M.J. at 20.

⁴⁵ *Id.* The appellant also argued that the violations of Air Force Instruction (AFI) 31-205 "independently constitute a violation of Article 13, UCMJ, and R.C.M. 304(f), both of which prohibit pretrial punishment and provided a separate basis for sentencing relief." *Id.* at 21. Alternate theories of relief are discussed further *infra* Part IV.D.

⁴⁶ *Adcock*, 65 M.J. at 21, 25 (emphasis added). Counsel litigating potential credit for regulatory violations should examine the following CAAF case, as well as a line of unpublished Air Force cases, where regulatory violations were found, but no credit was awarded, which underscores the premise that there is no *per se* right to credit for every regulatory violation. *See United States v. Williams*, 68 M.J. 252 (C.A.A.F. 2009) (confinement conditions that violate service regulations do not trigger a *per se* right to sentencing credit); *United States v. Belton*, No. 37484, 2010 WL 2265605, at *3-4 (A.F. Ct. Crim. App. May 19, 2010) (no credit awarded for minor violations of AFI 31-205 (e.g., lack of vegetarian meals, denied physical training, subjected to mold) because there was no intent to punish or unduly harsh confinement conditions); *United States v. Vogler*, No. 37231, 2009 WL 2996991, at *3 (A.F. Ct. Crim. App. Sept. 3, 2009) (no credit for minor violations of AFI 31-205 that were "done to achieve legitimate, non-punitive, governmental objectives."); *United States v. Durbin*, No. 36969, 2008 WL 5192441, at *7 (A.F. Ct. Crim. App. Dec. 10, 2008) (no credit for post-trial violations of AFI 31-205 alleged in clemency matters that did not amount to cruel and unusual punishment); *United States v. McIntyre*, No. S31286, 2008 WL 4525359, at *2-3 (A.F. Ct. Crim. App. Sept. 26, 2008) (no credit for minor violations of AFI 31-205 (i.e., cell smaller than

The court held that the confinement officials' knowing and deliberate violations of a regulation "designed to protect the rights of presumptively innocent servicemembers," under the circumstances of that case, entitled the servicemember to relief under R.C.M. 305(k).⁴⁷ Thus, trial and defense counsel are well-advised to review their applicable service regulations, visit their local confinement facilities, and compare the conditions to the service standard.⁴⁸

2. Application of Rule for Court-Martial 305(k) Credit

Rule for Court-Martial 305(k) credit for *illegal* pretrial confinement is fundamentally different from *Allen* and *Mason* credit for *lawful* pretrial confinement, because of what happens if the credit exceeds the sentence.⁴⁹ Essentially, any lawful pretrial confinement the accused serves in excess of the adjudged confinement is lost. Not so with RCM 305(k) credit for illegal pretrial punishment, because if this credit exceeds the adjudged confinement, it will then be applied to: (1) hard labor without confinement, (2) restriction, (3) fine, and (4) forfeiture in that order of precedence.⁵⁰ When appropriate to provide meaningful relief, it may even be applied against "any other form of punishment" (i.e., punitive discharge or reduction in rank).⁵¹

required) because there was no evidence of intent to punish and there were legitimate governmental reasons for deviation from the standard).

⁴⁷ *Adcock*, 65 M.J. at 25-26.

⁴⁸ See, e.g., U.S. DEP'T OF ARMY, REG. 190-47, THE ARMY CORRECTIONS SYSTEM (15 June 2006). A review of the applicable service regulation, along with any local requirements, coupled with a tour of the local confinement facility, should be an annual block of training for every installation legal office. Counsel must also ensure that pretrial confinees are not confined with foreign nationals, in violation of Article 12, UCMJ. Recently, the Air Force Court of Criminal Appeals found error where the convening authority did not grant two-for-one RCM 305(k) credit to compensate the appellant for each day he spent in pretrial confinement commingled with foreign nationals. See *United States v. Spinella*, No. ACM S31708 2010 WL 8033026, at *1-2 (A.F. Ct. Crim. App. Dec. 17, 2010); but see *United States v. Wise*, 64 M.J. 468, 473-77 (C.A.A.F. 2007) (holding that appellant's post-trial confinement conditions did not violate Article 12 or otherwise merit relief where he was separated from Iraqi enemy prisoners of war by only a single strand of concertina wire).

⁴⁹ *United States v. Smith*, 56 M.J. 290, 292 (C.A.A.F. 2002) ("There is no provision in the UCMJ or the Manual for Courts-Martial that requires credit against an adjudged sentence for lawful pretrial confinement."); see *supra* note 11 and accompanying text.

⁵⁰ MCM, *supra* note 15, R.C.M. 305(k).

⁵¹ *Id.*; see *United States v. Zarbatany*, 70 M.J. 169, 170 (C.A.A.F. 2011). This case holds that while "[c]onversion of confinement credit to forms of punishment other than those found in R.C.M. 305(k) is generally inapt," particularly when "the qualitative differences between punitive discharges and confinement are pronounced," confinement credit may nevertheless be applied to punishments not listed in RCM 305(k) when such is required to provide meaningful relief for Article 13 violations. This relief "can range from dismissal of the charges, to confinement credit or to the setting aside of a punitive discharge." *Id.*

D. Article 13 Credit

Article 13, UCMJ, proscribes two things: (1) pretrial punishment and (2) conditions of pretrial restraint that are "more rigorous than necessary to ensure the accused's presence for trial."⁵² These two prohibitions often overlap. The military judge can remedy Article 13 violations by awarding confinement credit under RCM 305(k), which provides additional sentencing credit for abuse of discretion or unusually harsh circumstances.⁵³ The military judge has considerable latitude in determining the amount of credit, and may grant as much as he deems appropriate.⁵⁴ Indeed, a military judge can even dismiss a case to remedy egregious pretrial punishment.⁵⁵ An accused may be awarded Article 13 credit without having been subject to pretrial restrictions.⁵⁶ Motions for Article 13 credit must be raised at trial, or they are waived on appeal.⁵⁷

1. Pretrial Punishment

Allegations of illegal pretrial punishment are usually leveled against the servicemember's command for maltreatment at the unit. The military judge resolves the issue by determining whether the conditions were imposed to punish, or for some legitimate government purpose.⁵⁸ Thus, the matter often turns on the imposing official's intent.⁵⁹ The CAAF has adopted four factors to apply when

⁵² 10 U.S.C. § 813 (2006), *quoted in* *United States v. King*, 61 M.J. 225, 227 (C.A.A.F. 2005). This prohibition is echoed in RCM 304(f), which directs that "[p]retrial restraint is not punishment and shall not be used as such. No person who is restrained pending trial may be subjected to punishment or penalty for the offense which is the basis for that restraint."

⁵³ *United States v. Crawford*, 62 M.J. 411, 414 (C.A.A.F. 2006) (citations omitted).

⁵⁴ MCM, *supra* note 15, RCM 305(j)(2), (k) (stating that judge may grant credit but not specifying amount); *United States v. Adcock*, 65 M.J. 18, 24 (C.A.A.F. 2007) (judge's decision in response to motion for 305(k) credit is reviewed for abuse of discretion). See also *United States v. Tilghman*, 44 M.J. 493, 494 (C.A.A.F. 1996). In that case, the command disobeyed a court order to not confine the accused overnight between findings and sentencing, and the trial judge awarded 10-for-1 credit to remedy the noncompliance, even though the defense counsel requested only 1-for-1 credit. Two months later, the Chief Circuit Military Judge detailed himself to the case, conducted a post-trial Article 39(a) session, and awarded an additional eighteen months' credit against the sentence, based on the command's "cavalier disregard for due process and the rule of law."

⁵⁵ *United States v. Fulton*, 55 M.J. 88, 89-90 (C.A.A.F. 2001) ("[W]here no other remedy is appropriate, a military judge may, in the interest of justice, dismiss charges because of unlawful pretrial punishment," but "[d]ismissal of charges is an extraordinary remedy" that is rarely appropriate.) (internal quotations omitted).

⁵⁶ *United States v. Combs*, 47 M.J. 330, 332 (C.A.A.F. 1997).

⁵⁷ *United States v. Inong*, 58 M.J. 460, 461 (C.A.A.F. 2003).

⁵⁸ *United States v. Gilchrist*, 61 M.J. 785, 796-97 (A. Ct. Crim. App. 2005).

⁵⁹ *Id.* See Major John M. McCabe, *How Far Is Too Far? Helping the Commander to Keep Control Without Going Over the Line; The Trial Practitioner's Guide to Conditions on Liberty and Article 13 Credit*, ARMY

determining whether pretrial restraint has risen to the level of pretrial punishment:

1. What similarities, if any, in daily routine, work assignments, clothing attire, and other restraints and control conditions exist between sentenced persons and those awaiting disciplinary disposition?
2. If such similarities exist, what relevance to customary and traditional military command and control measures can be established by the government for such measures?
3. If such similarities exist, are the requirements and procedures primarily related to command and control needs, or do they reflect a primary purpose of stigmatizing persons [a]waiting disciplinary disposition?
4. If so, was there an “intent to punish or stigmatize a person [a]waiting disciplinary disposition?”⁶⁰

When a pretrial condition is reasonably related to a legitimate governmental objective and is reasonable under the circumstances, Article 13 credit will not be awarded.⁶¹

a. Public Humiliation or Degradation

Any intentional humiliation or displaying the accused as an “example” to other troops is likely to bring swift condemnation from the court in the form of substantial Article 13 credit.⁶² For example, in the infamous case of *United States v. Cruz*, the accused and about forty other Soldiers were segregated into a “Peyote Platoon,” called out in front of mass formations, and otherwise humiliated because they were pending adverse action for drug use. The Court of Military Appeals issued a strong rebuke, holding

that the “public denunciation by the commander and subsequent military degradation before the troops prior to courts-martial constitute[s] unlawful pretrial punishment prohibited by Article 13.”⁶³ While many trial counsel may assume that a scenario such as *Cruz* would never occur in their units, constant vigilance is key. For example, many rear detachments separate their daily accountability formations into a platoon of “medically” nondeployable Soldiers and a platoon of “legally” nondeployable Soldiers. Defense counsel may be able to argue that a “legal nondeployable” platoon is akin to the “Peyote Platoon.” Trial counsel must remain vigilant.

b. Preventing Accusations of Pretrial Punishment

Given the nature of Article 13 motions, trial counsel must carefully analyze why the commander is imposing a particular condition and whether it is reasonably related to the objective.⁶⁴ With careful thought and planning at the outset, trial counsel can often avoid unpleasant Article 13 motions. For example, in a deployed environment, commanders sometimes seek to remove an accused’s weapon before trial. All forward-deployed personnel, however, are required to carry a weapon. Thus, a servicemember without a weapon is usually presumed to be in trouble. At a minimum, the servicemember will frequently be stopped to explain why he is not carrying a weapon. Given the likely embarrassment this would cause, a motion for Article 13 credit would not be surprising.⁶⁵ With a little creativity, however, the command could eliminate this concern by simply removing the bolt assembly from the servicemember’s weapon instead, thus rendering the weapon unusable, yet sparing the servicemember any stigma associated with not having a weapon. Thus, thoughtful trial counsel can often prevent an Article 13 motion or, at a minimum, ensure they are armed with favorable facts if an allegation arises.

2. Unduly Harsh Pretrial Conditions

Allegations of unduly harsh pretrial conditions are often directed toward the local confinement facility.⁶⁶ Such was

LAW., Aug. 2007, at 46, 60. Major McCabe concludes that “the purpose behind the [command]’s action, and the action itself will speak volumes in determining proper conditions on liberty and appropriate Article 13 credit.”

⁶⁰ *United States v. Smith*, 53 M.J. 168, 172 (C.A.A.F. 2000) (quoting FRANCIS A. GILLIGAN & FREDERIC I. LEDERER, COURT-MARTIAL PROCEDURE § 4-90.00, at 136–37 (2d ed. 1999)).

⁶¹ *Gilchrist*, 61 M.J. at 797; *United States v. McCarthy*, 47 M.J. 162, 165 (C.A.A.F. 1997).

⁶² See, e.g., *United States v. Fulton*, 55 M.J. 88, 89 & n.1 (C.A.A.F. 2001) (trial court awarded three-for-one sentencing credit for an accused who was forced to refer to himself as “bitch” or “jackass” and parade about naked, and was threatened with rape, among other outrages); *United States v. Tilghman*, 44 M.J. 493, 494 (C.A.A.F. 1996) (ten-for-one credit, over eighteen months total, for an accused who was confined between findings and sentencing, in violation of the military judge’s order); *United States v. Stamper*, 39 M.J. 1097, 1100 (A.C.M.R. 1994) (The appellate court granted 145 days’ sentencing credit to remedy the company commander’s “totally inexcusable” disparaging comments about the accused.).

⁶³ *United States v. Cruz*, 25 M.J. 326, 328–30 (C.M.A. 1987).

⁶⁴ See McCabe, *supra* note 59, at 59. Major McCabe provides suggestions to trial counsel on how to assist commanders with crafting conditions on liberty that are unlikely to run afoul of Article 13.

⁶⁵ *Id.* at 56–58. Major McCabe describes a motion that arose in the case of *United States v. Graner* (Abu Ghraib detainee abuse case). There, the military judge reluctantly granted a small amount of credit for the accused not being able to carry a weapon for several months at a large Forward Operating Base in Iraq.

⁶⁶ They may also be lodged against a mental health facility or confinement facility that places an accused on “suicide watch,” thus greatly limiting his freedom of movement. See, e.g., *United States v. Williams*, 68 M.J. 252, 257–58 (C.A.A.F. 2010) (No Article 13 credit granted where accused was placed on suicide watch and denied access to books, radio, CD player, and

the case in *United States v. Crawford*. Captain (Capt.) Crawford was awaiting court-martial for stealing and selling military ammunition and explosives. He was held in pretrial confinement at a local Navy brig. During the first week, Capt. Crawford was segregated from other confinees for “observation,” and he then spent nine months in “maximum custody,” with greatly reduced movement and recreation. He requested Article 13 credit, on the grounds that these conditions were unduly harsh and more rigorous than necessary to secure his presence at trial. The CAAF found, however, that the government had demonstrated that Capt. Crawford was particularly dangerous, because he had told undercover agents he was willing to teach terrorists how to build bombs, among other things.⁶⁷ Given that, the CAAF was “reluctant to second-guess the security determinations of confinement officials” when there is a reasonable factual predicate.⁶⁸ Thus, the court denied Article 13 credit.⁶⁹ Even so, the CAAF was careful not to open the floodgates, declaring that:

[W]e do not wish to convey the impression that we condone arbitrary policies imposing “maximum custody” upon pretrial prisoners. We will scrutinize closely any claim that maximum custody was imposed solely because of the charges rather than as a result of a reasonable evaluation of all the facts and circumstances of a case. Where we find that maximum custody was arbitrary and unnecessary to ensure an accused’s presence for trial, or unrelated to the security needs of the institution, we will consider appropriate credit or other relief to remedy this type of violation of Article 13, UCMJ.⁷⁰

Thus, the outcome of Article 13 motions will usually turn on the reason why a particular restraint is imposed, and its reasonableness under the circumstances.

3. Nonreceipt of Pay

Servicemembers in pretrial confinement are entitled to pay, unless their terms of service expire during the confinement period.⁷¹ Sometimes, however, the government

compelled to wear a suicide gown, because there was a non-punitive reason for the conditions—mental health. The accused did, however, receive two weeks of Article 13 credit for a separate decision to arbitrarily place him in a segregated environment for two weeks.).

⁶⁷ *United States v. Crawford*, 62 M.J. 411, 415 (C.A.A.F. 2006).

⁶⁸ *Id.* at 414.

⁶⁹ *Id.* at 417.

⁷⁰ *Id.* (footnotes and citations omitted).

⁷¹ *United States v. Fischer*, 61 M.J. 415, 417–20 (C.A.A.F. 2005) (Over vigorous dissent, the court approved of the policy set forth in DoD Financial Management Regulation, vol. 7A, ch. 1, subpara. 010302.G.4 (2005), directing that “[i]f a member is confined awaiting court-martial trial when the enlistment expires, pay and allowances end on the date the enlistment

fails to pay those awaiting trial, particularly those who have recently returned from a nonpay status, because they were AWOL or in civilian confinement.⁷² When those pay problems go unresolved, they can be viewed by the court as illegal pretrial punishment.⁷³

In almost all cases, the failure to pay a Soldier awaiting trial is the result of a clerical error or misapplication of pay regulations.⁷⁴ Once the parties identify the issue, there will normally be no disagreement as to whether the servicemember should have been paid. The tension will lie in whether the failure to pay resulted from an intent to punish, thus triggering Article 13 credit. Defense counsel hoping to prevail on such motions must develop facts to show that the government’s failure went beyond mere error and crossed over into blatant indifference. A defense counsel whose client is entitled to pay, but is not receiving it, should contact the trial counsel and commander to request that the problem be resolved. These communications should be memorialized in e-mail for easy documentation later at trial. Then, if the pay problem is not resolved, defense counsel can credibly argue the government’s indifference or punitive intent toward the accused. Absent such evidence a bald motion for credit is likely to be denied.

Conversely, trial counsel must ensure that servicemembers awaiting trial are properly paid, particularly those who are returning from a nonpay status. Verification of an accused’s pay status should be one of the first steps in the court-martial process. When a servicemember does “slip through the cracks” and erroneously goes unpaid for some period before trial, trial counsel should take two steps: (1)

expires. If the member is acquitted when tried, pay and allowances accrue until discharge.”); *see also* 37 U.S.C. § 204(a)(1) (2006) (“[A] member of the uniformed service who is on active duty” is entitled to basic pay.).

⁷² In the author’s experience, unit S-1 shops and installation finance offices often confuse how to correctly process a Soldier confined by civilian authorities (*not* entitled to pay) and Soldiers serving military pretrial confinement in a civilian facility pursuant to a local contract (Soldier entitled to pay unless expiration of term of service (ETS) date has passed).

⁷³ *See, e.g., United States v. Jauregui*, 60 M.J. 885, 888–89 (A. Ct. Crim. App. 2004) (implying that pay issue could have led to Article 13 credit, but denying relief on grounds of waiver).

