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*Major Sean M. Watts & Captain Christopher E. Martin*

### **The Solomon Amendment: A War on Campus**

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## Nation-Building in Afghanistan: Lessons Identified in Military Justice Reform

Major Sean M. Watts<sup>1</sup>

Captain Christopher E. Martin<sup>2</sup>

Following the ouster of the Taliban regime, the international community and representatives of what would form the Afghan Interim Authority concluded the 2001 Bonn Agreement.<sup>3</sup> Building on international commitments through United Nations Security Council Resolutions<sup>4</sup> and a 2002 Tokyo donors' conference,<sup>5</sup> three coalition partners emerged as lead nations to help restore the rule of law in Afghanistan.<sup>6</sup> Under the Bonn Agreement, Italy would lead efforts to assist the Afghans with civilian justice reform and reform of the Afghan Ministry of Justice.<sup>7</sup> Germany would lead and coordinate assistance to train and reform Afghan national police forces.<sup>8</sup> The United States assumed primary responsibility to assist rebuilding the Afghan National Army (ANA).

The U.S. effort continues today under the overall operational leadership of Combined Forces Command-Afghanistan (CFC-A),<sup>9</sup> headquartered in the capital city of Kabul. Colocated with CFC-A, the Office of Security Cooperation-Afghanistan (OSC-A) conducts direct coordination with the Afghan Ministry of Defense (MOD) and the ANA.<sup>10</sup> The Office of Security Cooperation-Afghanistan staff sections work directly with their MOD and ANA counterparts to foster staff

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<sup>1</sup> Associate Professor, International and Operational Law Department, U.S. Army Judge Advocate General's Legal Center and School, Charlottesville, Virginia. Major (MAJ) Watts participated in a military justice training mission for Afghan National Army (ANA) lawyers in Kabul, Afghanistan, hosted by the Office of Military Cooperation, Afghanistan (OMC-A). The authors wish to thank Lieutenant Colonel (LTC) Paul Kantwill and LTC Ian Corey for their helpful review and comments.

<sup>2</sup> Country Program Manager, Defense Institute of International Legal Studies (DIILS). Since February 2004, DIILS has conducted an ongoing series of seminars and training missions for Afghan Ministry of Defense and Afghan National Army lawyers, at the request of OMC-A. Captain (CPT) Martin has participated in nine of these missions since February 2004. In 2006, he will participate in a yearlong DIILS mission to Afghanistan to train Afghan judges and lawyers on the new military justice system.

<sup>3</sup> Agreement on Provisional Arrangements in Afghanistan Pending the Re-Establishment of Permanent Government Institutions, U.N. Doc. S/2001/1154 (Dec. 5, 2001), available at <http://daccessdds.un.org/doc/UNDOC/GEN/N01/678/61/IMG/N0167861.pdf?OpenElement> [hereinafter Bonn Agreement].

<sup>4</sup> United Nations Security Council Resolution 1378 (14 November 2001) reflected ongoing international support for establishment of a new government in Afghanistan, and called on member states to support the formation of a transition administration and new government, including "quick impact" projects and long-term social and economic assistance. S.C. Res. 1378, ¶ 1, U.N. Doc. S/RES/1378 (Nov. 14, 2001), 41 I.L.M. 505 (2002). United Nations Security Council Resolution 1383 welcomed the Bonn agreement and called on donors to "reaffirm, strengthen and implement their commitment to assist with the rehabilitation, recovery and reconstruction of Afghanistan . . ." S.C. Res. 1383, U.N. Doc. S/RES/1383 (Dec. 6, 2001).

<sup>5</sup> The Ministry of Foreign Affairs of Japan, International Conference on Reconstruction Assistance to Afghanistan (Jan. 21-22, 2002), available at [http://www.mofa.go.jp/region/middle\\_e/afghanistan/min0201/summary.html](http://www.mofa.go.jp/region/middle_e/afghanistan/min0201/summary.html) (providing conclusions of the 21-22 January 2002 conference in Tokyo, Japan). This was the first international donors' conference to pledge financial and other assistance to the Afghan Interim Authority.

<sup>6</sup> Article II of the Bonn Agreement states that "[t]he Interim Administration shall establish, with the assistance of the United Nations, a Judicial Commission to rebuild the domestic justice system in accordance with Islamic principles, international standards, the rule of law and Afghan legal traditions." Bonn Agreement, *supra* note 3, art. II (2); see also UN Development Programme—Afghanistan, Democratization and Civil Society Empowerment Programme, [http://www.undp.org.af/about\\_us/overview\\_undp\\_afg/dcse/dcse.htm#jud\\_ref](http://www.undp.org.af/about_us/overview_undp_afg/dcse/dcse.htm#jud_ref) (last visited Apr. 20, 2006) (providing a summary of judicial and other reform efforts).

<sup>7</sup> See Italian Ministry of Foreign Affairs, L'impegno Italiano in Afghanistan, [http://www.esteri.it/eng/4\\_27\\_54\\_25\\_254.asp](http://www.esteri.it/eng/4_27_54_25_254.asp) (last visited Mar. 17, 2006) (providing a description of the Italian government's assistance efforts in Afghanistan).

<sup>8</sup> German Embassy—Kabul, Germany's Contribution to the Reconstruction of the Afghan Police and Justice System (Mar. 29, 2005), [http://www.kabul.diplo.de/en/03/Wiederaufbau/Polizeiaufbau\\_Seite.html](http://www.kabul.diplo.de/en/03/Wiederaufbau/Polizeiaufbau_Seite.html) (providing a description of German efforts in security sector reform).

<sup>9</sup> See Combined Forces Command—Afghanistan, <http://www.cfc-a.centcom.mil/> (last visited Mar. 17, 2006). By the summer of 2006, overall operational leadership in Afghanistan is expected to transfer from CFC-A to the North Atlantic Treaty Organisation (NATO), which commands the International Security Assistance Force (ISAF). The NATO has been slowly expanding its role in Afghanistan since 2003 and operates under the authority of UN Security Council Resolutions 1386, 1413, 1444 and 1510. See NATO, *NATO in Afghanistan*, <http://www.nato.int/issues/afghanistan/index.html> (last visited Feb. 17, 2006). The specific mission of the OSC-A legal advisors is not expected to change.

<sup>10</sup> On 12 July 2005, what was formerly known as the Office of Military Cooperation—Afghanistan was renamed the Office of Security Cooperation-Afghanistan (OSC-A). Previously, OMC-A's sole role was to lead U.S. effort to rebuild the Afghan National Army. The name change reflects OSC-A's assumption of dual roles: leading ANA reform and taking the U.S. lead in supporting the German-led reform of the Afghan National Police. See *Unit Takes on New Mission*, Name, AFGHANISTAN FREEDOM WATCH, 25 July 2005, available at [http://www.defenselink.mil/news/Jul2005/20050713\\_2054.html](http://www.defenselink.mil/news/Jul2005/20050713_2054.html) (copy on file with authors).

experience and build operational and doctrinal infrastructure. Under this arrangement, the OSC-A legal section coordinates military justice reform by serving as mentors to ANA judge advocates and MOD lawyers and by assisting with legal drafting. Since February 2004, the OSC-A legal section has received periodic assistance from the Defense Institute of International Legal Studies (DIILS).<sup>11</sup> Defense Institute of International Legal Studies officers and adjuncts have provided extensive instruction in international law and military justice and have participated in working groups to assist Afghan efforts to draft legislation and regulations.

Working from the outside in to help rebuild a military justice system in an environment as complex as Afghanistan's has proved a formidable challenge. Through our experience as advisors in the military justice reform effort spearheaded by OSC-A, we were able to experience these challenges firsthand. This article is intended to serve as a primer on Afghan military justice development, as well as to identify difficulties encountered during reform efforts. This article identifies several lessons key to providing effective assistance in such a demanding operating environment. Lessons range from mundane practical matters, such as the need for responsive transportation and specialized legal translators, to cultural and interpersonal complexities, such as religious sensitivities and individual work patterns and proclivities, as well as identifying fundamental (and nearly show-stopping) institutional and historical disconnects. The article concludes that justice reform missions associated with nation-building and reconstruction operations require judge advocates to develop refined skills in cross-cultural communication, flexible thinking, and, especially, an appreciation of historical and political context.

*"Different Flowers from Different Gardens"*<sup>12</sup>

Afghanistan's eclectic legal system is an inevitable byproduct of the country's tumultuous political history. We found that many fundamental and widely-accepted legal precepts were either not familiar to Afghan legal personnel or entirely absent from the Afghan system. After encountering difficulty relating seemingly basic criminal law concepts (at least from a Western understanding), we quickly realized that much of the failing was our own. To effectively develop a new military legal regime requires an understanding of existing systems and the history of the indigenous military justice system.

*Historical Development of the Afghan Military Legal System*

As stated by Colonel Mohammad Daud Hazem, an Afghan military prosecutor with twenty years of experience, the Afghan legal "system" is actually a mixture of different systems—a product of successive regimes and occupiers importing respective ideologies and systems.<sup>13</sup> The histories of Afghan civil and military law are remarkably relevant to the current military justice situation.<sup>14</sup>

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<sup>11</sup> See Defense Institute of International Legal Studies, <http://www.dsca.mil/diils/> (last visited Feb. 17, 2006) (explaining that DIILS is headquartered in Newport, Rhode Island and provides mobile and resident instruction in legal topics to military and civilian government representatives worldwide.). The Defense Institute of International Legal Studies is a branch of the United States Defense Security Cooperation Agency. *Id.*

<sup>12</sup> Interview with Colonel (COL) Mohammad Daud Hazem, Kabul University Faculty of Law graduate and current Director for Fiscal Law, General Staff (GS) Legal Department, Afghan Ministry of Defense (MOD), in Kabul, Afghanistan (July 31, 2005) [hereinafter Daud Interview] (on file with authors). Most of the historical summary in this section reflects an amalgam of interviews on 31 July 2005 with COL Daud and members of the military justice working group he spearheaded, as well as over 130 hours the authors spent with members of this working group during military justice reform sessions. Additional working group members included COL Zmari Rasikh, Deputy Director for Rules and Policy Development, GS Legal Department; COL Saed Abdul Hamid, Deputy of Acquisition and Procurement, Afghan MOD Legal Department; COL Zamanullah Mohammad Jan, Director for Legal Advice, MOD Legal Department; and LTC Gheljai Sharifi, Director for Military Courts and Legal Services, GS Legal Department.

<sup>13</sup> *Id.*; see also United States Institute of Peace, *Special Report No. 117, Establishing the Rule of Law in Afghanistan* (Mar. 2004), available at <http://www.usip.org/pubs/specialreports/sr117.html> [hereinafter USIP Special Report].

<sup>14</sup> See NELOFER PAZIRA, *A BED OF RED FLOWERS: IN SEARCH OF MY AFGHANISTAN* 337-89 (2005); M. HASSAN KAKAR, *AFGHANISTAN: THE SOVIET INVASION AND THE AFGHAN RESPONSE, 1979-1982* (1995) (providing a more detailed political history).

Prior to 1978,<sup>15</sup> the Afghan Army conducted military justice under a statutorily enacted “Military Courts Manual.”<sup>16</sup> The Manual did not provide for dedicated military prosecutors, defense counsel, or military courts. Instead, commanding officers performed traditional military legal functions such as investigating alleged misconduct, establishing commissions of judges to make findings, and serving as sentencing approval authorities.<sup>17</sup> The Afghans were eager to point out that this earlier system was somewhat similar to the U.S. Uniform Code of Military Justice (UCMJ), where convening authorities initiate courts-martial and ultimately approve or disapprove court-martial findings and sentences.<sup>18</sup> Yet under the Military Courts Manual, results were unpredictable and judges far from independent.<sup>19</sup>

In 1964,<sup>20</sup> Zahir Shah,<sup>21</sup> considered the “father of the nation,”<sup>22</sup> enacted the first Afghan criminal procedure code.<sup>23</sup> Although the Code introduced Afghanistan to professional defense counsel, such counsel were rarely, if ever, employed in a manner envisioned by the Code. In 1973,<sup>24</sup> under President Mohammad Daoud Khan,<sup>25</sup> Afghanistan adopted a new civil penal code and modified the national criminal procedure code. President Daoud introduced legislation establishing, for the first time in Afghanistan, three branches of government: Executive, Legislative, and Judicial. While a promising development, Afghans did not implement the legislation before the Soviet Union toppled President Daoud’s regime and replaced it with Soviet-backed leadership in 1978.<sup>26</sup>

The new Soviet-dominated regime abolished the existing constitution and established a fourth branch of government: a powerful, independent Attorney General’s office.<sup>27</sup> Special Attorneys General were created for each government agency, including the Ministry of Defense. The result was a significant blurring of military and civilian jurisdiction over a range of criminal offenses.<sup>28</sup> Suddenly, military-specific crimes took on extremely severe penalties, often death. Military jurisdiction extended to persons not traditionally subject to its reach. In 1979,<sup>29</sup> the civil and military justice systems were further conflated when the military criminal procedure code was replaced by a law on “Discovery and Investigation of Crimes.”<sup>30</sup>

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<sup>15</sup> Year 1357 in the Afghan calendar. During his narrative, COL Daud referred to dates using the Afghan calendar, which since 1958 has followed a variant of the Iranian solar calendar. Other calendars used in Afghanistan have included the lunar Hegira calendar and Gregorian (Western) calendar. See FRANK PARISE, THE BOOK OF CALENDARS 167-68 (1982); PC World, Calendar Magic V13.5 shareware program, [http://www.pcworld.com/downloads/file\\_description/0,fid,944,00.asp](http://www.pcworld.com/downloads/file_description/0,fid,944,00.asp) (providing a reliable converter between the Afghan and Gregorian calendars). Because COL Daud did not mention exact months and days, Gregorian conversions of the dates he gives are approximate. For additional information on the Afghan calendar, see The Persian Calendar, [http://www.ortelius.de/kalender/pers\\_en.php](http://www.ortelius.de/kalender/pers_en.php) (last visited Apr. 18, 2006).

<sup>16</sup> An approximate translation, not the official title. See Daud Interview, *supra* note 12.

<sup>17</sup> See *id.*

<sup>18</sup> See UCMJ art. 60 (2005).

<sup>19</sup> Daud Interview, *supra* note 12.

<sup>20</sup> 1343 in the Afghan calendar. See PARISE, *supra* note 15.

<sup>21</sup> Also referred to as Mohammad Zahir, Zahir Shah become king at only nineteen years old after the assassination of his father, King Nadir, in 1933. Most of the political and economic changes that occurred during Zahir Shah’s rule were in fact dominated by two of his father’s three surviving brothers, Hashim Khan and Shah Mahmud Khan, who served as consecutive prime ministers. See KAKAR, *supra* note 14, at 4-6.

<sup>22</sup> The last ten years of the King’s rule, 1963-1973, are also known as the “constitutional decade,” due to Zahir Shaha’s efforts to install democratic rule in Afghanistan. *Id.* at 10.

<sup>23</sup> Daud Interview, *supra* note 12.

<sup>24</sup> 1352 in the Afghan calendar. See PARISE, *supra* note 15.

<sup>25</sup> See Afghanistan.com, Mohammad Daoud Khan, <http://www.afghanland.com/history/daoud.html> (last visited Mar. 21, 2006) (providing a historical summary of President Daoud’s era). Daoud became President in 1973 after overthrowing his cousin, Zahir Shah, in a largely nonviolent military coup, and declaring Afghanistan a republic. The support of pro-Moscow communists in Afghanistan precipitated President Daoud’s rise to power. See KAKAR, *supra* note 14, at 11-12.

<sup>26</sup> *Id.*; see also MARTIN EVANS, AFGHANISTAN: A NEW HISTORY 135-36 (2001).

<sup>27</sup> Daud Interview, *supra* note 12.

<sup>28</sup> *Id.*

<sup>29</sup> 1358 in the Afghan calendar. See PARISE, *supra* note 15.

<sup>30</sup> Informal title based on a rough translation.

The new law gave great power to the Attorney General's office. Prosecutors vigorously pursued political crimes. Persons suspected of violations would often simply disappear.<sup>31</sup>

The highly centralized Attorneys General prosecuted selectively, leaving discipline in dispersed military units largely neglected. To fill voids left by Special Attorney General prosecutions, military units away from garrison began to conduct "field courts" for alleged offenses. Judgments and sentences from these field courts were final with no possibility of appeal. On the whole, judges and prosecutors were considered unprofessional and often did not understand or apply the law.<sup>32</sup>

The next substantial military legal development occurred in 1987,<sup>33</sup> when Afghanistan adopted a new constitution under the leadership of Dr. Mohammad Najibullah Ahmadzai.<sup>34</sup> Dr. Najib, a medical doctor, had led the notorious KHAD (*Khidamat-e-Atla't Dualati*) state security service during the Soviet occupation.<sup>35</sup> Under Dr. Najib, the constitution reaffirmed the three basic branches of government, integrating the courts and the Attorney General's office.<sup>36</sup> All courts were organized under the Afghan Supreme Court. Despite encouraging structural developments and formalities, the new arrangements did little to reestablish the rule of law, and Dr. Najib was eventually overthrown by the *mujahideen*.<sup>37</sup>

When the *mujahideen*<sup>38</sup> replaced the Najib regime with an Islamic government, some Soviet communist laws were repealed, but few new laws were passed. Judges and prosecutors enjoyed nearly unchecked power, with no agency capable of overseeing their activities.<sup>39</sup>

As civil war ensued, the "rule of the gun" prevailed. When the Taliban eventually gained more complete control, they abolished all secular laws and exclusively applied Islamic law. The Taliban armed forces, for example, had only one military court, with one judge, who applied *sharia* law in closed session. This "system" persisted until the fall of the Taliban in November 2001.<sup>40</sup>

Not surprisingly, as tenuously positioned regimes, both the Taliban-controlled and earlier Soviet-dominated governments of Afghanistan focused on protecting the State rather than the individual. The regimes' respective legal systems naturally reflected their biases toward self-preservation. Entrenched judges focused on perpetuating their positions and maintaining the status quo among elites. Information quickly became the currency of power and influence. Information flow across, and even within, ministries is poor to this day, as information is still perceived as key to maintaining power.<sup>41</sup>

The challenge of exercising effective national governance over Afghanistan persists today, in part, because highly centralized regimes never exercised strong control outside Kabul, remaining virtually ineffective in Afghanistan's thirty-four provinces. Years of ineffective national rule have produced an elaborate, independent, and unwritten system of law in the provinces and rural villages. To this day, for the sake of maintaining peace and stability, the central government often

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<sup>31</sup> Daud Interview, *supra* note 12.

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

<sup>33</sup> 1366 in the Afghan calendar. See Daud Interview, *supra* note 12.

<sup>34</sup> Often referred to as "Dr. Najib." See Afghanland.com, Dr. Najibullah Ahmadzai, <http://www.afghanland.com/history/najib.html> (last visited Mar. 21, 2006); see also EDWARD GIRARDET, AFGHANISTAN: THE SOVIET WAR 105 (1985).

<sup>35</sup> AMIN SAIKAL, MODERN AFGHANISTAN: A HISTORY OF STRUGGLE AND SURVIVAL 163 (2004).

<sup>36</sup> The new constitution in fact promised a multiparty democracy, but failed to deliver under Najib's tight rule. EVANS, *supra* note 26, at 166.

<sup>37</sup> *Id.* The term "mujahideen" is frequently translated as "holy warriors." GIRARDET, *supra* note 34, at 1.

<sup>38</sup> While fighting Soviet invasion and occupation, the *mujahideen* were composed of independent and often competing groups. *Id.* at 55. In fact, two separate groups identified themselves as the "Islamic Unity of Afghan Mujahideen" *Id.* at 55-56. Following the Soviet withdrawal, civil war erupted between competing *mujahideen* with the fundamentalist Taliban emerging as the dominant faction.

<sup>39</sup> Daud Interview, *supra* note 12.

<sup>40</sup> *Id.*

<sup>41</sup> Defense Institute of International Legal Studies, Executive Summary Trip Report, Kabul, Afghanistan, 16-20 February 2004 (30 July 2004). This trip report reflects the initial DIILS mission to Afghanistan in February 2004, where CPT Martin participated in interviews with over thirty representatives of OMC-A, the Afghan government, the U.S. Embassy, and partner nations. The names of those interviewed are contained in the DIILS trip report.

chooses not to intervene in or countermand such proceedings.<sup>42</sup> While administering provincial “civil” law, many military commanders favor soldiers from their own tribes or ethnicities, especially in remotely situated units.<sup>43</sup>

Compounding the problem, *sharia* law, recognized by the new Afghan constitution,<sup>44</sup> is once again applicable to certain types of social crimes apart from secular law.<sup>45</sup> Its role in military justice and provincial legal systems, however, is inconsistent and ambiguous. Whether *sharia* offenses are to be complementary, concurrent, or exclusive in relation to military and civil offenses is now, and may remain, unsettled.

