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In Memoriam: Sergeant Michael M. Merila

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IN MEMORIAM

Sergeant Michael M. Merila

17 February 1980 – 16 February 2004

AN AMERICAN SOLDIER

My estimate of [the American Soldier] was formed on the battlefield many, many years ago, and has never changed. I regarded him then as I regard him now – as one of the world's noblest figures, not only as one of the finest military characters, but also as one of the most stainless. His name and fame are the birthright of every American citizen. In his youth and strength, his love and loyalty, he gave all that mortality can give.

* * *

I do not know the dignity of his birth, but I do know the glory of his death.

— *General Douglas MacArthur*[1]

Generations of Americans have sacrificed to establish the title "American Soldier" as one that needs no qualifiers – it is a title of honor in and of itself. This proud service has been on American soil and upon far flung battlefields across the globe. The Soldiers of this generation are continuing to build upon this storied legacy in places like Iraq and Afghanistan. While the honor that comes with holding the title of American Soldier belongs to all who sacrifice and serve, soldiering does come more naturally to some than to others. For some new recruits, fitting into the Army is painful – like trying to hammer a square peg into a round hole. For others, like Sergeant (SGT) Michael M. Merila, soldiering comes as naturally as breathing. These Soldiers seem to stand a little straighter; they are confident and assured; they shine. From the start, it was apparent that Michael Merila was going to shine. He truly seems to have been born to serve his country. One of four children born into an Army family, SGT Merila's father, Chief Warrant Officer Four Michael Merila is a retired aviator, and his mother,

[1] General Douglas MacArthur, Thayer Award Acceptance Address at the U.S. Military Academy, West Point, N.Y. (May 12, 1962) (paraphrasing a selected portion of the published remarks), *available at* http://www.americanrhetoric.com/speeches/douglasmacarthurthayeraward.html (last visited Feb. 10, 2005).

Lieutenant Colonel Susan Merila is a retired Military Intelligence Corps officer. After graduating from Buena High School in Sierra Vista, Arizona, in 1988, SGT Merila enlisted in the Army in 2001. He attended basic training at Fort Jackson, South Carolina, where he received a Certificate of Achievement for graduating in the top ten-percent of his class. He entered advanced individual training (AIT) as a legal specialist where he, again, finished at the top of his class as the distinguished honor graduate for which he received the Army Achievement Medal, a Certificate of Achievement, the Adjutant General's Branch coin, and a coin from the Post Command Sergeant Major.

> *When I first came to Fort Lewis in 2003, I was afraid I wouldn't fit in with the crew. Right away Mike took me around and made me feel very comfortable. In the summer, I was dealing with some personal problems, and he was always right there beside me helping me out. I don't know how well I would have made it, or if I would have made it at all if it weren't for him. That's what friends are for, and he was that and then some. In the military, friends come and go, but the good ones are always there no matter the time and distance between them.*
>
> — *Sergeant James Kuykendall*

Sergeant Merila's first assignment was at Fort Lewis, Washington, as a paralegal specialist for the 1st Squadron, 14th Cavalry Regiment, 3d Interim Brigade Combat Team. He arrived in October 2001 and quickly established himself as something special. Although new to both the Army and also the JAG Corps, SGT Merila won the 2001 I Corps and Fort Lewis Paralegal Specialist of the Year board only months after arriving. Sergeant Merila was much more than just a great paralegal; he was a great Soldier. In 2002, he was twice recognized for excellence by the Army's senior leadership. On 3 October 2002, SGT Merila received a coin for excellence from Major General James M. Collins, the I Corps Deputy Commanding General, for his performance as a paralegal during the preceding year, as demonstrated by the results of the brigade's annual command inspection. On 5 November 2002, SGT Merila received two coins from Sergeant Major of the Army (SMA) Jack Tilley for his excellent performance as a Soldier in support of the brigade's Warfighter exercise and the brigade's certification as the Army's first Stryker Brigade Combat Team (SBCT). When SMA Tilley asked the First Sergeant of Headquarters and Headquarters Company, 3d SBCT to name his top three Soldiers in the company, the First Sergeant named SGT Merila. As his fellow Soldier, Specialist (SPC) Danile Gonzalez, recalls of SMA Tilley's visit:

> We were doing a preventive maintenance inspection [PMI] at the place inside the airfield where it's all electronic. [SMA Tilley] briefed the Soldiers on the new changes the Army is going through which included transformation. After the brief the SMA asked our 1SG "give me the name of your best soldier in the company." 1SG replied without hesitation, "Specialist Merila." I knew he was going to say his name. I just knew it. [Mike] was that type of Soldier.

Almost immediately after certification, the recently renamed 3d SBCT received orders to deploy to Iraq. Sergeant Merila had been in the brigade for over two years and was due to rotate to another unit. When offered the opportunity to transfer to a different unit, he refused. He could not abandon the unit he had helped establish or the Soldiers with whom he had served shoulder-to-shoulder. It was this action of which Lieutenant General Edward Soriano said, "It speaks volumes about this young man, and his character, his upbringing and his values."[2]

> *It's been hard to express just how well loved Mike was. He was someone that made you happy every day. There was something memorable every day. He was so full of energy, youth and charisma. I miss his company. He brought something to the group that nobody else did. He was truly unique.*
>
> — *Sergeant Dennis Robertshaw*

> *I don't think that there was a day that Mike didn't do or say something that made me laugh. He was an absolute joy to work with.*
>
> — *Staff Sergeant Vellis Weathers*

[2] Michael M. Merila (Sept. 7, 2004), *at* http://www.cbsnews.com/elements/2004/09/07/iraq/whoswho641558_0_29_person.shtml (last visited Feb. 9, 2005).

Sergeant Merila was a competent and proficient Soldier. The Soldiers he worked with respected him as a Soldier, a paralegal, and a friend. His AIT roommate, SPC Jon Coen, remembers that, "[h]e was an outstanding Soldier and great person to be around." His roommate knew even then that "[SGT Merila] would be called on to perform service somewhere." As his Army career progressed, he remained the same joyful Soldier that his colleagues remember. "You can't remember [SGT] Merila without some laughter because he was such a joy to be around," remembers Sergeant Major Jerry L. Gatton, Jr.

In November 2003, SGT Merila deployed with his squadron to Iraq. He worked and lived with the Soldiers of 1st Squadron, 4th Cavalry Regiment, sharing their hardships and dangers. His unit leadership did not see SGT Merila as only a paralegal; they saw him as a Soldier. When he was needed for an extended legal mission by the brigade trial counsel, his squadron leadership fought to keep him, because, in words of Major (MAJ) David Athey, the squadron executive officer, "I know he's a paralegal, and we should be giving him to you, but we need him. You know I wouldn't be saying that if he wasn't one of my best Soldiers."[3] According to Captain (CPT) John Wheeler, the Adjutant for 1st Squadron, SGT Merila's presence was an immediate boost to morale.

Sergeant Merila not only excelled in his legal support to the squadron, but he also stepped outside of his military occupational skill to assist his unit. Sergeant Merila pulled countless hours of guard duty and radio watch in the Combat Training Command Post (CTCP). He quickly became proficient on the radio and became the squadron's best radio transmitter operator. The CTCP received orders to move forward in support of operations around the city of Samarra. They wanted to keep their footprint small and bring only a few of their best Soldiers. Sergeant Merila was at the top of their list. After the operation in Samarra, the squadron moved to northern Iraq near the city of Tal Afar. Sergeant Merila's excellent performance continued. In addition to his normal duties, he provided security on convoys. Sergeant Merila's position of choice on any convoy was the .50 caliber machine gunner. He would often come off of an all-night guard shift or radio watch and roll out on a convoy the very next morning. He did this all without complaint. On 16 January 2004, a convoy SGT Merila was providing security for was attacked by enemy combatants. The convoy reacted quickly and cleared the ambush site with only one officer suffering minor injuries as a result of the attack. In the words of CPT Wheeler, "As a combat arms officer, I was continually impressed by SPC Merila's calm under pressure. Specialist Merila was not only a great legal clerk; he was a great Soldier and a fellow brother in arms."

> *You liked him from the first time you met him. I don't know if it was his smile, or his self-confidence, or his fundamental goodness that was so readily shown. Whatever it was, he drew people to him. If you were given a tough mission, and you had to pick one Soldier to help you, you would want SGT Merila. He was always ready to sacrifice himself to make you successful. How rare that is. He always looked to build you up, to make you shine, to step into the shadows so you could stand in the light. I have never met anyone so loyal and caring. He was also there to pick you up when you fell. One of our captains, his trial counsel, related how upset she had been when she lost a tough case and how SGT Merila spent hours trying to cheer her up. That was just how he was.*
>
> — *Sergeant Major Jerry L. Gatton, Jr.*

On 16 February 2004, one day before his twenty-fourth birthday, SGT Merila's convoy was attacked near Tal Afar, by enemy combatants using an improvised explosive device. Sergeant Merila suffered a fatal wound and died doing what he had been born to do, selflessly serving his country. His was the first combat death in the 3d Stryker Brigade Combat Team.[4] Sergeant Merila's awards include the Bronze Star, the Purple Heart, the Army Achievement Medal, the Army Good Conduct Medal, the National Defense Service Medal, the Army Service Ribbon, and the Expert Marksmanship Badge.

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[3] Michael J. Gilbert, *Soldier Remembered for Kindness, Humor*, NEWS TRIBUNE (Seattle, Wash.), Feb. 19, 2004, at 1.

[4] *See Sierra Vista Solider Killed in Roadside Bombing in Iraq* (Feb. 18, 2004), *at* http://www.azcentral.com/specials/special19/articles/0218Soldier-ON.html (last visited Feb. 9, 2005).

It is impossible to adequately relate the enormity of the loss of SGT Merila to the Army unless you knew him. Specialist Danile Gonzalez and the JAG Corps know that, "[h]e was going to do great things for the Army. He had unlimited potential. But it was cut way too short." Sergeant Merila is sorely missed.*

> *If I could have one Soldier to take with me the rest of my career, it would be Mike. No matter how many Soldiers the Army gives me, there will always be one missing.*
>
> — *Staff Sergeant Vellis Weathers*

* The staff of *The Army Lawyer* thanks the many people who contributed to this memorial, with special thanks to Sergeant Major Jerry L. Gatton, Jr., for his invaluable assistance. Most importantly, we thank the Merila family for sharing this remarkable Soldier with us.