⁷⁴ Such was the issue in *Jauregui*. Private First Class (PFC) Jauregui returned to his unit after being AWOL and was not paid for the seventy-seven days he performed ordinary duties before his court-martial. Private First Class Jauregui was not paid because a finance officer at the installation erroneously determined that he was not entitled to pay. The court found that even though the finance officer did not intend to punish PFC Jauregui, “his determination of nonpayment was inconsistent with precedent, and . . . [t]he government’s failure to pay appellant while he was performing military duties because he was ‘just awaiting court-martial’ was not reasonably related to a legitimate government objective.” *Id.* at 888. The court therefore granted sentence relief pursuant to Article 66(c), UCMJ, but declined to grant Article 13 credit because the issue was not raised at trial and therefore waived. *Id.* at 889. This remarkable result, where the court granted relief even though the issue was waived, sends a clear message that the appellate courts will hold the government to a reasonable standard of professionalism in carrying out its duties to pay servicemembers awaiting trial.

personally ensure the servicemember's pay is corrected as soon as possible, and (2) if possible, resolve the issue in the pretrial agreement

E. Credit for Previous Nonjudicial Punishment (*Pierce* Credit)

A servicemember is entitled to sentencing credit when he is convicted of an offense for which he previously received nonjudicial punishment.⁷⁵ This credit is not automatic and the accused must request it.⁷⁶ For tactical reasons, the defense may elect to raise the matter during sentencing or an Article 39(a) session, or wait and present it to the convening authority on action.⁷⁷ Of course, the defense may decline to raise the matter altogether.⁷⁸ In any event, the credit is "day-for-day, dollar-for-dollar, stripe-for-stripe."⁷⁹ When the punishments adjudged at court-martial do not precisely match those meted out at the prior nonjudicial punishment (e.g., extra duty is frequently dispensed at Article 15s, but cannot be adjudged at court martial), courts or the convening authority should utilize the Table of Equivalent Punishments contained in the *Military Judges' Benchbook*.⁸⁰

⁷⁵ *United States v. Pierce*, 27 M.J. 367, 369 (C.M.A. 1989); see also *United States v. Porter*, No. 20090974, 2010 WL 4140591, at *1 (A. Ct. Crim. App. Oct. 20, 2010) ("*Pierce* credit is only granted if the court-martial offense for which an accused is sentenced is substantially identical to the prior Article 15 punishment offense.") (citing *United States v. Bracey*, 56 M.J. 387, 389 (C.A.A.F. 2002)).

⁷⁶ *Bracey*, 56 M.J. at 388.

⁷⁷ *Id.* The accused is the "gatekeeper" for determining when credit for nonjudicial punishment will be applied—either at sentencing or the post-trial stage. *United States v. Gammons*, 51 M.J. 169, 179 (C.A.A.F. 1999); *United States v. Rice*, No. 200700208, 2007 WL 2340613 (N-M. Ct. Crim. App. Aug. 8, 2007). In the author's experience, this determination is often based upon whether raising the Article 15 at trial enhances or detracts from the defense sentencing case. For example, prior nonjudicial punishment can show that the accused lacks rehabilitative potential if further offenses were committed after the nonjudicial punishment was imposed. *Id.* at *5. In general, unless some circumstance surrounding the nonjudicial punishment engenders considerable leniency, it is more prudent to raise the issue post-trial, since at that juncture there is no doubt that the accused will get the full benefit of any credit against his sentence.

⁷⁸ *Bracey*, 56 M.J. at 388.

⁷⁹ *Pierce*, 27 M.J. at 369; see *United States v. Gormley*, 64 M.J. 617, 620–21 (C.G. Ct. Crim. App. 2007) (holding that either the military judge or convening authority must state on the record the exact credit awarded for prior nonjudicial punishment).

⁸⁰ U.S. DEP'T OF ARMY, PAM. 27-9, MILITARY JUDGES' BENCHBOOK para. 2-7-21, tbls.2-6 & 2-7 (1 Jan. 2010). Table 2-7 provides that two days of restriction are equivalent to one day of confinement, the forfeiture of one day's pay is equivalent to one day of confinement, and three days of extra duty are equivalent to two days of confinement. Pay lost due to a reduction in rank also counts against sentence credit; however the total pay lost should be divided by the pay rate at the prior (higher) rank, rather than the pay at the new (lower) rank, to avoid improperly inflating this credit. *United States v. Santizo*, No. 20100146 2011 WL 4036106, at *3 (A. Ct. Crim. App. Aug. 31, 2011).

If one considers anew the opening hypothetical, it becomes apparent that Private Tentpeg may be entitled to four types of sentencing credit: (1) *Allen* credit for each day spent in pretrial confinement (either military or on behalf of the military); (2) *Mason* credit for each day spent at the unit if the conditions were tantamount to confinement; (3) RCM 305(k) credit for the unit's failure to immediately retrieve Private Tentpeg from the local jail and perform the required pretrial reviews; and (4) Article 13 credit for illegal pretrial punishment (i.e., sleeping in the supply room, not being permitted to wear a uniform, and nonreceipt of pay). The remaining sections of this article discuss how counsel for both sides should act to obtain the best outcome for their respective clients.

IV. Motions for Sentencing Credit

Motions for sentencing credit can be time-consuming and embarrassing for the command, as they often involve accusations of maltreatment. Further, it is often difficult to predict whether a military judge will award sentencing credit, and if so, in what amount. Given that, the parties will often agree to a specified amount of sentencing credit before trial, which provides efficiency and a certain result. When there is no agreement, the defense controls if and how the issue is raised, with the only limitation being that the matter is waived if not raised at trial.⁸¹ The defense bears the burden of proving by a preponderance of the evidence that the requested credit is warranted.⁸² Any sentencing credit awarded is applied to the approved sentence, e.g., the lesser of the adjudged sentence or any sentence limitation specified in a pretrial agreement (unless the pretrial agreement specifies otherwise).⁸³

A. Form

Motions for sentencing credit can be made orally or in writing, although given that well-developed motions are usually fact-intensive, a written motion is almost always preferable. When the written motion contains well-drafted facts, the court will sometimes adopt them as its findings (provided they are established by appropriate proof).⁸⁴ Of course, it is not unheard of for trial counsel to be surprised

⁸¹ *United States v. Inong*, 58 M.J. 460, 461 (C.A.A.F. 2003).

⁸² MCM, *supra* note 15, R.C.M. 905(c); see also *United States v. Crawford*, 61 M.J. 411, 414 (C.A.A.F. 2006).

⁸³ *United States v. Spaustat*, 57 M.J. 256, 263–64 & n.6 (C.A.A.F. 2002) (specifically noting that a pretrial agreement can require sentence credit to be deducted from the adjudged sentence instead of the approved sentence).

⁸⁴ Bear in mind that statements of fact in a motion are not evidence. Counsel must either stipulate to the facts or call witnesses to establish the facts on the record. Often, defense counsel must prepare the accused to testify for the limited purpose of the motion in order to get facts on the record. Additionally, counsel should consider submitting a digital copy of the motion to the court, to facilitate transcribing the facts in the ruling.

with an oral motion for sentencing credit immediately before trial. When that occurs, trial counsel should not jettison their duties to advocate zealously on behalf of their client in exchange for getting a case done the same day. Unless the matter is simple or insignificant, trial counsel should request any delay necessary to prepare a response. They should use the accused's failure to raise the issue before as evidence he was not really punished.⁸⁵

B. Timing

Ordinarily, defense counsel will become aware of a sentencing credit issue first. The next consideration is when and how to raise the matter. In most cases, defense counsel should request the government correct any unlawful condition as soon as possible, both because doing so may obtain relief and because failing to do so will reduce the chance for judicial relief.⁸⁶ If "JAG diplomacy"—talking to the trial counsel—fails, the defense should consider other avenues, such as talking directly to the commander, or making a request for redress under Article 138, UCMJ. If the government continually fails to correct the condition, then the defense can more credibly argue that the government failed to live up to its obligations. If the government fixes the problem, then the client's predicament has been improved, without waiving prior claims.

In cases where the government cannot or will not fix the deficiency (e.g., client is being restricted in a manner tantamount to confinement, and the government failed to conduct pretrial confinement reviews in accordance with RCM 305), the defense is often best served by raising the matter after a pretrial agreement is in place. If the defense raises the matter before that, the government will usually insist the defense waive or settle any claim as part of the pretrial agreement. Once the pretrial agreement is signed by the convening authority, the defense can raise the motion and the government will be unable to withdraw from the pretrial agreement in response.⁸⁷ Raising the matter after the pretrial agreement is signed ensures the client receives the full benefit of both his plea agreement and sentencing credit motion.

In cases where there is no plea agreement, the defense should usually raise any motion for sentencing credit in accordance with the military judge's instructions.⁸⁸ At a minimum, a well-supported motion for sentencing credit may persuade the government to offer a favorable plea agreement (or alternative disposition of the case). An oral motion for sentencing credit (other than on the most elementary matters such as *Allen* credit) on the eve of trial is almost always the wrong answer. It suggests a lack of preparation at best, and "litigation by ambush" at worst, and is unlikely to put the judge in the right frame of mind for granting relief.⁸⁹

C. Support

Motions for sentencing credit are centered on facts. The court has great discretion in granting credit; thus, it is particularly important to give the military judge a thorough understanding of what occurred. Both trial and defense counsel must be creative and diligent when seeking out witnesses and evidence that will convincingly establish the facts.

Trial counsel can largely control whether they will work with good or bad facts. Careful attention to detail in the pretrial confinement process can eliminate RCM 305(k) motions that procedures were not followed. Careful implementation of pretrial conditions on liberty and restrictions can largely preclude motions for *Mason* credit. Article 13 motions are minimized by monitoring of servicemembers awaiting trial. A good working relationship with commanders ensures that the trial counsel will learn about these issues early and be able to give the right advice to fix them. When claims for sentencing credit do surface, trial counsel must focus their efforts upon preparing witnesses to explain what they did and why it was necessary.

Defense counsel must remember that they carry the burden of proof,⁹⁰ and thus must usually go beyond unsupported assertions made by the accused, which are almost certain to be contradicted by a government witness. This requires diligent investigative work. For example, when a servicemember claims to be living in squalid

⁸⁵ *United States v. Combs*, 47 M.J. 330, 332 (C.A.A.F. 1997) (citing *United States v. Palmiter*, 20 M.J. 90, 97 (C.M.A. 1985)) ("[T]he failure to voice a contemporaneous complaint of the alleged mistreatment is powerful evidence that it was not unlawful."); *see also* *United States v. Starr*, 53 M.J. 380, 382 (C.A.A.F. 2000), *United States v. McCarthy*, 47 M.J. 162, 166 (C.A.A.F. 1997) (both using accused's failure to complain to the command about treatment later claimed as punishment as evidence that this treatment was not, in fact, punishment).

⁸⁶ *See supra* note 84.

⁸⁷ *See* MCM, *supra* note 15, R.C.M. 705(d)(4)(B) (listing the conditions under which a convening authority can withdraw from a pretrial agreement).

⁸⁸ The defense counsel's duty to his client can supersede docketing instructions issued by the court. If he could not or did not request relief on time, but now sees that his client is entitled to it, he should request permission to file a late motion requesting that relief, and offer an explanation justifying the request, if possible.

⁸⁹ U.S. DEP'T OF ARMY, REG. 27-26, RULES OF PROFESSIONAL CONDUCT FOR LAWYERS cmt. to r. 3.1 (1 May 1992) [hereinafter AR 27-26]. "The advocate has a duty to use legal procedure for the fullest benefit of the client's cause, but also a duty not to abuse legal procedure." Fortunately, under most circumstances, these two duties do not conflict.

⁹⁰ MCM, *supra* note 15, R.C.M. 905(c)(2); *United States v. Fischer*, 61 M.J. 415, 418 (C.A.A.F. 2005).

conditions at her unit, defense counsel and a paralegal⁹¹ should immediately go to the unit to take pictures, interview witnesses, and otherwise document the scene. Witnesses and photographs will paint the picture for the military judge far better than the accused's description, watered down by the contradictory testimony of a unit leader. In cases where the servicemember claims maltreatment at a confinement facility, the defense counsel should interview other confinees⁹² and employees at the facility and then compare the actions to any standard operating procedures (SOPs) and the service regulation governing pretrial confinement.⁹³ The goal is to paint a vivid picture and give the military judge concrete facts upon which he can make findings that support an award of sentencing credit.

D. Alternate Theories of Relief

Often, a pretrial condition will give rise to multiple sources of sentencing credit. When this occurs, defense counsel should assert all credible alternative theories, as one can never be certain which theory will resonate with the judge. Thus, when preparing a motion for sentencing credit, defense counsel must consider each source of sentencing credit and whether it applies.⁹⁴ Pretrial confinement that leads to *Mason* or *Allen* credit may warrant additional credit for illegal pretrial punishment under Article 13, if the conditions are unduly harsh or not reasonably related to some legitimate government purpose.⁹⁵ Violation of service regulations to the detriment of the accused's rights during confinement may warrant additional sentencing credit under RCM 305(k).⁹⁶ The key point is that the same period of

⁹¹ Ideally, the defense counsel will have a paralegal or some other person take photographs or gather other evidence so that neither the accused nor defense counsel need to testify for the purposes of giving evidence or laying an evidentiary foundation for an exhibit (i.e., a photograph).

⁹² Recall that these other confinees are probably represented by counsel and, therefore, prior coordination is appropriate before conducting any interviews regarding the conditions of their confinement. See AR 27-26, *supra* note 88, r. 4.2 (Communication with Person Represented by Counsel).

⁹³ See *supra* note 47.

⁹⁴ Appendix A summarizes these sources.

⁹⁵ See, e.g., *United States v. DiMatteo*, 19 M.J. 903, 904 (A.C.M.R. 1985) (In a case where the appellant was incarcerated in a dirty basement storage room under extremely harsh circumstances, the court noted that the appellant was entitled to not only the *Mason* credit he requested at trial, but probably additional sentencing credit for illegal pretrial punishment, had he requested such.); see also *United States v. Smith*, 20 M.J. 528, 532 (A.C.M.R. 1985) ("We find that the conditions of the appellant's restriction were lawful, as they related to the need to ensure the appellant's presence at trial, the legitimate military interest in protecting the five-year-old dependent victim from further molestation, and the legitimate military interest in precluding appellant's exposure to the temptations of further aberrant sexual misconduct.").

⁹⁶ *United States v. Williams*, 68 M.J. 252, 256 (C.A.A.F. 2010) (holding that "R.C.M. 305(k) provides an independent basis for the award of additional confinement credit where there has been a violation of service regulations 'when those regulations reflect long-standing concern for the prevention of pretrial punishment and the protection of servicemembers'

pretrial restraint may warrant credit from multiple sources—possibly even multiple days of credit for each day of pretrial restriction under some circumstances. The motion should assert all the ones that apply.⁹⁷

V. Practice Tips Regarding Sentencing Credit Issues

An essential requirement for sentencing credit success is situational awareness. When all parties are thoroughly aware of the conditions under which servicemembers awaiting trial are living, there are fewer disputes over sentencing credit. When trial counsel are in regular contact with unit leaders and defense counsel are in frequent communication with their clients, abuses are much less likely to occur, and are quickly corrected when they do. When both parties are aware of all of the attendant facts in the case, sentencing credit issues can often be resolved efficiently as part of pretrial negotiations, as opposed to surprise motions on the eve of a guilty plea.

All parties must ensure that the rules for placing a Soldier into pretrial confinement are scrupulously complied with. To that end, every counsel should have a pretrial confinement binder containing the Part-Time Military Magistrate SOP, the applicable service regulation governing confinement (along with any local supplements),⁹⁸ and any other related policies. Whenever an accused is placed in pretrial confinement, counsel should review the procedure and verify that all required steps have been executed.

A. Specific Advice for Trial Counsel

Motions for sentencing credit usually spring from an allegation of mistreatment or that the government has failed to perform some required task. Trial counsel should minimize the possibility of such allegations by taking three steps. First, trial counsel should educate unit leaders on the court-martial process, with a focus on the pretrial portion. Unit leaders should be strongly encouraged to contact their trial counsel any time they seek to restrict a servicemember.⁹⁹ The second step, as noted above, is situational awareness. Trial counsel should track every servicemember pending adverse action and have detailed knowledge about that servicemember's living conditions and

rights") (quoting *United States v. Adcock*, 65 M.J. 18, 25 (C.A.A.F. 2007)).

⁹⁷ Recall that the same conditions giving rise to confinement credit may also provide the basis for a speedy trial motion. See *supra* note 20 and accompanying text.

⁹⁸ See *supra* note 47.

⁹⁹ Trial counsel should assist commanders in devising pretrial conditions on liberty or restraint, centered upon the legitimate purpose behind the action. The Pretrial Restraint Quick Reference Sheet found at Appendix C provides a handy reference when discussing various possible measures with the commander.

restrictions. Trial counsel should likewise train their paralegals to monitor conditions at their units. Third, trial counsel must ensure strict compliance with regulations when a servicemember is restricted. These three steps will minimize the likelihood that the command will be summoned to court to respond to allegations of mistreatment.

B. Specific Advice for Defense Counsel

As with trial counsel, situational awareness paves the way to success for defense counsel. Defense counsel likewise must do three things to effectively represent a client who has been subject to pretrial restriction. First, defense counsel must communicate with the client from the outset and continually throughout the pretrial process to identify potential issues. The day before trial is not the ideal time to first broach the issue. Second, defense counsel must thoroughly document pretrial restrictions to support any motion for sentencing credit, as discussed above. Defense counsel must document any pretrial deprivations with photographs, detailed sworn statements, memoranda, counseling statements, staff duty logs (for Soldiers required to sign in periodically), etc. Third, defense counsel must determine how the pretrial restrictions can otherwise affect the case. The concerns here are usually speedy trial and sentencing. For example, at sentencing defense counsel may be able to demonstrate that the client has rehabilitative potential by his compliance with onerous pretrial restrictions. Similarly, defense counsel should request leniency at sentencing due to pretrial deprivations, regardless of whether formal confinement credit is awarded.