### *Lost in Translation*

What may be considered basic rule of law standards to those involved in legal sector reform are often difficult to apply to such a complex legal tradition. Even international standards that may be *legally* recognized under the new Afghan constitution are frequently not yet *structurally* recognized. For example, civilian control of the military and police is not a familiar or even acceptable concept to some Afghans accustomed to the approaches of former regimes. In a society dominated by war and rule of the gun for over fifty years, the military has assumed a dominant and highly visible role. For example, today, within the Afghan MOD, nearly all officials have military rank associated with their positions, even those who perform traditional civilian roles or who are not technically members of the ANA or Air Corps. In accord with the Soviet model, military justice had until recently been applied to all “armed forces,” an expansive term including police and national security agencies. All employees, civilian and military, could be tried in military courts for offenses committed on duty, as could be ordinary civilians if the victim of the offense involved “armed forces” personnel or property.<sup>46</sup>

As these examples make clear, international legal development efforts, both former coerced variants and latter invited efforts, introduced legal traditions new to Afghanistan. Afghan jurists have proved adept at incorporating foreign legal developments into their own system. It was not until we began to appreciate Afghan military legal history that we were able fully to appreciate the Afghans’ process of incorporation. Our eventual understanding of the Afghans’ history of centralized, and often arbitrarily executed, legal systems rendered invaluable context for the advice we would give.

As preceding citations indicate, no single source provided the complete historical picture for us to proceed as legal advisors. Comprehensive and unbiased legal histories were simply not available in Kabul. In fact, the most useful information and most revealing insights came from interviews with the Afghans themselves. Having labored under successive legal systems, the Afghan attorneys provided crucial background information and candid evaluations of preceding systems’ strengths and weaknesses. In addition to providing factual context, these interviews built rapport. After sensing our interest in learning Afghan history, our partners were more open to our own suggestions. Such historical sensing sessions, therefore, seem predicate and essential to future legal reform efforts.

### **The Current and Future Military Justice System**

The framework for the new Afghan military justice system begins with the new Afghan Constitution, which supersedes the 1964 Constitution initially restored under the Bonn Agreement.<sup>47</sup> Adopted in 2004, the new Constitution removes military courts from the Afghan civil judicial system.<sup>48</sup> Although the Afghan Ministry of Justice was reluctant to relinquish

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<sup>42</sup> Daud Interview, *supra* note 12.

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

<sup>44</sup> Chapter 1, Article 3 of the Afghan Constitution states, “No law shall contravene the tenets and provisions of the holy religion of Islam in Afghanistan” AFG. CONST. ch. 1, art. 3. An English version of the Afghan Constitution is available at [http://www.moj.gov.af/pdf/constitution\\_2004.htm](http://www.moj.gov.af/pdf/constitution_2004.htm). Note, however, that only Pashtu and Dari versions are considered official. Later articles of the Constitution explicitly refer to *hanafi* (ch. 7, art. 15) and *shia* jurisprudence (ch. 7, art. 16) in resolving certain types of legal disputes. *Id.* ch. 1, art. 3; ch. 7, art. 15.

<sup>45</sup> Daud Interview, *supra* note 12.

<sup>46</sup> *Id.*

<sup>47</sup> Bonn Agreement, *supra* note 3.

<sup>48</sup> *See* AFG. CONST. art. 22.

its more expansive jurisdiction over members of the “armed forces,” the views of the MOD and its U.S. advisors ultimately prevailed.<sup>49</sup> Another key document is the Afghan National Army Law of Military Courts,<sup>50</sup> signed into law by Presidential Decree on 25 September 2005.<sup>51</sup> The Law of Military Courts, citing the Afghan Constitution, creates primary military trial courts<sup>52</sup> and a single Court of Military Appeals.<sup>53</sup> Like many military justice systems, the Law of Military Courts defers, however, to the civil Supreme Court as its highest appellate authority.<sup>54</sup> The Law of Military Courts also limits jurisdiction of the military courts system to members of the Afghan National Army or other persons under specific conditions.<sup>55</sup> Like the U.S. military justice system, ANA soldiers will be subject to military jurisdiction in all locations they find themselves, regardless of whether they are on or off duty. Additionally, military courts will have exclusive jurisdiction over purely military offenses and concurrent jurisdiction with Afghan civil courts over offenses that violate both military and Afghan civilian criminal law. The Law of Military Courts empowers the ANA Judge Advocate General<sup>56</sup> to organize primary military trial courts “in such numbers and locations as may be required to meet the needs of the service.”<sup>57</sup>

Several articles of the Law of Military Courts illustrate why an effective military justice system must dovetail with the civilian justice system. Article 8(B) of this law, for example, authorizes the Minister of Defense to establish written procedures and rules for military courts “in accordance with the constitution and the laws of Afghanistan.”<sup>58</sup> The Military Criminal Procedure Code, the implementing legislation discussed in the next section of the article, goes on to state that, “the Civilian Criminal Procedure Code will be applied on issues for which there is not any provision listed in this code.”<sup>59</sup> Other provisions with necessary crossover between the civil and military systems include article 9, which provides for concurrent military and civil jurisdiction in certain cases;<sup>60</sup> and article 12, which states that the Court of Military Appeals shall apply “the same scope of review that the civilian criminal appeals courts would apply in a similar case.”<sup>61</sup> Finally, article 15 addresses civilian court appellate procedures to the Supreme Court of Afghanistan.<sup>62</sup>

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<sup>49</sup> See *supra*, note 11; see also Defense Institute of International Legal Studies, Executive Summary Trip Report, Kabul, Afghanistan 13 June - 30 June 2005 (July 2005) (released on 16 Sept. 2005) (copy on file with authors).

<sup>50</sup> AFGHAN NATIONAL ARMY LAW OF MILITARY COURTS (2005) [hereinafter LAW OF MILITARY COURTS] (copy on file with authors). The Afghan Ministry of Justice publishes all national laws in its Official Gazette but has yet to publish or officially distribute the Law of Military Courts. A list of recently passed Afghan legislation and statutes, including the Law of Military Courts, is available at the Afghan Ministry of Justice website at [http://www.moj.gov/af/pdf/list\\_recently\\_published/doc.pdf](http://www.moj.gov/af/pdf/list_recently_published/doc.pdf).

<sup>51</sup> Presidential Decree on the Approval of the Military Court Laws, Decree No. 81 (Sept. 25, 2005) (copy on file with authors).

<sup>52</sup> See LAW OF MILITARY COURTS, *supra* note 50, art. 11.

<sup>53</sup> *Id.* art. 12.

<sup>54</sup> *Id.* art. 15.

<sup>55</sup> *Id.* art. 2. In addition to ANA members, article 2(A)(4)(a) of the Law of Military Courts asserts jurisdiction over “a person who: in time of war, insurrection, or armed conflict, serves with or accompanies the Afghan National Army in the field, or serves with or accompanies an insurgent force, or an enemy armed force in the field; or submits voluntarily to military authority.” *Id.* art. 2(A)(4)(a). Article 2(A)(4)(b) further asserts jurisdiction over “a person over whom the authority for the exercise of jurisdiction by a military court is delegated by the Constitution and laws of Afghanistan, from a treaty or international law.” *Id.* art. 2(A)(4)(b).

<sup>56</sup> Referred to in the Law of Military Courts as the “Head of the Legal Department for the General Staff of the Afghan National Army.” Although the Afghans recognize the term in conversation, the phrase “Judge Advocate General” has no direct written translation. See, e.g., LAW OF MILITARY COURTS, *supra* note 50, art. 2.

<sup>57</sup> *Id.* art. 11(A).

<sup>58</sup> *Id.* An analogous provision, although it refers to the President, appears as Article 36 of our own UCMJ. See 10 U.S.C.S. § 836 (LEXIS 2005).

Pretrial, trial, and post-trial procedures, including modes of proof, for cases arising under this chapter triable in courts-martial, military commissions and other military tribunals and procedures for courts of inquiry, may be prescribed by the President by regulations which shall, so far as he considers practicable, apply the principles of law and rules of evidence generally recognized in the trial of criminal cases in the United States district courts . . .

*Id.*

<sup>59</sup> MILITARY CRIMINAL PROCEDURE CODE art. 60 (2005) [hereinafter MCPC].

<sup>60</sup> LAW OF MILITARY COURTS, *supra* note 50.

<sup>61</sup> *Id.* art. 12.

<sup>62</sup> *Id.* art. 15.

Although the Law of Military Courts is now in force, Afghan judge advocates indicated that Afghan military leaders throughout the country would require considerable time to accept it fully. Many commanders outside Kabul are accustomed to administering their own justice under their own local terms.<sup>63</sup> Warlords and illegal militias still wield significant power in the provinces and remain a political, as well as security, challenge.<sup>64</sup> Legal reform to date has had little effect on the tribal systems of customary law in the provinces.<sup>65</sup> While the abolition of collateral courts is essential in the long term, it cannot be expected to happen immediately.

An example from the civil justice reform effort illustrating the difficulty of transitional change is the Interim Criminal Procedure Code (ICPC). The Afghan Interim Authority approved the ICPC in April 2004 for use in the civilian courts.<sup>66</sup> The Italian legal reform team developed the Code by streamlining the preexisting five-hundred article civil criminal procedure code to just ninety-eight articles. Unfortunately, many Afghan judges find the new code inadequate and simply resort to using the old, longer code. Accustomed to the civil law tradition, many Afghans jurists prefer a detailed code that spells out fine points of law.<sup>67</sup>

The first tangible success in Afghanistan's military justice reform effort appeared in the form of a complete nonjudicial punishment regulation.<sup>68</sup> Thanks to the hard work of Afghan military jurists and OMC-A, the NJP regulation, including forms and a commander's guide, has been adopted, printed, and disseminated to ANA commanders. Anecdotal feedback from Afghan commanders indicates that it is well-received.<sup>69</sup> As with other legal developments, the challenge will be to move fully into implementation.

### **The Afghan Military Justice Code**

In June 2005, due to developments involving the future repatriation of Afghan detainees from the U.S. detention facility at Guantanamo Bay, Cuba,<sup>70</sup> The American Embassy in Kabul directed OSC-A Legal to prioritize efforts at developing the procedural and substantive rules that would give life to the Law of Military Courts. The resulting two laws, enacted on December 17, 2005,<sup>71</sup> include the Military Criminal Procedure Code (MCPC)<sup>72</sup> and the untitled punitive articles.<sup>73</sup> The sixty-one articles of the MCPC<sup>74</sup> are akin to the procedural and due process articles of the UCMJ. In fact, early in its mission, OMC-A decided to use the UCMJ as the foundation for the MCPC.

The MCPC outlines a military case from start to finish, including pretrial investigation, referral to trial, execution of the sentence, and appeal. More than any other recent military legal development in Afghanistan, these provisions seek to

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<sup>63</sup> See *supra* text accompanying notes 42 and 43.

<sup>64</sup> See, e.g., *Afghanistan Struggles to Keep Warlords off the Ballots*, CHRISTIAN SCI. MONITOR, Sept. 8, 2005, available at <http://www.csmonitor.com/2005/0908/p07s01-wosc.html>; Afghanistan's New Beginnings Programme, <http://www.undpanbp.org> (last visited Feb. 17, 2006) (providing demobilization statistics).

<sup>65</sup> See USIP Report, *supra* note 13.

<sup>66</sup> See Italian International Institute of Higher Studies in Criminal Sciences, *Criminal Justice and Human Rights Training Programs in Afghanistan: A Report on ISISC Project Activities from July 2003 through July 2004*, [http://www.isisc.org/docs/July\\_2004\\_Report\\_ISISC\\_Programs\\_Afghanistan.htm](http://www.isisc.org/docs/July_2004_Report_ISISC_Programs_Afghanistan.htm) (providing a summary of civil sector justice reform) (copy of the interim code on file with authors).

<sup>67</sup> Daud Interview, *supra* note 12.

<sup>68</sup> Officially, Regulation for the Resolution of Military Offenses Without Trial, and informally referred to as the "NJP regulation" (on file with authors).

<sup>69</sup> Daud Interview, *supra* note 12.

<sup>70</sup> Tony Capaccio, *U.S. to Move Afghan Detainees from Cuba to Jail Outside Kabul*, BLOOMBERG NEWS, Jan. 20, 2006.

<sup>71</sup> See "ANA Establishes Military Justice System," Defense and Security Highlights, Afghanistan, Jan. 4, 2006 [hereinafter DASH-A]. Defense and Security Highlights is a locally produced publication of OSC-A (copy on file with authors).

<sup>72</sup> MCPC, *supra* note 59.

<sup>73</sup> PUNITIVE ARTICLES (copy on file with authors).

<sup>74</sup> The term "Afghan Code of Military Justice" was favored by the working group as a title for the complete military justice system, including the procedural rules, punitive articles, and rules of evidence, but was dropped from the final version passed into law.

reconcile the preexisting Afghan civil law tradition with the common law-based U.S. system selected as a model. During working group sessions with Afghan judge advocates, however, we quickly encountered a series of translational and conceptual impasses to superimposing the U.S. military justice system on the Afghans' existing experience base. In fact, we began seriously to question the wisdom and efficacy of the UCMJ as a template at all. Working group sessions quickly revealed that even determining which general subjects the legislation should address was very different in American and Afghan perceptions and experience.

Typically, common law systems, particularly that of the United States, draft broad statutes authorizing the executive branch by orders and through agencies to promulgate rules to implement and refine legislation into usable form. The UCMJ's supporting Rules for Courts-Martial (RCM) and Military Rules of Evidence (MRE) illustrate the common law approach. By comparison, the Afghans favor exhaustively specific and particularized legislation. The Afghan delegation quickly became concerned at the lack of detail in the UCMJ. An Afghan judge advocate explained that in the Afghan civil system, executive rules and agency regulations had not been regarded highly by military judges. Consistent with many civil law systems, the Afghan system prefers highly detailed statutes that operated without development by supporting regulations. Afghan judge advocates expressed a strong preference for including matters found in the U.S. RCM and MRE into the MCPC itself, rather than issuing subsequent executive branch rules.

Thus, the Working Group moved toward building a system that tried to offer the best of both worlds—maintaining recognizable civil law procedures as much as possible, while also building in essential guarantees and procedures to reflect the relative strengths of the common law system. The key procedural difference between the civil and common law systems identified in the Working Group sessions was the nature of the pretrial investigation and concomitant role of the prosecutor.

In the Afghan civilian sector, investigations are conducted jointly by the prosecution and defense. The prosecutor has two duties: to represent the law and order interests of society and to ensure justice for the accused. For instance, if a prosecutor finds evidence of innocence during an investigation, he has an independent obligation to stop the case.<sup>75</sup>

The working group suggested applying this inquisitorial, civil law understanding of the role of the prosecutor to the military courts as well. In essence, independent military prosecutors replace convening authorities provided under the UCMJ.<sup>76</sup> In the U.S. military justice system, commanders have a role in every stage of the case, including the investigation (either by the command or professional investigators); preferral and referral of charges; trial; and approval of the findings and sentence.<sup>77</sup> Under the new Afghan system, however, the direct role of the commander ends upon his discovery of the crime and initial investigation.<sup>78</sup> The commander is then required to hand the case to the prosecutor for further investigation, the charging decision, and the conduct of the trial.<sup>79</sup> The prosecutor also recommends to the military judge whether pretrial detention is or is not warranted.<sup>80</sup>

Perhaps the most unusual aspect of the MCPC, at least to the U.S. judge advocate, is its recognition that both the accused and the prosecutor can appeal verdicts of the primary military trial courts to the Court of Military Appeals.<sup>81</sup> The prosecution, like the accused, also retains the right to appeal to the Afghan Supreme Court.<sup>82</sup> Perhaps because of the novelty of government verdict appeals to common law-trained lawyers, several U.S. advisors encouraged the removal of the prosecution's right of appeal. What seemed uncomfortable to U.S. advisors, however, proved remarkable to the Afghan lawyers only by its absence. The Afghan working group members strongly insisted on maintaining the right of the prosecution to appeal. In the fall of 2005, this provision mysteriously disappeared from the draft version of the MCPC between working group sessions.

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<sup>75</sup> See *supra* note 11.

<sup>76</sup> Although this option did not immediately occur to the U.S. delegation and required an adjustment, upon reflection during a session break, the authors agreed that the U.S. system was likely quite exceptional and not representative of the international direction of military justice. Lieutenant Colonel Richard Batty, the British officer on the delegation, was able to effectively relate his armed forces' experience with the *Findlay* decision and the resulting divestment of command involvement in courts-martial and military justice generally. See *Findlay v. The United Kingdom* (22107/93) [1997] ECHR 8 (25 Feb. 1997).

<sup>77</sup> See generally MANUAL FOR COURTS-MARTIAL, UNITED STATES R.C.M. chs. 3, 4, and 11 (2005).

<sup>78</sup> See MCPC, *supra* note 59, arts. 16 and 17(d).

<sup>79</sup> *Id.* arts. 21, 24, and 39.

<sup>80</sup> *Id.* art. 21.

<sup>81</sup> *Id.* art. 47.

<sup>82</sup> *Id.* art. 55.

When the DIILS team returned to discuss the provision's absence with the nineteen newly-appointed military judges in November 2005, there was unanimous uproar and an immediate call to reinsert the provision. The judges' arguments were based, no less, on the interim civil procedure code, which also affords prosecutors the right to appeal.<sup>83</sup> The provision was restored and passed as part of the final law. While allowing prosecutorial appeals could arguably slow down the military justice process, the authors came to believe that U.S. efforts to remove this provision were based more on knee-jerk reactions than an inherent misunderstanding of the civil law process.<sup>84</sup>

In another significant departure from U.S. practice, Afghan commanders have no binding input on judgments and sentencing. Afghan lawyers in the military justice working group were very uncomfortable with the idea of a commander (i.e., convening authority) being able to approve or disapprove a sentence. Afghan judge advocates explained that ANA line officers currently do not have the legal understanding or independence to make these decisions in courts-martial. Further, commanders are perceived to be partial toward soldiers from their own provinces. The Afghans thus repeatedly expressed the need for powerful and independent military judges and prosecutors.<sup>85</sup>

When we turned to the separate Punitive Articles Working Group, we found ourselves working with what turned out to be a direct translation of the UCMJ.<sup>86</sup> Despite efforts to streamline and simplify the offenses listed in the UCMJ, it quickly became apparent that the UCMJ and its procedures were simply too foreign to be of any use to the working group members. In the late summer of 2005, with the assistance of the DIILS team, the working group discarded its UCMJ draft altogether and revised a former Soviet-era military justice code.<sup>87</sup> This Soviet code reflected many of the common military offenses of the UCMJ, such as disobeying a superior and absence without leave, but was written in a language and format much more familiar to the Afghans. As a result, the working group quickly revised the forty-eight punitive articles that were passed into law in December 2005.<sup>88</sup>

### Getting Out and About

Our admittedly brief experience with the Afghan team revealed another important lesson. In any operational environment, but especially one in which combat operations are ongoing, there are typically too few personnel, too many missions, and too few hours to complete every task. Operation Enduring Freedom, particularly with respect to the legal staffs at CFC-A and OSC-A, is no exception.

While the legal staff at CFC-A may appear robust with an O-6 (colonel) staff judge advocate and between three and five subordinate legal personnel, all of these personnel are fully engaged at all times with the operational focus. The OSC-A Strategic Reform Team faces similar if not more profound personnel challenges, operating with two full-time attorneys: an O-5 (lieutenant colonel) judge advocate on a six-month rotation and a civilian contract attorney. At present, even augmented by DIILS staff and adjuncts, the OSC-A Legal section is not staffed for its mission. Considering that OSC-A typically works with an Afghan legal staff of eighty or more lawyers who service a force of more than 25,000 soldiers (with a goal of 70,000), the challenges are obvious. Rank disparities between the working group delegations further complicate a difficult situation. A larger, and perhaps more senior, American legal contingent to OSC-A would provide greater value.

The OSC-A's command structure poses a further challenge. While OSC-A is led by a major general, this officer is not in a command billet and therefore lacks the attributes of command to influence outcomes. This, along with the organization's

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<sup>83</sup> See *supra* note 63.

<sup>84</sup> The notes from these revision sessions are on file with the authors. See also Defense Institute of International Legal Studies, Executive Summary Trip Report, Kabul, Afghanistan, 16–25 Nov. 2005 (Nov. 2005) (mission completed by CPT Martin) (copy on file with authors).