The 2002 Moscow Treaty: Marking a New Strategic Relationship Between the United States and Russia

James P. Terry[1]

On 6 March 2003, the Senate unanimously consented to ratify the 2002 United States-Russia arms reduction treaty (Moscow Treaty),[2] marking a new era in relations between the two states. The Moscow Treaty codifies the significant reductions which were announced jointly by Presidents George W. Bush and Vladimir Putin in Washington, D.C., and Crawford, Texas in November 2001.[3] Secretary of State Colin L. Powell wrote the following in his June 2002 Letter of Submittal of the Treaty to the President: "The Moscow Treaty is one important element of a new strategic framework, which involves a broad array of cooperative efforts in political, economic and security areas."[4]

Background

Nuclear non-proliferation has been a fundamental policy of the United States since the conclusion of World War II, when the post-war effects of Hiroshima and Nagasaki became known. The past thirty years have witnessed three principal efforts, prior to the Moscow Treaty, to limit and reduce strategic arms. After nearly three years of negotiation from 1968-1971, the Strategic Arms Limitation Talks (SALT I) process resulted in passage of two critical agreements, the Anti-Ballistic Missile (ABM) Treaty[5] and the Interim Agreement on the Limitation of Strategic Offensive Arms.[6]

The ABM Treaty prohibited the United States and the Soviet Union from developing, testing, and deploying a nationwide ABM system.[7] The Interim Agreement put a cap on each side's ICBM force by prohibiting the construction of any additional fixed, land-based launchers for ICBMs.[8] Together these agreements marked the first successful effort of the superpowers to regulate their deployment of strategic offensive forces and defensive systems that could drive each to deploy even greater numbers of offensive nuclear forces.

The second effort culminated in the signing of the SALT II Treaty at the Vienna Summit by President Jimmy Carter and General Secretary Leonid Brezhnev on 18 June 1979.[9] This agreement was intended to replace the Interim Agreement with a long-term comprehensive treaty providing broad limits on strategic offensive weapons systems. It provided for numerical limits including an equal aggregate limit on strategic nuclear delivery vehicles, launchers of MIRVed ICBMs, and heavy bombers with long-range cruise missiles.[10]

Never ratified, the treaty would have imposed numerous restraints on qualitative developments which could threaten future stability, such as the ban on heavy mobile ICBM launchers and heavy SLBMs, on the flight testing or deployment of new types of ICBMs, and on new types of strategic offensive systems. However, following the Soviet invasion of

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[1] The author currently serves as Deputy Assistant Secretary of State for Regional, Global and Functional Affairs in the Bureau of Legislative Affairs. He served as legal counsel to the Chairman, Joint Chiefs of Staff from 1992-1995. In addition to earning undergraduate and graduate degrees from the University of Virginia, he received a J.D. from Mercer University and LL.M. and S.J.D. degrees from George Washington University. A retired Marine colonel, he is widely published in the areas of national security law and coercion control.

[2] Treaty on Strategic Offensive Reductions, May 24, 2002, U.S.-Russ., S. TREATY DOC. NO. 107-8 (2002) [hereinafter Moscow Treaty]. On 6 March 2003, the Senate unanimously voted 95-0 to approve the Resolution of Ratification (five Senators were absent). *See Moscow Treaty Approved*, WASH. POST, Mar. 7, 2003, at A3.

[3] *See* Patrick E. Tyler, *The Bush-Putin Summit: News Analysis; Missile Impasse: The Shape of the Deal*, N.Y. TIMES, Nov. 16, 2001, at A12. The Moscow Treaty requires that the United States and Russia reduce and limit their strategic nuclear warheads to 1700-2200 each by 31 December 2012, a reduction of nearly two-thirds below current levels. *See* Moscow Treaty, *supra* note 2, at art. I.

[4] Letter from Secretary of State Colin Powell to The President of the United States (June 20, 2002), *available at* http://www.state.gov/t/ac/trt/18016.htm#3 [hereinafter Submittal Letter].

[5] Treaty on the Limitation of Anti-Ballistic Missile Systems, May 26, 1972, U.S.-U.S.S.R., 23 U.S.T. 3435 [hereinafter ABM Treaty].

[6] Interim Agreement on the Limitation of Strategic Offensive Arms, May 26, 1972, U.S.-U.S.S.R., 23 U.S.T. 3462 [hereinafter Interim Agreement].

[7] *See* ABM Treaty, *supra* note 5, at arts. I(2), III, V.

[8] *See* Interim Agreement, *supra* note 6, at art. I.

[9] Treaty on the Limitation of Offensive Arms and Protocol Thereto, June 18, 1979, U.S.-U.S.S.R., S. EXEC. DOC. Y, 96-1, at 37 (1979) [hereinafter SALT II Treaty].

[10] *See id.* at art. 3.

Afghanistan in 1979, the SALT II Treaty was not ratified and never entered into force.[11]

The third effort was begun during President Ronald Reagan's first administration in 1981. This process centered on both strategic reductions (START) and intermediate-range forces (INF). The INF Agreement, signed on 8 December 1987, with advice and consent provided by the Senate on 27 May 1988,[12] required that "each party shall eliminate its intermediate-range and shorter-range ground missiles."[13] The INF Treaty was significant in that it was the first treaty to ban an entire class of missiles (however armed). The Strategic Offensive Arms Reduction and Limitation of Strategic Offensive Arms (START) Treaty, entered into force in 1994, provided for very deep reductions in strategic land-based and sea-based missiles, launchers, and deployed heavy bombers, and the nuclear weapons attributed to them.[14] It also contains significant qualitative limits on each sides' strategic forces and, like INF, includes detailed verification and inspection provisions unprecedented in their breadth and intrusiveness.[15]

The Moscow Treaty

The Moscow Treaty is brief, encompassing only five Articles. Article I, the central article in the treaty, provides:

> Each party shall reduce and limit strategic nuclear warheads . . . so that by December 31, 2012 the aggregate number of such warheads does not exceed 1700-2200 for each Party. Each Party shall determine for itself the composition and structure of its strategic offensive arms, based on the established aggregate limit for the number of such warheads.[16]

As stated in the 20 June 2002 Letter of Submittal to the President: "The United States and Russia both intend to carry out strategic offensive reductions to the lowest possible levels consistent with their national security requirements and alliance obligation, and reflecting the new nature of their strategic relations."[17] The Article I limits affect only "strategic nuclear warheads." The treaty by its own terms does not limit the number of U.S. or Russian delivery vehicles, as were implicated in the Strategic Offensive Arms Reduction and Limitation of Strategic Offensive Arms (START) Treaty.[18] Thus, the number of inter-continental ballistic missiles (ICBMs) or submarine-launched ballistic missiles or their associated launchers or heavy bombers are not affected.

Each side has the flexibility to decide what counting methodology it will use to reach the treaty's limits. This flexibility represents a significant departure from the START Treaty, which contains very precise counting rules that attribute a specific number of warheads (encompassing both nuclear *and* non-nuclear) to each type of delivery vehicle (ICBM, SLBM or heavy bomber), irrespective of how many warheads may actually be deployed on a missile or bomber at any specific time.[19] Thus, the numbers counted under the START Treaty may be different from both the number representing the capacity of the specific system and the actual number of warheads carried at any one time by that system.[20]

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[11] *See* 79 U.S. DEP'T OF STATE BULL. NO. 2028, at 23 (July 1979).

[12] Treaty on the Elimination of Intermediate-Range and Shorter-Range Missiles, Dec. 8, 1987, U.S.-U.S.S.R., S. TREATY DOC. NO. 100-11 (1988), *available at* http://www.state.gov/www/global/arms/treaties/inf2.html [hereinafter INF Treaty].

[13] *Id.* at art. 1.

[14] Treaty on the Reduction and Limitation of Strategic Offensive Arms, July 31, 1991, U.S.-U.S.S.R., S. TREATY DOC. NO. 102-20 (1991) [hereinafter START I Treaty].

[15] *See id.* at arts. 11, 12.

[16] Moscow Treaty, *supra* note 2, at art. I.

[17] Submittal Letter, *supra* note 4.

[18] START I Treaty, *supra* note 14.

[19] *See id.* at art. 2. On 1 October 1992, the Senate gave its advice and consent to the ratification of the START Treaty (93-6). *See* JOHN NORTON MOORE, GUY B. ROBERTS, ROBERT F. TURNER, NATIONAL SECURITY LAW DOCUMENTS 450 n.1 (1995) (reprinting the Moscow Treaty). On 4 November 1992, the Supreme Soviet of the Russian Federation voted to ratify the START Treaty by a vote of 157-1 with twenty-six abstentions. *See id.* The Treaty entered into force in 1994 when all elements of the Lisbon Protocol were carried out. *See id.*

[20] A further difference between START and the Moscow Treaty is that the attributed number of warheads to be counted in START I includes any kind of warhead, non-nuclear (for example, high explosive, chemical or biological) or nuclear, while the Moscow Treaty includes only deployed nuclear warheads. *See* Moscow Treaty, *supra* note 2, at art. I; START I Treaty, *supra* note 14, at art. 1.

To reach the limits under the Moscow Treaty, the United States has decided to use the concept of "operationally deployed" warheads. As President Bush stated on 13 November 2001: ". . . the United States will reduce our operationally deployed strategic nuclear warheads to a level between 1,700 and 2,200 over the next decade, a level consistent with American security."[21] The article-by-article analysis the Administration transmitted to the Senate includes the following explanation of the term "operationally deployed:"

> . . . in using the term "operationally deployed strategic nuclear warheads" the United States means reentry vehicles on ICBMs in their launchers, reentry vehicles on SLBMs in their launchers aboard submarines, and nuclear armaments loaded on heavy bombers or stored in weapons storage areas of heavy bomber bases. The United States also made clear that a small number of spare strategic nuclear warheads (including spare ICBM warheads) would be located at heavy bomber bases and that the United States would not consider these warheads to be operationally deployed strategic nuclear warheads.[22]

Thus, under the Moscow Treaty, the United States will count the actual number of strategic nuclear warheads on missiles in their launchers and at bomber bases to reduce the level to between 1,700-2,200.[23] Another interesting aspect of this treaty is that it contains only a final reduction level to be achieved, with no interim reduction levels to be met during the term of the agreement. In practical terms, the requirements of Article I mean that both sides must determine for themselves how and when to implement their reductions in order to meet their final limits on time.

Further, "[t]he Treaty does not restrict a Party's decisions regarding how it will implement the required reductions."[24] It is expected that each side will plan in advance how to execute its own reductions and will do so in a timely and measured fashion. For instance, the U.S. already has outlined the first phase of its planned drawdown. In a report to Congress in January 2002, the Department of Defense outlined the U.S. plan to retire all fifty of its ten-warhead Peacekeeper ICBMs and remove four Trident submarines from strategic service by the end of Fiscal Year 2007.[25] In addition, the United States has indicated it will likely implement the additional required reductions through downloading—the removal of a subset of warheads currently deployed on missiles.