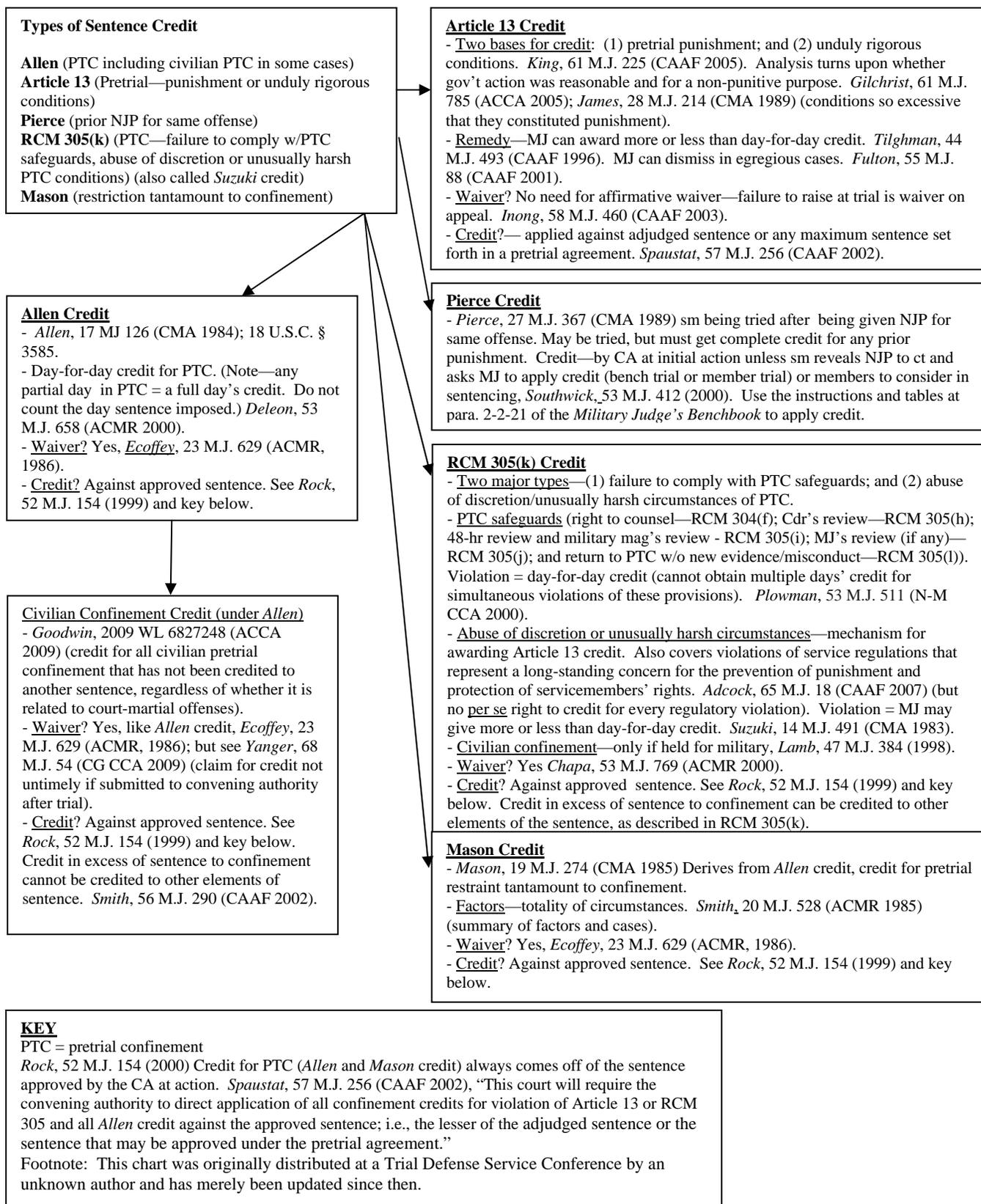
VI. Conclusion

Sentencing credit issues can have a tremendous impact on the outcome of a case, particularly at guilty pleas involving relatively minor offenses. Indeed, a motions hearing could take more time and effort than the guilty plea itself, and a substantial award of sentencing credit could wipe out an entire sentence to confinement. What counsel should appreciate after reading this primer is that sentencing credit is an area of trial practice where individual initiative can greatly influence whether and how the issue is raised, and whether the result will be obtained with difficulty or ease. For trial counsel, the goal is to prevent, or at least minimize, the issue through training, vigilance, and incorporation of any sentencing credit issues into a pretrial agreement. For defense counsel, the goal is to properly discover and document the issues, and obtain the maximum credit.

Counsel can set the conditions for success when addressing sentencing credit issues. The best result rarely falls into the lap of the counsel who never leaves the office—it is obtained through knowledge of the law backed up by diligent legwork. That is what often separates a mediocre trial advocate from one who is truly outstanding. It is this higher level of advocacy that every client deserves, and that this primer seeks to encourage.

Appendix A

Sentence Credit Considerations



Appendix B

Pretrial Restraint Checklist

Case: _____
TC/DC: _____ Phone/Email: _____
CDR/1SG: _____ Phone/Email: _____
Supervisor: _____ Phone/Email: _____

Time Frame

SPEEDY TRIAL CLOCK START

DATE: _____
Date of earliest misconduct: _____ Date command became aware of
misconduct: _____
Date first pretrial restraint imposed: _____ Date charges referred: _____
Date defense submitted speedy trial demand (if any): _____
Defense delays: _____

Pretrial Conditions/Actions

*Has the Soldier had any pay stoppages since getting into trouble? _____
Reason: _____
Dates: _____
Corrective Action Taken: _____
*Has the Soldier been restricted in any way since the first act of misconduct? _____
What restrictions? _____ Dates: _____
Reason for
Restrictions: _____
*Has the Soldier been limited in any way from performing his/her normal duties? _____
What limitations? _____ Dates: _____
Reason for
Limitations: _____
*Has the command changed the Soldier's living conditions or daily routine in any other way? _____
What changes? _____ Dates: _____
Reason for Changes: _____
*Does the Soldier claim to have been embarrassed, harassed, or otherwise mistreated due to the pending court-
martial? _____
Incidents: _____
Dates: _____
Witnesses/Evidence: _____ Corrective Action Taken: _____
*Any prior nonjudicial punishment for court-marital offenses? _____
Date: _____
Punishment adjudged and executed: _____
Likely impact of nonjudicial punishment on
case: _____

Pretrial Confinement Procedure (RCM 305)

Officer Ordering Confinement: _____
Date and place Soldier first confined by military or on behalf of military: _____
Date Soldier received pretrial confinement advice (RCM 305(e)): _____
Date the commander prepared a memorandum or other document determining that the Soldier meets the requirements for
pretrial confinement contained in RCM 305(h)(2)(B). _____ Are all facts in the memo accurate? _____
Did commander reasonably consider lesser forms of restraint? _____
Date the government conducted the 48-hour probable cause determination (RCM 305(i)(1)). _____
Was the 48-hour probable cause determination conducted by a neutral and detached officer? _____
Date the commander prepared the 72-hour memorandum (RCM 305(h)(2)(C)). _____
Are all facts in the memo accurate? _____
(For Defense) Is it in the client's best interest to argue against continued pretrial confinement? _____
Date of 7-day pretrial confinement review: _____ Reviewing Officer: _____
Is reviewing officer neutral and detached? _____ Properly appointed? _____

Any defense objections overruled by the reviewing officer: _____
Did reviewing officer abuse his/her discretion? _____
Date reviewing officer completed review (no more than 7 days after confinement or 10 days with good cause): _____
Date reviewing officer's memorandum received: _____ Factually accurate? _____
Any new information warranting a request for 7-day reviewing officer to reconsider confinement decision? _____
What information? _____ Date and result of reconsideration: _____
Are all potential sentencing credit issues incorporated into any pretrial agreement? _____

Trial

Date of Motion for Release from Pretrial Confinement (can make after referral): _____
How did reviewing officer allegedly abuse discretion? _____
Result: _____ Post-motion restraint on Soldier: _____
Any Motions for Sentencing Credit: _____
Will any Pierce credit be applied at sentencing or post-trial? _____
Sentencing impact of pretrial restraint/confinement/punishment: _____
Impact of pretrial restraint/confinement/punishment on defense post-trial submissions: _____

Appendix C

Pretrial Restraint /Conditions Quick Reference Sheet

PURPOSE: to provide judge advocates and commanders with a quick guide as to the likely sentencing credit impact of commonly encountered pretrial restraint measures and conditions.

CAVEAT: Pretrial conditions are viewed under the totality of the circumstances to determine whether credit should be awarded. Thus, several pretrial conditions that may not warrant credit in isolation may warrant credit when imposed simultaneously. The key determination is usually the imposing authority's intent.

PRETRIAL CONDITIONS NOT LIKELY TO GENERATE SENTENCING CREDIT:

- Revocation of off-post pass privileges. *Washington*, 20 M.J. 699.
- Sign-in requirements < hourly. *Washington*, 20 M.J. 699.
- No-contact orders with victim(s).
- Commitment of servicemember to mental health or drug treatment facility. *Regan*, 62 M.J. 299
- Requirement of an escort to leave unit area or assignment of a "battle buddy." *Washington*, 20 M.J. 699.
- Denial of leave or pass (can be denied on the basis the servicemember is flagged).

PRETRIAL CONDITIONS THAT MAY GENERATE SENTENCING CREDIT:

- Requirement to remain in uniform at all times (usually if servicemember is a flight risk).
- Restriction to unit area. *Washington*, 20 M.J. 699.
- Failure to pay servicemember. *Jauregui*, 60 M.J. 885.
- Order to not drink alcoholic beverages. *Blye*, 37 M.J. 92.
- Taking away of car keys or order not to drive personally owned vehicle (usually related to flight risk).
- Restriction to barracks after 2200. *Washington*, 20 M.J. 699; *Smith*, 20 M.J. 528.
- Taking away of weapon in combat zone.

PRETRIAL CONDITIONS THAT ARE LIKELY TO GENERATE SENTENCING CREDIT:

- Restriction to a single room or building. *Smith*, 20 M.J. 528.
- Sign-in requirements > hourly. *Smith*, 20 M.J. 528.
- Taking away of rank, other unit insignia, or uniform. *Cruz*, 25 M.J. 326.
- Name-calling, singling out of servicemember, or parading in front of troops. *Fulton*, 55 M.J. 88, *Cruz*, 25 M.J. 326; *Stamper*, 39 M.J. 1097.
- Shackling of the servicemember or any other form of physical restraint. *Gilchrist*, 61 M.J. 785; *Cruz*, 25 M.J. 326.
- Failure to immediately take charge of servicemember in civilian confinement on behalf of the military (based on R.C.M. 305(k) requirements to perform pretrial confinement reviews).
- Requiring servicemember to live under unnecessarily difficult conditions (e.g., sleeping in a supply room, conference room, or at the staff duty desk when barracks rooms are available). *Gilchrist*, 61 M.J. 785; *Hoover*, 24 M.J. 874.
- Restriction from visiting family or friends (when not for some legitimate pretrial purpose).
- Requirement to perform extra duties or unusually menial duties that display an intent to punish (e.g., cutting the grass while wearing a helmet and body armor, excessive janitorial duties).
- Exclusion from unit activities, information flow, leadership, or any kind of intentional isolation.
- Restriction from performing normal MOS (unless reasonably necessary due to the pending charges—e.g., many MOS's cannot be fully performed if the servicemember's security clearance is suspended)
- .

**The Office of Servicemember Affairs at the Consumer
Financial Protection Bureau:
The Twenty-Ninth Charles L. Decker Lecture in
Administrative and Civil Law¹**

*Hollister (Holly) K. Petraeus**

Thank you, Colonel Ohlweiler. Good morning, everyone. It's great to be here in Charlottesville. This is actually my first visit here and to have a chance to tell you, all of you, about setting up the Office of Servicemember Affairs at the new Consumer Financial Protection Bureau. I'd like to thank Major Brooker for recommending me for this honor and Colonel Diner for inviting me to be here today. I was very honored to be asked. And thank you, General Miller, for hosting this great event.

I appreciate all everyone in this room and everyone who's listening out there does to help our servicemembers with both professional and personal legal issues. Up front I have to confess I was more than a little surprised to be asked to give a named lecture in Civil and Administrative Law. My first thought was definitely they do realize I'm not a lawyer and I did not stay at a Holiday Inn Express last night either **[laughter]**. I have to say I am working with so many lawyers now at the CFPB that I am quickly becoming one by osmosis so I hope that counts for something. And just a fun little factoid for all of you, I'm also the great-granddaughter of the prosecuting attorney in the Lizzie Borden ax murder case **[laughter]**. You all—how many of you know about that case, hands? **[Audience raised hands as directed.]** Oh, lots of you, okay. Well you may recall that he did not win that case **[laughter]**. It was notable for the really awful judge's instructions to the jury, so he didn't win and he was quoted as saying, "Innocent? She's guilty as hell," so **[laughter]**. Anyway, that was my great-grandfather. Luckily, he did go on to greater things. He was the Attorney General of

* Holly Petraeus heads the Office of Servicemember Affairs at the Consumer Financial Protection Bureau (CFPB). This office works with the Pentagon to see that military families receive strong financial education; monitors complaints from military families and responses to those complaints by the CFPB and other agencies; and encourages federal and state agencies to coordinate their activities to improve consumer protection measures for military families. Prior to joining the CFPB, Mrs. Petraeus spent six years as the Director of Better Business Bureaus (BBBs) Military Line, a program of the Council of Better Business Bureaus providing consumer education and advocacy for servicemembers and their families. She is a recipient of the Secretary of the Army Public Service Award, the Boy Scouts of America "Service to Families" Award, and the Department of the Army Outstanding Civilian Service Medal.

¹ This lecture is an edited transcript of a lecture delivered on 25 March 2011 by Mrs. Hollister K. Petraeus, Director, Office of Servicemember Affairs, consumer Financial Protection Bureau, U.S. Department of the Treasury at The Judge Advocate General's Legal Center and School, Charlottesville, Virginia. The lecture is named in honor of Major General Charles L. Decker, the founder and first Commandant of The Judge Advocate General's School, U.S. Army, in Charlottesville, Virginia, and the 25th Judge Advocate General of the Army. Every year, The Judge Advocate General invites a distinguished speaker to present the Charles L. Decker Lecture in Administrative and Civil Law.

Massachusetts, so I figure I do have a little bit of DNA going on that justifies my being here, but it was kind of intimidating to read the list of previous presenters, including Justice Scalia, Judge Bork, and then me. Seriously? **[Laughter]** But here are what I think are my real credentials for being here today to give this lecture.

As I think you all probably know, I do happen to be an Army spouse, married to a guy whose name you might recognize. I have been married for thirty-six years to my Soldier, and in that time—years, those thirty-six years, we've moved twenty-three times; that's a whole lot of visits to JAG Legal Assistance for powers of attorney to move the household goods and cars, and I should point out that in my personal experience the active duty spouse is very good at finding ways to be otherwise occupied or better still out of town when the moving crew shows up **[laughter]**. So I have used a lot of those powers of attorney over the years.

One thing you may not know about me is that I'm also an Army daughter. My father was General Bill Knowlton, who served in the Army also for over thirty-six years. He fought in both World War II and Vietnam and he was the Superintendent of West Point for four years. And now I'm a military mom, as well. My son is a lieutenant who just finished a tour in Afghanistan as an infantry platoon leader. And I have to tell you it's way harder to be a mom. You know your spouse does what they do but your child you always want to protect, so from that perspective I'm learning some new things.

But anyway, I've been around this unique military community of ours for my entire life. I've seen the problems that can arise from too much mouth and not enough money as well as the scams that are out there, and I hope to bring my knowledge of the financial issues that can cause our servicemembers problems to my new job within the Consumer Financial Protection Bureau. I feel it is very important for our military to have strong advocates working on its behalf, and it's my intent that this new Office of Servicemember Affairs be one of those strong advocates, both educating and looking out for military personnel and their families.

During my years as an Army wife after working a series of low-level civil service jobs for the first seven years, I spent a lot of years, over twenty, as a volunteer on the Army post where we were assigned, just one of that army of military spouses who do so much for the communities in which they live. I was a neighborhood mayor, and I served on a ton of boards: the Child Development Council, the PTA, the Spouses' Club, charitable foundations, and so forth. There was no paycheck involved but there were a lot of great opportunities to learn about military families and the unique challenges they face every day.

During the first year of the Iraq War when my husband was the Commander of the 101st Airborne Division (Air Assault), at Fort Campbell, Kentucky, I served as a senior Family Readiness Group advisor, and in that capacity I saw the unforeseen problems that came with deployment and I worked on those issues with DoD officials as well as local, state, and national legislatures. A year later, I was invited to become the Director of BBB Military Line, a program of the Council of Better Business Bureaus providing consumer education and advocacy for servicemembers and their families, a position that I held for 6 years, from 2004 to 2010. The BBB was looking for a military family subject matter expert and that was certainly a title that I could claim. It was my good fortune that they were willing to think outside the box and overlook my very unconventional résumé. In fact, I have to laugh. Really they hired me without any paperwork at all and I'd only been there about a week and the HR Director came by and said, "Do you have a résumé?" and I said, "Well, I could write one," and she said, "Would you please, just for the files?" So anyway they were very flexible. They knew what they were looking for, and apparently it was someone that had the knowledge that I had and I was very—I learned a lot in that job and hopefully did some good things as well.

During my time in that job, the Better Business Bureau received approximately 50,000 military consumer complaints per year, so I learned a lot about the problems and scams that military consumers were facing. Based on that knowledge, my team and I developed six military consumer workshops that have been taught to over 20,000 military personnel and family members around the country. I also traveled around the country doing military outreach, and I wrote a monthly military consumer newsletter that went out to about 3000 subscribers.

It was in my BBB capacity that I first connected with the CFPB, the Consumer Financial Protection Bureau, last fall. I was part of an ad hoc group that included representatives from the military legal assistance community and various nonprofits that met with Treasury officials soon after the financial reform law, the Dodd-Frank Act, was passed. We wanted to give our suggestions as to how the Office of Servicemember Affairs, created by the act, should be set up. Not long afterwards, President Obama asked Professor Elizabeth Warren to serve as an assistant to the President and Secretary of the Treasury Geithner asked her to serve as his special advisor on the Consumer Financial Protection Bureau.