<sup>85</sup> See *supra* note 11.

<sup>86</sup> See Defense Institute of International Legal Studies, Executive Summary Trip Report, Kabul, Afghanistan, 23 July – 10 Aug. 2005, Kabul, Afghanistan (Nov. 2005) (mission completed by CPT Martin and released on Nov. 18, 2005) (copy on file with authors).

<sup>87</sup> *Id.* The working group worked with two versions of the Soviet code—one from the 1970s and one that was revised and used by the Ministry of Justice (but not Ministry of Defense) in 2001. To emphasize the lack of interagency cooperation inherent in the Afghan government, the MOD lawyers were not even aware of the MOJ revision, even though both ministries purported to exercise jurisdiction over the “armed forces.” Copies of both Soviet codes are on file with the authors.

<sup>88</sup> DASH-A, *supra* note 71.

location apart from its MOD counterparts, poses special challenges. While CFC-A lawyers are well-situated to support their client—the lieutenant general CFC-A commanding general—the OSC-A legal section is practically a world apart from the Afghan lawyers whom they are charged to mentor. The very secure Afghan MOD, where the ANA Staff Judge Advocate and MOD General Counsel both hold offices in a single building, is a five-minute drive from Camp Eggers, the location of CFC-A and OSC-A. The mission would be best served by establishing offices at the MOD. Co-located with their advisees, OSC-A legal officers could both better respond to requests for assistance and impart a stronger sense of trust and cooperation with the ANA and MOD legal sections. This problem is not unique to the legal mission—no OSC-A section, as far as we could observe, maintains offices at the MOD.

We also observed that vigorous coordination, both horizontally and vertically, is absolutely essential to making effective progress in something as multi-faceted as military justice reform. Military justice reform cannot happen in a passive environment, and changes made by U.S. mentors will never take root unless they are closely coordinated with the Afghans and other parties involved. We observed that critical coordination was needed at several levels: with the Afghans themselves, within the U.S. military effort, and with the international community. Without such coordination, military justice reform may repeat many of the mistakes made in the parallel civil justice reform effort.

The Afghan bureaucracy and generally disoriented state of the government are often a hindrance to prompt action. One of the greatest challenges is identifying a single source of information, legal or otherwise. In a world driven by the Information Age, very few Afghan laws are available on the Internet or even in the public domain. Operating within a highly bureaucratic system, Afghan government ministries still rarely exchange information voluntarily. We found it extremely difficult to locate old Afghan military laws and regulations, even those purportedly still in effect. Written copies of any law are precious few. Some military laws, due to the previously hazy military-civilian overlap, are held by the Ministry of Justice and Ministry of Interior. Unaccustomed to interagency cooperation, many Afghan organizations have difficulty sharing information. The OSC-A should actively foster information cross-leveling as the Afghan system matures and traditional practices erode. Inter-agency drafting exercises and working groups provide an excellent forum to acclimate Afghan lawyers to information sharing.

A further opportunity for coordination exists at monthly Justice Sector Reform meetings, which we were invited to observe. Attendees include the CFC-A commanding general; the Italian ambassador overseeing civilian justice sector reform; U.S. Embassy representatives, including a resident Department of Justice lawyer; representatives of the U.S. Agency for International Development (USAID); civil affairs representatives; and other relevant military staff. The meeting is designed to update and coordinate justice reform efforts, including civilian legal reform, judges' training, and construction of courthouses and even prisons. The Office of Security Cooperation-Afghanistan should remain a regular participant in these proceedings both to inform others of its progress as well as to coordinate future developments.

The United States Agency for International Development, which occupies a compound within the walls of Camp Eggers, has been involved in legal training and legal reform programs in Afghanistan.<sup>89</sup> Unfortunately, OSC-A lawyers have no regular coordination with the USAID efforts, as we learned from their inquiries while trying to form a full picture of the varied assistance projects. The problem continues at the international level. Contact, both formal and informal, between OSC-A and the Italian lawyers in Kabul charged with civil sector legal reform does not exist. After days of effort to effect such coordination, we were only able to secure the name and number of an Italian lawyer who left Kabul more than six months ago.

Lack of coordination and information sharing directly limited the efficiency of our work. The military and international organizations regularly involved in legal reform in Afghanistan surely suffer from the same challenges. For military justice in particular, stronger top-down oversight, plus a greater dedication of manpower and resources, are needed to truly create lasting reform in Afghanistan. Military justice reform is not incident just to the U.S. mission in Afghanistan; it is an obligation to the international community under the division of responsibilities for rebuilding the country.<sup>90</sup> More importantly, it is an obligation to the Afghans themselves.

### *Ownership*

Do not try to do too much with your own hands. Better the Arabs do it tolerably than that you do it

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<sup>89</sup> See, e.g., United States Agency for Int'l Development, Rebuilding Afghanistan: Weekly Activity Update for April 9 – April 15, Issue #83, [http://www.usaid.gov/locations/asia\\_near\\_east/afghanistan/weeklyreports/041505\\_report.pdf](http://www.usaid.gov/locations/asia_near_east/afghanistan/weeklyreports/041505_report.pdf).

<sup>90</sup> See Bonn Agreement, *supra* note 3.

perfectly. It is their war, and you are to help them, not to win it for them.<sup>91</sup>

Lawrence of Arabia's words of wisdom, popular among U.S. military commanders,<sup>92</sup> could just as easily apply to development efforts in Afghanistan, or anywhere else in the world. After discovering just how foreign a transplanted common law system could be to experienced Afghan lawyers, we quickly realized that any new legal system would have to be recognizable to Afghan practitioners if it were to have any lasting value. This illustrates the final and most important lesson learned: ownership ultimately has to be in the hands of the reformed, not the reformers. This observation, while perhaps obvious, is nonetheless easy to overlook.

There is perhaps a cliché among the international community in Afghanistan, prevalent in the legal as well as other reform sectors, that because Afghanistan suffered under a succession of oppressive, destructive regimes, good law, governmental organizations, or even societal norms simply do not or cannot exist. The logic continues that even if these resources do exist, they must be categorically "bad," since they emerged from "bad" regimes. At least with respect to military justice, this could not be further from the truth. We discovered that Afghanistan enjoys a great wealth of knowledge, experience, and even written laws to govern military justice. It is an equally great challenge to pull together this knowledge from its scatterings over decades of war, but the results will be rewarding. Given that it targets a finite group of individuals, reflecting a population that tends to be more educated than the average for Afghan society, with highly trained judges, defense counsel, and prosecutors, the Afghan military justice system stands to be a huge success story in the modern reform taking place in Afghanistan.

### Conclusion

Military justice reform in Afghanistan is well under way. Currently, the U.S. units charged with this mission enjoy a number of conditions conducive to success, including prepared partners, talented support staff, and relatively good security conditions. Above all, owing to their unfortunate political history, the Afghan military legal community possesses a wealth of experience at learning from other legal systems. Leveraging these advantages, while mindful of shortcomings associated with past legal reforms and even the present effort, will ensure a lasting and successful transition. Readers with previous international justice reform experience have likely found similarities between their own experience and that related in this article. To be sure, the lessons identified in this article—appreciation of history, the value of embedding oneself in advisee operations, and fostering a sense of ownership in reform—apply to nation-building efforts elsewhere.

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<sup>91</sup> JEREMY WILSON, LAWRENCE OF ARABIA: THE AUTHORIZED BIOGRAPHY OF T.E. LAWRENCE 962 (1989). This excerpt comes from T.E. Lawrence's famous *Twenty Seven Articles*, published in the *Arab Bulletin* on 20 August 1917 to offer tips on relating to Arabs. See *27 Articles of T.E. Lawrence*, <http://www.lib.byu.edu/~rdh/wwi/1917/27arts.html> (last visited Marc. 23, 2006).

<sup>92</sup> See *Pentagon Promotes Words of Wisdom by Lawrence of Arabia*, TELEGRAPH ONLINE (U.K.), June 7, 2005, available at <http://www.telegraph.co.uk/news/main.jhtml?xml=news/2005/07/06/wlawr06.xml&sSheet=news/2005/07/06/ixworld.html>.

# The Solomon Amendment: A War on Campus

Major Anita J. Fitch

*The Federal Government does not insist on any predetermined level of access; rather, it simply asks what other employers receive. Likewise, the recipient schools remain free to criticize the military and its policies, and, of course, they remain free to decline Federal funds altogether.*<sup>1</sup>

## Introduction

In a decision of great significance to judge advocate recruiting and therefore to the Judge Advocate General's Corps, the United States Supreme Court unanimously upheld the constitutionality of the Solomon Amendment in *Rumsfeld v. Forum for Academic and Institutional Rights (FAIR)*.<sup>2</sup> The Solomon Amendment allows the Secretary of Defense to deny federal funding to colleges and universities if they prohibit or prevent military recruitment on campus.<sup>3</sup> Despite the law, several law schools limited the access of military recruiters, arguing that the military's exclusion of gay, lesbian, and bisexual students through the Department of Defense's (DOD's) policy on homosexual conduct<sup>4</sup> violates the school's nondiscrimination policy. With millions of dollars of federal funding at risk,<sup>5</sup> most schools reluctantly conceded and allowed military recruiters on campus.<sup>6</sup> Had the Court found the Solomon Amendment unconstitutional, a number of the American Bar Association (ABA) accredited schools would likely have either barred military recruiters from their campus and from access to their career placement offices or placed restrictions on military recruiters' access to their campus.<sup>7</sup> The purpose of this article is to provide background information on the Solomon Amendment and the *FAIR* case and to alert judge advocates (JAs) to the recent Court decision and its impact on the future of the Judge Advocate General's Corps.

## What Is the Solomon Amendment?

Law schools have long-standing policies promoting nondiscriminatory environments for their students.<sup>8</sup> Beginning in the 1970s, "law schools began expanding these policies to prohibit discrimination based on sexual orientation"<sup>9</sup> and extending these policies to prospective employers by prohibiting recruitment on campus or use of the school career placement services unless employers provide written assurance that they do not discriminate on the basis of any protected

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<sup>1</sup> Transcript of Oral Argument at 3, *Rumsfeld v. Forum for Academic & Institutional Rights*, No. 04-1152 (U.S. argued Dec. 6, 2005), available at [http://www.supremecourt.gov/oral\\_arguments/argument\\_transcripts/04-1152.pdf](http://www.supremecourt.gov/oral_arguments/argument_transcripts/04-1152.pdf) (statement of Solicitor General Paul D. Clement) [hereinafter Transcript of Oral Argument].

<sup>2</sup> *Rumsfeld v. Forum for Academic & Institutional Rights*, 2006 U.S. LEXIS 2025 (2006).

<sup>3</sup> See 10 U.S.C.S. § 983 (LEXIS 2005) (providing for the denial of federal funds to an "institution of higher education (including any subelement of such institution) if the Secretary of Defense determines that that institution (or any subelement of that institution) has a policy or practice (regardless of when implemented) that either prohibits, or in effect prevents" military recruiting on campus).

<sup>4</sup> See 10 U.S.C.S. § 654 (LEXIS 2005).

<sup>5</sup> Harvard University, for example, receives more than \$400 million annually from the federal government for research. See Daniel J. Hemel, *Senate Mulls Over Solomon Amendment*, HARV. CRIMSON, May 19, 2004, available at <http://www.thecrimson.com/printerfriendly.aspx?ref=502627>.

<sup>6</sup> See, e.g., Scott Johnson, *JAGS Not Welcome: America's Top Law Schools Try to Figure Out a Way Around the Solomon Amendment*, WKLY. STANDARD, Sept. 27, 2005, available at <http://www.weeklystandard.com/Content/Public/Articles/000/000/006/132qedpc.asp> (stating that Yale Law School has waived its nondiscrimination policy in order for the university to receive \$350 million in federal funds. "We would never put at risk the overwhelmingly large financial interests of the University in federal funding. We have a point of principle to defend, but we will not defend this—at the expense of programs vital to the University and the world at large." (quoting then-law school Dean Anthony Kronman)). Three schools, however, have denied access to military recruiters. E-mail from Lieutenant Colonel Raymond Jackson, Judge Advocate Recruiting Office, to Author (Mar. 6, 2006, 10:54 EST) (on file with author) (stating that Vermont Law School, New York Law School, and William Mitchell College of Law do not receive federal funds because they do not allow military recruiting on campus).

<sup>7</sup> Of the 188 ABA accredited schools, 168 are members of the AALS, which requires its members to abide by certain bylaws and restrictions, one of which—bylaw section 6-3b—requires law schools to ensure that employers or recruiters abide by the AALS nondiscrimination policy. See The Association of American Law Schools, Member Schools, [http://www.aals.org/about\\_memberschools.php](http://www.aals.org/about_memberschools.php) (last visited June 1, 2006); The Association of American Law Schools, AALS Handbook: Membership Requirements (Aug. 2005), [http://www.aals.org/about\\_handbook\\_requirements.php](http://www.aals.org/about_handbook_requirements.php); see also The Association of

American Law Schools Deans Memorandum 00-2, Executive Committee Policy Regarding "Solomon Amendment" (Jan. 24, 2000), <http://www.aals.org/deansmemos/00-2.html> (stating that the AALS is returning to its prior policy of requiring schools to deny the military access except in limited situations).

<sup>8</sup> *Forum for Academic & Institutional Rights v. Rumsfeld*, 390 F.3d 219, 224 (3d Cir. 2004), *rev'd*, 2006 U.S. LEXIS 2025 (2006).

<sup>9</sup> *Id.*

category.<sup>10</sup> In the 1980's, some law schools began barring military recruiters from their campuses because of the DOD's policy on homosexual conduct.<sup>11</sup> In 1990, the Association of American Law Schools (AALS) added "'sexual orientation' to the list of protected categories under the Association's nondiscrimination provisions."<sup>12</sup> These actions did not go unnoticed by the federal government, and in 1994, Representative Gerald Solomon sponsored an amendment to the annual defense appropriations bill that proposed denying funding from the DOD to schools that barred military recruiters from campus.<sup>13</sup> Despite the DOD's objection to the proposed amendment as "unnecessary and duplicative,"<sup>14</sup> Congress ultimately approved the resolution, and the Solomon Amendment became law.<sup>15</sup> Congress later expanded the law in 1997 to include funds from the Departments of Education, Labor, and Health and Human Services.<sup>16</sup> The DOD regulations further strengthened the law by requiring revocation of federal funds to an entire university if only one of the university's subelements denies access to military recruiters.<sup>17</sup> In 2004, Congress again amended the law to codify the DOD's informal policy that military recruiters must be given access equal to that provided to other recruiters.<sup>18</sup>

### **A Brief History of *Forum for Academic & Institutional Rights v. Rumsfeld***

The FAIR is an "association of thirty-six law schools and law faculties whose mission is to promote academic freedom and to support educational institutions i[n] opposing discrimination."<sup>19</sup> In its first legal challenge, FAIR filed suit against the DOD and other federal agencies seeking a preliminary injunction against the enforcement of the Solomon Amendment on the ground that it is an unconstitutional condition.<sup>20</sup> The FAIR stated "if the law schools' compliance with the Solomon Amendment compromises their First Amendment rights, the statute is unconstitutional."<sup>21</sup> The district court denied FAIR's

<sup>10</sup> See *id.* at 225.

<sup>11</sup> See *id.*; Eartha Melzer, *Supreme Court to Tackle Complex Solomon Case*, WASHINGTONBLADE.COM, May 13, 2005, available at <http://www.washblade.com/2005/5-13/news/national/supream.cfm>.

<sup>12</sup> See The Association of American Law Schools, AALS Handbook: Statement of Good Practices (Aug. 13, 1997), [http://www.aals.org/about\\_handbook\\_sgp\\_mil.php](http://www.aals.org/about_handbook_sgp_mil.php).

<sup>13</sup> See *Forum for Academic & Institutional Rights*, 390 F.3d at 225.

<sup>14</sup> See *id.* (quoting 140 Cong. Rec. H3864 (daily ed. May 23, 1994) (statement of Rep. Schroeder)) ("In light of Vietnam War-era legislation, rarely invoked, that already granted the [Department of Defense] discretion to withhold funding from colleges and universities that barred military recruiters, the [Department of Defense] itself objected to the proposed amendment as 'unnecessary' and 'duplicative.'") (citation omitted). Other representatives opposed the amendment as a violation of academic freedom and civil rights. See *id.* (statement of Rep. Dellums).

<sup>15</sup> See National Defense Authorization Act for Fiscal Year 1995, Pub. L. No. 103-337, § 558, 108 Stat. 2663, 2776 (1994).

<sup>16</sup> See Omnibus Consolidated Appropriations Act, 1997, Pub. L. No. 104-208, § 514(b), 110 Stat. 3009-270 (1996); see also *Forum for Academic & Institutional Rights*, 390 F.3d at 226.

<sup>17</sup> See Gerald Walpin, *The Solomon Amendment Is Constitutional and Does Not Violate Academic Freedom*, 2 SETON HALL CIR. REV. 1, 7 (citing 48 C.F.R. § 209.470-1 (2000)). Although this article, the media, and the FAIR case primarily address the Solomon Amendment and its effect on law schools, it is important to note that the Solomon Amendment makes no distinction. Federal funding can be denied to any institution of higher education (or subelement of that institution), not just the law school. See 10 U.S.C.S. § 983 (LEXIS 2006). The focus on law schools is likely due, in part, to the AALS. "Membership in the AALS gives privileged access to a variety of AALS services and is a mark of prestige. . . ." Andrew P. Morriss, *The Market for Legal Education & Freedom of Association: Why the 'Solomon Amendment' Is Constitutional and Law Schools Aren't Expressive Associations*, 14 WM. & MARY BILL RTS. J. 415, 419 (2005). In addition, the AALS influences the ABA accreditation process. *Id.*

<sup>18</sup> Ronald W. Reagan National Defense Authorization Act for Fiscal year 2005, Pub. L. No. 108-375, § 552, 118 Stat. 1811, 1911 (2004); see *Forum for Academic & Institutional Rights*, 390 F.3d at 227-28.

[F]ollowing the terrorist attacks in the United States in September 2001, the [Department of Defense] began applying an informal policy of requiring not only access to campuses, but treatment equal to that accorded other recruiters. As evidence of this informal policy, a letter from the [Department of Defense]'s Acting Deputy Undersecretary William J. Carr to Richard Levin, the President of Yale University, stated that universities are required "to provide military recruiters access to students equal in quality and scope to that provided to other recruiters."

*Id.* at 227.

<sup>19</sup> Solomon Response.org, Forum for Academic and Institutional Rights, <http://www.law.georgetown.edu/solomon/joinFAIR.html> (last visited June 1, 2006).

<sup>20</sup> *Forum for Academic & Institutional Rights v. Rumsfeld*, 291 F. Supp. 2d 269, 274-275 (D.N.J. 2003) (alleging that the Solomon Amendment violates the universities' First Amendment rights), *rev'd*, 390 F.3d 219 (3d Cir. 2004), *rev'd*, 2006 U.S. LEXIS 2025 (2006). "Congress shall make no law . . . abridging the freedom of speech." U.S. CONST. amend. I. In addition to the FAIR case, several other law school professors, students, and affiliated organizations have challenged the Solomon Amendment. See *Burbank v. Rumsfeld*, 2004 U.S. Dist. LEXIS 17509 (E.D. Pa. Aug. 19, 2004); *Student Members of SAME v. Rumsfeld*, 321 F. Supp. 2d 388 (D. Conn. 2004); *Burt v. Rumsfeld*, 354 F. Supp. 2d 156 (D. Conn. 2005) (declaring the Solomon Amendment unconstitutional and enjoining its enforcement against Yale, currently pending before the Second Circuit).