Article II of the treaty provides that, "[t]he Parties agree that the START Treaty remains in force in accordance with its terms."[26] The importance of this article is that it confirms that the 1991 START Treaty is separate from the Moscow Treaty, and the former's terms are not affected in any way by the new agreement. The START Treaty, with about 300 pages of text and protocols, contains detailed provisions for, among other things, data exchange, notifications, conversion and elimination procedures, and inspection and verification procedures, including continuous monitoring at certain missile production plants.[27] In contrast, the Moscow Treaty contains no such verification and inspection provisions, reflecting the President's view that "[t]here is no longer the need to narrowly regulate every step we each take, as did Cold War treaties founded on mutual suspicion and an adversarial relationship."[28]

Article III of the Moscow Treaty establishes a Bilateral Implementation Commission (Bilateral Commission). It states: "For purposes of implementing this Treaty, the Parties shall hold meetings at least twice a year of a Bilateral Implementation Commission."[29] This diplomatic forum will discuss issues related to implementation of the Treaty in its annual meetings. The Bilateral Commission will be separate and distinct from the Consultative Group for Strategic Security (CGSS), established by the Joint U.S.-Russia Declaration of 24 May 2002.[30]

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[21] President George W. Bush, Press Conference at the White House, the East Room (Nov. 13, 2001), *at* http://www.whitehouse.gov/news/release/2001/11/20011113-3.html.

[22] *Article-by-Article Analysis of the Treaty Between the United States of America and the Russian Federation on Strategic Offensive Reductions* (undated), *at* http://www.state.gov/t/ac/trt/18016.htm#4 (last visited Jan. 21, 2005).

[23] *Id.* at art. I analysis (reflecting also that, "Russia did not state conclusively during the negotiations how it intends to carry out its reductions").

[24] *Id.*

[25] *See* Dep't of Defense Nuclear Posture Review Briefing submitted to Congress (Jan. 2002) (detailing NPR decisions made to reduce operationally deployed warheads to 1700-2200 over the next decade and that planned reductions will be completed in phases) (briefing slide presentation on file with author).

[26] Moscow Treaty, *supra* note 2, at art. II.

[27] *See* START I Treaty, *supra* note 14, at arts. 11, 12.

[28] Moscow Treaty, *supra* note 2, at iv.

[29] *Id.* at art. III.

Because the Moscow Treaty does not contain provisions for making "viability and effectiveness" changes to treaty obligations, the Bilateral Commission will not have the kind of authority to negotiate and bring into effect such changes, as do the implementing bodies for some other arms control treaties, such as the START Treaty's Joint Compliance and Inspection Commission.[31] As a result, any changes to the obligations under the treaty would have to be submitted to the Senate as amendments for advice and consent, unless the Senate agreed that submission was not required. Through the Bilateral Commission, as with any other U.S.-Russian diplomatic channel, the United States and Russia could negotiate and agree, for example, on procedures for implementing treaty obligations or for exchanging information on a party's treaty implementation, as long as such agreements do not change treaty obligations.

As noted earlier, the CGSS, established by President Bush and President Putin at the Moscow Summit on 24 May 2002,[32] is not a part of the treaty structure. Nevertheless, it can play an important role in the cooperation necessary to the effective implementation of the Moscow Treaty's provisions. This group will be the principal mechanism through which the United States and Russia strengthen mutual confidence, expand transparency, share information and plans, and discuss strategic issues of mutual interest. As provided in the Joint Declaration, the CGSS will be chaired by the two countries' Foreign and Defense Ministers.[33]

Article IV consists of three paragraphs covering ratification, entry into force, duration and withdrawal:

> 1. This Treaty shall be subject to ratification in accordance with the constitutional procedures of each Party. This Treaty shall enter into force on the date of the exchange of instruments of ratification.
>
> 2. This Treaty shall remain in force until December 31, 2012 and may be extended by agreement of the Parties or superseded earlier by a subsequent agreement.
>
> 3. Each Party, in exercising its national Sovereignty, may withdraw from this Treaty upon three months written notice to the other Party.[34]

This three months' notice period is shorter than has been typical in previous arms control agreements—six months notice was required in the case of the ABM Treaty, for instance.[35] Also, different from several prior agreements, this withdrawal clause is not tied to a party's determination that extraordinary circumstances jeopardizing its supreme national interests exist.[36] The Moscow Treaty thus allows greater flexibility for both sides to respond to unforeseen circumstances, such as changes in the international environment, or the emergence of new threats.

Article V, the final provision in the treaty, sets forth the standard requirements for registration of the treaty with the United Nations pursuant to Article 102 of the UN Charter.[37]

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[30] Secretary of State Colin Powell observed in his July 9, 2002 written statement on the Moscow Treaty before the Senate Foreign Relations Committee that the Consultative Group would be "a broader forum to discuss issues of strategic significance and to enhance mutual transparency." Statement for the Record, Secretary of State Colin L. Powell, subject: Senate Foreign Relations Committee Hearing 4 (9 July 2002) [hereinafter Powell Statement].

[31] *See* START I Treaty, *supra* note 14, at art. 15(b) (providing that the Joint Compliance and Inspection Commission shall meet to ". . . agree upon such additional measures as may be necessary to improve the viability and effectiveness of this Treaty").

[32] *See Joint Declaration on the New Strategic Relationship Between the United States and Russia*, May 24, 2002, *at* http://www.state.gov/t/ac/trt/18016.htm#13.

[33] *Id.*

[34] Moscow Treaty, *supra* note 2, at art. IV.

[35] *See* ABM Treaty, *supra* note 5, at art. XV(2).

[36] *See, e.g.*, Treaty on Further Reduction and Limitation of Strategic Offensive Arms, Jan. 3, 1991, U.S.-Russ., S. TREATY DOC. NO. 103-1, art. 6(4) (1993) [hereinafter START II Treaty]. The treaty states:

> Each Party shall, in exercising its national sovereignty, have the right to withdraw from this Treaty if it decides that extraordinary events related to the subject matter of this Treaty have jeopardized its supreme interests. It shall give notice of its decision to the other Party six months prior to withdrawal from this Treaty. Such notice shall include a statement of the extraordinary events the notifying Party regards as having jeopardized its supreme interests.

Id. The START II Treaty was not ratified. *See id.*

[37] U.N. CHARTER art. 102(1). The U.N. Charter provides: "Every treaty and every international agreement entered into by any Member of the United Nations after the present Charter comes into force shall as soon as possible be registered with the Secretariat and published by it." *Id.*

Verification of the Moscow Treaty Reductions

As is obvious from the review of the Moscow Treaty's operative provisions, there is no verification regime established by this treaty. It was determined, however, that U.S. security and the new strategic relationship with Russia do not require a tailored verification regime. Unlike prior arms control agreements with the Russians in which suspicion and distrust marked the relationship, the current approach taken by Presidents Bush and Putin is reflective of trust, openness, cooperation and predictability. As Secretary Powell stated in addressing verification in his 9 July 2002, testimony before the Senate Foreign Relations Committee:

> I have submitted to the Congress a report required by Section 306 of the Arms Control and Disarmament Act on the verifiability of the Moscow Treaty. In that Report, I conclude that the Treaty is not constructed to be verifiable within the meaning of Section 306, and it is indeed not. A treaty that was verifiable under the old Cold War paradigm was neither required nor relevant in this case.[38]

Another consideration in not seeking new verification measures in negotiating the Moscow Treaty relates to the existing framework established for the START Treaty. While the START provisions do not extend to the Moscow Treaty, and while the Moscow Treaty's verification provisions were designed with START's different counting rules in mind, the information obtained in monitoring START is relevant to the Moscow Treaty. The START verification regime, including its data exchanges,[39] on-site inspections,[40] and provisions concerning conversion and elimination,[41] will continue through 2009 and add to the U.S.'s knowledge concerning the disposition of Russia's strategic nuclear warheads and the overall reduction in Russia's strategic forces. This will aid significantly in the U.S.'s confidence concerning Russian reductions under the Moscow Treaty.

Unless further extended, the START Treaty expires in 2009. For this reason, confidence in Russia's reductions under the new agreement beyond 2009 will depend upon information sharing established under the Moscow Treaty, information the United States has from other sources, and the expected maturity and transparency of the new strategic relationship between the two states. Of course, the United States will continue to devote national intelligence resources to monitoring the size and composition of Russian strategic forces.

In addition to these sources, the ongoing U.S. programs to assist Russia in eliminating its strategic offensive arms and enhance the safety and security of nuclear warheads in Russia will yield additional data on Russia's reduction efforts.[42] Thus, the United States will gain significant insight into the disposition of Russia's strategic offensive forces through its national intelligence sources, bilateral assistance programs, the START Treaty, the work of the Consultative Group for Strategic Security, and the Bilateral Commission consultations. These data sources, when considered in the aggregate, should prove sufficient to provide confidence that Russia is continuing to meet its Moscow Treaty obligations.

The Moscow Treaty's Relationship to Nuclear Non-Proliferation Treaty Obligations

The Nuclear Non-Proliferation Treaty (NPT)[43] is the centerpiece of the global nuclear non-proliferation regime. This treaty, which was signed in 1968 and entered into force for the United States in 1970, represents the culmination of years of effort in the United Nations and special U.N. organizations, particularly the Eighteen Nation Disarmament Committee.[44] Article VI of the NPT reflects the agreement by the nuclear weapons states to seek an early end to the nuclear arms race and to seek nuclear disarmament as well as general and complete disarmament "under strict and effective international control."[45]

While the fact that the Moscow Treaty does not call for the destruction of either delivery vehicles or nuclear warheads

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[38] Powell Statement, *supra* note 30, at 7.

[39] START I Treaty, *supra* note 14, at art. 11(2); sec. 1 of the Notification Protocol.

[40] START I Treaty, *supra* note 14, at art. 11(3).

[41] *Id.* art. 11(8).

[42] *See, e.g.*, Cooperative Threat Reduction Act of 1993, Pub. L. No. 103-160, tit. xii and the Freedom Support Act of 1991, Pub. L. No. 102-511, section 502.

[43] Treaty on the Non-Proliferation of Nuclear Weapons, July 1, 1968, 21 U.S.T. 483 [hereinafter Non-Proliferation Treaty].