In October I was called to meet with Professor Warren one-on-one and offer my ideas on how the Office of Servicemember Affairs might interact with and serve the military. Apparently, unbeknownst to me, what I was actually doing was having a stealth job interview. My advice session, at least, turned into that. She invited me back a couple weeks later and offered me the job of setting up the Office of Servicemember Affairs, and I couldn't resist the chance to be in on the ground floor of building this new

agency and the opportunity to participate as an advocate for you, military personnel, and their families. And I have to say that Professor Warren's enthusiasm for what we can accomplish is contagious.

So what is the Consumer Financial Protection Bureau going to do? We have one core mission, which is to protect consumers; as simple as that. Once the CFPB is fully established, it will significantly consolidate under one roof authorities to issue rules, conduct compliance examinations, and enforce 18 different federal consumer financial laws that are currently spread out among seven federal agencies. And, of course, we will also enforce part of the Dodd-Frank Act itself.

Since this is an audience of lawyers, I'm actually going to go into a little more detail on the laws that we will enforce because I want you to know what they are, but do keep in mind that I'm not a lawyer. I have to give you that disclaimer. I did have a lawyer write this part, though [laughter]. And we'll have a chat later about now that I'm back working for the Government, everything has to be vetted and I have this ongoing battle with the lawyers at CFPB who want to change everything I write and make it very boring, frankly [laughter]. I'm just saying.

And so—and this is the boring bit now but pay attention because it's important [laughter]. So, law number one: The Truth in Lending Act, or TILA, which requires that lenders provide clear disclosures to consumers about the cost of a mortgage, credit card, payday loan, or other consumer credit. For example, TILA requires that credit card issuers disclose a standard annual percentage rate to give consumers a chance to make meaningful comparisons between offers. Congress has amended TILA many times, including by the passage of two related laws: the Consumer Leasing Act and the Home Ownership and Equity Protection Act. These two laws expanded TILA to provide special protections for leases and high-cost mortgages. Two other important TILA amendments include the Fair Credit Billing Act, which provides certain protections regarding billing errors, grace periods, and other matters, and the Credit Card Act of 2009, which prohibits certain credit card practices, improves disclosures, and creates other important consumer protections.

Another major consumer financial law we will enforce is the Fair Credit Reporting Act, which governs the behavior of credit bureaus and entities that use credit reports or report information to credit bureaus. For example, the Fair Credit Reporting Act entitles the consumer to obtain a free copy of his or her credit report once a year from each of the three largest credit bureaus, and I suspect you all know what website they can get that from: AnnualCreditReport.com.

More laws. The Real Estate Settlement Procedures Act, which regulates settlement services provided in connection with residential real estate purchases and requires certain

disclosures in mortgage transactions on top of those that TILA already requires.

The Equal Credit Opportunity Act, which prohibits discrimination in lending on the basis of race, color, religion, national origin, sex, marital status, age, or because a person receives public assistance or has exercised a right under certain consumer credit laws.

The Home Mortgage Disclosure Act, which requires lenders to disclose certain data about their mortgage lending, mostly so that the public can determine whether lenders are, in the words of the statute, fulfilling their obligations to serve the housing needs of the communities and neighborhoods in which they are located.

The Electronic Fund Transfer Act, which establishes the rights and responsibilities of consumers in connection with electronic money transfers. Among other important protections, the Electronic Fund Transfer Act provided the basis for the recent rule prohibiting banks from automatically enrolling customers in costly overdraft programs for ATM withdrawals and point-of-sale (POS) debit card transactions.

The Fair Debt Collection Practices Act, which provides protections against harassment and other unfair or deceptive practices and provides for a private right of action by consumers against debt collectors who violate this law.

The Truth in Savings Act, which requires uniform disclosures of rates and fees for deposit accounts, such as early withdrawal fees on a CD.

The Gramm-Leach-Bliley Act, which requires financial institutions to provide consumers with privacy notices, including notice of the right to direct that the institution not disclose the consumer's nonpublic personal information to unaffiliated third parties in some circumstances.

The Safe Mortgage Licensing Act, which provides for registration and some licensing of mortgage loan originators, meaning brokers and mortgage loan officers, and establishes minimum standards for state licensing and registration of those originators.

The Omnibus Appropriations Act, which includes a provision that granted the FTC authority to prohibit unfair or deceptive acts or practices related to mortgage lending.

And finally, the Dodd-Frank Act itself, which created the CFPB and authorizes us to write rules and take enforcement actions to prevent unfair, deceptive, or abusive acts or practices by companies and individuals that provide consumer financial products or services that fall under our authority. Included in Dodd-Frank are important new mortgage protections, such as: one, a requirement that mortgage lenders document and verify a borrower's income before making a loan and take other steps to ensure that the

borrower can afford to repay it; and two, prohibitions on brokers and bankers being paid more for steering borrowers into higher cost loans.

So, got that? **[Laughter]** Did anyone tell you there will be a quiz after my talk? Believe it or not there are a few other laws we'll be responsible for as well, but that kind of gives you the bulk of them. Seriously, those laws will obviously give us plenty to do at the CFPB. In order to focus our work a bit, we've outlined three priorities right now for the CFPB. The first is to make it easier for a family to see the cost and risks of a mortgage up front and to give them the tools to choose the mortgage product that is right for them. The second is to empower consumers to make direct comparisons between credit card products which will help to enhance competition and help people decide which card to use and how they want to use it. And third, to be the first 21st Century consumer agency, a voice for families and a cop on the beat, making sure lenders are playing by the rules. The CFPB will carry out its work through the following three important functions. First, enforcing the Federal Consumer Financial Laws I mentioned earlier, and related to this enforcement power examining a range of financial services companies, including the nations' largest banks, thrifts, and credit unions, that's those with over ten billion in assets, and their affiliates; mortgage-related non-bank companies like lenders, brokers, and servicers; payday lenders and private student loan providers; and larger non-bank providers of other consumer financial products and services, such as credit bureaus and debt collectors, so some of this is very groundbreaking that we will have that authority over the non-bank sector. Number two would be conducting research, monitoring markets, and issuing regulations and other guidance to promote fairness, transparency, and competition in markets from mortgages, credit cards, and other consumer financial products and services. And third, providing consumer assistance and education, including financial literacy programs, online resources, and a consumer complaints hotline.

So how is my office, the Office of Servicemember Affairs, going to fit into that equation? Well, the law specifically contemplates—and I have to stop there and say, do you think a lawyer wrote that phrase? **[Laughter]** You know, I always put “the law intends” and they cross it out and put “specifically contemplates,” and I have—I just have this mental vision of a lawyer looking at a bust of Oliver Wendell Holmes, you know, contemplating the law. Anyway, so **[laughter]** according to the lawyers, the law specifically contemplates **[laughter]** that the Office of Servicemember Affairs will work to see that military personnel and their families receive a strong financial education; that it will monitor their complaints about consumer financial products and services and the responses to those complaints; and that it will coordinate the efforts of federal and state agencies to improve consumer protection measures for military families. And we're authorized to enter into formal agreements with the Department of

Defense to carry out the OSA's work and to make sure that we achieve those goals.

Within the CFPB, we'll make sure that the agency understands the unique financial issues that impact military families. We'll ask CFPB examiners to keep an eye out for military-specific issues; encourage CFPB enforcement teams to take action against financial providers who break the law to harm servicemembers; and make sure that the CFPB Consumer Response Division is attuned to the military community and responsive to its complaints. We also plan to work closely with the Consumer Financial Education Team at the CFPB. History has shown us that best practices developed in support of the military can translate to the larger U.S. community and that the military can be a great testing ground for innovative financial education products that could have an application to the population at large.

So what are we doing right now? First of all, let me say that I just started in mid-January so I don't expect too much just yet. The first priority has obviously been to figure out organization and staffing of this brand new startup organization and then hire employees. And I wasn't kidding when I said my entire staff is here, all two, you know, two of them, so I'm very happy to have them on board. And I want to mention to this audience especially that the CFPB wants to get the word out to qualified veterans and military spouses that we are hiring in all divisions, not just my office, and that includes lots of slots for lawyers if you know any who might be interested. We are posting our jobs on our web site right now, so please help us spread the word about that. You can go to consumerfinance.gov, that's our—it's kind of the Beta version of our site, and click on "Jobs" to find the listings and they're going up fast and furious now, so I—and I hope that if you go to the site, look around, too. We'd love to hear your feedback and what you think of it. And if you're really cool you can actually follow us on Twitter CFPB, **[laughter]** so; you'll get cool points for doing that.

Aside from organizing and hiring, there's a lot of work to do before we are fully up and running this summer. We can talk to the military community and listen to what they have to say, and that certainly includes the JAG Corps. As a first step, in late-January Professor Warren and I took the first of what I hope will be many trips to Lackland Air Force Base in San Antonio, or as it's now known, Joint Base San Antonio. While we were there, we had two roundtable discussions. The first was with military service providers, including JAGs, financial counselors, mental health professionals, and chaplains, as well as Lackland's brass. Our role was to ask questions about what scams and other financial problems those service providers were seeing and to ask for insights from them on how they thought those financial problems might be addressed and hopefully prevented from happening in the first place. We heard from them that payday loans were still an issue in Texas, where they fall outside the 36 percent interest rate cap imposed by the Talent Amendment for military on active duty and their dependents. You might ask why they fall outside that law.

Because they are now offered for more than ninety-one days, which puts them outside of the definition that was in the Talent Amendment.

The attendees also were concerned about military indebtedness. They saw that as a big problem. They told us the average trainee enters the military \$8500 in debt, some of it incurred during the waiting period between recruitment and entering into the service when new recruits get out there thinking big and buy that car, that phone, and that computer in anticipation of their military salary to come.

The providers had ideas about follow-up financial training after Basic and also made an interesting suggestion that the Leave and Earnings Statement have a separate column for special deployment pay to make it really obvious what money would go away when you would come back from deployment, and we thought that was an interesting idea and we've actually talked about it with the folks at DA, so hopefully something may come of that.

The second roundtable we did was with military personnel and spouses. The meeting was definitely joint, as we had representation from three of the services: Air Force, Army, and Navy. No Marines, sorry. It was a terrific group and all of us learned from them. They felt strongly that doing mandatory financial training only in Basic Training was not enough. You know, they told us basic trainees are so tired and so stressed and focused on the next chow call and the next formation that they don't absorb a whole lot; what you're teaching them tends to go, shoo, you know, right by. And also, frankly I've experienced if you take that group and you put them in a comfortable chair and you turn the lights down, what happens? **[Laughter]** They fall asleep. So a number of the attendees suggested a sort of continuing education through the various professional development schools, such as Basic Noncommissioned Officer Course (BNCOC) and Advanced Noncommissioned Officer Course (ANCOC), both for personal education and also because they wanted to be better leaders for their soldiers. One suggested that it be a quarterly mandatory requirement like EO training, and to our surprise when we said, "Well how many of you out there think it should be mandatory?" the entire room raised their hands, so they were serious about it and they felt it was important.

The military spouses in the room brought up some very good points about the challenges of deployment for dual military couples just trying to manage their affairs during a situation like that when they were both deployed or coming and going; the difficulties and temporary loss of income when moving a spouse's civilian career job because of a permanent change of station (PCS) move and the basic financial strains of frequent moves, and I could certainly relate to that considering the number of times I've moved. And I will say this past year has been a personal record for me as I have lived at four different addresses in the last twelve months, so very hard. I got really tired of changing my address with all of our accounts.

We also had a good discussion about something that the CFPB won't receive but that is very pertinent to this audience: the problem of powers of attorney. I'm sure many of you won't be surprised when I tell you that powers of attorney can be a really vexing issue during deployment. It's important for Soldiers to have someone enabled to handle their financial affairs in their absence, but sadly the person to whom they give that power of attorney is not always trustworthy and then financial abuses happen. I've seen really bad situations where Soldiers had to be brought back from deployment because they had been cleaned out by someone at home: a spouse, friend, or even a parent. And I will also say that even after some years of experience it's possible to be surprised by some of the situations that these young people can get themselves into. I recall during the preparation for the invasion of Iraq that Soldiers at Fort Campbell, for example, were strongly encouraged to have powers of attorney. Well, several of these single troops found the perfect designee for their powers of attorney: a very engaging young lady who worked as a dancer at the local gentlemen's club [laughter]. This young woman had collected about five powers of attorney before somebody sharp-eyed at JAG said, "Wait a minute. I've seen that name before" and her little scheme, that was the end of that. That one kind of surprised me; and then, we set up our Family Assistance Center right away and one of the first people who came in was a spouse who—lived on post, had a young child, and was distraught because she had no access to their money, she was running out of cash, and we said, "Didn't . . ."—well I asked the folks at ACS, "Didn't he fill out a power of attorney before he left?" and they said, "That's the first thing we looked up and, yes, he did, for his girlfriend." So prepare to be surprised at what you may see. People are always capable of doing things that you really would not expect them to do and to realize that your legal advice may sometimes need to extend into good life lessons, as well.

So, anyway, we are listening a lot right now at the Office of Servicemember Affairs and we're not just listening to military personnel and their families; we're also listening to the nonprofit organizations that work with them in the financial arena, as well as to the business community. We want to hear about not only the problems but also the best practices that have been developed and we're definitely interested in innovative, interesting financial education models, too, as well as ideas for how best to reach out and respond to the military community both online and in person. And then it will be our job to translate that feedback and those best practices into the best financial education and consumer response programs that we can possibly provide.

Aside from listening, I've already had some opportunities for public engagement and education. Quite recently you may have read in the news about major banks allegedly violating the Servicemembers Civil Relief Act (SCRA). The SCRA is certainly a law that you in the audience will be involved with on numerous occasions—you probably already have—but I did not expect it to be one of my first areas of public engagement. As it happens, the CFPB will not enforce that particular law; that responsibility remains with the prudential regulators in the Justice Department's Civil Rights Division. But that didn't stop me from taking the opportunity to speak out on behalf of our servicemembers on the issue, including testifying before the House Committee on Veterans Affairs in February on the same panel with your colleague, Colonel Shawn Shumake, from DoD. I took the opportunity to help raise awareness about what the SCRA does and what it doesn't do. And in addition I wrote a letter to the chief executive officers (CEOs) of our nation's twenty-five largest banks, asking them to review their policies and procedures to ensure that they were complying with the SCRA; and I've heard back from a number of them detailing what they are doing to ensure compliance.

So I hope that gives you a basic idea of how I come to be standing here in front of you today and what we intend to achieve in the Office of Servicemember Affairs. It's exciting to work for an agency that will be an enforcer and an educator on behalf of our military families who serve so faithfully and deserve the best treatment from both government and business. But in order to be successful, we need to benefit from the collective wisdom of people like you who are actually out there every day hearing the problems and working the issues. We need to hear from you. And even before our stand-up date this summer, please feel free to send me your comments and suggestions at military@treasury.gov. If you e-mail that, military@treasury.gov, I will see it.

So again, Colonel Diner, thank you for inviting me here today. I think my lawyer grandfather and great-grandfather would be proud, and I just appreciate the opportunity to be in the same room with you and to tell you personally, thank you for what you all do. The service you provide to our military personnel is amazing; it's free. You know I know they pay many thousands of dollars for it on the outside and the advice you provide the commanders also is amazing. My husband would be the first to say that he's a huge fan of the military lawyers. So from the Petreaus family, thank you for all that you do.

Subsequent to the Decker Lecture, the CFPB's Office of Servicemember Affairs and Office of Enforcement executed a Joint Statement of Principles with the TJAGs of all five services on 6 July 2011. Among other things, the Statement includes a mechanism for JAG attorneys to get prompt assistance from the CFPB with their consumer law questions and issues. The Statement created a single point of contact with the Office of Enforcement. Currently, Angela Martina, a long-time JAG civilian legal assistance attorney, is the designated contact. The single point of contact can be reached at military@cfpb.gov. JAGs in the field should encourage their clients to submit complaints to the CFPB on-line at www.consumerfinance.gov.

Claims Report
U.S. Army Claims Service

Affirmative Claims Note

**Personnel Claims Disaster Response:
Lessons Learned from the Fort Leonard Wood Tornado**

*Henry Nolan**

Introduction

During the morning hours of New Year's Eve, Friday, 31 December 2010, a tornado tore through a privatized¹ officer housing area on Fort Leonard Wood, Missouri.² It destroyed fifty-one sets of quarters³—including the Staff Judge Advocate's—severely damaged thirty-three, and damaged another seventy-five. The tornado also damaged or destroyed approximately 200 vehicles and other personal property. Because many of the officers whose quarters were affected were students at Fort Leonard Wood military schools who were on block leave, only a few minor injuries resulted.⁴

This article will discuss the splendid efforts of judge advocates and claims professionals at Fort Leonard Wood and from other Army installations in response to this disaster. There are two types of disaster claims operations. The first is the response to disasters caused by military operations or activities, such as a range fire that burns nearby civilian property, where the primary concern is paying claims for damages occurring off the installation.⁵ The second is the response to natural or other disasters that are not caused by military activities but which cause a great deal of damage on a military installation that can be paid for

under the Personnel Claims Act (PCA).⁶ This article will focus on the second type of disaster claim response.

Disaster Claims Response at Fort Leonard Wood

The Commander, U.S. Army Claims Service (USARCS), quickly designated the storm at Fort Leonard Wood as an “unusual occurrence”⁷ under Army Regulation 27-20 to allow payment of claims arising from the storm. Additionally, he declared that the event constituted “extraordinary circumstances”⁸ to permit payment of up to \$100,000 per claim.

The author contacted the Defense Finance and Accounting Service (DFAS) and requested their help in paying the tornado claims quickly. DFAS responded superbly. After mutually agreeing that their initial offer to send a pay team to Fort Leonard Wood was impractical under the circumstances,⁹ DFAS established an expedited process that resulted in the payment of approved claims within two business days after receipt, vice their normal seven to ten days.

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¹ In the mid-1990s, the Army initiated the Residential Communities Initiative (RCI) and contracted out to private companies the responsibility for the construction, care, and management of on-post housing. *Residential Communities Initiative*, U.S. ARMY ACCESSIONS COMMAND NEWSROOM, www.armyaccessionsnewsroom.com/media-resources/fact-sheets/residential-communities-initiative-rci/ [hereinafter RCI Fact Sheet] (last visited Dec. 8, 2011).