<sup>21</sup> *Forum for Academic & Institutional Rights*, 390 F.3d at 229.

motion.<sup>22</sup> On appeal, however, the Third Circuit Court of Appeals reversed, holding that “FAIR has demonstrated a likelihood of success on the merits of its First Amendment claims and that it is entitled to preliminary injunctive relief.”<sup>23</sup> Specifically, the court found that “the Solomon Amendment’s forcible inclusion of and assistance to military recruiters undermines [the Universities’] efforts to disseminate their chosen message of nondiscrimination.”<sup>24</sup> Following a motion filed by the DOD and other federal agencies,<sup>25</sup> the Third Circuit stayed its ruling pending a petition for writ of certiorari with the Court.<sup>26</sup>

### The Third Circuit Court’s Analysis

In the *FAIR* case, the Third Circuit found that the Solomon Amendment infringed upon the universities’ First Amendment rights “by impeding the law schools’ rights of expressive association and compelling them to assist in the expressive act of recruiting.”<sup>27</sup> A law that infringes upon a constitutional right is subject to strict scrutiny.<sup>28</sup> Specifically, “[a] regulation that disrupts an expressive association or compels speech must be narrowly tailored to serve a compelling governmental interest, and must use the least restrictive means of promoting the Government’s asserted interest (here, recruiting talented lawyers).”<sup>29</sup> The court, after recognizing the government’s compelling interest in recruiting talented lawyers, focused on the military’s ability to recruit through alternative means and found the Solomon Amendment broadly, rather than narrowly, tailored.<sup>30</sup> “The availability of alternative, less speech-restrictive means of effective recruitment is sufficient to render the Solomon Amendment unconstitutional under strict scrutiny analysis.”<sup>31</sup>

In addition, the Third Circuit found that the Solomon Amendment violates the law schools’ First Amendment rights under the compelled speech doctrine. “To comply with the Solomon Amendment, the law schools must affirmatively assist military recruiters in the same manner they assist other recruiters, which means they must propagate, accommodate, and subsidize the military’s message.”<sup>32</sup> The court further found that schools are essentially unable to disclaim the military’s policy because of the “at least equal in quality and scope”<sup>33</sup> language from the most recent change to the Solomon

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

<sup>23</sup> *Id.* at 224.

<sup>24</sup> *Id.* at 233.

<sup>25</sup> Appellees’ Motion to Stay the Mandate, *Rumsfeld v. Forum for Academic & Institutional Rights*, No. 03-4433 (3rd Cir. Jan. 14, 2005), available at <http://www.law.georgetown.edu/solomon/documents/DODMotionforStay.pdf>.

<sup>26</sup> Order, *Forum for Academic & Institutional Rights v. Rumsfeld*, No. 03-4433 (3rd Cir. Jan. 20, 2005), available at <http://www.law.georgetown.edu/solomon/documents/FAIR3CirStay.pdf>. The federal government filed the petition for writ of certiorari on 28 February 2005, *Petition for a Writ of Certiorari, Forum for Academic & Institutional Rights v. Rumsfeld*, No. 04-1152 (2005), available at <http://www.law.georgetown.edu/solomon/documents/SGPetition.pdf>, and the Supreme Court granted certiorari on 2 May 2005. See *Rumsfeld v. Forum for Academic & Institutional Rights*, 125 S. Ct. 1977 (2005). The issue was argued before the U.S. Supreme Court on 6 December 2005. See Supreme Court of the United States, October Term 2005, Oral Arguments for the Session Beginning November 28, 2005, available at <http://www.supremecourtus.gov/oralarguments/argumentcalendars/monthlyargumentaldecember2005.pdf>. A copy of the transcript of the oral argument is available at [http://www.supremecourtus.gov/oral\\_arguments/argument\\_transcripts/04-1152.pdf](http://www.supremecourtus.gov/oral_arguments/argument_transcripts/04-1152.pdf).

<sup>27</sup> See *Forum for Academic & Institutional Rights v. Rumsfeld*, 390 F.3d 219, 230 & 234 (3d Cir. 2004), *rev’d*, 2006 U.S. LEXIS 2025 (2006).

<sup>28</sup> *Id.* at 230.

<sup>29</sup> See *id.*

<sup>30</sup> See *id.* at 234.

<sup>31</sup> *Id.* at 235.

<sup>32</sup> See *id.* at 236 (referring to the “expressive nature” of recruiting, which requires the university to publish and post announcements of the recruiters visit, publish written descriptions of the employer and the available positions, and actively coordinate, through written and oral communication, the interviews and the employer’s schedule).

<sup>33</sup> 10 U.S.C.S. § 983(b) (LEXIS 2005).

Amendment.<sup>34</sup> Furthermore, even if disclaimers were permissible under the Solomon Amendment, the court found that the ability to disclaim the military's message does not eliminate or erase the First Amendment violation.<sup>35</sup>

The Third Circuit did not analyze the Solomon Amendment from the perspective of the spending clause and did not mention the five-part test from *South Dakota v. Dole*<sup>36</sup> for analyzing the constitutionality of spending clause conditions.<sup>37</sup> When determining whether the compelled speech doctrine applied, the court never analyzed the universities' right to reject federal funding and deny access to military recruiters; instead, the court stated that the Solomon Amendment "insists," "requir[es]," and "compels law schools to propagate the military's message," likening the Solomon Amendment to the "forced display of an unwanted motto on one's license plate."<sup>38</sup>

The dissent in the FAIR case "would hold that Congress' use of the spending power and fulfillment of the requirements to maintain the military under Articles I and II do not unreasonably burden speech and, therefore, do not offend the First Amendment."<sup>39</sup> Writing in dissent, Judge Ruggero Aldisert felt it unnecessary to reach a First Amendment analysis, finding that the presence of military recruiters on campus for such a limited period of time cannot "compel the inference that a law school's antidiscrimination policy is violated."<sup>40</sup> Nonetheless, the dissent analyzed the majority's First Amendment concerns using the balancing-of-interests test.<sup>41</sup> Weighing the interest in public safety through national defense and through service in the military against the universities' interest in free speech, the dissent failed to find a constitutional violation.<sup>42</sup> The dissent also noted that the military's need for competent lawyers may even be more important than "in the open society of civilian life."<sup>43</sup>

The dissent went on to address the compelled speech argument and found it unlikely that law students would perceive that a law school endorses the message of an employer simply because of the employer's on-campus activities.<sup>44</sup> Furthermore, the dissent commented on the law school's ability to make speeches and erect notices disclaiming the employer's message.<sup>45</sup>

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<sup>34</sup> *Forum for Academic & Institutional Rights*, 390 F.3d at 240-42.

[T]he Solomon Amendment, as recently amended, does not appear to permit law schools to disclaim the military's message. Its express terms require them to provide treatment to the military recruiters "equal in quality and scope" to that provided to other employers. As the law schools do not disclaim the messages of those employers, similarly they may not disclaim the message of the military.

*Id.* at 240-41.

<sup>35</sup> *See id.* at 232-33, 241.

<sup>36</sup> 483 U.S. 203 (1987) (upholding the constitutionality of a federal statute requiring the withholding of federal highway funds from any state with a drinking age below 21). In holding that Congress may impose conditions on federal spending grants to the states, the Court established the following guidelines. First, the exercise of the spending power must be in pursuit of "the general welfare." *Id.* at 207 (citing *Hilvering v. Davis*, 301 U.S. 619, 640-41 (1937) and *United States v. Butler* 297 U.S. 1, 65 (1936)). Second, spending conditions must be unambiguous. *Id.* (citing *Pennhurst State School and Hospital v. Halderman*, 451 U.S. 1, 17 (1981)). Third, conditions on the receipt of federal funds must be related "to the federal interest in particular national projects or programs." *Id.* (quoting *Massachusetts v. United States*, 435 U.S. 444, 461 (1978)). Fourth, the conditions must not be in contradiction to other constitutional provisions. *Id.* at 208. Finally, conditions must not amount to coercion. *Id.* at 211.

<sup>37</sup> *See Forum for Academic & Institutional Rights*, 390 F.3d at 229 ("[T]he Solomon Amendment does not create a spending program; it merely imposes a penalty—the loss of general funds.").

<sup>38</sup> *Id.* at 240.

<sup>39</sup> *Id.* at 248 (Aldisert, J., dissenting).

<sup>40</sup> *Id.* at 252-53 (Aldisert, J., dissenting).

<sup>41</sup> *Id.* at 253 (citing *Roberts v. United States Jaycees*, 468 U.S. 609, 620 (1984)).

<sup>42</sup> *Id.* at 248 (Aldisert, J., dissenting).

<sup>43</sup> *See id.* at 255-56 ("It scarcely can be an exaggeration to suggest that in many respects the need for specially competent lawyers and exceptionally qualified judges may be more important in a settled environment dominated by the strictures of discipline than in the open society of civilian life.").

<sup>44</sup> *See id.* at 257.

<sup>45</sup> *See id.* at 257, 262.

## The Battle of Amici

Faculty members and students at numerous law schools demonstrated their support by submitting legal briefs either supporting or challenging the Solomon Amendment. Other groups and organizations also offered their opinions on behalf of the FAIR or the government. Twenty-seven amicus curiae briefs were filed with the Court.<sup>46</sup>

The American Association of University Professors (AAUP), the National Association for Law Placement, Syracuse University, and individual law school professors and administrators at Cornell Law School,<sup>47</sup> Harvard Law School, Columbia Law School, and several other major universities were just some of the groups that filed briefs opposing the Solomon Amendment. The AAUP amicus brief<sup>48</sup> argues that the forced inclusion of military recruiters on campus interferes with academic freedom and violates the First Amendment.<sup>49</sup> In addition, AAUP argues that the government's requirement for equal treatment, rather than adequate access for recruiters, suppresses academic freedom of speech by replacing the law's schools nondiscrimination message with the federal government's policy.<sup>50</sup> An amicus brief submitted by a group of Harvard professors took a somewhat different approach, arguing that the government's aggressive implementation of the Solomon Amendment proves that the government is asking for a "special exemption from even-handed antidiscrimination policies" and not simple "equality of treatment."<sup>51</sup>

A group of law school professors, students, and law school student organizations from across the nation also submitted a consolidated amicus brief in support of the Solomon Amendment.<sup>52</sup> In addition, several non-profit organizations and other groups including law students, law school faculty and professors, and military servicemembers submitted amicus briefs in support of the federal government. A group of law professors and law students from universities across the United States argued that law students, and not the federal government or the schools, are the group whose interests are "most severely compromised"<sup>53</sup> if the Solomon Amendment is found unconstitutional because the law students would be denied the "information necessary to evaluate a legal career in the military."<sup>54</sup>

While most of the amicus briefs in support of the government were concerned with university freedoms and recruiter access, some of the briefs primarily focused on other constitutional concerns. The Boy Scouts of America, concerned that the appeals court's decision may impact the Court's ruling in *Boy Scouts of America v. Dale*, which protected the Boy Scouts' selection of volunteer leadership from state nondiscrimination policies, submitted an amicus brief.<sup>55</sup> The attorneys general in eleven states—Alabama, Colorado, Delaware, Florida, Indiana, Kansas, Michigan, South Dakota, Texas, Utah, and West Virginia—concerned that an adverse decision would jeopardize an assortment of state laws placing requirements on the receipt of higher education funds, also filed a brief.<sup>56</sup>

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<sup>46</sup> See Solomon Response.org, Documents Related to *FAIR v. Rumsfeld*, <http://www.law.georgetown.edu/solomon/FAIRvRumsfeld.html> (last visited Feb. 1, 2006).

<sup>47</sup> Brief for National Association for Law Placement, Syracuse University, and individual law school professors and administrators as Amici Curiae in Support of the Respondents, *Rumsfeld v. Forum for Academic & Institutional Rights*, No. 04-1152 (U.S. argued Dec. 6, 2005), available at [http://www.nalp.org/assets/194\\_amicusbriefnalpetal.pdf](http://www.nalp.org/assets/194_amicusbriefnalpetal.pdf).

<sup>48</sup> Brief for American Association of University Professors as Amici Curiae in Support of the Respondents, *Rumsfeld v. Forum for Academic & Institutional Rights*, No. 04-1152 (U.S. argued Dec. 6, 2005), available at <http://www.aaup.org/Legal/cases/SolomonAmendmentAmicusBrief.pdf>.

<sup>49</sup> *Id.* at 8-14 (stating that academic freedom is "fundamental to the functioning of our society." (quoting *Rust v. Sullivan*, 500 U.S. 173, 200 (1991)).

<sup>50</sup> See *id.* at 18.

<sup>51</sup> Brief for Professors William Alford et al. as Amici Curiae in Support of the Respondents, *Rumsfeld v. Forum for Academic & Institutional Rights*, No. 04-1152 (U.S. argued Dec. 6, 2005), available at <http://www.law.georgetown.edu/solomon/documents/FAIRamicusHarvard.pdf>.

<sup>52</sup> Brief for Law Professors and Law Students as Amici Curiae in Support of the Petitioners, *Rumsfeld v. Forum for Academic & Institutional Rights*, No. 04-1152 (U.S. argued Dec. 6, 2005), available at <http://www.law.georgetown.edu/solomon/documents/amicusLawProfs.pdf> [hereinafter Law Professors and Law Students Brief].

<sup>53</sup> *Id.*

<sup>54</sup> Law Professors and Law Students Brief, *supra* note 52, at 5.

<sup>55</sup> See *Boy Scouts of America v. Dale*, 530 U.S. 640 (2000); Brief for Boy Scouts of America as Amici Curiae in Support of the Petitioners at 1-2, *Rumsfeld v. Forum for Academic & Institutional Rights*, No. 04-1152 (U.S. argued Dec. 6, 2005), available at <http://www.law.georgetown.edu/solomon/documents/amicusBoyScouts.pdf>.

<sup>56</sup> Brief for Texas et al. as Amici Curiae in Support of the Petitioners, *Rumsfeld v. Forum for Academic & Institutional Rights*, No. 04-1152 (U.S. argued Dec. 6, 2005), available at <http://www.law.georgetown.edu/solomon/documents/amicusStates.pdf>.

## Did the Supreme Court Show Their Hand?

Predicting Supreme Court decisions is “risky business,” but if the questions and overall content of the oral argument are indicators of the Justices’ positions,<sup>57</sup> it is no surprise that the Court upheld the Solomon Amendment. The Court heard oral argument on the case on 6 December 2005. The government argued that the Solomon Amendment was constitutional under both the Spending Clause and Congress’s power to raise and support armies.<sup>58</sup> The FAIR argued that the Solomon Amendment was unconstitutional on three First Amendment grounds—“the right to be free from compelled speech; the right to speak; and the freedom to associate.”<sup>59</sup>

At times, the Court seemed to focus on the government’s right to free speech as opposed to the universities’ right to free speech. “[T]he speech is on [the law schools’] side. The Government just says, ‘Let our recruiters in.’”<sup>60</sup> As an extreme example, Justice Stephen Breyer asked FAIR’s attorney, Mr. E. Joshua Rosenkranz, whether the First Amendment right would allow universities to exclude employers who have policies promoting affirmative action or racial diversity when the university does not agree with such policies.<sup>61</sup> Justice Breyer, repeating an oft used phrase in First Amendment litigation,<sup>62</sup> went on to ask Mr. Rosenkranz, “What’s wrong with the Government saying, University, you disapprove of what we do. The remedy for such a situation is not *less speech*, it is *more speech*[?]”<sup>63</sup> In addition, several other justices asked the attorney for the government, Solicitor General Paul D. Clement, whether the Solomon Amendment would allow universities to disclaim the military’s message by voicing their objections to the policy while still allowing military recruiters on campus.<sup>64</sup> For example, Justice Anthony Kennedy asked whether the university “could organize a student protest at the hiring interview rooms, so that everybody jeers when the applicant comes in the door?”<sup>65</sup> Solicitor General Clement accepted the notion of counterspeech and stated that the Solomon Amendment has to accommodate for free speech.<sup>66</sup>

Mr. Rosenkranz argued that “the speech is on both sides because the schools are being forced to host the Government’s message.”<sup>67</sup> Also, when addressing the compelled speech doctrine, he stated that “the ability to protest the forced message is never a cure for a compelled-speech violation. . . .”<sup>68</sup> Chief Justice John G. Roberts, Jr., did not accept Mr. Rosenkranz’s arguments. Chief Justice Roberts plainly stated that this case is about conduct, not speech<sup>69</sup> and later stated that “nobody thinks that [the] law school is speaking through these employers who come onto its campus for recruitment. . . . Nobody thinks the law school believes everything that the employers are doing or saying.”<sup>70</sup>

Mr. Rosenkranz also argued the unconstitutional-conditions doctrine—the government cannot enact laws that restrict speech as a condition for receiving federal benefits.<sup>71</sup> Chief Justice Roberts, however, was particularly critical of this argument, stating that the Solomon Amendment “doesn’t insist that [the law schools] do anything. It says that, ‘If you want our money, you have to let our recruiters on campus’”<sup>72</sup> and later stating that the law schools are perfectly free to reject

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<sup>57</sup> See Doug Lederman, *The Supremes Scrutinize Solomon*, INSIDE HIGHER EDUC., Dec. 2005 (providing an interesting analysis of the oral argument and quoting FAIR’s attorney, Mr. E. Joshua Rosenkranz, as saying “I never count noses” after being asked “how many votes were likely to go FAIRs way.”).

<sup>58</sup> See Brief for the Petitioners at 2, 12, 15, *Rumsfeld v. Forum for Academic & Institutional Rights*, No. 04-1152 (U.S. argued Dec. 6, 2005), available at <http://www.law.georgetown.edu/solomon/documents/GovernmentPartyBrief.pdf>; Transcript of Oral Argument, *supra* note 1, at 13 (referring to the spending power of congress, U.S. CONST. art. I, § 8, cl. 1, and U.S. CONST. art. I, § 8, cl. 12.).

<sup>59</sup> See Brief for the Respondents at 16, *Rumsfeld v. Forum for Academic & Institutional Rights*, No. 04-1152 (U.S. argued Dec. 6, 2005), available at <http://www.law.georgetown.edu/solomon/documents/briefFAIR.pdf>.

<sup>60</sup> See Transcript of Oral Argument, *supra* note 1, at 56.

<sup>61</sup> See *id.* at 42-43.

<sup>62</sup> See, e.g., *Whitney v. California*, 274 U.S. 357, 377 (1927) (Brandeis, J., concurring).

<sup>63</sup> See Transcript of Oral Argument, *supra* note 1, at 45 (emphasis added); see also *id.* at 43.

<sup>64</sup> See *id.* at 21, 25.

<sup>65</sup> See *id.* at 25.

<sup>66</sup> See *id.* at 5, 26-27.

<sup>67</sup> *Id.* at 56.

<sup>68</sup> *Id.* at 37.

<sup>69</sup> *Id.* at 29.

<sup>70</sup> See *id.* at 38.

<sup>71</sup> See *id.* at 32, 33, 39.

<sup>72</sup> *Id.* at 32.

federal funding.<sup>73</sup> Mr. Rozenkranz argued that conditioning federal funds on the law schools' agreement to allow access to military recruiters amounts to coercion, forcing law schools to send mixed messages by accepting federal funds and allowing military recruiters on the one hand, while broadcasting policies prohibiting discrimination based on sexual orientation on the other.<sup>74</sup> Again, Chief Justice Roberts criticized the argument stating the schools choose to accept the money and choose to send the message—"we believe in [nondiscrimination of homosexuals] strongly, but we don't believe in it, to the tune of \$100 million."<sup>75</sup>

The justices were also critical of the government's positions. Justice David Souter characterized the government as forcing the universities to underwrite the government's speech and "forcing [the universities] into hypocrisy."<sup>76</sup> In addition, Justice Sandra Day O'Connor suggested that perhaps the Solomon Amendment demands preferential treatment by requiring equal access despite the military's inability to comply with the law schools' nondiscrimination policy. "I thought [the Solomon Amendment] says that the military must have equal access with any other employer. Now, every other employer is subject to the same policy, presumably, of the law school."<sup>77</sup>

Solicitor General Clement concluded the argument by summing up the government's position and stating that FAIR's argument is limitless. "Even if Congress changed 'don't ask, don't tell' tomorrow, . . . presumably, the law schools would still be here protesting the military's position on gender, or perhaps the war in Iraq, or perhaps the war in Afghanistan."<sup>78</sup>

### The Decision

The Court unanimously ruled on 6 March 2006<sup>79</sup> to uphold the constitutionality of the Solomon Amendment. The opinion, by Chief Justice Roberts, was presented to a group of lawyers newly admitted to practice before the Court. The Court ruled that "military recruiters must be given the same access as recruiters who comply with the [nondiscrimination] policy."<sup>80</sup>

The opinion left little doubt as to Congress's power to raise and support armies. "[T]here is no dispute in this case that it includes the authority to require campus access for military recruiters."<sup>81</sup> The Court recognized that Congress "chose to secure campus access for military recruiters indirectly, through its Spending Clause power. The Solomon Amendment gives universities a choice: Either allow military recruiters the same access to students afforded any other recruiter or forgo certain federal funds."<sup>82</sup> After finding that Congress was free to directly require universities to provide military recruiters equal access, the Court stated that "it is clear that a funding condition cannot be unconstitutional if it could be constitutionally imposed directly."<sup>83</sup>

The Court rejected all of FAIR's First Amendment arguments and the Third Circuit Court of Appeals' findings that the Solomon Amendment violates law schools' freedom of speech and noted that FAIR "attempted to stretch a number of First Amendment doctrines well beyond the sort of activities these doctrines protect."<sup>84</sup> Recognizing that the Solomon

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<sup>73</sup> See *id.* at 57.