[44] *See*, *e.g.*, John Rhinelander, *Arms Control in the Nuclear Age*, *in* MOORE, *supra* note 19, at 579.

[45] Non-Proliferation Treaty, *supra* note 43, at art. VI.

may cause some observers to question whether it represents an "effective" measure "relating to nuclear disarmament" called for in Article VI, the Moscow Treaty is consistent with that article's recognition that disarmament can only be achieved through a step-by-step process. Article VI specifically sets no timelines or specific milestones.[46] It recognizes that while the elimination of nuclear weapons is a key goal, it is a goal that will not be reached quickly or without enormous effort. The Moscow Treaty represents an important step in the process of reductions called for in Article VI of the NPT.[47]

Conclusion

The Moscow Treaty represents a continuation of the United States and Russia's long-standing process to regulate, reduce, and increase transparency concerning the nuclear-capable forces of each country. At the same time, it represents a departure from the past, because it reflects the fact that Russia is not the Soviet Union, and that our mutual relationship is no longer adversarial.

Thus, the Moscow Treaty provides deep reductions in strategic nuclear warheads, but in a much more flexible manner and without the extensive verification and implementation provisions that we relied upon for the INF and START Treaties. As Chairman John Warner of the Senate Armed Services Committee observed in a 21 October 2002 letter to then-Chairman Joseph Biden and Senator Jesse Helms of the Senate Foreign Relations Committee:

> In my view, the strength of the Moscow Treaty is in its simplicity. This Treaty is not like any that we have seen before. It is the first arms control treaty to embody the post Cold War U.S.-Russian relationship. In negotiating this Treaty, both sides consciously rejected the Cold War mentality of distrust and hostility that previously had required lengthy negotiations, and extensive legal structures and detailed verification regimes to ensure that both sides would abide by their obligations. This simplicity puts the focus where it belongs—on the deep equitable reductions to strategic nuclear warheads which are the centerpiece of the Moscow Treaty.[48]

As noted by Senator Warner, the most important feature of this arms control agreement is the deep reductions it will achieve. It will reduce the arsenals of both sides from the present levels of approximately 6000 START-accountable warheads to 1700-2200 deployed strategic nuclear warheads.

The Moscow Treaty is clearly an important step forward in the U.S.-Russian strategic relationship. The Treaty requires the United States and Russia to continue on the path of deep reductions in deployed strategic nuclear warheads, while at the same time preserving flexibility to meet unforeseen strategic changes. It reflects the new era in which Cold War suspicion has been replaced by trust and cooperation with a major power that is no longer an adversary, but an important U.S. partner.

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[46] No preceding arms control treaty, to include SALT, SALT II, START, START II or INF, required warhead elimination because of the difficulties associated with verifying destruction. These prior treaties dealt with the elimination of launchers and delivery vehicles, not warhead elimination. The Moscow Treaty similarly does not deal with warhead elimination, only removal from deployed status.

[47] Some of the U.S. warheads removed from deployed status as required by the Moscow Treaty will be used as spares, some will be stored, and some will be destroyed.

[48] Letter from Senator John Warner, to Senators Joseph R. Biden, Jr. & Jesse Helms (Oct. 21, 2002) (on file with author) (detailing the importance of the Moscow Treaty).

TJAGLCS Practice Note

Family Law Note

State Court Treats Service Member's Receipt of CSB/Redux Bonus as "Retirement Benefit" for Purposes of Property Division

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Legal assistance practitioners should be familiar with the structure and effect of the Uniformed Services Former Spouses' Protection Act (USFSPA),[1] which permits states to divide service members' disposable military retired pay[2] as marital property in a divorce. Many courts also treat other types of military pay, such as voluntary separation incentives (VSI) and voluntary lump-sum separation benefits (SSBs), similarly to "retired pay," which is subject to division between a service member and his spouse upon divorce.[3] These courts do so despite no clear provision in the USFSPA permitting such "other" types of pay to be characterized as divisible. Courts that divide such "other" types of pay upon divorce typically do so based on a theory that the payments compensate the service member now, for retirement benefits that he would have received in the future.

A type of pay available to some service members is the "fifteen-year career status bonus," or CSB/Redux.[4] Federal law makes such pay available to a service member who first became an armed forces member on or after 1 August 1986 and who has completed fifteen years of active duty in the armed services.[5] Eligible service members may elect to receive a $30,000 bonus in one to five installments.[6] Service members who choose to receive this bonus must agree in writing to remain continuously on active duty until their completion of twenty years of active service.[7] Service members who elect to receive the bonus and who retire with less than thirty years of service prior to age sixty-two receive military retirement pay at a lesser rate than members who do not elect to receive the bonus.[8]

Until very recently, no judicial decision determined whether courts should classify this CSB/Redux benefit as a "military retirement benefit" pursuant to a property settlement or divorce decree that equitably divides marital property.[9] However, in December 2004, a Virginia state court decision divided a service member's CSB/Redux upon that service member's divorce from his spouse.[10] As a case of first impression addressing the division of CSB/Redux bonuses upon divorce, *Boedeker v. Larson*[11] may prompt other courts' willingness to divide such service member bonuses as retirement benefits in the future.

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[1] 10 U.S.C. § 1408 (2000).

[2] "Disposable retired pay" consists of pre-tax gross retired pay, minus amounts that section 1408(a)(4) of the USFSPA defines, including government recoupment for prior overpayments, waiver of retired pay that a court-martial adjudges, waiver of retired pay to receive disability pay, and Survivor Benefit Plan premiums. *See id.* § 1408(a)(4).

[3] *See, e.g.*, Kelson v. Kelson, 675 So.2d 1370, 1371 (Fla. 1996) (likening VSI payments to retired pay, in which a former spouse has an interest); Marsh v. Wallace, 924 S.W.2d 423, 425 (Tex. Ct. App. 1996) (likening SSB payments to "retirement pay, compensating [a service member now] for the retirement benefits he would have received in the future").

[4] Enacted in October 1999, 37 U.S.C. § 322, establishes the mechanism for providing certain service members a choice in converting to the military's pre-1986 military retirement plan, or accepting a bonus and choosing the military's new retirement plan. *See* 37 U.S.C. § 322(b) (2000).

[5] *See id*.

[6] *See id*. § 322(d).

[7] *See id*. § 322(a).

[8] *See id*. § 322(f).

[9] *See generally* Major Mary J. Bradley, *Calling for a Truce on the Military Divorce Battlefield: A Proposal to Amend the USFSPA*, 168 MIL. L. REV. 40, 69 (2001) (noting that "courts have yet to litigate treatment of CSB/REDUX"); *see also* Boedeker v. Larson, 2004 Va. App. LEXIS 596, at *21 (Va Ct. App. Dec. 7, 2004) ("We are unaware of any judicial decisions determining whether CSB/Redux benefits are classified as military retirement benefits . . . .").

[10] Boedeker v. Larson, 605 S.E.2d 764 (Va. Ct. App. 2004).

[11] *Id.*

The service member-husband in *Boedeker* married his wife in 1986, and during the parties' marriage, he enlisted in the U.S. Navy.[12] The husband remained on active duty at the time the parties separated in 2002.[13] On 9 October 2002, the parties agreed in writing to a property settlement, which contemplated that the settlement would be made part of a final decree or judgment concerning divorce.[14] As part of that agreement, the parties agreed that "all retirement and pension types of accounts [had] been disclosed," and that the civilian spouse would receive a percentage of the service member's military "retirement pension."[15] In July 2003, the service member's spouse filed a divorce action in Virginia requesting the court to merge the separation agreement into the couple's final divorce decree.[16]

In October 2003, the service member testified that he expected to receive a $30,000 Redux bonus.[17] The husband also testified that his receipt of that bonus would reduce the amount of his military retired pay and stated that his wife should receive a portion of the Redux bonus, because "her portion of his pension would be reduced as a result of his taking the Redux."[18] The parties' written agreement did not indicate that the husband would be permitted to reduce the amount of retirement benefits to which he would be entitled by forfeiting a portion of his military retired pay in exchange for receipt of his CSB/Redux bonus. The parties' attorneys then determined that the wife would receive 46% of any Redux bonus the service member received.[19]

The husband received the bonus in November 2003; however, before paying his wife the agreed-upon share, he changed his position regarding her entitlement to a portion of the bonus.[20] The service member argued that the bonus should be characterized as "income" rather than as "retirement pay."[21] The trial court rejected the service member's argument and ordered that he pay his wife a portion from each of the two Redux installment payments which he opted to receive.[22]

The service member filed a motion for rehearing and argued that, despite his earlier contentions, the Redux bonus constituted post-separation income.[23] As such, he argued that his wife was not entitled to share in a portion of the bonus.[24] The court denied the motion for rehearing, which prompted the service member's appeal to the Court of Appeals of Virginia.[25]

In the service member's appeal, he argued that the Redux bonus did not constitute "disposable retired pay" under federal law (the USFSPA), but rather that it constituted post-separation income, and that a state court thus could not divide it.[26] The appellate court rejected the service member's argument, finding that federal law supported the lower court's decision that the Redux bonus constituted "marital property" subject to division pursuant to the parties' property settlement agreement.[27]

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[12] *See id*. at 765.

[13] *See id*.

[14] *See id*.

[15] *Id*. at 766. Specifically, the parties agreed that the spouse would receive a percentage of the service member's military retired pay, based on the following calculation: "166 months/number of months of active duty multiplied by .5." *Id*.

[16] *See id*.

[17] *See id*.

[18] *Id*.

[19] *See id*. The parties apparently reached this percentage by dividing the number of months they were married while the service member was in the military (166 months) by the number of total months the service member was in the service (180 months), and multiplying that fraction by one-half. *See id*.

[20] *See id*. at 766-67.

[21] *See id*. at 767.

[22] *See id.*

[23] *See id*.

[24] *See id*.

[25] *See id*.

[26] *See id*. at 767-68.

[27] *See id*. at 768.

In reaching its decision, the court of appeals did not rely on the service member's initial statement to the effect that his wife was entitled to a portion of the bonus.[28] Instead, the court of appeals noted that the parties had disclosed in their written agreement "all retirement and pension types of accounts."[29] Moreover, the parties' written agreement did not stipulate that the husband could forfeit a portion of his military retired pay to which his wife would be entitled in exchange for his exclusive receipt of his CSB/Redux bonus.[30] The court declared that, because a property settlement agreement constitutes a contract, it must discern the parties' intent and the agreement's language based on an examination of the agreement.[31]

The court further recognized that the husband's acceptance of the bonus – while on active duty – would reduce his military retired pay as a result. The court found that the CSB/Redux is "in the nature of retirement pay, compensating [the service member now] for . . . retirement benefits he would have received in the future."[32] The court noted that it was unclear whether Congress intended for CSB/Redux payments to be classified as disposable retired pay. In the absence of a clear congressional declaration of intent, the court found that the parties previously had disclosed all "retirement *or pension types of accounts*"[33] in their written agreement, and that they had agreed that the civilian spouse was entitled to one-half the marital share of the service member's "retirement."