² Tiffany Wood, *Fort Leonard Wood Demonstrates Resiliency After Tornado*, ARMY MAG., Mar. 2011, at 52.

³ See Alexandra Browning & Patrick Fallon, *Fort Leonard Wood Begins Recuperation After Tornado Disaster*, MISSOURIAN, 31 Dec 2010, available at <http://www.columbiamissourian.com/stories/2010/12/31/fort-leonard-wood-begins-recuperation-after-tornado-disaster/>.

⁴ U.S. DEP'T OF ARMY, REG. 27-20, CLAIMS para. 1-21 (8 Feb. 2008) [hereinafter AR 27-20]; U.S. DEP'T OF ARMY, PAM. 27-162, CLAIMS PROCEDURES para. 1-21 (21 Mar. 2008) [hereinafter DA PAM. 27-162].

⁵ AR 27-20, *supra* note 4, para. 1-21; DA PAM. 27-162, *supra* note 4, para. 1-21.

⁶ The Personnel Claims Act (PCA) authorizes the Government to reimburse service members and civilian employees for the incident to service loss of, damage to, or destruction of their personal property. It further authorizes the Service secretaries to publish implementing regulations. 31 U.S.C. § 3721 (2006).

⁷ AR 27-20, *supra* note 4, para. 11-5c (considering on-post loss, damage or destruction due to unusual occurrences, including tornados, hurricanes, earthquakes, etc., to be cognizable and payable as incident to service).

⁸ See Personnel Claims Act, 31 U.S.C. § 3721(b) (2006) (authorizing payments up to \$40,000; but the ceiling is raised to \$100,000 under “extraordinary circumstances”).

⁹ The team would have needed active security twenty-four hours per day and a highly secure location to store funds. These requirements would have placed a substantial burden on Fort Leonard Wood leadership and detracted from their primary mission of caring for the victims. Additionally, providing victims with substantial amounts of cash when they had no place to store and secure it would raise a substantial risk of loss or theft. Further, most victims had credit cards to cover immediate expenses. Finally, as all but two victims received very prompt payment from their personal renter's insurance, and all were covered in part by RCI insurance, they had the ready financial resources they needed to pay for immediate expenses while they tried to recover from the event. Telephone Conversation between the author and Mr. Ryan Busby, Div. Chief, Disbursing Operations, Def. Fin. & Accounting Serv. (DFAS) Indianapolis, Ind. (3 Jan. 2011) [hereinafter Telecon DFAS Indianapolis].

On Monday afternoon, 3 January 2011, a three-member team led by Mr. Steve Kelly, Chief, Personnel Claims Branch,¹⁰ departed from USARCS for Missouri to assist in the payment of emergency claims. On Tuesday, 4 January, two members of the Fort Leavenworth Claims Office also deployed to Fort Leonard Wood. Fort Leavenworth and USARCS responders were later joined by claims professionals from three other field offices: Fort Riley, Fort Sill, and Joint Base Lewis-McChord.¹¹

As the extent and nature of the destruction became clearer, the Commander, USARCS, authorized two additional deviations from normal practice.¹² First, USARCS agreed to pay, as an incidental expense,¹³ costs for rental vehicles for up to fourteen days for claimants during the evaluation, repair, or replacement of vehicles damaged by the storm.¹⁴ Factors in the decision included the number of vehicles damaged or destroyed, the limited number of repair shops and car dealers in the vicinity, and the overwhelming need for claimants to have access to vehicles to deal with the aftermath of the event. Second, in view of the devastation, the Commander also recognized that requiring claims staff to adhere to the usual methodology of determining whether and to what extent to pay an insurance deductible would be superfluous.¹⁵ Accordingly, he authorized direct payment of the deductibles where the claimants had filed claims with the privatized housing insurance company¹⁶ or their private insurance carriers.

¹⁰ Other team members included Ms. Brenda McCord, Claims Management Analyst, and Ms. Bobbie Guidry, Claims Examiner.

¹¹ Teams from Fort Gordon, Fort Eustis, Carlisle Barracks, and Fort Polk were alerted and ready to deploy.

¹² AR 27-20, *supra* note 4, para. 1-17 (authorizing the Commander, USARCS, to grant exceptions to AR 27-20 “except as to matters based on statute, treaties and international agreements, executive orders, controlling directives of the Attorney General or Comptroller General, or other publications that have the force and effect of law”).

¹³ *Id.* para. 11-15 (authorizing the payment, under the Personal Claims Act, of certain “(e)xpenses incident to repair or replacement”, including the cost of obtaining certain estimates of repair, the cost of developing photographs of the damage to support the claim, drayage, towing charges, and certain other charges). The regulation does not explicitly permit rental cars as incidental expenses, but the commander, USARCS has the power to grant exceptions to the regulation, as he did in this case.

¹⁴ Information Paper, USARCS Personnel Claims and Recovery Division (JACS-PCR), Payment for Rental Cars in Emergency Situation UP the Personnel Claims Act (4 Jan. 2011) [hereinafter Information Paper-Rental Cars] (on file with author). The Commander, USARCS, granted an exception to the regulation based on a new interpretation of what the Personnel Claims Act (PCA) permits under certain very limited circumstances.

¹⁵ See DA PAM. 27-162, *supra* note 4, para. 11-21a(2) for a description of the usual methodology (noting briefly, the Army determines the total amount that it would pay if no insurance had been obtained, subtracts the total amount paid by the insurance company, and pays the difference; under the streamlined procedures authorized here, the Army simply paid the amount of the insurance deductible).

Initially, claims were to be filed in the USARCS online claims-filing program, PCLAIMS, and adjudicated using traditional procedures. On Tuesday, 4 January, staff judge advocates at four other installations¹⁷ agreed that their claims offices would accept and adjudicate transferred claims arising from the event to allow the claims staff on-site to focus on dealing with the victims.

However, after reviewing the situation, the leadership at Fort Leonard Wood, U.S. Army Training and Doctrine Command (TRADOC),¹⁸ and USARCS determined that more on-site support was needed. Accordingly, the call for help in adjudication quickly became a request for on-site assistance. In response, eight claims personnel from other installations were mobilized and traveled to the hard-hit post. After discussions with the TRADOC staff judge advocate, the U.S. Army Installation Management Command (IMCOM) staff judge advocate agreed to fund travel and other expenses of those supporting claims operations. The claims staff at Fort Knox remained available to handle any claims that needed to be transferred.

The now-augmented Fort Leonard Wood claims staff began documenting the damage and determining what had been destroyed. They quickly realized that waiting for claimants to stop by the claims desk to discuss their losses and file their claims was not working well. More personal contact and support were needed.¹⁹ Accordingly, two-person claims teams began contacting claimants and visiting them at the destroyed or damaged quarters. The teams took pictures of the destruction, conducted in-depth interviews with claimants, helped them to recall items that had been lost or destroyed, and as much as possible tried to relieve them of the administrative burden involved in filing a claim.²⁰

¹⁶ As part of their contract, the RCI company, Balfour Beatty, provided personal property insurance for the occupants of the quarters. U.S. ARMY MANEUVER SUPPORT CTR. OF EXCELLENCE, FORT LEONARD WOOD, MO., BALFOUR BEATTY COMMUNITIES RESIDENT GUIDE 7, available at www.wood.army.mil/DPWHSG/RCO/Lease%20Signing%20Documents/BC%20Handbook.pdf.

¹⁷ Fort Leavenworth, Kansas; Fort Knox, Kentucky; Fort Riley, Kansas; and Fort Gordon, Georgia.

¹⁸ Fort Leonard Wood’s next higher headquarters.

¹⁹ Claims personnel must remember to keep to their role of assisting claimants by recording the damage and the claimant’s listing of damaged property, as permitted by AR 27-20, *supra* note 4, para. 11-21. They may not *represent* claimants, e.g., make an argument to the claims approving authority on behalf of the claimant in favor of paying a claim. This would be legal assistance, and beyond the scope of permissible legal assistance under U.S. DEP’T OF ARMY, REG. 27-3, LEGAL ASSISTANCE para. 3-8b(1) (21 Feb. 1996) (requiring legal assistance attorneys to send claims clients to claims attorneys, and limiting the scope of advice even legal assistance attorneys may give). Under AR 27-20, claims personnel may “(t)ake an active and continuing role in publicizing claims information to Soldiers and their families” and “assist in the completion of claims forms, and help with the procurement of evidence in support of the loss and the amount claimed.” AR 27-20, *supra* note 4, para. 11-2b. The temptation to go further may be especially strong in disaster situations, when all involved want to provide as much assistance as possible.

Lessons Learned

Privatized Housing Is Covered by the PCA

It also became evident that normal procedures and substantiation requirements²¹ for filing claims were impracticable. The disaster had often destroyed the very records that a claimant would need to substantiate the ownership, condition, and value of individual items of property.

Within a week of the tornado, USARCS announced, as an exception to the regulation, a new Catastrophic Loss Accelerated Claims Procedure (CLASP),²² which permitted claimants to recover under the PCA for the destruction of all of their household goods without having to create a detailed listing of their property with substantiating evidence.

As of 30 June 2011, Fort Leonard Wood tornado victims had filed 110 claims, eight of which were paid using CLASP.²³ Most of the rest were for insurance deductibles and rental cars. Those who did not file PCA claims received full or almost full reimbursement from private insurance or from the Residential Communities Initiative (RCI) privatized housing contractor.

General George W. Casey, the Army Chief of Staff, set a goal of processing all claims within forty-five days of the event. This was somewhat beyond USARCS's control, as claimants have up to two years from the date of the loss to file their claims. However, all 108 claims filed within forty-five days of the event were paid by the forty-fifth day. Two claims were filed after the forty-five-day suspense and, like the others, were processed to payment within three to five business days.

²⁰ Normally, the claimant is responsible for substantiating ownership and possession, the fact of loss or damage, and the value of property, especially for expensive items. AR 27-20, *supra* note 4, para. 11-9b. Additionally, the claimant must complete and submit a DD Form 1842 (Claim for Loss of or Damage to Personal Property Incident to Service) and DD Form 1844 (List of Property and Claims Analysis Chart) and provide necessary substantiation before a claims office can pay the claim. *Id.* para. 11-8a.

²¹ Claimants normally must complete a DD Form 1844 with detailed information about the claimed item or items, including description of item (with brand name, model, size, finish, type, style, etc.), original cost, date of acquisition, nature and extent of damage or destruction, cost of repair or replacement, information about repair person, etc., and provide substantiation, e.g., estimates, receipts, inventories, etc., of the above. AR 27-20, *supra* note 4, paras. 11-8a, 11-9a, b.

²² The unprecedented disaster at Fort Leonard Wood caused USARCS not only to revisit the PCA and its legislative history, but also to consult with the other services and the insurance industry about "best practices" to streamline the implementation while fulfilling the fundamental requirements of the PCA. This resulted in the development and implementation of CLASP. CLASP may be activated by the Commander USARCS as an exception to AR 27-20. It provides for a flat rate of depreciation to ensure payment of the fair market value (FMV) of the lost, damaged or destroyed property, and extends the period after payment during, which the claimant may seek reconsideration of the payment decision and show by full traditional substantiation that the payments received, including all insurance payments that did not cover the FMV of the subject property.

²³ All statistics are on file with the author.

Because the affected housing area was privatized housing managed as part of the RCI, a question arose as to whether Soldiers living in that area were proper party claimants under the provisions of the PCA. Pursuant to Department of Defense (DOD) policy,²⁴ damage to RCI housing is covered by the PCA. Claims personnel directed those who suffered losses to first recover from the insurance of the RCI housing contractor, then from their private insurance, if any, and finally to file with the Army. This enabled the Army to provide the maximum coverage possible, i.e., up to the maximum \$100,000 payable under the PCA, plus the amount paid by insurance.²⁵

Payment for Rental Cars, Lodging, and Per Diem

Another issue that arose was the extent to which the PCA could be used to pay for rental cars, lodging, and per diem expenses. The USARCS Commander designated the tornado as an unusual occurrence covered by the PCA. The "unusual occurrence," designation authorized payment for property losses at on-post quarters, including vehicle losses. That authority did not extend to payment for renting vehicles. But because of the unique circumstances existing at Fort Leonard Wood, the USARCS Commander granted an exception to the regulation to permit payment for rental vehicles for a limited period of time to permit the evaluation, repair, or replacement of damaged or destroyed privately owned vehicles.²⁶ The "unusual occurrence" designation did not authorize payment under the PCA for lodging and per diem expenses. But, under circumstances like those existing at Fort Leonard Wood, these expenses are payable by military finance sources pursuant to other authorities. These include the Joint Federal Travel Regulation (JFTR) and the Joint Travel Regulation (JTR).²⁷

²⁴ Memorandum from Dr. David S. C. Chu, Undersec'y of Def., to Sec'y of the Military Dep'ts et al, subject: Uniform Policy on Personnel Claims Act (PCA) Claims in Military Housing Privatization Initiative (MHPI) (Sept. 2, 2005).

²⁵ The purpose of this prioritization is to ensure the Army gets what it has paid for, i.e., insurance coverage for occupants of privatized housing, and provide for the maximum coverage and reimbursement for members who have suffered catastrophic losses. In most instances, if the Army serves as the first insurer, any payment by the Army would be offset by the insurance company (whether RCI or private renter's insurance). When the insurance company pays first, the Army does not have to offset and thus can increase the potential maximum coverage to \$100,000 plus the amount of any insurance.

²⁷ The JFTR governs payment of evacuation allowances to military members and their dependents in the event of evacuation caused by unusual or emergency circumstances, U.S. DEP'T OF DEFENSE, JOINT FED. TRAVEL REG., VOL. 1: UNIFORMED SERVICE MEMBERS, ch. 6, pt. B. (Sept. 1, 2011), available at [http://www.defensetravel.dod.mil/Docs/perdiem/JFTR\(Ch1-10\).pdf](http://www.defensetravel.dod.mil/Docs/perdiem/JFTR(Ch1-10).pdf). The JTR allows advance payments (of pay and allowances) to civilian employees in the event of an evacuation. U.S. DEP'T OF DEF., JOINT TRAVEL REG., VOL. 2: DEP'T OF DEFENSE CIVILIAN PERSONNEL ch.

Notification to USARCS

Claims personnel must notify USARCS as soon as possible after a major catastrophe to ensure funds to pay claims are available.²⁸ Speedy notification also enables the Commander, USARCS, to make appropriate determinations regarding the event, such as whether it is an unusual occurrence or extraordinary circumstances; coordinate with DFAS; and swiftly deploy a claims support team, if needed. The early designation of catastrophic events as extraordinary circumstances is very useful, because it authorizes the payment of personnel claims up to \$100,000. Experience has shown that adjudicated amounts rarely exceed the normal limit of \$40,000 per claim, particularly after privatized housing (RCI) or private insurance payments are received. However, announcing that the PCA will cover claims up to \$100,000 lets victims know that the Army will take care of its own. It immediately reduces the anxiety victims feel regarding the extent to which they will be covered.

Swift On-Site Claims Support

The Army claims response must be swift and visibly on-site as soon after the event as possible. As soon as the disaster site is safe, installation claims staff should begin documenting and photographing the event. This will be especially important in the event the USARCS Commander authorizes the use of CLASP. Additionally, as soon as it appears that additional support may be necessary, USARCS should contact appropriate staff judge advocates and claims chiefs to alert those claims staff who have been designated for deployment as part of a claims disaster reaction team.

Coordination with DFAS

Early contact with DFAS to arrange for expedited payment of personnel claims arising from the incident proved to be critical. DFAS immediately offered to send a team to provide on-the-spot cash payments, but under the circumstances the offer proved unnecessary and impractical.²⁹ DFAS then immediately established a procedure to provide electronic fund transfer payment two business days after receipt of the approved voucher, vice the normal ten. As with the determination that extraordinary

6, pt. D (Sept. 1, 2011), available at [http://www.defensetravel.dod.mil/Docs/perdiem/JTR\(Ch1-7\).pdf](http://www.defensetravel.dod.mil/Docs/perdiem/JTR(Ch1-7).pdf).

²⁸ Personnel claims are paid from the Open Allotment. The funding is provided to USARCS by Operating Agency 22, the Army Budget Office sub-organization that oversees funding of USARCS as well as OTJAG. It is then managed and distributed to field claims offices by the USARCS Budget Office based on historical funding figures and immediate needs, e.g., emergencies. AR 27-20 *supra* note 4, para. 13-6.

²⁹ Telecon DFAS Indianapolis, *supra* note 9.

circumstances authorized payments up to \$100,000, the DFAS offer and action greatly reduced victim anxiety regarding the extent to which they would be covered.

Experienced Response Team

It is vital to select experienced claims personnel to serve on the on-site response team. A few members of the team may be relatively new to claims; their deployment will provide them experience in dealing with future disasters. However, the majority of claims personnel who deploy to a disaster site as part of a claims reaction team should be highly experienced in the investigation, documentation, substantiation, and payment of claims. That experience is essential to the success of the team, both in interacting with victims, many of whom may be distraught or in shock, and in implementing CLASP, whose implementation depends in great part upon the experience and expertise of the examiners in regard to evaluating and substantiating the extent of the loss.

Resources

It also is important to ensure prospective responders have Government Travel Cards and other resources necessary to respond. Those tasked to respond to a claims disaster may not (and, hopefully, will not) be called to travel very frequently, but when they are needed, they must be able to respond quickly. Accordingly, they should be pre-issued and trained in the use of and constraints on Government Travel Cards.³⁰ Each designated responder should also maintain a "Go Kit," a carry-on travel bag with, at a minimum, the following items: digital camera, laptop, calculator, note pads, clipboards, pens, pencils, claims forms and packets, ruler, measuring tape, latex gloves and masks, first aid kit, notebook containing the Disaster SOP, CLASP Attachment and a USARCS telephone list. Many of these documents can be stored on a designated laptop computer.