<sup>74</sup> See *id.* at 38-39.

<sup>75</sup> See *id.* at 39.

<sup>76</sup> See *id.* at 16.

<sup>77</sup> See *id.* at 4.

<sup>78</sup> See *id.* at 64.

<sup>79</sup> *Rumsfeld v. Forum for Academic & Institutional Rights*, 2006 U.S. LEXIS 2025 (2006).

<sup>80</sup> *Id.* at \*19.

<sup>81</sup> *Id.* at \*20; see also *id.* at \*35.

Military recruiting promotes the substantial Government interest in raising and supporting the Armed Forces -- an objective that would be achieved less effectively if the military were forced to recruit on less favorable terms than other employers. The Court of Appeals' proposed alternative methods of recruiting are beside the point. The issue is not whether other means of raising an army and providing for a navy might be adequate.

*Id.* at \*35-36.

<sup>82</sup> *Id.* at \*20-21.

<sup>83</sup> *Id.* at \*22.

<sup>84</sup> *Id.* at \*40.

Amendment does not restrict the law schools' freedom to express their disapproval of military policies, the Court found that "the Solomon Amendment regulated conduct, not speech. It affects what law schools must *do*—afford equal access to military recruiters—not what they may or may not say."<sup>85</sup> In addition, the Court stated that "[a] military recruiter's mere presence on campus does not violate a law school's right to associate, regardless of how repugnant the law school considers the recruiter's message."<sup>86</sup>

Finding that the Court of Appeals erred in holding that the Solomon Amendment violates the First Amendment, the Court reversed the judgment of the Third Circuit and remanded the case for further proceedings consistent with their opinion.

### Conclusion

Congress's power to raise and support armies is predictably broad.<sup>87</sup> Government regulations or conditions in the academic setting, however, are often highly controversial.<sup>88</sup> In this case, universities view their choice as sticking to their moral guns and risk losing millions of dollars in federal funding or compromising their beliefs to subsidize their schools and often important research projects. With a competing interest, the military seeks highly qualified and competent lawyers. These lawyers, as JAs, play an important role in today's armed forces. Not only are JAs responsible for administering military justice and providing legal support to military combat operations and humanitarian assistance missions, but they also uphold individual Soldiers' legal rights through the services' legal assistance programs and ensure the legality of multi-million dollar contracts with outside corporations. The importance of this opinion to judge advocate recruiting and the military services is clear. Had the Court found the Solomon Amendment unconstitutional, numerous law schools would have likely barred military recruiters from their campus or placed other restrictions on military recruiters' access to their campus, such as requiring military recruiters to conduct interviews in inconvenient locations or remote buildings or refusing to announce recruiters' planned visits or schedule interviews for the recruiters. Instead, as a result of the ruling, "[l]aw schools must ensure that their recruiting policy operates in such a way that military recruiters are given access to students at least equal to that 'provided to any other employer.'" <sup>89</sup>Despite the Court's ruling, FAIR certainly succeeded in bringing more attention to the DOD's policy on homosexual conduct. Judge advocates must be prepared to contend with continued hostility towards the DOD's policy on homosexual conduct and yet still be able to maintain their military bearing and professional courtesy at all times. Several lawsuits against the Solomon Amendment may continue, and law school protests should be expected.<sup>90</sup> "The Supreme Court's opinion in *Rumsfeld v. FAIR* is a call to arms to law school administrations across the country to vocally demonstrate their opposition to the military's 'Don't Ask, Don't Tell' policy."<sup>91</sup>

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<sup>85</sup> *Id.* at \*23.

<sup>86</sup> *Id.* at \*39-40.

<sup>87</sup> *United States v. O'Brien*, 391 U.S. 367, 377 (1968) (stating "[T]he constitutional power of Congress to raise and support armies and to make all laws necessary and proper to that end is broad and sweeping."); *see also* U.S. . art. I, § 8, cl. 12.

<sup>88</sup> "Academic freedom, though not a specifically enumerated constitutional right, long has been viewed as a special concern of the First Amendment." *Regents of Univ. of Cal. V. Bakke*, 438 U.S. 265, 312 (1978). The FAIR not only argues for academic freedom, but it also argues that their nondiscrimination policy and rationale for denying access to military recruiters is morally driven, which may further intensify the controversial nature of this dispute. *See* Transcript of Oral Argument, *supra* note 1, at 42-43. For example, in a recent interview with *National Review Online*, Mr. Rosenkranz stated: "If the first amendment gives bigots the right to discriminate against gays then certainly it gives the right to right-minded academic institutions to discriminate against bigots." Anthony Paletta, *The Wisdom of Solomon? The Right to Bear Arms*, NAT'L REV. ONLINE, July 22, 2005, available at <http://www.nationalreview.com/comment/paletta200507220822.asp>.

<sup>89</sup> *Forum for Academic & Institutional Rights*, 2006 U.S. LEXIS at \*18.

<sup>90</sup> Rudy Kleysteuber, co-chair of the Yale Student/Faculty Alliance for Military Equality and a leader behind *SAME v. Rumsfeld*, Ruling on Plaintiffs' Motion for Summary Judgement and Defendant's Motion to Dismiss, *SAME v. Rumsfeld*, No. 3:03-cv-1867 (D. Conn. Mar. 31, 2005), available at <http://www.law.georgetown.edu/solomon/documents/SAMEdecision.pdf>, which was dismissed in light of *Burt v. Rumsfeld*, 354 F.Supp.2d 156, 189-90 (D.Conn. 2005), "said they may file their lawsuit again if the faculty lose on appeal." Andrew Mangino, *Supreme Court Rules Against Law Schools*, YALE DAILY NEWS, Mar. 6, 2006, available at <http://www.yaledailynews.com/article.asp?AID=32185>.

<sup>91</sup> *See* SolomonResponse.Org, Welcome to SolomonResponse.Org, <http://www.law.georgetown.edu/solomon/> (last visited Apr. 5, 2006).

*Servicemembers Civil Relief Act (SCRA) and Uniformed Services Employment and Reemployment Rights Act (USERRA)*

**New Resources for SCRA and USERRA Practitioners**

*Lieutenant Colonel Jeffrey P. Sexton*

Almost five years after the terrorist attacks of 11 September 2001, servicemembers of all components continue to mobilize and deploy in unprecedented numbers in support of the global war on terror.<sup>1</sup> The stresses and strains of lengthy and repeated mobilizations, especially on National Guard and Reserve personnel who are called away from their civilian lives and obligations, can be significant.<sup>2</sup> Fortunately, Congress has long recognized the need for protective legislation that not only assists servicemembers during their tours of active duty, but also provides protection and relief when servicemembers return to their civilian jobs and responsibilities. Through the SCRA<sup>3</sup> and the USERRA,<sup>4</sup> Congress has provided a number of benefits and protections to servicemembers, ranging from basic financial and legal protections<sup>5</sup> to vital reemployment rights.<sup>6</sup> Given the continued use of National Guard and Reserve personnel in the global war on terror, there is little doubt that the SCRA and USERRA are more relevant than ever to servicemembers and their families.

Two new resources pertaining to the SCRA and the USERRA should prove beneficial to legal assistance practitioners. First, in March 2006, the U.S. Army Judge Advocate General's Legal Center and School updated publication *JA 260*,<sup>7</sup> *The Servicemembers Civil Relief Act Guide*, to reflect the sweeping changes made by Congress in 2003 and 2004 in adopting the SCRA (and follow-up amendments), which replaced the venerated Soldiers' & Sailors' Civil Relief Act (SSCRA).<sup>8</sup> Mirroring the SCRA's attempt to strengthen, clarify, and modernize the older SSCRA, the new *SCRA Guide* replaces the earlier *JA 260 SSCRA Guide*<sup>9</sup> and is intended to assist the practitioner in applying the new legislation to current issues. For example, the new *SCRA Guide* addresses the SCRA's significant expansion of protections to servicemembers who need to terminate residential and automobile leases,<sup>10</sup> the SCRA's straightforward clarification of the application of the six percent interest rule to servicemember debts,<sup>11</sup> and the SCRA's extension of protections to National Guard Soldiers serving on active

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<sup>1</sup> As of 26 April 2006, over 106,000 National Guard and Reserve personnel were currently serving on active duty in support of the global war on terror. See U.S. Dep't of Defense News Release, National Guard (In Federal Status) and Reserve Mobilized as of April 26, 2006 (Apr. 26, 2006), <http://www.defenselink.mil/releases/2006/nr20060426-12888.html>.

<sup>2</sup> See Brad Knickerbocker, *Money Woes on Home Front*, CHRISTIAN SCI. MONITOR, Aug. 11, 2005, at 3 (stating that many Reserve and National Guard Soldiers find themselves burdened with financial problems back home and citing studies showing that about half of all Reserve and National Guard members report a loss of income when they go on active duty); Karen Jowers, *Survey: Families Carry Worry From Tour to Tour*, ARMY TIMES, Apr. 10, 2006, at 22 (stating that Army National Guard and Reserve families reported their greatest stress is deployment length); David Hanners, *After Rifle Is Set Aside, A New Fight Begins: National Guard Finding Ways to Help Service Members and Families Cope With Big Readjustments After War*, ST. PAUL PIONEER PRESS, Apr. 25, 2006, at 1A (listing common problems experienced by Reserve component Soldiers returning from deployment, to include post-traumatic stress disorder, divorce, problems with children's behavior, and trouble re-entering the workforce).

<sup>3</sup> Servicemembers Civil Relief Act, 50 U.S.C. App. §§ 501-596 (LEXIS 2006).

<sup>4</sup> Uniformed Services Employment and Reemployment Rights Act, 38 U.S.C.S. §§ 4301-4334 (LEXIS 2006).

<sup>5</sup> Examples of benefits and protections provided by the SCRA include reduction of interest to six percent for debts incurred before entry on active duty, stays of civil proceedings, protection against default judgments, tolling of statutes of limitation, termination of residential and automobile lease provisions, and protection from evictions. See 50 U.S.C. App. §§ 501-596.

<sup>6</sup> The USERRA provides specific employment and reemployment rights to persons who have been called to active duty, to include reinstatement to their civilian jobs, accrued seniority, continuation of employment status, employer-provided health insurance and nonseniority benefits, training, and protection against discharge except for cause. See 38 U.S.C.S. §§ 4301-4334.

<sup>7</sup> ADMINISTRATIVE AND CIVIL LAW DEP'T, THE JUDGE ADVOCATE GENERAL'S LEGAL CENTER & SCHOOL, U.S. ARMY, *JA 260, THE SERVICEMEMBERS CIVIL RELIEF ACT GUIDE* (Mar. 2006) [hereinafter *JA 260*].

<sup>8</sup> Soldiers' and Sailors' Civil Relief Act, 50 U.S.C. app. §§ 501-594 (2000) (current version at 50 U.S.C. app. §§ 501-596 (LEXIS 2006)).

<sup>9</sup> ADMINISTRATIVE AND CIVIL LAW DEP'T, THE JUDGE ADVOCATE GENERAL'S LEGAL CENTER & SCHOOL, U.S. ARMY, *JA 260, THE SERVICEMEMBERS CIVIL RELIEF ACT GUIDE* (July 2000).

<sup>10</sup> *JA 260*, *supra* note 7, at 4-7 to 4-14.

<sup>11</sup> *Id.* at 6-1 to 6-5.

duty in Title 32 status for more than thirty consecutive days in response to a presidential declaration of national emergency.<sup>12</sup> The new *SCRA Guide* is located on the JAGCNET website.<sup>13</sup>

The second important resource pertains to the USERRA. On 19 December 2005, the Department of Labor (DOL) published in the *Federal Register* its first-ever rules and regulations interpreting, explaining, and clarifying the USERRA.<sup>14</sup> The publication had been eagerly anticipated in the Reserve Component community. Although section 4331 of the USERRA authorized the Secretary of Labor, in consultation with the Secretary of Defense, to prescribe rules and regulations implementing the Act,<sup>15</sup> this is the first time since the passage of the USERRA in 1994 that the DOL has done so. The rules and regulations should prove to be a useful resource for legal assistance practitioners. The preamble explains the DOL's interpretation of the USERRA section by section, while the regulation generally follows the outline of the USERRA and handily addresses key issues in an easy-to-use question and answer format. For example, the regulations address frequently asked questions such as "Does USERRA cover an independent contractor?,"<sup>16</sup> "Is all service as a member in the National Guard considered 'service in the uniformed services?'"<sup>17</sup> and "Are there any types of service that do not count against USERRA's five-year service limit?"<sup>18</sup> In addition, the regulations tackle complicated and thorny issues under USERRA such as employee pension plan benefits,<sup>19</sup> health plan benefits<sup>20</sup> and employer statutory defenses.<sup>21</sup> The USERRA rules and regulations are located on the DOL website.<sup>22</sup>

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<sup>12</sup> *Id.* at 2-4 to 2-5.

<sup>13</sup> The new *SCRA Guide* can be accessed at <http://www.jagcnet.army.mil> (click on TJAG Legal Center & School (TJAGLCS); then follow TJAGLCS Publications. The new *SCRA Guide*, JA 260, is located in the Legal Assistance section).

<sup>14</sup> Uniformed Services Employment and Reemployment Rights Act of 1994; Final Rules, 70 Fed. Reg. 75246 (Dec. 19, 2005) (to be codified at 20 C.F.R. pt. 1002).

<sup>15</sup> 38 U.S.C.S. § 4331 (LEXIS 2006).

<sup>16</sup> Uniformed Services Employment and Reemployment Rights Act of 1994, 70 Fed. Reg. at 75299, § 1002.44.

<sup>17</sup> *Id.* at 75299, § 1002.57.

<sup>18</sup> *Id.* at 75301, § 1002.103.

<sup>19</sup> *Id.* at 75309-75311, §§ 1002.259-1002.267.

<sup>20</sup> *Id.* at 75305-75306, §§ 1002.163-1002.171.

<sup>21</sup> *Id.* at 75304, § 1002.139.

<sup>22</sup> U.S. Dep't of Labor, Federal Register (Dec. 19, 2005), <http://www.dol.gov/vets/regs/fedreg/final/2005023961.pdf>.

**Update on Department of State and Department of Defense Coordination of Reconstruction and Stabilization Assistance**

*Charles Oleszycki\**

**Introduction**

The purpose of this article is to provide a brief update on the efforts of the Department of Defense (DOD), the Department of State (DOS), and the President to provide assistance to other countries for reconstruction, stabilization, or security. First, the DOS has established an Office of Reconstruction and Stabilization to lead U.S. efforts at assisting other countries. Next, the DOD has promulgated a directive providing guidance for military support for stabilization, security, transition, and reconstruction (SSTR). Finally, the President has issued a new presidential directive delineating responsibilities for such efforts.

**Department of State**

*Office of the Coordinator for Reconstruction and Stabilization*

In July 2004, with bipartisan support in Congress and with the agreement of the National Security Council, the Secretary of State established the Office of the Coordinator for Reconstruction and Stabilization (S/CRS) to lead U.S. efforts at assisting other countries in transition from conflict and helping them reach a sustainable path toward peaceful, democratic, and market-oriented societies.<sup>1</sup> The Secretary named Ambassador Carlos Pascual as Coordinator.<sup>2</sup> The Coordinator reports directly to the Secretary of State.<sup>3</sup>

The S/CRS Office was founded with the agreement of the National Security Council to coordinate U.S. planning activities across federal agencies. The office's emphasis will be to strengthen the U.S. government's institutional capacity to deal with crises in failing states and to reconstruct and stabilize societies recovering from conflict and civil strife.<sup>4</sup> "The S/CRS will engage interagency partners to identify states at risk of instability and focus attention on policies and strategies to prevent or mitigate conflict."<sup>5</sup>

In particular, the S/CRS's goal is to provide an operational field response to post-conflict situations that will emphasize transformational diplomacy to include, among other things: facilitation of peace implementation processes; coordination with international and local institutions and individuals that are developing transition strategies; implementation of transitional governance arrangements; encouragement of conflicting factions to work together; development of strategies to promote transitional security; coordination with other U.S. government agencies and the U.S. military; coordination with foreign agencies and armed forces; and, if necessary, preparation of a diplomatic base on the ground.<sup>6</sup>

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<sup>1</sup> Press Release, U.S. Dep't of State, Office of the Coordinator for Reconstruction and Stabilization (Mar. 8, 2005), <http://www.state.gov/documents/organization/43429.pdf>.

<sup>2</sup> *Id.*

<sup>3</sup> *Id.*

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

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

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

### *Active Response Corps*

Operational experiences in Haiti, Somalia, the Balkans, Afghanistan, and Iraq have vividly demonstrated that a civilian field presence is essential in the very first stages of a reconstruction or stabilization mission, both to keep the government informed of the situation and to shape the tactical-level environment for follow-on civilian elements. Accordingly, the DOS is planning to form an Active Response Corps (ARC), which will include a select, dedicated full-time, specially-trained group of State Department Foreign Service and Civil Service personnel for short-notice deployment as “first responders” to reconstruction or stability operations. The deployments may be with or without U.S. military forces and possibly in conjunction with or attached to a United Nations or international mission. When not deployed, ARC personnel will be training in U.S. government exercises or in State Department bureaus assisting with preparing and planning for countries or regions facing reconstruction or stabilization challenges.<sup>7</sup>

The DOS is forming the ARC with volunteers from State Foreign and Civil Service personnel. Training is important to the success of the ARC—all ARC personnel will receive training in area studies, emergency first aid, personal and group security, field communications systems, and field environment living. Active Reserve Corps personnel will frequently participate in staff and field exercises with the military, other agencies, and partner countries.<sup>8</sup>

### *Standby Response Corps*

The DOS is also establishing a Standby Response Corps (SRC) of volunteer Foreign and Civil Service Officers.<sup>9</sup> These individuals will supplement the skills available in the ARC and will be prepared to follow on behind the ARC to support transition efforts over the long term. These officers will continue to perform their current duties in the DOS or overseas, but as resources permit, they will also participate in training or exercises with the S/CRS or the ARC.<sup>10</sup>

### *Funding*

The President’s fiscal year (FY) 2006 budget request included a \$100 million Conflict Response Fund to strengthen the ability of the S/CRS to lead U.S. planning efforts for countries and regions of most concern, and coordinate the deployment of U.S. resources when needed.<sup>11</sup> This request, however, was not funded by Congress for FY 2006.<sup>12</sup> Nevertheless, Congress approved approximately \$16.6 million in the FY 2006 budget for funding of the S/CRS staff in the DOS and for creating, training, and maintaining the ARC. More funding will be needed to fully form the ARC. Currently S/CRS staff within the State Department consists of fifteen permanent positions, twelve interagency detailees, and forty-eight non-permanent positions funded by DOS. In FY 2007, there is expected to be an increase of fifteen additional permanent positions.<sup>13</sup>

The DOD has approximately \$200 million in its FY 2006 budget set aside for “stabilization and reconstruction,” and there has been some discussion between Congress and the Administration about allowing the DOS, in an emergency, to request funds from the DOD for conflict response.<sup>14</sup> This possibility, however, is still only at a preliminary stage. There is, however, authority for the Secretary of Defense to provide to the DOS up to \$100 million in materiel and services per year in FY 2006 and FY 2007 to support Reconstruction & Stabilization operations.<sup>15</sup>

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

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

<sup>9</sup> *Id.*

<sup>10</sup> *Id.*

<sup>11</sup> Oxford Analytica, *Failing Nations Threaten U.S. Security*, FORBES.COM, Apr. 15, 2005 [hereinafter Oxford Analytica].

<sup>12</sup> Steven Weisman, *Bush Gives State Dept. Priority in Helping Nations Rebuild*, N.Y. TIMES, Dec. 15, 2005.

<sup>13</sup> U.S. Dep’t of State, Office of the Coordinator for Reconstruction and Stabilization (S.CRS), *S/CRS Reference Guide to President Bush’s FY 2007 Budget Request*, Apr. 6, 2006, available at <http://www.crs.state.gov/index.cfm?fuseaction=layout.LayoutDisplay&layoutid=180ccabf-9d8d-441f-b72e-2127a1cd9b1d&returnto=80a55522-b068-4356-bf3e-d931f218a86>

<sup>14</sup> Carlos Pascual, Ambassador, Statement to the Senate Committee on Foreign Relations, Washington, DC (June 16, 2005).

<sup>15</sup> H.R. 1815, 109th Cong. § 1207 (2005).