At this point, the ramifications of the *Boedeker* decision are unclear. Parties may argue that this Virginia case should be limited to its facts. They first might argue that it applies only in the context of dividing CSB/Redux bonuses where the parties agree in writing that "all retirement and pension types of accounts" have been disclosed. Alternatively, parties also may argue that the court's decision applies only in situations in which a written agreement fails to stipulate that the service member may forfeit a portion of retired pay that his spouse would otherwise be entitled in exchange for the service member's exclusive receipt of a CSB/Redux bonus. However, the *Boedeker* court's willingness to liken CSB/Redux to VSI or SSB, which many state courts are willing to divide as marital property upon divorce, may signal a trend for future division of the CSB/Redux bonus.

Issues regarding courts' treatment of certain types of pay as divisible under the USFSPA remain state-specific.[34] Legal assistance attorneys advising clients on divorce and separation issues must remain vigilant of courts' concerns to ensure that former spouse's property interests are protected in the event service members opt to receive payments while on active duty that will reduce the percentage of military retired pay which they will receive upon retirement.

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[28] *See id.* at 770 n.1 ("We do not rely on husband's initial statement that wife was entitled to a portion of the bonus . . . . Rather . . . husband's admission that his taking the bonus would reduce his retirement benefit – and, thus, wife's share of that benefit – supported the conclusion that the bonus [is] properly classified . . . as retirement . . . .").

[29] *Id*. at 769.

[30] *See id*.

[31] *See id*. at 770.

[32] *Id*. at 771 (quoting Marsh v. Wallace, 924 S.W.2d 423, 425 (Tex. Ct. App. 1996)).

[33] *See id*. at 772.

[34] For a thorough discussion of the divisibility of military retired pay under state property division schemes, see Bradley, *supra* note 9, at 56-59; Faculty, The Judge Advocate General's School, *Legal Assistance Note: State-by-State Analysis of Divisibility of Military Retired Pay*, ARMY LAW., Aug. 2002, at 42.

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

Legal Team Trends at the Combat Training Centers

Introduction

The Combat Training Centers (CTCs) are designed to provide realistic combat training to units. The Judge Advocate General's Corps (JAGC) assigns both judge advocates (JAs) and enlisted paralegals to the CTCs.[1] These JAs and paralegals mentor, coach, and teach the legal teams rotating through the CTCs and are in a unique position to capture legal team training challenges during unit rotations. They then analyze these challenges and spot trends that may need to be addressed by JAGC leaders for the benefit of future CTC rotations. More importantly, the CTCs strive to spot problematic issues before they materialize in current and/or future operations.

This note is based on information gathered from the legal teams assigned as observer controllers (O/Cs) at the CTCs and addresses several challenges and trends they noted. This article is intended to assist leaders and those deploying to the CTCs in devising home station training strategies to prepare legal teams for their CTC rotations and for their deployments in support of real-world operations.

Legal Teams as Staff Officers

According to JAGC doctrine, legal teams must be present in the tactical operations center (TOC), have access to the commander, and have the training, mobility, secure communications and equipment to provide the right answers at the right time and place.[2] To best improve the skills required in today's legally complex operational environment, legal teams must arrive at the CTC prepared to further perfect the skills they have gained already through home station integration and training.

Legal Team Presence in the TOC

While placement of the legal team in the TOC during CTC rotations is generally not a problem, the location of the team within the TOC is frequently an issue. Legal teams often begin an exercise with their assigned space located near the periphery of the TOC or in a location which hampers staff coordination and access to decision-makers by the JA. When this issue arises, it is always corrected by the unit no later than the mid-point of the exercise with little or no O/C coaching. Judge advocates need to be sensitive to this issue and strive for a location in the TOC that enhances information-sharing and access to the commander. In addition, O/Cs have observed that some Reserve Component (RC) Offices of the Staff Judge Advocate (OSJA) may not designate JAs to cover the brigade combat teams (BCTs) prior to arriving at the CTC, because the OSJAs ordinarily drill as a consolidated legal team. The BCT commanders and staffs, therefore, may not be accustomed to having direct JA support. Considering they will soon follow their active duty counterparts by transforming to modular BCTs, JA O/Cs recommend RC OSJAs designate specific JAs to cover BCTs as soon as possible, and use future drill weekends to build working relationships at the brigade level.

Access to Subordinate Commanders and Other Decision-Makers

Although the legal teams can locate their office in an area of the brigade TOC that fosters access to the commander and staff, they still may be hampered in their access to commanders at the battalion level and below. This results from consolidating paralegals at the brigade level, and subsequently failing to identify critical tasks that the paralegal performs at the battalion level and training another Soldier to conduct those tasks (*e.g.*, reviewing detention packets, receiving claims, coordinating legal assistance, and handling command discipline issues). Thus, brigade operational law teams (BOLTs) must ensure that they have a designated Soldier at the battalion level responsible for legal actions and trained to spot issues that the BOLT may need to address. Similarly, JAs must ensure that paralegals deploying with their battalions to forward operating bases (FOBs) at a different location than their brigade have systems in place that assist the paralegal in enhancing the

[1] The Joint Readiness Training Center (JRTC), at Fort Polk, Louisiana, has three JAs and one enlisted paralegal. The National Training Center (NTC), at Fort Irwin, California, has two JAs and one paralegal. The Combat Maneuver Training Center (CMTC), at Hohenfels, Germany, has one JA. Finally, the Battle Command Training Program (BCTP), at Fort Leavenworth, Kansas, has three JAs.

[2] U.S. DEP'T OF ARMY, FIELD MANUAL 27-100, LEGAL OPERATIONS para. 5.5.4 (Mar. 2000) [hereinafter FM 27-100].

information flow of legal issues from the battalion commander to the BOLT JA. About one-third to one-half of BOLTs actually attempt to employ this configuration at the CTCs; O/Cs who have observed paralegals operating at the battalion have found it to be highly effective. In these cases, the BOLT JAs and senior noncommissioned officers must work to train junior paralegals at the battalions so that they can participate fully in battalion TOC operations. With training, these paralegals can spot issues for the commander and address those issues with the BOLTs.

Training

The clear strength of the BOLTs deploying to the CTCs is their exceptional knowledge and ability in the core legal disciplines. When asked, legal teams provide the correct legal answer nearly every time, even when confronted with complex questions and situations. Reserve component legal teams, in particular, excel at court-martial advocacy, but often need to work harder to learn the procedural aspects of the military discipline system. Recently, to prepare for deployment, RC legal teams have trained at active duty SJA offices to learn the administrative processing details of military legal actions.

Although the BOLTs' legal skills are excellent, their knowledge of staff officer skills is one of the primary weaknesses of JAs and enlisted paralegals who rotate through the CTCs. Many legal teams lack understanding of basic staffing processes and are unable to speak staff or Army "language." Much of the training that JAs and paralegals receive is focused on the technical legal aspects of military operations; therefore, many do not understand the military decision making process (MDMP).[3] Consequently, they fail to develop the required products at the required time. Moreover, JAs often do not participate in the intelligence preparation of the battlefield (IPB) process[4] and fail to provide the products required to support the decision-making process at the brigade and battalion level.[5] Many junior JAs find themselves in an environment where they must interact with other staff sections and think proactively. These legal teams risk becoming compartmentalized and reactive, simply waiting in their cells for the phone to ring.

Similarly, many JAs and paralegals do not know how to write a legal annex, how to format the annex, and which information should be in the annex. If the legal teams are not familiar with how to draft a legal annex, they should contact the legal O/Cs prior to their rotation for sample formats.

In addition, commanders and fellow staff members value officers who embody military values. Impressions are often formed before a JA has an opportunity to give legal advice. Therefore, legal teams must be familiar with and adhere to basic military protocol at all times. To be effective, legal teams must present themselves as knowledgeable staff officers and Soldiers who add value to the team. Not only must the legal team's military bearing be above reproach, but their workspace should present an organized and military appearance. Moreover, a continuing issue is the legal teams' unfamiliarity with basic Soldier skills, including, but not limited to, the following: land navigation; weapons use and clearing procedures; night driving with night vision goggles; familiarity with operational terms and graphics; and familiarity with other battlefield operating systems (BOS) elements.

In sum, JA O/Cs observe that if the legal teams present a proper appearance and participate in the staff process, including the MDMP, they become fully integrated into the staff. Other staff officers include them in all planning and seek out the legal team for advice and support. Once these legal teams "speak the language," they can disseminate information using the information tools the Army provides, including fragmentary orders (FRAGOs) and net calls.

Mobility

When a legal team arrives at a CTC without a vehicle, they often miss opportunities to practice basic skills such as land navigation, convoy operations, and night driving. Thus, the OSJA leadership must emphasize basic Soldier skill training at home station prior to deployment to a CTC and ensure legal teams have a vehicle during their rotation. Second only to

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[3] U.S. DEP'T OF ARMY, FIELD MANUAL 101-5, STAFF ORGANIZATION AND OPERATIONS ch. 5 (31 May 1997) (recently replaced by U.S. DEP'T OF ARMY, FIELD MANUAL 5-0, ARMY PLANNING AND ORDERS PRODUCTION ch. 3 (20 Jan. 2005)).

[4] *See generally* U.S. DEP'T OF ARMY, FIELD MANUAL 34-130, INTELLIGENCE PREPARATION OF THE BATTLEFIELD ch. 1 (8 July 1994) (stating that all staff officers participate in IPB).