Proactively Counsel Claimants

To the extent possible, the claims staff should strive to provide individual on-site counseling to prospective claimants. Proactive counseling and supportive interview techniques greatly assist claimants to accurately detail their destroyed and missing property. Additionally, while the Army Claims Program is not intended to be insurance or replace insurance,³¹ the Army claims response will be

³⁰ Defense Travel System (DTS) Training Website, www.defensetravel.dod.mil/site/training.cfm [hereinafter DTS Training website] (last visited June 15, 2011).

³¹ The PCA is a gratuitous payment statute that does not require the Secretary of the Army to pay a claim but merely permits the payment. AR 27-20, *supra* note 4, para. 11-3a; DA PAM. 27-162, *supra* note 4, para. 11-1a. The PCA is not a substitute for insurance. *Id.* para. 11-5c.

compared with that of swiftly reacting private insurers. Uniformed Services Automobile Association (USAA) adjusters were on-site at Fort Leonard Wood the evening of the event. The Army claims staff must react quickly to photograph and otherwise record the nature and extent of the damage, swiftly conduct supportive interviews with the claimants at the site of the event, and to the extent possible relieve them of the administrative burden of filing a claim. Such actions will go a long way to achieving the morale-enhancement purpose of the PCA.³²

This contrasts sharply with the standard claims procedures traditionally used in responding to large claims events, such as setting up shop in a central location, providing claims instructions and forms to prospective claimants, and expecting claimants to list in detail and provide significant substantiation of the items lost, damaged, or destroyed and the cost to repair or replace them. While having a central, easily accessed site is important, setting up and running this site should not be the only thing claims personnel do.

In addition to helping claimants file, document, and substantiate their claims, Army Claims presence soon after the event helps ensure that victims understand that the claims staff is there to assist and not to challenge them. Claims staff must be seen as an integral factor in the Army taking care of its own. The claims staff must exhibit a thoroughly customer-service-oriented approach. In that regard, empathy and compassion are as important as the settlement and can make the difference in assisting people to move forward with their lives.

Communication Plan

It also is vital to have and implement a communication plan. At Fort Leonard Wood, the claims process initially was hampered by the lack of accurate claims-related communications. Consequently, Fort Leonard Wood leadership and claims personnel spent significant effort early on responding to misunderstandings and unrealistic expectations when they should have been focused on serving the victims.³³ The USARCS and the field claims office must have a communication plan that should be implemented as soon as possible after a disaster or other major claims event.

³² See AR 27-20, *supra* note 4, para. 11-10a (describing personnel claims program as a "morale program").

³³ Areas of confusion and unrealistic expectations included, *inter alia*, extent of PCA coverage, whether PCA would cover privatized housing, and ability of USARCS to pay per diem and lodging. For example, Fort Leonard Wood OTJAG and USARCS personnel spent valuable time discussing whether the PCA covered evacuated victims' lodging and per diem. A prepared communication plan could have announced the authorities available to pay those expenses and immediately focused all concerned on the correct path to follow.

Among other things, the plan should include ready-to-publish information sheets, radio, TV, and internet and social media notices to let prospective claimants know about the Army Claims Program. The plan should be coordinated with local leadership, public affairs, and claims officials and tailored to the circumstances surrounding the event.

Subjects to address include the Army Claims Program, legal limits of the PCA, the potential presence of other insurance and the importance of claimants filing first with their insurance companies in order to maximize their reimbursement; the locations of claims personnel; and the non-claims related authorities that will allow the payment of temporary lodging and per-diem for claimants displaced from quarters by the event.

Coordinate and Co-locate with Private Insurers

Initially, claims processing sites at separate locations were established for the Fort Leonard Wood claims operation, USAA, and the RCI insurance company. While well intentioned, this proved problematic. As previously noted, in an effort to maximize the victims' recovery, USARCS guidance and insurance contract considerations dictated that claimants file and settle first with the RCI insurance, then with private insurance, if any, and finally with the Army. As the sites were not co-located, victims found themselves going from one site to the other to complete the claims process. This was exacerbated by the damage to or destruction of their vehicles.³⁴ Co-locating insurance company claims intake sites with the Army's claims operations not only assists claimants, but facilitates the exchange and dissemination of accurate information and helps avoid misunderstandings.³⁵

Be Flexible

Initially, as noted above, claims personnel expected claims would be filed, substantiated, and adjudicated using traditional procedures. However, the circumstances required a different approach. Waiting for claimants to stop by the claims desk to discuss their losses and file their claims did not work very well. It also became evident that the normal procedures and substantiation requirements for filing claims would not work. In response, both the claims personnel on-site and at USARCS demonstrated commendable flexibility.

Two-person teams of claims professionals began contacting claimants and visiting them at quarters that were

³⁴ By 6 January, claims sites were consolidated in the Army Community Service building.

³⁵ Post-event conversation between author and Ms. Bobbie Guidry, USARCS Claims Examiner and member of the USARCS team that deployed to Fort Leonard Wood in reaction to the tornado (on or about 18 January 2011).

totally destroyed or heavily damaged. The teams took pictures of the destruction, conducted in-depth interviews with claimants, took detailed notes of those interviews, and tried to help claimants remember their personal items that had been lost or destroyed. In general, they tried to relieve the traumatized victims of much of the administrative burden involved in filing a claim.

Within a week of the tornadoes, USARCS announced the development and implementation of a new expedited procedure, CLASP, to permit recovery under the PCA without requiring a detailed listing and itemized substantiation of the property lost, damaged and destroyed. Among other factors, CLASP relied heavily on the active support that the claims teams were providing the victims and the expertise of the claims examiners in evaluating and substantiating the damage.

CLASP Is Not Appropriate for All Disasters

CLASP is designed to be used when the disaster causes a total or substantially total loss, and where the nature and extent of the loss renders impracticable or impossible a claimant's ability to substantiate the loss in the traditional manner.

Disasters such as the October 2010 warehouse fire in Stuttgart, Germany,³⁶ for example, do not lend themselves to the use of CLASP. While the destruction of the warehouse contents may have been total, the Servicemembers and other shippers still retained inventories of the contents of the shipments. Neither did they suffer the shock and disorientation common to the Fort Leonard Wood tornado victims. The claimants who suffered loss from a warehouse fire must file detailed claims with the transportation service providers (TSP) in order to receive full replacement value for their destroyed items.³⁷ Past disasters in which the application of CLASP might have been appropriate, had it existed, include Hurricane Andrew³⁸ and Hurricane Katrina.³⁹

³⁶ The fire resulted in the destruction of more than 100 sets of household goods and unaccompanied baggage in temporary storage awaiting delivery to the owners. E-mail from Mr. Joseph Dunn, Transp. Branch, Logistics Div., IMCOM-European Region, to Mr. Jim Eaves, Acting Chief, Logistics Div., IMCOM-European Region, subject: "Andreas Christ GmbH Warehouse Fire Heilbronn, Germany" (1 Nov. 2011) (on file with author).

³⁷ Effective, 1 October 2007 (international shipments) and 1 November 2007 (domestic shipments), DoD transportation contracts for the shipment of household goods must provide for full replacement value (FRV) reimbursement for items lost or destroyed in the move. To obtain FRV reimbursement, the shipper (military member or civilian employee whose property it is) must first file a claim with the TSP. Only if the TSP does not satisfactorily settle the claim may the shipper then file with the military claims office. 10 U.S.C. § 2636a (2006); Colonel R. Peter Masterton, *Claims Office Management*, ARMY LAW., Sept. 2011 at 48, 50-51.

³⁸ In 1992, Hurricane Andrew struck Florida and largely destroyed Homestead Air Force Base, which later was rebuilt as an Air Reserve Base. *History of Homestead Air Reserve Base*, HOMESTEAD AIR RESERVE BASE,

Establish a Formal Disaster Claims Program

The response of USARCS and other organizations to the Fort Leonard Wood tornado was highly commendable, reflected the ability of experienced professionals to rise to the occasion, and resulted in some innovative responses to issues that arose. The response was *ad hoc* in nature, however, and its success depended on the flexibility and mission focus of the leadership and claims personnel from Fort Leonard Wood, TRADOC, USARCS, and supporting installations, and was not without some avoidable confusion.

To minimize confusion, USARCS, in conjunction with the TRADOC staff judge advocate is developing a coordinated Disaster Claims Program to institutionalize claims actions for disasters. This program will likely require USARCS to identify and prepare appropriate claims professionals to be part of a claims reaction team, decide in advance the funding source for reaction team travel and expenses, detail how procedures for disaster claims may differ from those used in normal circumstances, and prepare pre-packaged claims information that can be disseminated in the event of a disaster.⁴⁰

Conclusion

Claims professionals from Fort Leonard Wood, USARCS, and several field claims offices reacted to the Fort Leonard Wood tornado in a flexible and highly professional

<http://www.homestead.afrc.af.mil/library/factsheets/factsheet.asp?id=3401> (Jun. 10, 2008).

³⁹ In 2005, Hurricane Katrina devastated substantial parts of Louisiana and Mississippi and caused substantial damage to Keesler Air Force Base near Biloxi, Mississippi. Damage was especially extensive in the housing areas. *History of Keesler Air Force Base*, KEESLER AIR FORCE BASE, <http://www.keesler.af.mil/library/factsheets/factsheet.asp?id=4881> (Oct. 11, 2006).

⁴⁰ These include, but are not limited to, events such as:

- (a) Emergency evacuations ordered as a result of local unrest, riots, combat operations, natural disasters, or
- (b) Loss, destruction, or damage to personal property caused by natural events such as hurricanes, tornados, wildfires, ice or hail storms, blizzards, floods.

Factors justifying disaster personnel claims response include one or more of the following:

- (a) Event causes significant damage, destruction, or loss of Service members', employees and family members' personal property;
- (b) Event affects large number of victims beyond the capability of the local field claims office to handle within a reasonable period of time.
- (c) Nature of event calls for extraordinary response measures.

Mr. Henry Nolan, U.S. Army Claims Service Disaster Claims SOP (Draft), (Mar. 29, 2011) (on file with author).

manner. They responded to this unusually destructive event quickly and enthusiastically, and addressed many issues in new and innovative ways. This article is a first step in

capturing and institutionalizing their responses to ensure that the knowledge gained will be available for use in future catastrophic events.

TJAGLCS Features

New Developments

Administrative & Civil Law

Deactivation of Army Family and Morale, Welfare, and Recreation Command and Transition to Installation Management Command G-9 at Fort Sam Houston

In a ceremony at Fort Sam Houston, Texas, on 3 June 2011, the Commander, Installation Management Command (IMCOM), deactivated the Army Family and Morale, Welfare, and Recreation (FMWR) Command (FMWRC).¹ Effective 3 June 2011, the FMWR services became the IMCOM G-9.² All actions requiring FMWRC approval or coordination should now be sent to the IMCOM G9.³

Legal support regarding Army FMWR programs is now provided by the IMCOM Office of the Staff Judge Advocate (OSJA), located at Fort Sam Houston, Texas. Legal support for FMWRC had previously been provided by the FMWRC Office of the Command Judge Advocate (OCJA) in Alexandria, Virginia. Both FMWRC and its supporting legal personnel from OCJA were relocated to Fort Sam Houston to be integrated into IMCOM under the Base Realignment and Closure (BRAC) Act.⁴ The attorneys from the former FMWRC OCJA were merged into the IMCOM OSJA.

—Lieutenant Colonel Jerrett Dunlap, U.S. Army

¹ MWR History, U.S. ARMY MWR, <http://www.armymwr.com/commander/history.aspx> (last visited Dec. 5, 2011).

² See Headquarters, U.S. Dep't of Army, Gen. Order No. 2011-08 (14 Nov. 2011).

³ See, e.g., U.S. DEP'T OF ARMY, REG. 215-1, MILITARY MORALE, WELFARE, AND RECREATION PROGRAMS AND NONAPPROPRIATED FUND INSTRUMENTALITIES para. 2-5 (24 Sept. 2010) (listing the responsibilities for the Commander, Family and Morale, Welfare, and Recreation Command).

⁴ See Tim Hipps, *Army FMWRC Integrated into Installation Management Command*, BELVOIR EAGLE (June 16, 2011), http://www.belvoireagle.com/index.php/news-articles/army_fmwrwc_integrated_into_installation_management_command/.

Dogface Soldier: The Life of General Lucian K. Truscott, Jr.¹

Reviewed by Major John J. Gowel*

*General Truscott rose, walked to the podium, did a sharp about-face, and proceeded to address not the guests but the graves holding the bodies of men whom he had so recently commanded. . . . Truscott apologized to the dead for their presence in the cemetery. He went on to say that “everybody tells leaders it is not their fault that men get killed in war, but that every leader knows in his heart this is not altogether true,” asking that any soldier resting there because of a mistake that he made forgive him but acknowledging “that was asking a hell of a lot under the circumstance.”*²

Introduction

The short list of great World War II U.S. Army generals contains many familiar names: Marshall, Bradley, Eisenhower, Patton, and MacArthur. A name that should be included, but that history has all but forgotten, is General Lucian K. Truscott, Jr. Little has been written about General Truscott largely because of *where* his victories and innovations in warfare occurred. He did not appear upon the main stage of Normandy and northern France. Instead, Truscott’s innovative and brilliant efforts came in the Allied Force’s opening acts in North Africa, Sicily, Italy, and Southern France.³

Dr. Wilson A. Heefner, a retired physician and Army officer, seeks to set right a “miscarriage of history,” namely, General Truscott being overlooked despite his being “a faithful and consummate soldier, commander and leader of men, victorious general, and warrior of the Cold War.”⁴ Dr. Heefner asserts that General Truscott deserves attention on par with Generals Patton, Marshall, Eisenhower, and Bradley.⁵ *Dogface Soldier* is meant to be *the* biography of Lucian Truscott and to earn him his deserved recognition.⁶ Dr. Heefner succeeds by providing a meticulously researched and comprehensive, yet often clinical and occasionally dense, account of the life of this consummate combat leader. Through the thorough detailing of Truscott’s life, Dr. Heefner may succeed in gaining General Truscott

the attention he deserves, but it is the substance and subject of Heefner’s story that does this and not his analysis or style; *Dogface Soldier* as the messenger of Truscott’s life is not the intellectually or emotionally engaging work that it may have been.

Analysis

Despite minor weaknesses in form, Dr. Heefner’s is successful because he very clearly supports and defends his thesis, namely, that General Truscott ranks among the top combat commanders and leaders of World War II and post-war Germany and, therefore, deserves greater recognition.⁷ In fact, Dr. Heefner’s support for his thesis is so great that the reader may conclude he has understated it. The factual data is so compelling that even with his clinical, dispassionate delivery, Dr. Heefner demonstrates Truscott to be even Patton’s superior in numerous areas of command and leadership: in his ability to work alongside his British counterparts,⁸ in his care and respect for his Soldiers,⁹ in his ability to bring his superiors to his way of thinking, and in his loyalty and sense of duty when following orders.¹⁰ When Eisenhower relieved Patton as commander of Third Army, he chose Truscott to take the helm.¹¹ General Eisenhower said in 1943 that Truscott’s 3d Infantry Division was the best unit in North Africa and Italy, an opinion joined in by the German commander for the Mediterranean theater, German Field Marshall Kesselring.¹² In his service with the CIA, Truscott’s accomplishments are also likely without equal: he coordinated all intelligence collection efforts in

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¹ WILSON A. HEEFNER, *DOGFACE SOLDIER: THE LIFE OF GENERAL LUCIAN K. TRUSCOTT, JR.* (2010).

² *Id.* at 246 (citation omitted).

³ *Id.* at 3.

⁴ *Id.* at 1 (quoting Roger J. Spiller, *Overrated, Underrated*, AM. HERITAGE, Oct. 2002, at 52, 295).

⁵ *Id.* at 1.

⁶ Dr. Heefner finds the other attempt to catalogue Gen. Lucian Truscott’s life lacking. He criticizes H. Paul Jeffers’ *Command of Honor: General Lucian Truscott’s Path to Victory in World War II* as being abbreviated and making insufficient use of primary sources. *Id.* at 303 n.1. Dr. Heefner praises and recommends General Truscott’s autobiographical work, *Command Missions*. *Id.* at 7–8.

⁷ *Id.* at 1, 295.

⁸ Compare HEEFNER, *supra* note 1, at 58–59 (Thank you letter to Truscott for close work with British staff), with STEPHEN E. AMBROSE, *AMERICANS AT WAR 168* (1997) (describing Patton as an Anglophobe).

⁹ Compare HEEFNER, *supra* note 1, at 121–22 (describing Truscott humbly moving out of the way of a working Soldier), with AMBROSE, *supra* note 7, at 165 (describing Patton slapping a battle-fatigued Soldier).

¹⁰ Compare HEEFNER, *supra* note 1, at 120 (Truscott’s willingness to follow orders), with AMBROSE, *supra* note 7, at 254 (Patton’s refusal to follow national denazification policy).

¹¹ HEEFNER, *supra* note 1, at 120.

¹² *Id.* at 3, 292.

Germany, led the successful effort to tap into Soviet telecommunications in East Berlin, opening a source of information that did not exist before, and perhaps prevented a disastrous revolution in eastern Europe, which could have led to general hostilities between the United States and the Soviet Union.¹³ Dr. Heefner's *Dogface Soldier* shines a sufficient spotlight on this general's accomplishments and talents to earn Truscott the attention that history has so far denied him.

Dr. Heefner's provides a comprehensive examination of Truscott's life. Although he completed only his first year of high school, General Truscott's military career outshone those of many more educated officers. Beginning his professional career as a schoolteacher in rural Oklahoma, Truscott entered the Army in 1917 through an officer training camp. Dr. Heefner details Truscott's pre-World War II career as he narrowly earns a permanent commission, marries Thomas Jefferson descendant Sarah Randolph, and starts a family.¹⁴ During the inter-war years, Truscott became a national polo champion and spent approximately ten years as a student and instructor at the Army's Cavalry School and then at the Command and General Staff School.¹⁵ In early 1941, Truscott assumed duties as the assistant G-3 for IX Corps at Fort Lewis, Washington, whose Chief of Staff was Colonel Dwight D. Eisenhower. It was there that the two met and became lifelong friends. "The close friendship . . . would play a decisive role in [Truscott's] career," so much so that a vociferous detractor said that Truscott "was carried along on the tail of Eisenhower's kite."¹⁶

Truscott began his World War II service by being hand-selected to integrate with the British staff responsible for Commando and amphibious operations. His task was to develop a plan for training American Soldiers for their first combat experiences. Truscott's efforts as part of this staff resulted in the creation of the U.S. Army Rangers.¹⁷ Dr. Heefner traces Truscott's rise from his regimental command during the invasion of North Africa in Operation TORCH, through his division command and brilliant performance during the invasion of Sicily in Operation HUSKY, through his corps command where he saved the Anzio beachhead and later put the German Army on the run from southern France, to his days as an army commander driving the Germans from Italy and beginning the management of the peace in post-war Germany both as commander for Third Army and as Chief of the CIA Mission for Germany.