## Department of Defense

### *DOD Directive 3000.05*<sup>16</sup>

The subject of the directive is military support for SSTR.<sup>17</sup> This directive establishes DOD policy, provides guidance on stability operations, and assigns responsibilities within the DOD for planning, training, and preparing to conduct and support stability operations under the legal authority of the Secretary of Defense<sup>18</sup> and the responsibilities assigned in the Strategic Planning Guidance, FY 2006-2011, March 2004.<sup>19</sup> The directive applies to the Office of the Secretary of Defense, the Military Departments, the Chairman of the Joint Chiefs of Staff, Combatant Commands, and all other organizational entities in the DOD (i.e., the DOD Components).<sup>20</sup>

### *Policy*

Department of Defense policy states that stability operations are a core U.S. military mission that the DOD shall be prepared to conduct and support.<sup>21</sup> Stability operations shall be given priority comparable to combat operations and explicitly addressed and integrated across all DOD activities including doctrine, organizations, training, education, exercises, materiel, leadership, personnel, facilities, and planning.<sup>22</sup> United States military forces shall be prepared to perform all tasks necessary to establish or maintain order when civilians cannot do so.<sup>23</sup>

### *Goals*

The immediate goal of stability operations is to provide security, restore essential services, and meet humanitarian needs. Longer-term goals are to develop: the local capacity for securing essential services, a viable market economy, rules of law, democratic institutions, and a robust civil society.<sup>24</sup>

### *Tasks*

Many stability operations are arguably best performed by indigenous, foreign, or U.S. civilian professionals. Nevertheless, the U.S. military must be prepared to perform all necessary stability operations tasks. Such tasks include: rebuilding indigenous institutions including various types of security forces, correctional facilities, and judicial systems that are necessary to secure and stabilize the environment; reviving or building the private sector; encouraging citizen-driven, bottom-up economic activity, constructing necessary infrastructure; and developing representative governmental institutions.<sup>25</sup>

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<sup>16</sup> U.S. DEP'T OF DEFENSE, DIR. 3000.05, MILITARY SUPPORT FOR STABILITY, SECURITY, TRANSITION AND RECONSTRUCTION (SSTR) (28 Nov. 2005) [hereinafter DOD DIR. 3000.05].

<sup>17</sup> *See id.*

<sup>18</sup> *See* 10 U.S.C. §§ 113, 153 (LEXIS 2006).

<sup>19</sup> Classified document. For access, contact Director, Executive Services (Doc. No. 75774-04).

<sup>20</sup> DOD DIR. 3000.05, *supra* note 14, paras. 1 and 2.

<sup>21</sup> *Id.* para. 4.1.

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

<sup>23</sup> *Id.* paras. 4.1-4.3.

<sup>24</sup> *Id.* para. 4.2.

<sup>25</sup> *Id.* paras. 4.3-4.5.

## *Interagency and Intergovernmental Cooperation*

Successful stability operations need proper integration of civilian and military efforts. The DOD must be prepared to work with the private sector; other U.S. agencies, foreign governments and forces; international organizations; and U.S. and foreign nongovernmental organizations.<sup>26</sup>

The DOD will lead and support the development of military and civilian teams, and participation shall be open to personnel from other U.S. agencies, foreign sources, international organizations, nongovernmental organizations, and the private sector. Assistance and advice shall be sought by the responsible DOD organization from the DOS and other U.S. agencies.<sup>27</sup>

### *Responsibilities*

The directive assigns specific responsibilities for implementing the above goals and tasks to five DOD Under Secretaries, two DOD Assistant Secretaries, the Chairman of the Joint Chiefs of Staff, the Commanders of the Geographic Combatant Commands, the Commander, U.S. Joint Forces Command, the Secretaries of the Military Departments and the Commander, U.S. Special Operations Command.<sup>28</sup>

### **Presidential Directive**

In support of these efforts and in recognition of the need to improve the U.S. government's ability to perform stabilization and reconstruction operations, President Bush issued a new presidential directive establishing the Secretary of State as the coordinator and lead integrator for U.S. government efforts, involving all U.S. Departments and Agencies with relevant capabilities, to prepare, plan for, and conduct stabilization and reconstruction activities.<sup>29</sup> When the U.S. military is involved, the Secretary of State is to coordinate such efforts with the Secretary of Defense to secure harmonization with any planned or ongoing U.S. military operations across the spectrum of conflict.<sup>30</sup>

The goal of these improved capabilities is to enable the United States to help governments abroad exercise sovereignty over their own territories and prevent those territories from being used as a base of operations or safe haven for extremists, terrorists, organized crime groups, or others that pose a threat to U.S. foreign policy, security, or economic interests.<sup>31</sup>

### **Conclusion**

The establishment of the State Department Office for Reconstruction and Stabilization, partnered with the issuance of the DOD directive and the guidance provided by the presidential directive, provides an opportunity for the United States to plan ahead and coordinate future responses to emergencies in failed states requiring some level of U.S. involvement in reconstruction and stabilization operations. The designation of the DOS as lead in this area, but with the requirement for coordination with the DOD when the U.S. military is involved, provides an opportunity for fruitful cooperation within the U.S. government that should lead to much more efficient and effective future U.S. responses to international crises. In particular, the new DOD policy that stability operations are a *core* responsibility provides the opportunity to view such problems in a new perspective. Hopefully, these new efforts will help avoid some of the pitfalls that the United States has encountered in previous efforts to address such issues in countries such as Bosnia, Afghanistan and, of course, Iraq.

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<sup>26</sup> *Id.* para. 4.4.

<sup>27</sup> *See id.* para. 4.6.

<sup>28</sup> *Id.* para. 5.

<sup>29</sup> Nat. Sec. Pres. Dir. No. 44, Management of Interagency Efforts Concerning Reconstruction and Stabilization (Dec. 7, 2005), available at <http://www.fas.org/irp/offdocs/nspd/nspd-44.html>.

<sup>30</sup> Office of the Spokesman, Dep't of State, President Issues Directive to Improve the United States' Capacity to Manage Reconstruction and Stabilization Efforts (Dec. 14, 2005), available at <http://www.fas.org/irp/offdocs/nspd/nspd-44fs.html>.

<sup>31</sup> *Id.*

**Center for Law and Military Operations (CLAMO) Practice Note**  
*The Judge Advocate General's Legal Center and School*

**Joint Multinational Readiness Center Transformation: An Adaptive Expeditionary Mindset**  
*Captain Joe Ratermann\**

*The [Joint Multinational Readiness Center] trains tailored forces and headquarters for full spectrum, joint, and combined operations. It provides Current Force, Stryker Brigade Combat Teams, and Units of Action tough, realistic, Army/Joint battle-focused training. The focus is on training adaptive leaders for full spectrum operations by integrating Joint, Interagency, Multinational (JIM) players, exploiting distributive live-virtual-constructive (LVC) capabilities, and focusing on execution of simultaneous, non-contiguous operations scenarios on the Joint Operational Environment (JOE) battlefield.<sup>1</sup>*

The Combat Maneuver Training Center's mission is changing and evolving. The training center's location at Hohenfels, Germany, remains the same; its name, however, has changed to the Joint Multinational Readiness Center (JMRC). As part of the transformation, strategic working groups are currently reviewing JMRC's mission and analysis indicates that while the mission will transform, the legal positions will only experience marginal changes.

The JMRC is a ten-by-twenty kilometer training area located in southeast Bavaria, Germany. In this training area, small units—up to brigade-size—conduct mission rehearsal and training exercises for situations ranging from peace operations to high intensity conflicts. These units prepare for deployments to the Balkans, Iraq, and Afghanistan, and support our nation's battles in the war on terror by improving and validating their skills at JMRC before departure.

The U.S. Army changed the training center's name to the JMRC to reflect the rapid changes in the expeditionary Army. The word "Joint" is appropriate because of the Air Force, Navy, and Marine Corps involvement in JMRC, which will likely expand as the JMRC transforms. For example, an Air Force "Bull's-eye" Observer/Controller (O/C) team currently provides liaison for simulated and live-fire training events at Hohenfels and Grafenwoehr, Germany. Also, Marine platoons have previously trained at the JMRC. In the future, Marines and additional Air Force servicemembers may become an integral part of the Operations Group Training Team.<sup>2</sup>

In the contemporary operating environment, working with coalition partners is crucial. The word "multinational" was added because units from allied and partner nations, such as Poland, Romania, and the Czech Republic, already participate in training events at JMRC with U.S. forces. Strategic success in the global war on terror will depend upon the U.S. forces' ability to effectively operate with coalition forces. For example, in 2005, in Operations Enduring Freedom and Iraqi Freedom, ninety-seven percent and seventy-seven percent, respectively, of all non-U.S. coalition forces originated from the European Command area of operations.<sup>3</sup> Consequently, the JMRC recognizes the necessity of training U.S. forces with multinational forces for coalition operations. In addition, these and other countries may have the opportunity to train as the primary training unit and not just for joint operations with a U.S. unit. Our allies' armed forces could also have their servicemembers serve in either a temporary or assigned status as members of the Operations Group.<sup>4</sup>

"Readiness" is important to the JMRC's title because it reflects the adaptive, expeditionary mindset of the Army and the training center. The JMRC will form into task organized deployable O/C teams.<sup>5</sup> Observer/Controller teams have recently assisted in training U.S. forces in multinational exercises in Bulgaria, Romania, Russia, Poland, and Afghanistan. The JMRC is also studying the feasibility of expanding the O/C concept to include an additional role for O/C teams. For example, this additional role may take the form of exportable training teams consisting of O/Cs, analysts, and support personnel conducting operations in support of the global war on terror.

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<sup>1</sup> Joint Multinational Readiness Center, Mission, <http://www.jmrc.hqjmtc.army.mil/mission.htm> (last visited Mar. 14, 2006).

<sup>2</sup> Operations group is organized into the following teams: Brigade Command and Control, Battalion Task Forces, Fire Support, Intelligence, Aviation, Combat Service and Support, Special Operations Division, and Live Fire.

<sup>3</sup> Brigadier General David Perkins, Commander, Joint Multinational Training Command, Briefing at the Army Training Leader Development Conference (28-29 Sept. 2005); *see also* U.S. Central Command, International Contributions to the War on Terrorism, <http://www.centcom.mil/sites/uscentcom/Shared%20Documents/Coalition.aspx> (last visited Mar. 23, 2006) (providing current coalition partner statistics).

<sup>4</sup> As a member of the Operations Group, servicemembers are responsible for planning, executing, observing, and controlling each training evolution.

<sup>5</sup> An O/C team, for example, the Brigade Command and Control team (at JMRC—the Mustangs), observes unit performance, and coaches, teaches, and mentors brigade staff counterparts.

Exportable training teams increase training opportunities for the U.S. Army. The U.S. Army is transforming into “plug and play,” rapidly deployable, modular, brigade combat teams.<sup>6</sup> This transformation will increase the number of brigades available for the nation’s security goals to as many as forty-eight. The number of “dirt” training centers (JMRC, National Training Center, and Joint Readiness Training Center), however, has not increased. Therefore, there will be a greater demand on training center space, which may not meet the immediate demands of battalion and brigade units to conduct necessary warfighter skill training, testing, and validation. Exportable training teams will help meet the increased demand for training a growing force that is currently restricted by finite training center space.

The proposed JMRC Exportable Training Model consists of four key components: support the Army Force Generation concept; train for deployment; Reception, Staging, Onward Movement and Integration (RSOI); and occupy Intermediate Staging Base (ISB), Forward Operating Bases (FOBs), and Tactical Assembly Areas (TAAs). Furthermore, an expeditionary instrumentation system has been developed as part of this exportable training model for immediate training feedback. The end state for military units will be Combined Arms/Joint-Coalition air and ground gunnery training and validation, and live-fire exercises in the Hohenfels training footprint, in another country, or at an individual’s home station.

The change to JMRC may have a number of impacts on the Judge Advocate General’s Corps (JAG Corps). The Brigade Staff O/C team at JMRC is called the “Mustang” team. The JMRC judge advocate (JA) O/C is currently a captain, with the call sign “Mustang 05.” As the Army transforms and the JMRC evolves, the “Mustang” captain position may become a major’s assignment to reflect the changes from a Brigade Operational Law Team (captain), to a Brigade Combat Team Command Judge Advocate (major) or the current Stryker (major) manning table. Currently, there are no legal noncommissioned officers assigned to JMRC. To better reflect the new brigade modified table of equipment (MTOE) or joint or multi-national units, either the Army or the Marine Corps may consider adding a staff noncommissioned officer paralegal to the “Mustang” team.

Judge advocates about to embark to the JMRC will continue to face many of the same challenges. Specifically, they should proactively:

- (1) Engage in the staff Military Decision Making Process (MDMP);
- (2) Teach Rules of Engagement (ROE) and the law of armed conflict;
- (3) Address real-life and exercise-related administrative law and claims actions;
- (4) Create efficient tracking systems and methods; and
- (5) Provide effective, real-life military justice advice and legal assistance.

In conclusion, the JMRC O/C team will continue to coach, teach, and mentor judge advocates as the Army and the JAG Corps continues transforming into a more lethal, mobile, and agile fighting force. The JMRC is transforming along with the Army and the JAG Corps, working to ensure JMRC’s continued support to the forces of the future. Within this transformation, the Judge Advocate General’s Corps JA O/C team at JMRC remains committed to ensuring JAs and paralegals receive the best training experience possible.

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<sup>6</sup> See TRADOC News Service and Web Operations, Modular Forces, [http://www.tradoc.army.mil/pao/Web\\_specials/Leadership\\_of\\_Futures/modforce.htm](http://www.tradoc.army.mil/pao/Web_specials/Leadership_of_Futures/modforce.htm) (last visited Mar. 23, 2006).

## Book Review

### GETTYSBURG JULY 1<sup>1</sup>

REVIEWED BY MAJOR ROBERT A. BROADBENT<sup>2</sup>

*Gettysburg July 1* is a comprehensive account of the events that occurred on the first day of the battle of Gettysburg. The author, David G. Martin,<sup>3</sup> is an accomplished civil war scholar and historian who wrote this account primarily focusing upon the fighting at the tactical and regimental levels.<sup>4</sup> Martin details why Gettysburg became the battleground for this crucial battle during the Civil War and describes how the various Union and Confederate commanders maneuvered and fought their respective forces.<sup>5</sup> *Gettysburg July 1* not only provides well-researched historical information regarding the Battle of Gettysburg but also provides numerous anecdotes and commentary on leadership, military tactics, and controversial issues surrounding the first day's battle.<sup>6</sup> "Make no mistake about it however; *Gettysburg July 1* is *not* for the casual observer of the battle. . . . [rather] [i]t is a work that is only for the serious minded Civil War student."<sup>7</sup> Given the level of detail provided, most readers should start with a less daunting and more exhilarating account of the entire Battle of Gettysburg prior to laboring through Martin's 569-page epic detailing only the first day of the battle.<sup>8</sup>

In his two-page preface, the author sets out several purposes for writing this book.<sup>9</sup> First, he argues that day one of the battle "was more than a simple prelude to the second and third days";<sup>10</sup> it was a "major battle deserving a detailed history on its own merit."<sup>11</sup> Second, he utilizes "primary sources"<sup>12</sup> and "conclusions reached by a number of very good recent brigade and regimental level monographs" to provide a new detailed account.<sup>13</sup> Third, he examines many of the controversies surrounding the first day's fighting.<sup>14</sup> Lastly, he provides reasons "why the battle came to be fought at Gettysburg."<sup>15</sup>

There can be no question that the first day of the battle of Gettysburg was a major engagement, given the forty-nine thousand troops involved in the day's fighting.<sup>16</sup> Accordingly, *Gettysburg July 1* quickly sets the stage for the battle by explaining the operational set of Union and Confederate armies and how and why this set precipitated the battle at Gettysburg.<sup>17</sup>

The author analyzes the campaign using primary sources and, in most cases, first-hand descriptions of each "skirmish" or battle that provide the reader with a view of the battle at the tactical and regimental levels.<sup>18</sup> Most of these accounts preserve the prose of the period and graphically depict the gruesome, yet necessary, face of war:

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<sup>1</sup> DAVID G. MARTIN, *GETTYSBURG JULY 1* (2003).

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

<sup>3</sup> "David G. Martin is the author of over twenty books on the Civil War and Revolution." Longstreet House, Books by Author, Dr. David Martin, <http://www.longstreethouse.com/author.html> (last visited Apr. 25, 2006).

<sup>4</sup> See MARTIN, *supra* note 1, at 9-10.

<sup>5</sup> See *id.*

<sup>6</sup> See *id.* (emphasis added).

<sup>7</sup> The Robert E. Lee Civil War Round Table of Central New Jersey, *Gettysburg July 1*: Reviewed by James G. Keating, <http://www.robteleeecwrt.org/reviews.html> (last visited Apr. 25, 2006).

<sup>8</sup> See, e.g., MICHAEL SHAARA, *THE KILLER ANGELS* (1987) (providing a Pulitzer Prize-winning overview of the entire battle through the eyes of the generals who fought the battle); STEPHEN W. SEARS, *GETTYSBURG* (2003) (providing a detailed narrative of the entire battle).

<sup>9</sup> See MARTIN, *supra* note 1, at 9-10.

<sup>10</sup> *Id.* at 9.

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

<sup>12</sup> *Id.* at 10.

<sup>13</sup> *Id.*

<sup>14</sup> *Id.*

<sup>15</sup> *Id.*

<sup>16</sup> See *id.* at 9.

<sup>17</sup> See *id.* at 10, 30.

<sup>18</sup> See *id.* at 9-10.

A soldier from the 88th relates that his line waited behind their fence until O'Neal's units were "in easy range, the order was given, 'commence firing.' With the sharp crack of the muskets a fleecy cloud of smoke rolled down the front of the brigade and the Minnie balls zipped and buzzed with a merry chorus toward the Southern line, which halted, and after a brief contest, retired to the shelter of the woods."<sup>19</sup>

And, "[t]he response from vastly superior numbers, equally well armed, was like a hail storm, but our men were as obedient to commands as if they shared the perils of twenty battles."<sup>20</sup> The author intersperses these types of accounts and many others through many of the chapters, adding details most would overlook. For example, when describing many of the officers and Soldiers, Martin provides detail that allows the reader to empathize with that particular leader or Soldier:

Colonel Pickens was aided by the 12th's major, Adolph Proskauer, who was an able officer as well as the "best dressed man in the regiment." Captain Robert Park was amazed at how "our gallant Jew major smoked his cigars calmly and coolly in the thickest of the fight."<sup>21</sup>

Martin's approach increases the readability and depth of this book by allowing the reader to view the battle through the participants' eyes.

On the other hand, Martin tends to overuse this approach, providing too much detail at times, thereby interrupting the flow of the narrative.<sup>22</sup> This detail, coupled with the lack of accurate and useful maps to visually portray the author's descriptions of the battlefield may cause problems for the average reader. The inaccuracies and lack of maps hinder the readability of the book because they require the reader to flip back and forth between various maps to ascertain how each unit was arrayed and maneuvered on the battlefield.<sup>23</sup>

Another drawback of *Gettysburg July 1* is that the author's topographical and meteorological descriptions are reserved for the appendices.<sup>24</sup> This information is better suited for the initial chapters and would better orient the lay reader to the battlefield and the corresponding effects of each on the ensuing battle. For instance, Martin explains in his topographical appendix that "[t]he primary reason a great battle arose at Gettysburg was the great road net – eleven in all – that radiated from the town and drew the two opposing sides to it."<sup>25</sup> This information provides answers to the fundamental reasons why Martin wrote this account and is better suited for the introductory chapters. Discussing the information provided in the appendices would help set the stage in the reader's mind as the author begins his description of the battle. In addition, a better description of the overall political and strategic environment would also help the average reader, as the leaders of the Confederate and Union States made decisions and set goals based on their background and leadership styles, which heavily influenced the decisions made by their senior army commanders at Gettysburg and throughout the war.<sup>26</sup> Thus, the introductory chapters lacked the detail that Martin poured into the rest of the book. These detractions, however, will only be a concern to the lay reader who is unfamiliar with the battle of Gettysburg and Civil War history as a whole.

Despite the detractions, *Gettysburg July 1* should be read by anyone wishing to explore the battle further. As previously discussed, Martin's account provides resolution to many controversies surrounding the first day's battle, objective critical commentary on the effect of decisions made by the leaders of both sides, and numerous anecdotes that could be studied by Soldiers and lawyers alike.<sup>27</sup> The author meticulously discusses the numerous controversies regarding the events of the first day, providing resolution and, in many cases, additional commentary on the effect of each mistake or misconception that

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<sup>19</sup> *Id.* at 222 (quoting JOHN D. VAUTIER, HISTORY OF THE EIGHTY-EIGHTH PENNSYLVANIA VOLUNTEERS IN THE WAR FOR THE UNION, 1861-1865 (1894)).