[5] *See generally* U.S. DEP'T OF ARMY, FIELD MANUAL 6-0, MISSION COMMAND: COMMAND AND CONTROL OF ARMY FORCES para. 1-5 (11 Aug. 2003) (requiring all staff officers to identify and disseminate relevant information in order to promote situational understanding). Judge advocates at the CTCs recommend that JA doctrine be updated to identify those products with specificity. The *Rules of Engagement Handbook* suggests what products should be developed and when those products should be produced, but focuses almost solely on ROE development. *See* CENTER FOR LAW AND MILITARY OPERATIONS, THE JUDGE ADVOCATE GENERAL'S SCHOOL, U.S. ARMY, RULES OF ENGAGEMENT HANDBOOK ch. 1 (July 2000) [hereinafter CLAMO HANDBOOK].

training, this is an important challenge facing a legal team deploying to a CTC. Although many BOLTs arrive at the CTC with dedicated vehicles, these vehicles often have been cross-leveled from some other source. Commanders must prioritize the availability of vehicles based upon what they believe the mission requires. Fortunately, many commanders understand the importance of JAs and paralegals in the contemporary operational environment.[6] The legal teams need vehicles to conduct missions in all core legal disciplines, such as claims and legal assistance, as well as missions that include meeting with local judicial representatives to ensure judicial reconstruction efforts and with local government agents on behalf of the commander.

Secure Communications

The ability to conduct secure communications is a significant issue for legal teams at the BCT. Although legal teams do not have organic communications (except e-mail), they have access to it, except while in transit. Thus, access to the commander is lost during periods of transit and while off of the FOB. Because the JA is both a personal and a special staff officer whose function cannot be replicated, the commander should have access to the JA at all times. This is rarely the case; a Senior JRTC O/C commented that during his tenure, only one BOLT arrived at JRTC with their own FM communications (a SINCGARs Advanced System Improvement Program (ASIP) radio).[7]

Equipment

All legal team equipment must be tested prior to deployment, and every member of the BOLT should be capable of operating each piece of organic equipment. A clear trend at the CTCs is that computer systems are rarely fully tested prior to deployment. Often, legal administrators keep "deployment laptops" segregated from "work laptops" and only issue the deployment laptops upon deployment. The Judge Advocate Warfighting System (JAWS) is the standard, and it is the most valuable piece of BOLT equipment. Optimally, the O/Cs recommend that each member of the BOLT utilize the JAWs system during unit rotations, particularly if the battalion paralegals have not been consolidated at the brigade. For a paralegal to be most effective at the battalion level, he must be able to timely transmit documents to the JA. To transmit documents, they must have a scanner. According to the O/Cs, the weakest component of the JAWS is the scanner/printer. It requires the most training and testing prior to deployment. Nevertheless, O/Cs have noticed that very few BOLTs arrive at the CTC having previously tested their scanners. BOLTS should consider replacing this component with an all-in-one scanner, printer, copier which, while larger, is more reliable and easier to employ.[8] Finally, few BOLTs arrive at the CTC with USB (universal serial bus) drives for paralegals even though the paralegals rarely have their own computer. There should be a minimum of two USB drives per member of the BOLT. While capacity is important, 64 MB is normally sufficient for all but the largest of PowerPoint presentations. One USB drive should be classified and the other unclassified.[9]

Rules of Engagement Issues

Clearly stated, the ROE must be published before Army forces are committed at higher levels. Operational law JAs assist the commander to interpret, draft, disseminate, and train the ROE. Because the ROE must conform to international

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[6] Major Rick Lear, the Senior O/C at JRTC observed:

> All JAs that I visited while in [the Iraqi] theater had dedicated vehicles, however, most received their vehicles after arriving in theater and once commanders realized that an adjustment had to be made in order for the JA to do his/her job. In other words, the commander had to go through some "growing pains" and realize that mobility was a more important issue for their JA than they anticipated.

E-mail from Major Rick Lear, Senior O/C, Joint Readiness Training Center, to Lieutenant Colonel Pamela Stahl, Director, Center for Law and Military Operations, subject: Data Call (3 Oct. 2004).

[7] *Id.*

[8] CENTER FOR LAW AND MILITARY OPERATIONS, THE JUDGE ADVOCATE GENERAL'S SCHOOL, U.S. ARMY, LEGAL LESSONS LEARNED FROM AFGHANISTAN AND IRAQ: VOLUME I, MAJOR COMBAT OPERATIONS (11 SEPTEMBER 2001 – 1 MAY 2003) ch. J, para. 3.f.3 (2004) (noting the need for an all-in-one copier, printer, and scanner).

[9] *See id.* para. 3.f.2 (highlighting the utility of USB drives).

law, Army policy gives military attorneys a role in ROE compliance,[10] and the Chairman of the Joint Chiefs of Staff has directed attorneys to review all operations plans and participate in military staffs' targeting meetings.[11]

There are few clearly identifiable trends regarding the level of knowledge of the ROE that Soldiers possess upon arrival at a CTC. Most Soldiers have received some level of training from JAs, their chain of command, or other sources. Soldiers in units who are not organic to the BCT (*e.g.*, Psychological Operations or Civil Affairs Soldiers) typically have less training on the ROE than organic units. Prior to arriving to the CTC, Soldiers generally receive their training in a classroom environment. Soldiers understand the importance of ROE and recognize that it contains both legal and political considerations. They often know the 5 Ss,[12] but have not internalized them and therefore fail to apply them in given situations. Consequently, during situational training exercise (STX) lanes, Soldiers confronted with difficult and realistic ROE scenarios have difficulty applying the appropriate use of force, although they can repeat the rules after the fact. Nearly all units incorporate vignettes into their ROE training program. The legal team O/Cs observed that the use of vignettes effectively contributes to Soldiers' understanding of the rules.

Clearly Stated ROE

Legal teams recognize the need to provide clearly stated ROE and excel when given the opportunity to help draft ROE and train Soldiers on ROE. Rules of engagement in today's operational missions are complex and derived from various sources. Real world confusion exists in several areas regarding the ROE, in particular regarding the use of warning shots. Judge advocates often fail to advise commanders on the production of clear guidance regarding the use of warning shots prior to their arrival at the CTC. Additionally, terms such as "positive identification" or "PID," can be confusing. While JAs easily understand this concept with little explanation, commanders and Soldiers often exhibit difficulty and must be trained on these concepts.

Interpret, Draft, Disseminate, and Train (I-D-D-T)

Units use the I-D-D-T (Interpret, Draft, Disseminate, and Train) methodology both consciously and instinctively in their training program.[13] Currently, most units arrive at the CTC with their version of the Combined Forces Land Component Command (CFLCC) ROE card rather than the prescribed CTC card in order to provide greater clarification to Soldiers deploying in support of Operation Iraqi Freedom. Dissemination through various means has been effective. What the I-D-D-T methodology does not consider, and the task that JAs and commanders often fail to perform, is an assessment of the effectiveness of the ROE training program. Soldiers should be spot-checked for possession of their cards, but more importantly, on the knowledge of what is on their cards.

Participate in the Targeting Meetings

Many JAs attend the targeting meetings only at the prompting of the O/C. This may be due to the fact that these JAs often do not understand the targeting process used by their commands, and therefore are unable to anticipate legal issues which will arise during targeting meetings. Judge advocates generally arrive at the correct legal answer, but normally fail to anticipate the issues and must research and answer the questions after the fact. For additional information on contemporary targeting, legal teams should refer to a previous CLAMO Note on effects-based targeting.[14]

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[10] FM 27-100, *supra* note 2, para. 8.4.

[11] CHAIRMAN OF THE JOINT CHIEFS OF STAFF, INSTR. 3121.01A, STANDING RULES OF ENGAGEMENT FOR US FORCES encl. L, para. 2.a (15 Jan. 2000) ("The staff judge advocate (SJA) assumes the role of principal assistant to the J-3 or J-5 in developing and integrating ROE into operational planning."); CHAIRMAN OF THE JOINT CHIEFS OF STAFF, JOINT PUB. 3-60, JOINT DOCTRINE FOR TARGETING app. A, para. 9 (17 Jan. 2002) ("Due to the complexity and extent of international law considerations involved in the Joint Targeting process, a judge advocate (JA) must be immediately available at all levels of command to provide advice about law of war compliance during planning and execution of exercises and operations.").

[12] Shout (verbal warning), show (show weapons or threat of force), shove (use physical force to restrain threat), shoot to warn (warning shot), shoot to kill. *See* CLAMO HANDBOOK, *supra* note 5, at 2-6.

[13] FM 27-100, *supra* note 2, para. 8.4 (describing the I-D-D-T methodology as a medium for teaching ROE).

[14] *See generally* Lieutenant Colonel Pamela M. Stahl & Captain Toby Harryman, *The Judge Advocate's Role in Information Operations*, ARMY LAW., Mar. 2004, at 30.

Detention Operations

Detention involves a less than lethal means of the use of force which should be addressed during ROE training.[15] About fifty-percent of units rotating through the CTCs have incorporated the rationale for detentions into ROE training. For example, JA O/Cs train all units deploying to Iraq on the proper method of completing the Multinational Corps Iraq (MNC-I) detention form. Units continue to have difficulty with this task, because they fail to provide required information and to demonstrate any basis for detention. The result is that interrogators are unable to properly formulate questions for detainees, and intelligence is lost. Moreover, despite the required training, Soldiers in maneuver units still appear untrained in the use of sworn statements and MNC-I detention forms. The Senior JA O/C at JRTC devised the following acronym that may be provided on DA Form 2823, Sworn Statement, to assist Soldiers in completing the form.

Witnesses: who saw it, both U.S. and local national.

Reason: what did this person do that caused you to detain him/her.

Observe: what did you directly observe or what did others tell you that they observed that caused you to detain this person.

Name: of the person detained and those detained with him/her.

Grid: location where the person was detained.

Conclusion

The CTCs use the most current information from ongoing operations and are therefore able to juxtapose the skills modern combat operations require of legal personnel with the skill levels of the legal teams rotating through the CTCs. Most trends in legal performance can be remedied before the units arrive at the CTC and should be remedied before deployment in support of ongoing combat operations. A successful training exercise at a CTC can build confidence in legal teams who may soon deploy with their units. Applying these lessons learned in training can assist leaders and those deploying to the CTCs in devising home station training strategies and acquiring the best equipment to ensure success in CTC rotations and for their deployments in support of real-world operations.

[15] *See generally* CLAMO HANDBOOK, *supra* note 5, ch. 2.

Administrative Compliance Agreements: An Effective Tool in the Suspension and Debarment Process

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Introduction

Many in the government contracting community question the effectiveness of administrative remedies such as suspension and debarment for ensuring a competitive and nondiscriminatory contracting environment. Such criticism may be well-founded, but the primary intent of these provisions is to protect the government and the taxpayer. One problem in ensuring effectiveness has been the lack of a mechanism for periodic review of contractor responsibility following an adverse administrative decision. Suspension and debarment, frequently viewed as an all or nothing remedy, generally function to disqualify the non-responsible contractor from receiving new government contracts for a specified period of time. In many cases, this is unobjectionable. In some cases, however, the government may have an interest in rehabilitating the contractor through the use of corrective and remedial administrative measures.