Dr. Heefner's extensive research is apparent throughout *Dogface Soldier* as he tells the story of Truscott's life. He uses an impressive array of primary sources to provide a multi-faceted view of Truscott. Truscott's efficiency reports, written by commanders such as Patton and Clark, place Truscott among the top leaders in the European theater.¹⁸ Dr. Heefner uses General Truscott's autobiographical work, *Command Missions*, and his letters to his wife to provide recurring glimpses inside General Truscott's heart and mind.¹⁹ Diaries and writings of Truscott's fellow commanders, members of his staff, fellow Soldiers, and accompanying correspondents depict unguarded moments in his day-to-day behavior and provide a more complete view of the man.²⁰ Finally, Dr. Heefner's use of the mundane business records of the Army and CIA—internal Army memoranda and directives, unit official reports, documents and medical records, and collections of CIA reports and documents—earn *Dogface Soldier* a firm foundation in authenticity and credibility.²¹

Perhaps as an unintended consequence of this thorough research, a distracting weakness that creates distance between author and reader, is the clinical tone of Dr. Heefner's detailing of Truscott's life, with insufficient energy and passion. Dr. Heefner often provides extensive detail about commanders, troop movements, or events without enough analysis to demonstrate the significance of these details and without enough energy to hold the reader's attention.²² These weaknesses are especially present until the mid-point of the book, where Truscott assumes command of VI Corps. Dr. Heefner also received similar criticism for an earlier work, *Patton's Bulldog: The Life and Service of General Walton H. Walker*, indicating that the issue may be one of the author's style and not one of subject matter.²³ In this work, Dr. Heefner provides a well-reasoned analysis of Truscott's life in the preface, introduction, and afterword; but the analysis of the individual battles and events within the work is almost completely lacking. Compounding the reader's frustration, the accompanying maps rarely succeed in bringing clarity and require no small

¹³ *Id.* at 293–94.

¹⁴ *Id.* at 15–16.

¹⁵ *Id.* at 21, 29.

¹⁶ *Id.* at 4 (quoting Brigadier General Paul M. Robinett, *The Tender Thread of Fate* 33 (unpublished short story) (on file with the George C. Marshall Research Library)).

¹⁷ *Id.* at 37.

¹⁸ *See, e.g., id.* at 71 (General Patton ranked him 4 of 183 colonels), 163 (Major General Lucas ranked him 1 of 38 division commanders), 253 (General Clark ranked him 1 of 73 general officers).

¹⁹ *Id.* at 5. Truscott's *Command Missions* makes up approximately thirty percent of all citations. *See id.* at 303–41.

²⁰ *See, e.g., id.* at 121–22 (Ernie Pyle, while visiting the 3d Infantry Division, witnessed a Soldier trip over a napping Truscott. The Soldier, annoyed, barked, "If you're not working, get the hell out of the way." The general got up and moved farther back without saying a word.).

²¹ *See, e.g., id.* at 343–48.

²² *See, e.g., id.* at 72–85 (regarding Truscott's time as Eisenhower's deputy chief of staff), 146 (regarding the disposition of General Clark's forces across the Winter Line).

²³ "There is little if any insightful analysis of his character, his role in World War I operations, or his shortcomings. Much the same is true for the author's treatment of the interwar years." Samuel Newland, Review, *Patton's Bulldog: The Life and Service of General Walton H. Walker*, PARAMETERS, Summer 2003, at 137.

amount of effort to reconcile with the text. For example, a map of the southern operations in Tunisia, including the battle of Kasserine Pass, attempts to show seventy days of battles and troop movements on one chart. This is overly ambitious and fails to convey what actually happened.²⁴

The lack of analysis can affect the reader's intellectual engagement, but the author's lack of passion and energy affects the reader's interest and emotional engagement. An example is found in Dr. Heefner's description of Truscott's first combat leadership experience on the beaches of Africa during Operation Torch: "Finding that the beach was still in chaos, and fearing that French aircraft might attack the beach the next morning, Truscott directed that order be established before daybreak."²⁵ Compare the same events as relayed by Rick Atkinson, *using the same source*:

He drew on his cigarette and picked up a rifle. Every battle also was made up of small actions by generals. Bellowing over the crashing surf, Truscott ordered straggling infantrymen, stranded coxswains, and anyone else within earshot to grab a weapon and move inland . . . There would be no Dieppe in Africa. Lucian Truscott would not permit it. No sonofabitch, no commander.²⁶

Heefner's description is logical but lacks emotion; however, Atkinson's account practically breathes. While Atkinson may have been writing to a more general audience, Dr. Heefner's account of General Truscott's first day in combat deserves more life.²⁷ This lack of attention-grabbing energy pervades the entirety of *Dogface Soldier*.²⁸

The analysis that is present within *Dogface Soldier* is excellent and engaging; however, the credit for the analysis must usually be given to General Truscott himself, which raises its own issue. The most effective analysis techniques employed by Dr. Heefner are his use of lessons learned and summaries of the problems facing the units that Truscott inherited. For example, following the chapter on the Anzio campaign, where Truscott's efforts as VI Corps commander save the Anzio beachhead, Dr. Heefner writes,

[H]e made his greatest contribution to the battle after he became VI Corps commander by "restoring confidence and morale among all elements of the beachhead" by adhering to a fundamental principle of command: the "successful commander must display a spirit of confidence regardless of the dark outlook in any grim situation, and he must be positive and stern in the application of measures which will impress this confidence upon his command."²⁹

The quoted language containing all of the analysis of Truscott's actions at Anzio are the words of Truscott himself. This pattern of using Truscott to analyze Truscott is repeated throughout the book, leaving a nagging question as to the impartiality of the author. Despite this weakness, Dr. Heefner generally provides ample factual detail to support Truscott's opinions.

Application

Dr. Heefner's depiction of General Truscott overflows with leadership lessons.³⁰ Truscott's presence on the front lines, his ability to honestly assess and fix situations, and his will to win are his greatest leadership qualities.

Perhaps Truscott's greatest lesson to leaders is the importance of leading through presence. Truscott spends most of his time away from his headquarters, meeting in person with subordinate commanders, and observing his Soldiers in action. But for his presence during the failed Dieppe raid, he may never have fully understood the complexities of amphibious warfare, and perhaps he would not have become, as *Time* described him, "the ablest sea-to-land commander in the United States Army."³¹ A leader's presence allows his subordinates to know that he shares their burden, is aware of their circumstances, and that he cares.

Truscott's life also depicts the lesson that leaders must assess and fix weaknesses in their organizations quickly. Truscott did this for each of his commands. In Anzio, his ability to identify and diagnose his unit's problems before the Germans and Italians could do so prevented failure of the

²⁴ See HEEFNER, *supra* note 1, at 76.

²⁵ *Id.* at 66.

²⁶ RICK ATKINSON, *AN ARMY AT DAWN: THE WAR IN NORTH AFRICA, 1942-1943* (2002).

²⁷ Heefner does state that his intended audiences are military historians with an interest in the Mediterranean theater and readers with an interest in military leaders of World War II. HEEFNER, *supra* note 1, at xi.

²⁸ Another missed opportunity for emotional connection is in the description of the death of Truscott's old friend Colonel William Darby. *Id.* at 241-43.

²⁹ *Id.* at 180.

³⁰ For events of particular note for judge advocates (JAs), more specifically, see the anecdote of Truscott's "solution" to a problem of self-maiming to avoid combat in Sicily resulting in a fifty-year sentence to confinement for one offender. *Id.* at 106. Although Truscott's actions would likely be considered unlawful command influence today, the anecdote still holds important lessons for JAs—showing the concerns of commanders on the eve of battle, the actions that can arise from those concerns, and the need for speed in military justice actions. There are also lessons regarding the military tribunals for German war criminals which took place under Truscott's supervision. *Id.* at 263.

³¹ *Id.* at 2, 51.

Allied campaign in Italy.³² Another clear example came after he assumed command of the 3d Infantry Division. Truscott noted the poor physical fitness of his men. He implemented a combat-focused physical training program centered on the “Truscott trot,” designed to allow his men to routinely and quickly march for thirty miles.³³ Within a few months, the Allied effort in Sicily relied on the “Truscott trot” over the narrow and rocky coast of northern Sicily as Truscott led the assault across ground unsuited to travel by any other means.³⁴

Truscott’s determination and drive to win explains many of Truscott’s tactical and operational successes and serves as a final leadership lesson. When Truscott ran out of land to outflank an adversary, he used amphibious landings to bypass and destroy the enemy.³⁵ When trucks and tanks could not carry his men and equipment through the Italian mountains, he found and used pack animals and horses to do so.³⁶ When his higher commander issued bad orders, he would reason with him. When that would fail, he would press the case to his boss’s boss.³⁷ His innovation in establishing a planning board to solve staff coordination problems still survives on division and higher staffs.³⁸ He even created a unit, Task Force Butler, to exploit his anticipated success in the invasion of southern France when he thought his higher headquarters might fail to provide such a force.³⁹ Truscott’s will to win, perhaps more than his other leadership qualities, explains how he was able to so effectively contribute to victory in Europe.

Conclusion

Undoubtedly, General Lucian K. Truscott, Jr., has earned his place in American history, and his leadership style and skills are relevant and needed today. Dr. Heefner achieves his end with *Dogface Soldier* by creating a work that organizes and presents the evidence necessary to earn General Truscott the place in history that he deserves. The stylistic weakness of the book, particularly the lack of passion and energy, may delay the speed at which this evidence reaches a general audience, but Dr. Heefner’s meticulous research and clinical compilation of the facts has fixed the “miscarriage of history” for this forgotten American hero by creating an accurate record of his service. Now all that stands between General Truscott becoming a title character in the American psyche is a screenplay and an actor of George C. Scott’s caliber.

³² *Id.* at 164–68.

³³ *Id.* at 99.

³⁴ *Id.* at 115–16.

³⁵ *Id.* at 123.

³⁶ *Id.* at 118.

³⁷ *Id.* at 63.

³⁸ *Id.* at 100.

³⁹ *Id.* at 189.

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 (800) 552-3978, extension 3307.

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

Go to Self Service, My Education. Scroll to Globe Icon (not the AARTS Transcript Services).

Go to ATRRS On-line, Student Menu, Individual Training Record. The training record with reservations and completions will be visible.

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

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

2. TJAGLCS CLE Course Schedule (June 2011–September 2012) (<http://www.jagcnet.army.mil/JAGCNETINTERNET/HOMEPAGES/AC/TJAGSAWEB.NSF/Main?OpenFrameset> (click on Courses, Course Schedule))

ATRRS. No.	Course Title	Dates
GENERAL		
5-27-C20	187th JAOBC/BOLC III (Ph 2)	17 Feb – 2 May 12
5-27-C22	60th Judge Advocate Officer Graduate Course	15 Aug – 25 May 12
	61st Judge Advocate Officer Graduate Course	13 Aug – 23 May 13
5F-F1	221st Senior Officer Legal Orientation Course	19 – 23 Mar 12
5F-F1	222th Senior Officer Legal Orientation Course	11 – 15 Jun 12
5F-F1	223d Senior Officer Legal Orientation Course	27 – 31 Aug 12
5F-F3	18th RC General Officer Legal Orientation Course	30 May – 1 Jun 12
5F-F5	2012 Congressional Staff Legal Orientation (COLO)	23 – 24 Feb 12
5F-F52	42d Staff Judge Advocate Course	4 – 8 Jun 12
5F-F52-S	15th SJA Team Leadership Course	4 – 6 Jun 12
5F-F55	2012 JAOAC	9 – 20 Jan 12

5F-F70	43d Methods of Instruction	5 – 6 Jul 12
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NCO ACADEMY COURSES		
512-27D30	2d Advanced Leaders Course (Ph 2)	9 Jan – 14 Feb 12
512-27D30	3d Advanced Leaders Course (Ph 2)	9 Jan – 14 Feb 12
512-27D30	4th Advanced Leaders Course (Ph 2)	12 Mar – 17 Apr 12
512-27D30	5th Advanced Leaders Course (Ph 2)	7 May – 12 Jun 12
512-27D30	6th Advanced Leaders Course (Ph 2)	9 Jul – 14 Aug 12
512-27D40	2d Senior Leaders Course (Ph 2)	12 Mar – 17 Apr 12
512-27D40	3d Senior Leaders Course (Ph 2)	7 May – 12 Jun 12
512-27D40	4th Senior Leaders Course (Ph 2)	9 Jul – 14 Aug 12

WARRANT OFFICER COURSES		
7A-270A0	19th JA Warrant Officer Basic Course	20 May – 15 Jun 12
7A-270A1	23d Legal Administrator Course	11 – 15 Jun 12
7A-270A2	13th JA Warrant Officer Advanced Course	26 Mar – 20 Apr 12

ENLISTED COURSES		
512-27D/20/30	23d Law for Paralegal NCO Course	19 – 23 Mar 12
512-27D/DCSP	21st Senior Paralegal Course	18 – 22 Jun 12
512-27D-BCT	BCT NCOIC Course	7 – 11 May 12
512-27DC5	37th Court Reporter Course	6 Feb – 23 Mar 12
512-27DC5	38th Court Reporter Course	30 Apr – 15 Jun 12
512-27DC5	39th Court Reporter Course	6 Aug – 21 Sep 12
512-27DC6	12th Senior Court Reporter Course	9 – 13 Jul 12
512-27DC7	16th Redictation Course	9 – 13 Jan 12
	17th Redictation Course	9 – 13 Apr 12

ADMINISTRATIVE AND CIVIL LAW		
5F-F22	65th Law of Federal Employment Course	20 – 24 Aug 12
5F-F24	36th Administrative Law for Military Installations & Operations	13 – 17 Feb 12
5F-F24E	2012 USAREUR Administrative Law CLE	10 – 14 Sep 12
5F-F202	10th Ethics Counselors Course	9 – 13 Apr 12

CONTRACT AND FISCAL LAW		
5F-F10	165th Contract Attorneys Course	16 – 27 Jul 12
5F-F12	83d Fiscal Law Course	12 – 16 Mar 12
5F-F14	30th Comptrollers Accreditation Fiscal Law Course	5 – 9 Mar 12
5F-F101	12th Procurement Fraud Course	15 – 17 Aug 12

CRIMINAL LAW		
5F-F31	18th Military Justice Managers Course	20 – 24 Aug 12
5F-F33	55th Military Judge Course	16 Apr – 5 May 12
5F-F34	41st Criminal Law Advocacy Course	6 – 10 Feb 12
5F-F34	42d Criminal Law Advocacy Course	10 – 14 Sep 12
5F-F34	43d Criminal Law Advocacy Course	17 – 21 Sep 12

INTERNATIONAL AND OPERATIONAL LAW		
5F-F40	2012 Brigade Judge Advocate Symposium	7 – 11 May 12
5F-F41	8th Intelligence Law Course	13 – 17 Aug 12
5F-F47	57th Operational Law of War Course	27 Feb – 9 Mar 12
5F-F47	58th Operational Law of War Course	30 Jul – 10 Aug 12
5F-F47E	2012 USAREUR Operational Law CLE	17 – 21 Sep 12
5F-F48	5th Rule of Law Course	9 – 13 Jul 12

3. Naval Justice School and FY 2011–2012 Course Schedule

For information on the following courses, please contact Jerry Gallant, Registrar, Naval Justice School, 360 Elliot Street, Newport, RI 02841 at (401) 841-3807, extension 131.