<sup>20</sup> *Id.* at 369.

<sup>21</sup> *Id.* at 223 (quoting ROBERT E. PARK, WAR DIARY OF CAPTAIN ROBERT EMORY PARK 113 (1898)).

<sup>22</sup> *See id.* at 233-34 (describing the capture of Confederate flags and colors by Union forces).

<sup>23</sup> Martin provides only twenty maps throughout 569 pages of text. These black and white maps depict only major terrain features, unit designations, and general movement routes. Additional color maps and photos would provide the reader with a better understanding of the battle.

<sup>24</sup> *See* MARTIN, *supra* note 1, at 570-94.

<sup>25</sup> *Id.* at 582.

<sup>26</sup> *See, e.g.*, JAMES M. MCPHERSON, ABRAHAM LINCOLN AND THE SECOND AMERICAN REVOLUTION 65-92 (1992) (comparing and contrasting the leadership styles, war aims, and policies of President Abraham Lincoln and President of the Confederacy, Jefferson Davis).

<sup>27</sup> *See* MARTIN, *supra* note 1, at 9-10.

triggered the controversy.<sup>28</sup> Martin's insightful analysis debauches many of the controversies with a logical resolution based on his depth of knowledge regarding the events of the day.<sup>29</sup> His discussion of these controversies provides "the reader with an unbiased and logical discussion of these . . . [and other] hotly debated topics."<sup>30</sup>

*Gettysburg July 1* is also full of interesting commentaries that explore the tactical decision-making and leadership of the commanders on both sides. Military leaders at all levels can benefit from a study of the lessons learned from each of the numerous tactical and regimental fights enumerated within this book. The author's criticism and discussion of the various effects of the mistakes of the day are not limited to one side, but are well dispersed among both sides at all levels of command.<sup>31</sup> Likewise, his criticism and conclusions provide plenty of fodder for discussion and comparison of modern-day leadership challenges and tactical decision-making during the fog of war. An example of this book's application to current warfighting is provided by one of the author's descriptions of how both forces quickly adapted to warfare in an urban environment: "it should be remembered that men running at full speed, scattered in single file, were safer from the fire of the enemy than if marching in a compact body."<sup>32</sup>

Martin's interpretation and analysis of events are superb in several areas, particularly when analyzing complex tactical issues of the day. For example, he attributes the initial Confederate effectiveness to the fact that "the Confederate units . . . simply had better fire control and better cohesion than the Union troops, who had trouble holding up and returned less effective fire than their opponents."<sup>33</sup> Martin's analysis is not only reserved for issues at the tactical level, but he also offers incisive commentary on the respective military commanders' effectiveness. He readily discusses General Robert E. Lee's failings as a leader, stating that "Lee was in the custom of giving his orders in the form of suggestions, or directing them to be carried out 'if practicable.' In this way he allowed his subordinates considerable discretion as to how, when or even if his command should be carried out."<sup>34</sup> Based on the level of discretion Lee allowed his subordinates, the author surmises, along with many Confederate officers of the day, that this may have been a key-contributing factor to the ultimate loss of the battle of Gettysburg.<sup>35</sup> Martin makes this point by quoting a Confederate lieutenant colonel:

There was not an officer, not even a man, that did not expect the war would be closed upon the hill that evening, for there was still two hours of daylight when the final charge was made, yet for reason that have never been explained nor ever will be. . . someone made a blunder that lost the battle of Gettysburg, and humanly speaking, the Confederate cause.<sup>36</sup>

As with the rest of his analysis, the author spares no command from his critical review, immediately following his critique of the Confederate failings with those of the Union.<sup>37</sup>

It is thus clear that Slocum did not maintain very close control of his XII Corps once it finally did reach the field. By sunset his command was spread out all across the field in three separate, disjointed and unsupported locations: Williams' two brigades east of Rock Creek, Kane's brigade on the Baltimore Pike, and Geary's other two brigades near Little Round Top. None were in direct contact with the enemy, and all might have been more effectively employed closer to the army's main position on Cemetery Hill. The best

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<sup>28</sup> See *id.* at 10.

<sup>29</sup> See *id.* For example, Martin's discussion of the opening shots of the battle states:

It should be noted that Jones's shot was not the first of the day, though it is often claimed to be so by a number of zealous sources. The actual first shots of the battle were fired at dawn between the *vendettes* of the 17th Pennsylvania Cavalry posted on the Carlisle Pike and some of Confederate troops under Ewell's direction, probably a detachment of the 1st Maryland Cavalry or possibly of French's 17th Virginia Cavalry.

*Id.* at 64.

<sup>30</sup> Keating, *supra* note 7.

<sup>31</sup> See *id.*

<sup>32</sup> See MARTIN, *supra* note 1, at 435.

<sup>33</sup> *Id.* at 301.

<sup>34</sup> *Id.* at 504-05.

<sup>35</sup> See *id.* at 514.

<sup>36</sup> *Id.* at 514 (quoting Hamilton C. Jones, Jr., "Fifty-Seventh Regiment," 3 N.C. REGIMENTS 414 (n.d.)).

<sup>37</sup> See *id.* at 523-41. In his final chapter, Martin hypothesizes about the various outcomes of the day's fighting had different decisions been made by the leaders on both sides. See *id.*

that can be said of the XII Corps' position that night was that it was last on (or at least near) the field, and was preventing the enemy from occupying the positions held by it.<sup>38</sup>

In addition to various commentaries on leadership and tactics, several of Martin's descriptions of the events that occurred both during and following battles could be utilized as vignettes for military lawyers. These commentaries provide early descriptions of concepts that now are considered customary law and regularly encountered by most operational lawyers. For example, Martin describes several "offers to parley"<sup>39</sup> along with the first hand reactions of the leaders involved:

By now many of Iverson's men had had enough, and began waving hats and handkerchiefs in token of surrender. Some of the Union officers, though, feared trap, and held an impromptu conference to consider what to do. Just then, General Baxter rode up and gave the order, "up boys, and give them steel!" His decision to conduct a bayonet counterattack may have been influenced by the fact that some of his men were beginning to run out of ammunition.<sup>40</sup>

Other good examples of issues germane to today's military lawyer are the discussions regarding the capture, treatment, and *parole*<sup>41</sup> of prisoners of war<sup>42</sup> and the treatment and protection of civilians in combat.<sup>43</sup> Accordingly, this work can provide some historical precedence and insight for military lawyers facing similar issues today.

*Gettysburg July 1* serves a definitive purpose—explaining the true importance of the often overlooked first day of the battle of Gettysburg.<sup>44</sup> Indeed, the first day set the conditions for the next two days of battle, the Confederate loss at Gettysburg, and the outcome of the Civil War. This account, however, should be reserved to those readers who have a keen interest in battle of Gettysburg, or at a minimum a working knowledge of the history of the Civil War. For the Civil War historian, the stories told and detailed commentaries make *Gettysburg July 1* a lasting contribution to the historical record and rank its author among the most learned Civil War scholars to date.

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<sup>38</sup> *Id.* at 541.

<sup>39</sup> An "offer to parley" is an offer to "discuss terms with an enemy," generally conducted prior to surrender. MERRIAM WEBSTER'S DELUXE DICTIONARY 1328 (10th Collegiate ed. 1998).

<sup>40</sup> See MARTIN, *supra* note 1, at 231.

<sup>41</sup> "Parole" in military law is "an engagement by a prisoner of war, upon being set at liberty, that he will not again take up arms against the government by whose forces he was captured, either for a limited period or while hostilities continue." BLACK'S LAW DICTIONARY 1116 (6th ed. 1990).

<sup>42</sup> See MARTIN, *supra* note 1, at 316. Martin describes the confusion caused by the vast numbers of prisoners of war stating that "[t]he Confederates apparently tried to persuade their prisoners to sign paroles even before they were transported off the battlefield, which was not the proper way of doing things." *Id.*

<sup>43</sup> See *id.* at 462. Civilians were generally protected: "the Confederates appear to have behaved quite reasonably in view of the fact that they had just won a major victory on northern soil. J.F.J. Caldwell of Perrin's brigade recalled that 'No violence was offered to the citizens by our troops.'" *Id.* (quoting J. F. J. CALDWELL, THE HISTORY OF A BRIGADE OF SOUTH CAROLINIANS FIRST KNOWN AS "GREGG'S" AND SUBSEQUENTLY AS "MCGOWAN'S" 140-41 (1866).

<sup>44</sup> See *id.* at 9-10.

## Announcements

### Invitation to the 2006 Basic Intelligence Law Course 5F-F41

The Judge Advocate General's Legal Center and School

17 – 18 July 2006

This two-day course is for practitioners who are new to the field of intelligence law and is designed to achieve the following objectives:

- a. Introduce new practitioners to the field of intelligence law; provide a historical context with which to view, understand, and apply existing laws, regulations and policies; and provide an overview of the organization, roles, and functions of the intelligence community.
- b. Provide a basic understanding of the legal framework in which the intelligence community operates, to include the principle sources of intelligence law, with a focus on Executive Order 12333, Department of Defense Directive 5240.1, Department of Defense Directive 5240.1-R, and the service regulations which implement these authorities.
- c. Introduce practitioners to principles and mechanisms involved in conducting intelligence oversight.
- d. Provide an introduction to the intelligence disciplines of counterintelligence, human intelligence, and signals intelligence with discussion focused on the unique legal issues and concerns which arise in each field.
- e. Provide practical experience which will enable new practitioners to identify, research, and address basic intelligence related legal issues.

This course, which is co-sponsored by The Judge Advocate General's Legal Center and School and the United States Army Intelligence Command, will be a unique opportunity for new practitioners in the intelligence and operational field to gain exposure to the growing field of intelligence law. The course will provide the basic tools and lay the groundwork necessary for new practitioners to identify and address intelligence-related legal issues. Additionally, since the course will be open to representatives from each of the components of the intelligence community, the course will provide an opportunity to interact with a broad spectrum of intelligence professionals.

The course is open to military or civilian attorneys employed by the U.S. Government assigned or pending assignment to an intelligence unit or organization, or special operations/mission unit and military attorneys who provide operational law advice to commanders. Attendance is also open to U.S. government employees assigned or pending assignment to positions requiring an understanding of intelligence law as it relates to the investigation of national security cases. This course will be limited to those individuals who have fewer than two years of experience in the intelligence community or in support of intelligence operations. Security clearance required: Secret. This course is classified "SECRET."

The Points of Contact for this course are Ms. Vicki Taylor and Sergeant First Class Michelle Norvell. Ms. Taylor can be contacted by email at [vicki.taylor@mi.army.mil](mailto:vicki.taylor@mi.army.mil). Sergeant First Class Norvell can be contacted by email at [michelle.norvell@mi.army.mil](mailto:michelle.norvell@mi.army.mil). Both Ms. Taylor and Sergeant First Class Norvell can be contacted telephonically at (703) 706-2555.

Attendance is by invitation only. Individuals wishing to attend this course must request an application from Ms. Taylor at the email address above. Failure to adequately address the justification portion of the application form may result in non-selection. **All attendees wishing to participate in the Basic Intelligence Law Course must also enroll in and attend the Advanced Intelligence Law Course from July 19-21, 2006.**

## Invitation to the 2006 Advanced Intelligence Law Course 5F-F43

The Judge Advocate General's Legal Center and School

19 – 21 July 2006

This course is designed to bring practitioners who are new to the field of intelligence law together with more experienced members of the community to achieve the following objectives:

- a. Provide an opportunity to engage in-depth discussions of emerging issues and specialized areas of intelligence law to include issues surrounding collection of intelligence in the cyber age;
- b. Provide an opportunity to examine intelligence issues which are the object of current national and international debate such as domestic surveillance and domestic collection activities; and
- c. Provide a forum to discuss intelligence reform and the intelligence oversight process.

This course, which is co-sponsored by The Judge Advocate General's Legal Center and School and the United States Army Intelligence Command, will be a unique opportunity for new practitioners in the intelligence and operational fields to interface with more seasoned intelligence law practitioners. It will provide all participants an opportunity to gain exposure to current and anticipated intelligence law issues relevant to the future of the intelligence community. Since the course will be open to representatives from each of the components of the intelligence community, the course will provide an opportunity to interact with a broad spectrum of intelligence professionals.

The course is open to military or civilian attorneys employed by the U.S. Government assigned or pending assignment to an intelligence unit or organization, or special operations/mission unit and military attorneys who provide operational law advice to commanders. Attendance is also open to U.S. government employees assigned or pending assignment to positions requiring an understanding of intelligence law as it relates to the investigation of national security cases. Priority of selection will be for those individuals selected to attend the Basic Intelligence Law Course. Security clearance required: Secret. This course is classified "SECRET."

The Points of Contact for this course are Ms. Vicki Taylor and Sergeant First Class Michelle Norvell. Ms. Taylor can be contacted by email at [vicki.taylor@mi.army.mil](mailto:vicki.taylor@mi.army.mil). Sergeant First Class Norvell can be contacted by email at [michelle.norvell@mi.army.mil](mailto:michelle.norvell@mi.army.mil). Both Ms. Taylor and Sergeant First Class Norvell can be contacted telephonically at (703) 706-2555.

Attendance is by invitation only. Individuals wishing to attend this course must request an application from Ms. Taylor at the email address above. Failure to adequately address the justification portion of the application form may result in non-selection.

**To provide the maximum flexibility and the opportunity to address the most current issues, individual attendees seeking CLE credits will be required to coordinate and process Continuing Legal Education (CLE) requests directly with their state Bar Associations. The Staff Judge Advocate, U.S. Army INSCOM will provide course outlines, instructor biographies and, if necessary, certify attendance. Continuing Legal Education requests for the Advanced Intelligence Law Course will not be processed by The Judge Advocate General's Legal Center and School.**

### **Appointment of Regimental Historian and Archivist**

Fred L. Borch, who retired last year after twenty-five years of active duty service as an Army judge advocate (JA), assumed duties on 7 March 2006 as the Judge Advocate General's Corps' (JAG Corps) Regimental Historian and Archivist at The Judge Advocate General's Legal Center and School (TJAGLCS). As a result, the Corps now has a permanent focal point for all Regimental history-related activities. In addition to establishing an on going history program that will capture the history of the Regiment as it unfolds in Afghanistan, Iraq, and future military operations, the Regimental Historian and Archivist is tasked with creating a world-class archive for Army JAG Corps history. This includes collecting, cataloging, and safeguarding documents, photographs, and other items of historical significance at TJAGLCS. Of particular interest are photographs (35mm and high resolution digital) of Army lawyers, legal administrators, and legal specialists in deployed environments; JA After Action Reports; and similar documentary summaries from military operations. Personal narratives from members of the Regiment about their experiences in military operations also are of interest. Consequently, Active and Reserve Component, National Guard, and civilian members of the Regiment—everywhere—are solicited to search their offices, personal file cabinets, and other storage areas for any items of historical interest. You may contact Fred Borch at (434) 971-3249 (DSN 521-3249); Fred.Borch@hqda.army.mil; or Mr. Fred Borch, Regimental Historian and Archivist, TJAGLCS, 600 Massie Road, Charlottesville, Virginia 22903-1781.

## CLE News

### 1. Resident Course Quotas

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

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

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

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

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

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

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

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

This list incorporates changes made to accommodate implementation of the Basic Officer Leadership Course (BOLC) which begins with the 171st Officer Basic Course. If you signed up for a course(s), please check the date(s) of the course(s). Please check the School web site and the most recent *The Army Lawyer* for the most up-to-date schedule. **This list is current as of June 26, 2006.**

| ATTRS. No.     | Course Title                  | Dates  |
|----------------|-------------------------------|--|
| <b>GENERAL</b> |                               |  |
|                |                               |  |
| 5-27-C22       | 55th Graduate Course          | 14 Aug 06 – 24 May 07  |
| 5-27-C22       | 56th Graduate Course          | 13 Aug 07 – 23 May 08  |
|                |                               |  |
| 5-27-C20       | 170th JA Officer Basic Course | 30 May – 23 Jun 06 (Phase I – Ft. Lee)<br>23 Jun – 31 Aug 06 (Phase II – TJAGSA) |
|                |                               |  |
| 5-27-C20       | 171st JA Officer Basic Course | 22 Oct – 3 Nov 06 (BOLC III) Ft. Lee<br>3 Nov 06 – 31 Jan 07 (BOLC III) TJAGSA   |
|                |                               |  |
| 5-27-C20       | 172d JA Officer Basic Course  | 4 – 16 Feb 07 (BOLC III) Ft. Lee<br>16 Feb – 2 May 07 (BOLC III) TJAGSA          |
|                |                               |  |
| 5-27-C20       | 173d JA Officer Basic Course  | 1 – 13 Jul 07 (BOLC III) Ft. Lee   |

|                            |   |   |
|----------------------------|---|---|
|                            |   | 13 – Jul – 26 Sep 07 (BOLC III) TJAGSA<br>(Tentative) |
| 5F-F70                     | 37th Methods of Instruction Course                | 7 – 8 Aug 06  |
| 5F-F70                     | 38th Methods of Instruction Course                | 26 – 27 Jul 07  |
| 5F-F1                      | 192d Senior Officers Legal Orientation Course     | 12 – 16 Jun 06  |
| 5F-F1                      | 193d Senior Officers Legal Orientation Course     | 11 – 15 Sep 06  |
| 5F-F1                      | 194th Senior Officers Legal Orientation Course    | 13 – 17 Nov 06  |
| 5F-F1                      | 195th Senior Officers Legal Orientation Course    | 29 Jan – 2 Feb 07                                     |
| 5F-F1                      | 196th Senior Officers Legal Orientation Course    | 26 – 30 Mar 07  |
| 5F-F1                      | 197th Senior Officers Legal Orientation Course    | 11 – 15 Jun 07  |
| 5F-F1                      | 198th Senior Officers Legal Orientation Course    | 10 – 14 Sep 07  |
| 5F-F3                      | 13th RC General Officers Legal Orientation Course | 24 – 26 Jan 07  |
| 5F-F52                     | 36th Staff Judge Advocate Course                  | 5 – 9 Jun 06  |
| 5F-F52                     | 37th Staff Judge Advocate Course                  | 4 – 8 Jun 07  |
| 5F-F52-S                   | 9th Staff Judge Advocate Team Leadership Course   | 5 – 7 Jun 06  |
| 5F-F52-S                   | 10th Staff Judge Advocate Team Leadership Course  | 4 – 6 Jun 07  |
| 5F-F55                     | 2007 JAOAC (Phase II)                             | 7 – 19 Jan 07   |
| 5F-JAG                     | 2006 JAG Annual CLE Workshop                      | 2 – 6 Oct 06  |
| 5F-JAG                     | 2007 JAG Annual CLE Workshop                      | 1 – 5 Oct 07  |
| JARC-181                   | 2006 JA Professional Recruiting Seminar           | 11 – 14 Jul 06  |
| JARC-181                   | 2007 JA Professional Recruiting Seminar           | 17 – 20 Jul 07  |
| <b>NCO ACADEMY COURSES</b> |   |   |
| 600-BNCOC<br>(Phase 1)     | 5th BNCOC Common Core                             | 30 Jun – 21 Jul 06                                    |
| 600-BNCOC<br>(Phase 1)     | 6th BNCOC Common Core                             | 22 Aug – 8 Sep 06                                     |
| 512-27D30<br>(Phase 2)     | 4th Paralegal Specialist BNCOC                    | 22 May – 16 Jun 06                                    |
| 512-27D30<br>(Phase 2)     | 5th Paralegal Specialist BNCOC                    | 24 Jul – 18 Aug 06                                    |
| 512-27D30<br>(Phase 2)     | 6th Paralegal Specialist BNCOC                    | 11 Sep – 6 Oct 06                                     |
| 512-27D30<br>(Phase 2)     | 001-07 Paralegal Specialist BNCOC                 | 6 Nov – 8 Dec 06                                      |
| 512-27D30<br>(Phase 2)     | 002-07 Paralegal Specialist BNCOC                 | 28 Jan – 2 Mar 07                                     |
| 512-27D30<br>(Phase 2)     | 003-07 Paralegal Specialist BNCOC                 | 2 Apr – 4 May 07                                      |
| 512-27D30<br>(Phase 2)     | 004-07 Paralegal Specialist BNCOC                 | 2 Apr – 4 May 07                                      |
| 512-27D30<br>(Phase 2)     | 005-07 Paralegal Specialist BNCOC                 | 11 Jun – 13 Jul 07                                    |