To this end, the Army has expanded the use of administrative compliance agreements.[1] Compliance agreements provide continuing assurance that the interests of the government will be sufficiently protected without resorting to a suspension or debarment.[2] Moreover, administrative compliance agreements provide redress for the apparent inequities of the suspension and debarment process with respect to small and large businesses. Every case, however, does not warrant the application of an agreement, as it requires considerable time and expense.[3] Factors for the government to consider before entering into an administrative compliance agreement include: the contractor's otherwise satisfactory performance; its response to the wrongdoing; its willingness to cooperate; its willing to make restitution; and its willingness to implement or strengthen an ethics program.[4]

This article briefly outlines suspension and debarment procedures and then discusses administrative compliance agreements as an effective option. The discussion also includes the application of an administrative compliance agreement to large and small businesses, as well as the measures taken by Boeing following the Air Force's recent suspension.

Background

Federal Acquisition Regulation (FAR) Part 9 encompasses procedures pertaining to contractor responsibility, as well as suspension and debarment.[5] A contracting officer shall make an affirmative determination of responsibility preceding all

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[1] *See* Robert Kittel, *Not Just a Punishment: Debarment Can Be Tool to Improve Acquisition System*, FEDERALTIMES.COM, *at* http://federaltimes.com/index.php?S=324697 (last visited Jan. 31, 2004). Compliance agreements are also referred to as administrative agreements. The Army includes the word compliance in the title because the primary focus is, and should be, contractor compliance. *See* Interview with Colonel Karl M. Ellcessor, Chief, U.S. Army Contract Appeals Division, U.S. Army Legal Services Agency, in Arlington, Va. (Sept. 13, 2004).

[2] *See id.*

[3] The complexity of compliance agreements necessitate cooperation between the Procurement Fraud Branch attorneys and the suspension and debarment official, who is involved in every phase of the agreement.

[4] Not surprisingly, these factors mirror those considered by the debarring official prior to making a debarment decision. *See* GENERAL SERVS. ADMIN. ET AL., FEDERAL ACQUISITION REG. 9.406-1 (July 1, 2004), *available at* http://www.arnet.gov/far/ [hereinafter FAR] (noting that the on-line version includes amendments from *Federal Acquisition Circular* (FAC) 19 (Jan. 1, 2004) and *FAC* 18 (Jan. 12, 2004)). The *FAC* publishes revisions, amendments, and updates to the *FAR*. *See* RALPH C. NASH, JR. ET AL., THE GOVERNMENT CONTRACTS REFERENCE BOOK, A COMPREHENSIVE GUIDE TO THE LANGUAGE OF PROCUREMENT 233 (1998).

[5] *See* FAR, *supra* note 4, at 9.402.

government contract awards.[6] In making that determination, the contracting officer must assess such factors as the adequacy of the contractor's financial resources, its ability to satisfy the contract requirements, and whether the contractor has "a satisfactory record of integrity and business ethics." [7] This analysis ensures that federal agencies only contract with responsible contractors. Furthermore, the analysis only applies on a contract-by-contract basis.

On the other hand, suspension and debarments render contractors ineligible from receiving any new federal government contracts.[8] Suspension is action taken by the suspension official under *FAR 9.407* to temporarily disqualify a contractor.[9] Debarment is action taken by the debarring official under *FAR 9.406* to exclude a contractor for a reasonable, specified period.[10] *FAR 9.407-2* and *FAR 9.406-2* lists causes for suspension and debarment.[11]

Are Administrative Compliance Agreements a Viable Alternative to Suspension and Debarment?

Administrative compliance agreements offer an option to agencies considering suspension and debarment. Although waivers permit the federal government to conduct business with a contractor that is suspended or debarred, such action is criticized because the contractor continues to receive business without addressing the misconduct. Administrative compliance agreements ensure that the government (and more importantly, the suspension and debarment official (SDO)), through internal and external audits, has confidence that the contractor will act responsibly. Although no industry template for administrative compliance agreements exists, the following elements draw from and expand upon those listed in *Defense Federal Acquisition Regulation Supplement 203.7001*:[12]

1. Recognition of Malfeasance: Contractor recognition of malfeasance and adequate assurance that it will not repeat the misconduct.

2. Removal: Removal of the wrongdoers within the firm, as appropriate. This may be difficult depending on the size of the company and/or the position held by the offender.

3. Satisfactory Performance: Overall contractor performance shall be otherwise satisfactory. The contractor's performance must be in strict compliance with the terms of current contracts.

4. Appointment of an Ombudsman: The Ombudsman's function is to assess the corporate ethical climate and act as the eyes and ears of the agency. This position is critical to any successful compliance agreement and generally refers to an independent attorney, certified public accountant, or other expert knowledgeable in the area of government contracts. While employed by the contractor, the Ombudsman will not be under its direct control. The Ombudsman will certify on an annual basis that he or she has no financial conflicts of interest. Responsibilities include: assisting in the implementation of the Agreement; serving as the first point of contact for all questions regarding the Agreement, conducting internal audits; and, investigating instances of alleged improprieties.

5. Contractor Responsibility Program (CRP): In order to ensure responsibility, the contractor must be willing to institute a CRP involving all employees. The program shall be designed to ensure that the contractor maintains the high standard of business integrity and honesty required of government contractors. At a minimum, the program shall include the following features:

a. Notification and dissemination of information to the contractor's employees regarding the existence of the compliance agreement;

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[6] *See id.* at 9.103(b).

[7] *See id.* at 9.104-1(d).

[8] Pursuant to *FAR 9.405-1(a)*, "[A]gencies may continue contracts or subcontracts in existence at the time that the contractor was debarred, suspended, or proposed for debarment unless the agency head [] directs otherwise." Unless the agency head issues a written waiver for a suspended or debarred contractor, agencies may not: "(1) Place orders exceeding the guaranteed minimum under indefinite quantity contracts; (2) Place orders under optional use Federal Supply Schedule contracts, blanket purchase agreements, or basic ordering agreements; or (3) Add new work, exercise options, or otherwise extend the duration of current contracts or orders." *See id.* at 9.405-1(b)(1)-(3).

[9] *See id.* at 2.101.

[10] *See id.* at 9.406.

[11] *See generally id.* at 9.406-2, 9.407-2.

[12] U.S. DEP'T OF DEFENSE, DEFENSE FEDERAL ACQUISITION REG. SUPP. 203.7001 (July 2002).

b. Adoption of a written Code of Business Ethics and Conduct (Code). The Code should be tailored for different levels of employees in the corporate hierarchy (reflecting their different duties, responsibilities, and core ethical values),[13] and the company should ensure all employees have access to, understand, and certify its Code;[14]

c. Publication of a Government Contracting and Procedures Manual (Manual) to regulate the performance of government contracts. The Manual shall describe, in detail, the contractor's method for competing for and administering government contracts and the positions responsible for performing, approving, and reviewing these tasks. Moreover, it will address the procedural safeguards the contractor has implemented to ensure that the misconduct does not reoccur;

d. Implementation of a training program in business ethics, government contracts, and applicable rules and regulations appropriate to correcting the misconduct. The Code and Manual described above should be provided to all employees and shall form the basis of the training. Training should be conducted at least annually and employees should be required to certify their attendance. Contractors should ensure that newly hired employees satisfy the aforementioned requirements as part of their orientation.

e. Appointment of an Ethics Program Director. This position refers to a company employee who will be the first point of contact for all ethics questions.

f. Installation of a mechanism, such as a hotline, for employees or other interested parties to report suspected instances of misconduct.

6. Compliance Visits: Because the Army has a vested interest in the contractor's responsibility, it will conduct on-site compliance visits. These visits permit the agency or its designee to examine and reproduce the contractor's books, records, documents, and supporting materials related to any report, allegation or complaint of suspected misconduct. They will be conducted on a periodic basis following reasonable notice.

7. Restitution: The contractor shall make restitution, when appropriate. For example, if the misconduct involves the falsification of invoices, the contractor should compensate the Government for the overcharge.

8. Payment of Costs: Contractors shall pay the costs associated with negotiating and administering the Agreement, to include costs associated with agency site visits to the contractor and any of its divisions or its subsidiaries. The money shall then be deposited in the United States Treasury pursuant to the Miscellaneous Receipts Statute.[15]

These components form the framework of an effective compliance agreement. The particular circumstances of each case will dictate which factors apply. For instance, the elements for a small business with ten employees will differ from those applicable to a large business. The following two case studies are situations in which the government reached effective compliance agreements—one with a small business, the other with a large business.

Applying Compliance Agreements to Government Contractors

The Case of Small Business X

In 2004, the Army SDO notified *Small Business X* (*SBX*)[16] that it was suspended based upon a criminal information filed in a U.S. District Court. The Army also suspended Jane Doe, *SBX*'s owner and president; John Doe, *SBX*'s vice-president and Jane Doe's husband; and their daughter, Janet Doe, an *SBX* employee. The criminal information charged *SBX* with intentionally attempting to export and cause the export of military hardware without obtaining the proper licenses and approvals in violation of the Arms Export Control Act.[17] The criminal information also charged Janet Doe with obstruction

[13] Core values are quintessential to the moral and ethical fiber of any organization. For example, the Army values (loyalty, dignity, respect, selfless-service, honesty, integrity, and personal courage) represent a code of personal conduct and a moral ethos for all its Soldiers and civilian personnel.

[14] *See* Joe Murphy & Win Swenson, *20 Questions To Ask About Your Code of Conduct*, ETHIKOS, July/Aug. 2003, *available at* http://www.ethikosjournal.com/html/20questions.html (posing questions for contractors to consider when measuring the effectiveness of their code of conduct).

[15] 31 U.S.C. § 3302(b) (LEXIS 2004); *see generally* Major Timothy D. Matheny, *Go On, Take the Money and Run: Understanding the Miscellaneous Receipts Statute and Its Exceptions*, ARMY LAW., Sept. 1997, at 41-42 (advocating an exception to the Miscellaneous Receipts Statute for the recovery of procurement fraud funds).

[16] *Small Business X* is a fictional company; however, this hypothetical is based upon a recent Army administrative compliance agreement.

[17] *See* 22 U.S.C. § 2778 (2000).

of justice by knowingly and intentionally impeding and obstructing officers of the United States in the execution of a search warrant. Ultimately, *SBX* and Janet Doe pled guilty to the charges contained in the criminal information and were placed on probation for five years and fined a substantial amount.