Naval Justice School Newport, RI		
CDP	Course Title	Dates
0257	Lawyer Course (020) Lawyer Course (030)	23 Jan – 30 Mar 12 30 Jul 12 – 5 Oct 12
900B	Reserve Legal Assistance (010) Reserve Legal Assistance (020)	18 – 22 Jun 12 24 – 28 Sep

850T	Staff Judge Advocate Course (010) Staff Judge Advocate Course (020)	23 Apr – 4 May 12 (Norfolk) 9 – 20 Jul 12 (San Diego)
786R	Advanced SJA/Ethics (010)	23 – 27 Jul 12
850V	Law of Military Operations (010)	4 – 15 Jun 12
NA	Litigating Complex Cases (010)	4 – 8 Jun 12
961J	Defending Sexual Assault Cases (010)	13 – 17 Aug 12
525N	Prosecuting Sexual Assault Cases (01)	13 – 17 Aug 12
4048	Legal Assistance Course (010)	2 – 6 Apr 12
03TP	Basic Trial Advocacy (010) Basic Trial Advocacy (020)	7 – 11 May 12 17 – 21 Sep 12
NA	Intermediate Trial Advocacy (010)	6 – 10 Feb 12
748A	Law of Naval Operations (010) Law of Naval Operations (020)	12 – 16 Mar 12 (San Diego) 17 – 21 Sep (Norfolk)
748B	Naval Legal Service Command Senior Officer Leadership (010)	23 Jul – 3 Aug 12
0258 (Newport)	Senior Officer (020) Senior Officer (030) Senior Officer (040) Senior Officer (050) Senior Officer (060) Senior Officer (070)	6 – 10 Feb 12 12 – 16 Mar 12 7 – 11 May 12 28 May – 1 Jun 12 13 – 17 Aug 12 24 – 28 Sep 12
2622 (Fleet)	Senior Officer (040) Senior Officer (050) Senior Officer (060) Senior Officer (070) Senior Officer (080) Senior Officer (090) Senior Officer (100) Senior Officer (110)	27 Feb – 1 Mar 12 (Pensacola) 9 – 12 Apr 12 (Pensacola) 21 – 24 May 12 (Pensacola) 9 – 12 Jul 12 (Pensacola) 30 Jul – 2 Aug 12 (Pensacola) 30 Jul – 2 Aug 12 (Camp Lejeune) 6 – 10 Aug 12 (Quantico) 10 – 13 Sep 12 (Pensacola)
7878	Legal Assistance Paralegal Course (010)	2 – 6 Apr 12
03RF	Legalman Accession Course (030)	11 Jun – 24 Aug 12
07HN	Legalman Paralegal Core (010) Legalman Paralegal Core (020) Legalman Paralegal Core (030)	25 Jan – 16 May 12 22 May – 6 Aug 12 31 Aug – 20 Dec 12
932V	Coast Guard Legal Technician Course (010)	6 – 17 Aug 12
846L	Senior Legalman Leadership Course (010)	23 – 27 Jul 12

08XO	Paralegal Ethics Course (020) Paralegal Ethics Course (030)	5 – 9 Mar 12 11 – 15 Jun 12
08LM	Reserve Legalman Phases Combined (010)	TBD
4040	Paralegal Research & Writing (020) Paralegal Research & Writing (030)	9 – 20 Apr 12 23 Jul – 3 Aug 12
627S	Senior Enlisted Leadership Course (Fleet) (040) Senior Enlisted Leadership Course (Fleet) (050) Senior Enlisted Leadership Course (Fleet) (060) Senior Enlisted Leadership Course (Fleet) (070) Senior Enlisted Leadership Course (Fleet) (080) Senior Enlisted Leadership Course (Fleet) (090) Senior Enlisted Leadership Course (Fleet) (100)	15 – 17 Feb 12 (Norfolk) 28 Feb – 1 Mar 12 (San Diego) 27 – 29 Mar 12 (San Diego) 30 May – 1 Jun 12 (Norfolk) 30 May – 1 Jun 12 (San Diego) 17 – 19 Sep 12 (Pendleton) 19 – 21 Sep 12 (Norfolk)
NA	Iraq Pre-Deployment Training (020)	26 – 28 Jun 12
	Legal Specialist Course (020) Legal Specialist Course (030)	25 Jan – 5 Apr 12 3 May – 20 Jul 12
NA	Legal Service Court Reporter (010) Legal Service Court Reporter (020)	9 Jan – 6 Apr 12 10 Jul – 5 Oct 12
NA	Information Operations Law Training (010)	19 – 23 Mar 12 (Norfolk)
NA	Senior Trial Counsel/Senior Defense Counsel Leadership (010)	19 – 23 Mar 12
NA	TC/DC Orientation (010) TC/DC Orientation (020)	30 Apr – 4 May 12 10 – 14 Sep 12

Naval Justice School Detachment Norfolk, VA		
0376	Legal Officer Course (030) Legal Officer Course (040) Legal Officer Course (050) Legal Officer Course (060) Legal Officer Course (070) Legal Officer Course (080) Legal Officer Course (090)	23 Jan – 10 Feb 12 27 Feb – 16 Mar 12 2 – 20 Apr 12 7 – 25 May 12 11 – 29 Jun 12 9 – 27 Jul 12 12 – 31 Aug 12
0379	Legal Clerk Course (030) Legal Clerk Course (040) Legal Clerk Course (050) Legal Clerk Course (060) Legal Clerk Course (070) Legal Clerk Course (080)	30 Jan – 10 Feb 12 5 – 16 Mar 12 9 – 20 Apr 12 14 – 25 May 12 16 – 27 Jul 12 20 – 31 Aug 12
3760	Senior Officer Course (030) Senior Officer Course (040) Senior Officer Course (050)	26 Mar – 30 Mar 12 4 – 8 Jun 12 10 – 14 Sep 12

Naval Justice School Detachment San Diego, CA		
947H	Legal Officer Course (030) Legal Officer Course (040) Legal Officer Course (050) Legal Officer Course (060) Legal Officer Course (070) Legal Officer Course (080)	30 Jan – 17 Feb 12 5 – 23 Mar 12 7 – 25 May 12 11 – 29 Jun 12 23 Jul – 10 Aug 12 20 Aug – 7 Sep 12
947J	Legal Clerk Course (040) Legal Clerk Course (050) Legal Clerk Course (060) Legal Clerk Course (070) Legal Clerk Course (080)	5 – 16 Feb 12 26 Mar – 6 Apr 12 14 – 25 May 12 18 – 29 Jun 12 27 Aug – 7 Sep 12
3759	Senior Officer Course (030) Senior Officer Course (040) Senior Officer Course (050) Senior Officer Course (060)	2 – 6 Apr 12 (San Diego) 30 Apr – 4 May 12 (San Diego) 4 – 8 Jun 12 (San Diego) 17 – 21 Sep (Pendleton)

4. Air Force Judge Advocate General School Fiscal Year 2012 Course Schedule

For information about attending the following courses, 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.

Air Force Judge Advocate General School, Maxwell AFB, AL	
Course Title	Dates
Paralegal Apprentice Course, Class 11-02	10 Jan – 2 Mar 2012
Homeland Defense/Homeland Security Course, Class 12-A	23 – 27 Jan 2012
CONUS Trial Advocacy Course, Class 12-A (Off-Site)	30 Jan – 3 Feb 2012
Legal & Administrative Investigations Course, Class 12-A	6 – 10 Feb 2012
European Trial Advocacy Course, Class 12-A (Off-Site, Kapaun AS, Germany)	13 – 17 Feb 2012
Judge Advocate Staff Officer Course, Class 12-B	13 Feb – 13 Apr 2012
Paralegal Craftsman Course, Class 12-02	13 Feb – 29 Mar 2012
Paralegal Apprentice Course, Class 12-03	5 Mar – 24 Apr 2012
Environmental Law Update Course-DL, Class 12-A	27 – 29 Mar 2012
Defense Orientation Course, Class 12-B	2 – 6 Apr 2012
Advanced Labor & Employment Law Course, Class 12-A (Off-Site DC location)	11 – 13 Apr 2012

Air Force Reserve and Air National Guard Annual Survey of the Law, Class 12-A (Off-Site Atlanta, GA)	13 – 14 Apr 2012
Military Justice Administration Course, Class 12-A	16 – 20 Apr 2012
Paralegal Craftsman Course, Class 12-03	16 Apr – 1 Jun 2012
Will Preparation Paralegal Course, Class 12-A	23 – 25 Apr 2012
Paralegal Apprentice Course, Class 12-04	30 Apr – 20 Jun 2012
Cyber Law Course, Class 12-A	24 – 26 Apr 2012
Negotiation and Appropriate Dispute Resolution Course, Class 12-A	30 Apr – 4 May 2012
Advanced Trial Advocacy Course, Class 12-A	7 – 11 May 2012
Operations Law Course, Class 12-A	14 – 25 May 2012
CONUS Trial Advocacy Course, Class 12-B (Off-Site)	14 – 18 May 2012
CONUS Trial Advocacy Course, Class 12-C (Off-Site)	21 – 25 May 2012
Reserve Forces Paralegal Course, Class 12-A	4 – 8 Jun 2012
Staff Judge Advocate Course, Class 12-A	11 – 22 Jun 2012
Law Office Management Course, Class 12-A	11 – 22 Jun 2012
Paralegal Apprentice Course, Class 12-05	25 Jun – 15 Aug 2012
Will Preparation Paralegal Course, Class 12-B	25 – 27 Jun 2012
Judge Advocate Staff Officer Course, Class 12-C	9 Jul – 7 Sep 2012
Paralegal Craftsman Course, Class 12-04	9 Jul – 22 Aug 2012
Environmental Law Course, Class 12-A	20 – 24 Aug 2012
Trial & Defense Advocacy Course, Class 12-B	10 – 21 Sep 2012
Accident Investigation Course, Class 12-A	11 – 14 Sep 2012

5. Civilian-Sponsored CLE Courses

For additional information on civilian courses in your area, please contact one of the institutions listed below:

AAJE: American Academy of Judicial Education
P.O. Box 728
University, MS 38677-0728
(662) 915-1225

ABA: American Bar Association
750 North Lake Shore Drive
Chicago, IL 60611
(312) 988-6200

AGACL: Association of Government Attorneys in Capital Litigation
Arizona Attorney General's Office
ATTN: Jan Dyer
1275 West Washington
Phoenix, AZ 85007
(602) 542-8552

ALIABA: American Law Institute-American Bar Association
Committee on Continuing Professional Education
4025 Chestnut Street
Philadelphia, PA 19104-3099
(800) CLE-NEWS or (215) 243-1600

ASLM: American Society of Law and Medicine
Boston University School of Law
765 Commonwealth Avenue
Boston, MA 02215
(617) 262-4990

CCEB: Continuing Education of the Bar
University of California Extension
2300 Shattuck Avenue
Berkeley, CA 94704
(510) 642-3973

CLA: Computer Law Association, Inc.
3028 Javier Road, Suite 500E
Fairfax, VA 22031
(703) 560-7747

CLESN: CLE Satellite Network
920 Spring Street
Springfield, IL 62704
(217) 525-0744
(800) 521-8662

ESI: Educational Services Institute
5201 Leesburg Pike, Suite 600
Falls Church, VA 22041-3202
(703) 379-2900

FBA: Federal Bar Association
1815 H Street, NW, Suite 408
Washington, DC 20006-3697
(202) 638-0252

FB: Florida Bar
650 Apalachee Parkway
Tallahassee, FL 32399-2300
(850) 561-5600

GICLE: The Institute of Continuing Legal Education
P.O. Box 1885
Athens, GA 30603
(706) 369-5664

GII: Government Institutes, Inc.
966 Hungerford Drive, Suite 24
Rockville, MD 20850
(301) 251-9250

GWU: Government Contracts Program
The George Washington University Law School
2020 K Street, NW, Room 2107
Washington, DC 20052
(202) 994-5272

IICLE: Illinois Institute for CLE
2395 W. Jefferson Street
Springfield, IL 62702
(217) 787-2080

LRP: LRP Publications
1555 King Street, Suite 200
Alexandria, VA 22314
(703) 684-0510
(800) 727-1227

LSU: Louisiana State University
Center on Continuing Professional Development
Paul M. Herbert Law Center
Baton Rouge, LA 70803-1000
(504) 388-5837

MLI: Medi-Legal Institute
15301 Ventura Boulevard, Suite 300
Sherman Oaks, CA 91403
(800) 443-0100

MC Law: Mississippi College School of Law
151 East Griffith Street
Jackson, MS 39201
(601) 925-7107, fax (601) 925-7115

NAC National Advocacy Center
1620 Pendleton Street
Columbia, SC 29201
(803) 705-5000

NDAA: National District Attorneys Association
44 Canal Center Plaza, Suite 110
Alexandria, VA 22314
(703) 549-9222

NDAED: National District Attorneys Education Division
1600 Hampton Street
Columbia, SC 29208
(803) 705-5095

NITA: National Institute for Trial Advocacy
1507 Energy Park Drive
St. Paul, MN 55108
(612) 644-0323 (in MN and AK)
(800) 225-6482

NJC: National Judicial College
Judicial College Building
University of Nevada
Reno, NV 89557

NMTLA: New Mexico Trial Lawyers' Association
P.O. Box 301
Albuquerque, NM 87103
(505) 243-6003

PBI: Pennsylvania Bar Institute
104 South Street
P.O. Box 1027
Harrisburg, PA 17108-1027
(717) 233-5774
(800) 932-4637

PLI: Practicing Law Institute
810 Seventh Avenue
New York, NY 10019
(212) 765-5700

TBA: Tennessee Bar Association
3622 West End Avenue
Nashville, TN 37205
(615) 383-7421

TLS: Tulane Law School
Tulane University CLE
8200 Hampson Avenue, Suite 300
New Orleans, LA 70118
(504) 865-5900

UMLC: University of Miami Law Center
P.O. Box 248087
Coral Gables, FL 33124
(305) 284-4762

UT: The University of Texas School of Law
Office of Continuing Legal Education
727 East 26th Street
Austin, TX 78705-9968

VCLE: University of Virginia School of Law
Trial Advocacy Institute
P.O. Box 4468
Charlottesville, VA 22905

6. Information Regarding the Judge Advocate Officer Advanced Course (JAOAC)

a. The JAOAC is mandatory for an RC company grade JA's career progression and promotion eligibility. It is a blended course divided into two phases. Phase I is an online nonresident course administered by the Distributed Learning Division (DLD) of the Training Developments Directorate (TDD), at TJAGLCS. Phase II is a two-week resident course at TJAGLCS each January.

b. Phase I (nonresident online): Phase I is limited to USAR and Army NG JAs who have successfully completed the Judge Advocate Officer's Basic Course (JAIBC) and the Judge Advocate Tactical Staff Officer Course (JATSOC) prior to enrollment in Phase I. Prior to enrollment in Phase I, a student must have obtained at least the rank of CPT and must have completed two years of service since completion of JAIBC, unless, at the time of their accession into the JAGC they were transferred into the JAGC from prior commissioned service. Other cases are reviewed on a case-by-case basis. Phase I is a prerequisite for Phase II. For further information regarding enrolling in Phase I, please contact the Judge Advocate General's University Helpdesk accessible at <https://jag.learn.army.mil>.

c. Phase II (resident): Phase II is offered each January at TJAGLCS. Students must have submitted all Phase I subcourses for grading, to include all writing exercises, by 1 November in order to be eligible to attend the two-week resident Phase II in January of the following year.

d. Regarding the January 2012 Phase II resident JAOAC, students who fail to submit all Phase I non-resident subcourses by 2400 1 November 2011 will not be allowed to attend the resident course.

e. If you have additional questions regarding JAOAC, contact LTC Baucum Fulk, commercial telephone (434) 971-3357, or e-mail baucum.fulk@us.army.mil.

7. Mandatory Continuing Legal Education

Judge Advocates must remain in good standing with the state attorney licensing authority (i.e., bar or court) in at least one state in order to remain certified to perform the duties of an Army Judge Advocate. This individual responsibility may include requirements the licensing state has regarding continuing legal education (CLE).

To assist attorneys in understanding and meeting individual state requirements regarding CLE, the Continuing Legal Education Regulators Association (formerly the Organization of Regulatory Administrators) provides an exceptional website at www.clereg.org (formerly www.cleusa.org) that links to all state rules, regulations and requirements for Mandatory Continuing Legal Education.

The Judge Advocate General's Legal Center and School (TJAGLCS) seeks approval of all courses taught in Charlottesville, VA, from states that require prior approval as a condition of granting CLE. For states that require attendance to be reported directly by providers/sponsors, TJAGLCS will report student attendance at those courses. For states that require attorneys to self-report, TJAGLCS provides the appropriate documentation of course attendance directly to students. Attendance at courses taught by TJAGLCS faculty at locations other than Charlottesville, VA, must be self-reported by attendees to the extent and manner provided by their individual state CLE program offices.

Regardless of how course attendance is documented, it is the personal responsibility of each Judge Advocate to ensure that their attendance at TJAGLCS courses is accounted for and credited to them and that state CLE attendance and reporting requirements are being met. While TJAGLCS endeavors to assist Judge Advocates in meeting their CLE requirements, the ultimate responsibility remains with individual attorneys. This policy is consistent with state licensing authorities and CLE administrators who hold individual attorneys licensed in their jurisdiction responsible for meeting licensing requirements, including attendance at and reporting of any CLE obligation.

Please contact the TJAGLCS CLE Administrator at (434) 971-3309 if you have questions or require additional information.

Current Materials of Interest

1. Training Year (TY) 2012 RC On-Site Legal Training Conferences

Date	Region, LSO & Focus	Location	Supported Units	POCs
24 – 26 Feb	Southeast Region 213th LSO Focus: Trial Advocacy and Military Justice	Atlanta, GA	12th LSO 16th LSO 174th LSO	CPT Brian Pearce brian.pearce@usdoj.gov (404) 735-0388
18 – 20 May	Midwest Region 9th LSO Focus: Expeditionary Contracting & Fiscal Law	Cincinnati, OH	8th LSO 91st LSO	CPT Steven Goodin steven.goodin@us.army.mil (513) 673-4277
15 – 17 Jun	Western Region 78th LSO Focus: Rule of Law	Los Angeles, CA	6th LSO 75th LSO 87th LSO 117th LSO	CPT Charles Taylor charles.j.taylor@us.army.mil (213) 247-2829
20 – 22 Jul	Mid-Atlantic Region 139th LSO Focus: Rule of Law	Nashville, TN	134th LSO 151st LSO 10th LSO	CPT James Brooks james.t.brooks@us.army.mil (615) 231-4226
17 – 19 Aug	Northeast Region 153d LSO Focus: Client Services	Philadelphia, PA (Tentative)	3d LSO 4th LSO 7th LSO	MAJ Jack F. Barrett john.f.barrett@us.army.mil (215) 665-3391

2. Brigade Judge Advocate Mission Primer (BJAMP)

Dates: 12 – 15 Mar 12; 4 – 7 Jun 12

Location: Pentagon

ATTRS No.: NA

POC: PDP@conus.army.mil

Telephone: (571) 256-2913/2914/2915/2923

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

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

The TJAGSA faculty and staff are available through the Internet. Addresses for TJAGSA personnel are available by e-mail at jagsch@hqda.army.mil or by accessing the JAGC directory via JAGCNET. If you have any problems, please contact Legal Technology Management Office at (434) 971-3257. Phone numbers and e-mail addresses for TJAGSA personnel are available on TJAGSA 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 TJAGSA classes, please ensure that your office e-mail is available via the web. Please bring the address with you when attending classes at TJAGSA. 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 TJAGSA can dial via DSN 521-7115 or, provided the telephone call is for official business only, use the toll free number, (800) 552-3978; the receptionist will connect you with the appropriate department or directorate. For additional information, please contact the LTMO at (434) 971-3264 or DSN 521-3264.

5. The Army Law Library Service

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

Point of contact is Mr. Daniel C. Lavering, The Judge Advocate General's Legal Center and School, U.S. Army, ATTN: ALCS-ADD-LB, 600 Massie Road, Charlottesville, Virginia 22903-1781. Telephone DSN: 521-3306, commercial: (434) 971-3306, or e-mail at Daniel.C.Lavering@us.army.mil.

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