|                                     |   |                    |
|-------------------------------------|---|--------------------|
| 512-27D30<br>(Phase 2)              | 006-07 Paralegal Specialist BNCOC             | 13 Aug – 14 Sep 07 |
| 512-27D40<br>(Phase 2)              | 4th Paralegal Specialist ANCOC                | 15 May – 16 Jun 06 |
| 512-27D40<br>(Phase 2)              | 5th Paralegal Specialist ANCOC                | 17 Jul – 18 Aug 06 |
| 512-27D40<br>(Phase 2)              | 001-07 Paralegal Specialist ANCOC             | 6 Nov – 8 Dec 06   |
| 512-27D40<br>(Phase 2)              | 002-07 Paralegal Specialist ANCOC             | 28 Jan – 2 Mar 07  |
| 512-27D40<br>(Phase 2)              | 003-07 Paralegal Specialist ANCOC             | 11 Jun – 13 Jul 07 |
| 512-27D40<br>(Phase 2)              | 004-07 Paralegal Specialist ANCOC             | 13 Aug – 14 Sep 07 |
| <b>WARRANT OFFICER COURSES</b>      |   |                    |
| 7A-270A1                            | 18th Legal Administrators Course              | 18 – 22 Jun 07     |
| 7A-270A2                            | 7th JA Warrant Officer Advanced Course        | 10 Jul – 4 Aug 06  |
| 7A-270A2                            | 8th JA Warrant Officer Advanced Course        | 9 Jul – 3 Aug 07   |
| 7A-270A0                            | 13th JA Warrant Officer Basic Course          | 30 May – 23 Jun 06 |
| 7A-270A0                            | 14th JA Warrant Officer Basic Course          | 29 May – 22 Jun 07 |
| <b>ENLISTED COURSES</b>             |   |                    |
| 5F-F58                              | 2007 Paralegal Sergeants Major Symposium      | 5 – 9 Feb 07       |
| 512-27DC5                           | 20th Court Reporter Course                    | 24 Apr – 23 Jun 06 |
| 512-27DC5                           | 21st Court Reporter Course                    | 31 Jul – 29 Sep 06 |
| 512-27DC5                           | 22d Court Reporter Course                     | 29 Jan – 30 Mar 07 |
| 512-27DC5                           | 23d Court Reporter Course                     | 23 Apr – 22 Jun 07 |
| 512-27DC5                           | 24th Court Reporter Course                    | 30 Jul – 28 Sep 07 |
| 512-27DC6                           | 7th Court Reporting Symposium                 | 30 Oct – 3 Nov 06  |
| 512-27DC6                           | 8th Court Reporting Symposium                 | 29 Oct – 3 Nov 07  |
| 512-27D/20/30                       | 18th Law for Paralegal NCOs Course            | 26 – 30 Mar 07     |
| 512-27DCSP                          | 3d Combined Sr. Paralegal NCO Course          | 11 – 15 Jun 07     |
| <b>ADMINISTRATIVE AND CIVIL LAW</b> |   |                    |
| 5F-F21                              | 5th Advanced Law of Federal Employment Course | 18 – 20 Oct 06     |
| 5F-F21                              | 6th Advanced Law of Federal Employment Course | 17 – 19 Oct 07     |
| 5F-F22                              | 60th Law of Federal Employment Course         | 16 – 20 Oct 06     |
| 5F-F22                              | 61st Law of Federal Employment Course         | 15 – 19 Oct 07     |
| 5F-F23                              | 59th Legal Assistance Course                  | 30 Oct – 3 Nov 06  |

|                                |  |                   |
|--------------------------------|--|-------------------|
| 5F-F23                         | 60th Legal Assistance Course                     | 14 – 18 May 07    |
| 5F-F23                         | 61st Legal Assistance Course                     | 29 Oct – 2 Nov 07 |
|                                |  |                   |
| 5F-F24                         | 31st Admin Law for Military Installations Course | 19 – 23 Mar 07    |
|                                |  |                   |
| 5F-F28                         | 2006 Income Tax Course                           | 11 – 15 Dec 06    |
|                                |  |                   |
| 5F-F29                         | 24th Federal Litigation Course                   | 31 Jul – 4 Aug 06 |
| 5F-F29                         | 25th Federal Litigation Course                   | 30 Jul – 3 Aug 07 |
|                                |  |                   |
| 5F-F202                        | 5th Ethics Counselors Course                     | 23 – 27 Apr 07    |
|                                |  |                   |
| 5F-F23E                        | 2006 USAREUR Legal Assistance CLE                | 23 – 27 Oct 06    |
| 5F-F23E                        | 2007 USAREUR Legal Assistance CLE                | 22 – 26 Oct 07    |
|                                |  |                   |
| 5F-F24E                        | 2006 USAREUR Administrative Law CLE              | 18 – 22 Sep 06    |
| 5F-F24E                        | 2007 USAREUR Administrative Law CLE              | 17 – 21 Sep 07    |
|                                |  |                   |
| 5F-F26E                        | 2006 USAREUR Claims Course                       | 16 – 20 Oct 06    |
| 5F-F26E                        | 2007 USAREUR Claims Course                       | 15 – 19 Oct 07    |
|                                |  |                   |
| 5F-F28E                        | 2006 USAREUR Income Tax CLE                      | 4 – 8 Dec 06      |
|                                |  |                   |
| 5F-F28P                        | 2007 PACOM Income Tax CLE                        | 6 – 9 Nov 06      |
|                                |  |                   |
| 5F-F28H                        | 2006 HAWAII Income Tax CLE                       | 13 – 17 Nov 06    |
|                                |  |                   |
| <b>CONTRACT AND FISCAL LAW</b> |  |                   |
|                                |  |                   |
| 5F-F10                         | 156th Contract Attorneys Course                  | 17 – 28 Jul 06    |
| 5F-F10                         | 157th Contract Attorneys Course                  | 23 Jul – 3 Aug 07 |
|                                |  |                   |
| 5F-F11                         | 2006 Government Contract Law Symposium           | 5 – 8 Dec 06      |
|                                |  |                   |
| 5F-F12                         | 75th Fiscal Law Course                           | 23 – 27 Oct 06    |
| 5F-F12                         | 76th Fiscal Law Course                           | 30 Apr – 4 May 07 |
|                                |  |                   |
| 5F-F13                         | 3d Operational Contracting Course                | 12 – 16 Mar 07    |
|                                |  |                   |
| 5F-F14                         | 20th Comptrollers Accreditation Course (PACOM)   | 26 – 30 Jun 06    |
|                                |  |                   |
| 5F-F101                        | 7th Procurement Fraud Course                     | 31 May – 2 Jun 06 |
|                                |  |                   |
| 5F-F102                        | 6th Contract Litigation Course                   | 9 – 13 Apr 07     |
|                                |  |                   |
| 5F-F103                        | 7th Advanced Contract Law                        | 12 – 14 Apr 06    |
|                                |  |                   |
| 5F-F15E                        | 2007 USAREUR Contract & Fiscal Law CLE           | 27 – 30 Mar 07    |
|                                |  |                   |
| N/A                            | 2007 Maxwell AFB Fiscal Law Course               | 5 – 8 Feb 07      |

| <b>CRIMINAL LAW</b>                      |   |                    |
|--|---|--------------------|
| 5F-F31                                   | 12th Military Justice Managers Course             | 21 – 25 Aug 06     |
| 5F-F33                                   | 50th Military Judge Course                        | 23 Apr – 11 May 07 |
| 5F-F34                                   | 26th Criminal Law Advocacy Course                 | 11 – 22 Sep 06     |
| 5F-F34                                   | 27th Criminal Law Advocacy Course                 | 5 – 16 Feb 07      |
| 5F-F34                                   | 28th Criminal Law Advocacy Course                 | 10 – 21 Sep 07     |
| 5F-F35                                   | 30th Criminal Law New Developments Course         | 6 – 9 Nov 06       |
| 5F-301                                   | 10th Advanced Advocacy Training                   | 29 May – 1 Jun 07  |
| 5F-F35E                                  | 2007 USAREUR Criminal Law CLE                     | 29 Jan – 2 Feb 07  |
| <b>INTERNATIONAL AND OPERATIONAL LAW</b> |   |                    |
| 5F-F41                                   | 2d Basic Intelligence Law Course                  | 17 – 21 Jul 06     |
| 5F-F41                                   | 3d Basic Intelligence Law Course                  | 23 – 27 Jul 07     |
| 5F-F43                                   | 2d Advanced Intelligence Law Course               | 19 – 21 Jul 06     |
|  | 3d Advanced Intelligence Law Course               | 25 – 27 Jul 07     |
| 5F-F42                                   | 86th Law of War Course                            | 10 Jul – 14 Jul 06 |
| 5F-F42                                   | 87th Law of War Course                            | 29 Jan – 2 Feb 07  |
| 5F-F42                                   | 88th Law of War Course                            | 16 – 20 Jul 07     |
| 5F-F44                                   | 2d Legal Aspects of Information Operations Course | 25 – 29 Jun 07     |
| 5F-F45                                   | 6th Domestic Operational Law Course               | 30 Oct – 3 Nov 06  |
| 5F-F45                                   | 7th Domestic Operational Law Course               | 29 Oct – 2 Nov 07  |
| 5F-F47                                   | 46th Operational Law Course                       | 31 Jul – 11 Aug 06 |
| 5F-F47                                   | 47th Operational Law Course                       | 26 Feb – 9 Mar 07  |
| 5F-F47                                   | 48th Operational Law Course                       | 6 – 17 Aug 07      |

### 3. Naval Justice School and FY 2006 Course Schedule

Please contact Monique E. L. Cover, Other Services Quota Manager/Analyst, SRA International, Inc., Naval Personnel Development Command, Code N72, NOB, 9549 Bainbridge Ave., N-19, Room 121, at (757) 444-2996, extension 3610 or DSN 564-2996, extension 3610, for information about the courses.

| <b>Naval Justice School<br/>Newport, RI</b> |                                   |                     |
|---|-----------------------------------|---------------------|
| <b>CDP</b>                                  | <b>Course Title</b>               | <b>Dates</b>        |
| 0257  | Lawyer Course (030)               | 5 Jun – 4 Aug 06    |
| 0257  | Lawyer Course (040)               | 7 Aug – 6 Oct 06    |
| NA  | Brigade Oriented Legal Team (030) | 7 – 11 Aug 06 (NJS) |
| 0259  | Legal Officer Course (202)        | 12 – 30 Jun 06      |
| 900B  | Reserve Lawyer Course (020)       | 11 – 15 Sep 06      |

|  |  |                               |
|--|--|-------------------------------|
| 914L   | Law of Naval Operations (020)  | 18 – 22 Sep 06                |
| 850T   | SJA/E-Law Course (020)   | 24 Jul – 4 Aug 06             |
| 850V   | Law of Military Operations (010)   | 12 – 23 Jun 06                |
| 961J   | Defending Complex Cases (010)  | 17 – 21 Jul 06                |
| 525N   | Prosecuting Complex Cases (010)  | 10 – 14 Jul 06                |
| 4048   | Estate Planning (010)  | 14 – 18 Aug 06                |
| 748K   | National Institute of Trial Advocacy (010)                                   | 24 – 28 Oct 06 (Camp Lejeune) |
| 748B   | Naval Legal Service Command Senior Officer Leadership (010)                  | 21 – 25 Aug 06                |
| 0258   | Senior Officer (NewPort) (060)   | 14 – 18 Aug 06                |
| 0258   | Senior Officer (NewPort) (070)   | 25 – 29 Sep 06                |
| 2622   | Senior Officer (Fleet) (090)   | 10 – 14 Jul 06 (Pensacola)    |
| 2622   | Senior Officer (Fleet) (100)   | 28 Aug – 1 Sep 06 (Pensacola) |
| 932V   | Coast Guard Legal Technician Course (010)                                    | 11 – 22 Sep 06                |
| 846L   | Senior Legalman Leadership Course (010)                                      | 24 – 28 Jul 06                |
| 4040   | Paralegal Research & Writing (030)   | 17 – 28 Jul 06 (San Diego)    |
| 627S   | Senior Enlisted Leadership Course (140)                                      | 19 -21 Jul 06 (Millington)    |
| 627S   | Senior Enlisted Leadership Course (150)                                      | 1 – 3 Aug 06 (San Diego)      |
| 627S   | Senior Enlisted Leadership Course (160)                                      | 16 – 18 Aug 06 (Norfolk)      |
| 627S   | Senior Enlisted Leadership Course (170)                                      | 12 – 14 Sep 06 (Pendleton)    |
| <b>Naval Justice School Detachment<br/>Norfolk, VA</b> |  |                               |
| 0376   | Legal Officer Course (050)   | 5 – 23 Jun 06                 |
| 0376   | Legal Officer Course (060)   | 24 Jul – 11 Aug 06            |
| 0376   | Legal Officer Course (070)   | 11 – 29 Sep 06                |
| 0379   | Legal Clerk Course (070)   | 31 Jul – 11 Aug 06            |
| 0379   | Legal Clerk Course (080)   | 11 – 22 Sep 06                |
| 3760   | Senior Officer Course (060)  | 26 – 30 Jun 06                |
| 3760   | Senior Officer Course (070)  | 17 – 21 Jul 06 (Millington)   |
| 3760   | Senior Officer Course (080)  | 28 Aug – 1 Sep 06             |
| 4046   | Military Justice Course for SKA/Convening Authority/Shipboard Legalman (030) | 10 – 21 Jul 06                |

| Naval Justice School Detachment<br>San Diego, CA |                             |                            |
|--|-----------------------------|----------------------------|
| 947H   | Legal Officer Course (060)  | 12 – 30 Jun 06             |
| 947H   | Legal Officer Course (070)  | 14 Aug – 1 Sep 06          |
| 947J   | Legal Clerk Course (060)    | 8 – 19 May 06              |
| 947J   | Legal Clerk Course (070)    | 12 – 23 Jun 06             |
| 947J   | Legal Clerk Course (080)    | 14 – 25 Aug 06             |
| 3759   | Senior Officer Course (070) | 5 – 9 Jun 06 (San Diego)   |
| 3759   | Senior Officer Course (080) | 24 – 28 Jul 06 (San Diego) |
| 3759   | Senior Officer Course (090) | 11 – 15 Sep 06 (Pendleton) |

#### 4. Air Force Judge Advocate General School Fiscal Year 2006 Course Schedule

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

| Air Force Judge Advocate General School<br>Maxwell AFB, AL     |                    |
|--|--------------------|
| Course Title   | Dates              |
| Staff Judge Advocate Course, Class 06-A                        | 12 – 23 Jun 06     |
| Law Office Management Course, Class 06-A                       | 12 – 23 Jun 06     |
| Paralegal Apprentice Course, Class 06-E                        | 19 Jun – 1 Aug 06  |
| Environmental Law Update Course, Class 06-A                    | 28 – 30 Jun 06     |
| Computer Legal Issues Course, Class 06-A                       | 10 – 14 Jul 06     |
| Legal Aspects of Information Operations Law Course, Class 06-A | 12 – 14 Jul 06     |
| Reserve Forces Paralegal Course, Class 06-A                    | 17 – 28 Jul 06     |
| Judge Advocate Staff Officer Course, Class 06-C                | 17 Jul – 15 Sep 06 |
| Paralegal Craftsman Course, Class 06-C                         | 1 Aug – 8 Sep 06   |
| Paralegal Apprentice Course, Class 06-F                        | 14 Aug – 26 Sep 06 |
| Trial & Defense Advocacy Course, Class 06-B                    | 18 – 29 Sep 06     |

#### 5. Civilian-Sponsored CLE Courses

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

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

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

requirement includes submission of all JA 151, Fundamentals of Military Writing, exercises.

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

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

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

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

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

| <b>Jurisdiction</b> | <b>Reporting Month</b>  |
|---------------------|---|
| Alabama**           | 31 December annually  |
| Arizona             | 15 September annually   |
| Arkansas            | 30 June annually  |
| California*         | 1 February annually   |
| Colorado            | Anytime within three-year period  |
| Delaware            | Period ends 31 December; confirmation required by 1 February if compliance required; if attorney is admitted in even-numbered year, period ends in even-numbered year, etc. |
| Florida**           | Assigned month every three years  |
| Georgia             | 31 January annually   |
| Idaho               | 31 December, every third year, depending on year of admission   |
| Indiana             | 31 December annually  |
| Iowa                | 1 March annually  |
| Kansas              | Thirty days after program, hours must be completed in compliance period<br>1 July to June 30  |
| Kentucky            | 10 August; completion required by<br>30 June  |
| Louisiana**         | 31 January annually; credits must be earned by 31 December  |

|                  |   |
|------------------|---|
| Maine**          | 31 July annually  |
| Minnesota        | 30 August annually  |
| Mississippi**    | 15 August annually; 1 August to 31 July reporting period                            |
| Missouri         | 31 July annually; reporting year from 1 July to 30 June                             |
| Montana          | 1 April annually  |
| Nevada           | 1 March annually  |
| New Hampshire**  | 1 August annually; 1 July to 30 June reporting year                                 |
| New Mexico       | 30 April annually; 1 January to 31 December reporting year                          |
| New York*        | Every two years within thirty days after the attorney's birthday                    |
| North Carolina** | 28 February annually  |
| North Dakota     | 31 July annually for year ending 30 June  |
| Ohio*            | 31 January biennially   |
| Oklahoma**       | 15 February annually  |
| Oregon           | Period end 31 December; due 31 January  |
| Pennsylvania**   | Group 1: 30 April<br>Group 2: 31 August<br>Group 3: 31 December                     |
| Rhode Island     | 30 June annually  |
| South Carolina** | 1 January annually  |
| Tennessee*       | 1 March annually  |
| Texas            | Minimum credits must be completed and reported by last day of birth month each year |
| Utah             | 31 January annually   |
| Vermont          | 2 July annually   |
| Virginia         | 31 October Completion Deadline; 15 December reporting deadline                      |
| Washington       | 31 January triennially  |
| West Virginia    | 31 July biennially; reporting period ends 30 June                                   |

Wisconsin\*

1 February biennially; period ends  
31 December

Wyoming

30 January annually

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

\*\*Must declare exemption.

## Current Materials of Interest

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

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

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

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

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

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

For the products and services requested, one may pay either by establishing a DTIC deposit account with the National Technical Information Service (NTIS) or by using a VISA, MasterCard, or American Express credit

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

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

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

### Contract Law

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

### Legal Assistance

- A384333 Servicemembers Civil Relief Act Guide, JA-260 (2006).
- AD A333321 Real Property Guide—Legal Assistance, JA-261 (1997).
- AD A326002 Wills Guide, JA-262 (1997).
- AD A346757 Family Law Guide, JA 263 (1998).
- AD A384376 Consumer Law Deskbook, JA 265 (2004).
- AD A372624 Legal Assistance Worldwide Directory, JA-267 (1999).
- AD A360700 Tax Information Series, JA 269 (2002).
- AD A350513 Uniformed Services Employment and Reemployment Rights Act (USAERRA), JA 270, Vol. I (2006).

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

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

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

AD A360704 Uniformed Services Former Spouses' Protection Act, JA 274 (2005).

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

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

### Administrative and Civil Law

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

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

AD A255346 Financial Liability Investigations and Line of Duty Determinations, JA-231 (2006).

AD A347157 Environmental Law Deskbook, JA-234 (2002).

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

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

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

### Labor Law

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

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

### Criminal Law

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

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

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

### International and Operational Law

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

\* Indicates new publication or revised edition.

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

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

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

### b. Access to the JAGCNet:

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

(a) Active U.S. Army JAG Corps personnel;

(b) Reserve and National Guard U.S. Army JAG Corps personnel;

(c) Civilian employees (U.S. Army) JAG Corps personnel;

(d) FLEP students;

(e) Affiliated (U.S. Navy, U.S. Marine Corps, U.S. Air Force, U.S. Coast Guard) DOD personnel assigned to a branch of the JAG Corps; and, other personnel within the DOD legal community.

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

c. How to log on to JAGCNet:

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

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

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

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

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

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

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

### **3. TJAGSA Publications Available Through the LAAWS XXI JAGCNet**

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

### **4. TJAGLCS Legal Technology Management Office (LTMO)**

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

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

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

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

### **5. The Army Law Library Service**

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

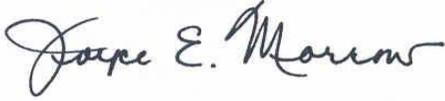
Point of contact is Mrs. Dottie Evans, The Judge Advocate General's School, U.S. Army, ATTN: CTR-MO, 600 Massie Road, Charlottesville, Virginia 22903-1781. Telephone DSN: 521-3278, commercial: (434) 971-3278, or e-mail at [Dottie.Evans@hqda.army.mil](mailto:Dottie.Evans@hqda.army.mil).



By Order of the Secretary of the Army:

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

Official:



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