Earlier, *SBX* advised the Army that the company and Janet Doe were under investigation, and the investigation was likely to result in criminal charges. *SBX* learned that the government was investigating the company for suspected violations of the arms export control laws when agents of the U.S. Department of Homeland Security and the Department of Defense Inspector General searched *SBX*'s business premises pursuant to a warrant. *SBX* then retained criminal counsel to conduct an internal inquiry regarding the alleged misconduct. *SBX* subsequently provided a copy of the report of that inquiry to the Army.

Following suspension, *SBX*'s counsel approached the Army Procurement Fraud Branch requesting that the Army terminate the suspensions pursuant to an administrative compliance agreement. Since most of *SBX*'s business consisted of government contracts, the viability of the firm and its fifty to sixty otherwise innocent employees were at risk. *SBX* informed the government of specific corrective and remedial measures undertaken to establish its responsibility. As a condition of entering into an agreement, however, the SDO required *SBX* to insulate the company and the government from future dealings with the Doe family, who would remain suspended despite the agreement. *SBX* agreed that the dismissed individuals would have no involvement with or responsibility for the operation of or conduct of *SBX*'s affairs. In addition to the forced resignations, the wrongdoer's voting stock shares were put in a blind trust under the direct control of a government-approved trustee.[18] Here, the Doe family acts as a silent partner and their communications must be routed through the ombudsman. Because the terms of the agreement favored the government, the SDO terminated *SBX*'s suspension.[19]

A suspension and debarment could signal the end of a small business specializing in government contracts. Oftentimes, innocent employees lose their jobs and their hard work is discredited by the misconduct of a few individuals. Administrative compliance agreements offer an alternative means to balancing these inequities.

The Case of Large Business Y

In 2004, the Army SDO notified *Large Business Y* (*LBY*) and Mr. James Smith, a *LBY* managing director, that they were suspended based upon indictments issued by a U.S. District Court. The indictments charged *LBY* and Mr. Smith each with conspiracy to restrain trade in violation of the Sherman Act, and conspiracy to defraud the United States. One month later, *LBY* entered into a plea agreement in which it agreed to waive indictment and further agreed to conditionally plead guilty to the two-count criminal information. The court accepted the plea agreement.

Large Business Y's counsel requested that the SDO terminate the suspension, and that for purposes of the compliance agreement, *LBY* and Mr. Smith be treated as having been convicted of felony violations of conspiracy to restrain trade in violation of the Sherman Act and conspiracy to defraud the United States. Although *LBY* believed it acted in good faith, it accepted the Army's contention that its conduct of engaging in price-fixing and collusion with other businesses reflected a lack of business integrity and business honesty. This behavior seriously impacted *LBY*'s responsibility. Before the parties could implement a compliance agreement however, the SDO insisted upon specific terms and conditions.

First, Mr. Smith could not hold any position as an officer, director, or active employee of *LBY* or serve in such capacity unofficially and/or free of charge. Second, *LBY* had to make restitution to the government for the loss suffered from *LBY* and Mr. Smith's price-fixing and anti-competition activities. Finally, in addition to the general provisions included in compliance agreements, *LBY* had to agree that if it establishes new companies or subsidiaries, merges with another company, or transfers the entire company or major assets to new owners, the agreement would survive and bind the parties and their respective successors and assignees unless the new owners request and demonstrate grounds for nullification of the compliance agreement.

The cases of *SBX* and *LBY* exemplify the appropriate application of administrative compliance agreements.

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[18] In the case of *SBX*, the Doe family controlled the voting stock, which made it difficult to prohibit all contact between the family and the company. In the instance where the wrongdoer owns only a share of the company, it may be preferable to require the wrongdoer to divest ownership.

[19] The compliance agreement contains the same or similar components as discussed above. The terms were also coordinated with investigators and the assistant U.S. attorney, who all concurred with the conditions of the agreement.

Applying the Facts to the Recent Boeing Suspension

Boeing's actions (and reactions) following the Air Force's recent suspension, reflect many of the terms and conditions included in a compliance agreement.

The Boeing Case

In July 2003, the Air Force suspended three of Boeing's business units[20] and three of its former employees.[21] The Air Force based the suspensions on its own investigation, which concluded that Boeing committed serious violations of the law.[22] The Department of Justice's (DOJs) press release, issued in connection with its criminal case, stated that:

> (1) Boeing possessed an extraordinary amount of rival Lockheed Martin Corporation's proprietary data during an Air Force procurement;
>
> (2) the data was capable of providing great insight into Lockheed Martin's cost and pricing; and
>
> (3) Boeing failed to disclose to the Air Force the full extent of the data in its possession for approximately four years.[23]

The Air Force twice waived Boeing's suspension upon a determination that compelling reasons existed for the award of new government contracts. The Air Force issued both waivers, because Boeing was the only contractor capable of launching the Global Positioning Satellite and the National Reconnaissance Office Satellite.[24] Absent Boeing's otherwise satisfactory performance and its corrective and remedial measures, it is doubtful that the waivers would have been approved or justified.

Boeing's Actions Constitute a De Facto Compliance Agreement

Before the suspension, Boeing admitted that it violated acceptable standards of business integrity and honesty and terminated the employees who engaged in the improper conduct.[25] Boeing also retained former Senator Warren B. Rudman, a partner in a D.C. law firm, to conduct an independent review of the company's ethics program and the handling of competitive information.[26] Senator Rudman, in effect, functioned as an ombudsman. To reinforce its commitment to the government, Boeing suspended work to ensure that all 78,000 employees of the affected business unit underwent ethics and procurement integrity training.[27] Employees were also briefed on the events that led to the Air Force suspension.[28]

Boeing then created a Contractor Responsibility Program, through its newly created Office of Internal Governance, and its head officer reported directly to the chairman and chief executive officer.[29] The "Ethics Program Director" has

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[20] *See* Press Release, U.S. Air Force, AF Announces Boeing Inquiry Results (July 25, 2003), *available at* http://www.af.mil/stories/story.asp? storyID=123005322 (noting that the suspensions were based upon an internal U.S. Air Force investigation finding that Boeing violated federal procurement laws during the 1998 evolved expendable launch vehicle source selection) [hereinafter AF Press Release].

[21] *See* Matt Kelley, *Air Force Bars Boeing from Future Rocket Work for Stealing Competitor's Documents*, *available at* http://www.signonsandiego.com/news/military/20030724-1452-boeing-contract.html (reporting that those individuals are Kenneth Branch, William Erskine, and Larry Satchell).

[22] AF Press Release, *supra* note 20.

[23] *See* Press Release, DOJ, Two Former Boeing Managers Charged in Plot to Steal Trade Secrets from Lockheed Martin (June 25, 2003), *available at* http://www.usdoj.gov/criminal/cybercrime/branchCharge.htm.

[24] *See Suspension and Debarment: Air Force Waives Boeing's Suspension, Awards $57 Million Rocket Launch Contract,* BNA'S FED. CONTRACTS REP., Sept. 9, 2003, at 1; Press Release, U.S. Air Force, Boeing's Delta 4 Rocket Wins NRO Launch Order (Sept. 30, 2003), *available at* http://spaceflightnow.com/news/n0309/30delta4/.

[25] *See* Press Release, Boeing, Boeing Responds to U.S. Air Force Announcement (July 24, 2003), *available at* http://www.boeing.com/news/releases/2003/q3/nr_030724s.html.

[26] *See id.*

[27] *See id.*

[28] *See id.*

[29] *See* Press Release, Boeing, Boeing Creates New Office of Internal Governance (Nov. 11, 2003), *available at* http://www.boeing.com/newreleases/2003/q4/nr_031111a.html.

responsibility for the following areas: "Internal Audit, Ethics, Import-Export Compliance, Foreign Sales Consultants, and Sarbanes-Oxley governance requirements."[30] Despite these measures, Boeing continued to have integrity breaches, as evidenced by the now famous tanker deal.[31] Under the tanker deal, the Air Force was scheduled to lease reconfigured 767 passenger planes (and use them as refueling tankers) and then buy the planes at the conclusion of the lease.[32] Boeing's defense contracts, however, came under heightened scrutiny last year when Boeing hired former Defense Department acquisition official Darleen Druyun.[33] Boeing attempted to correct this breach by terminating the employment of the executives involved in the misconduct.[34] While the suspension did little to restore public confidence in the company's present responsibility, the compliance agreement-like measures that Boeing imposed *sua sponte* represented a tangible effort at improving its corporate culture.

Conclusion

Administrative compliance agreements offer a viable alternative to the perceived draconian suspension and debarment process. In addition to restoring the government's confidence in the company's present responsibility, these agreements provide the government an unprecedented opportunity to assess and influence a company's corporate ethical climate. Because compliance agreements are fact-specific, they may be used for large and small businesses. The compliance agreement offers an effective vehicle for agencies confronted with contractor misconduct and permits continued business with otherwise satisfactory contractors. They also preserve competition and enhance the public trust in the procurement process. Although not appropriate for all cases involving non-responsible contractors, the administrative compliance agreement may answer the concerns of those who question the efficacy and fairness of the suspension and debarment process.

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[30] *Id.*

[31] *See* Renae Merle, *Boeing Deal Faces Justice Department Review: Potential Conflict of Interest Cited*, WASH. POST, Sept. 24, 2004, at A4.

[32] *See* Renae Merle, *Boeing Loses Out on Air Force Tanker Deal: Congress Approves Measure to Ban Program Reconfiguring Jets as Refueling Planes*, WASH. POST, Oct. 10, 2004, at A4.

[33] *See* George Cahlink, *Ex-Pentagon Procurement Executive Gets Jail Time*, GOVEXEC.COM, Oct. 1, 2004, *at* http://www.govexec.com/daily/1004/100104 g1.htm. Darleen Druyun pled guilty and was sentenced to nine months in prison for negotiating a position with Boeing while employed by the Air Force. In her guilty plea, she admitted to inflating the contract price for the proposed tanker lease as a "parting gift" to her future employer. Congress subsequently barred the Air Force from leasing tankers from Boeing. *See id*.

[34] *See* Press Release, Boeing, Boeing Dismisses Two Executives for Unethical Conduct (Nov. 24, 2003), *available at* http://www.boeing.com/news/releases /2003/q4/nr_031124a.html.

Book Reviews

THE BEDFORD BOYS: ONE AMERICAN TOWN'S ULTIMATE D-DAY SACRIFICE[1]

REVIEWED BY MAJOR JOHN G. BAKER[2]

Dear Mother, I know your worries. This is an awful fight.
To lose my only twin brother and suffer the rest of my life.
Now fellas, take my warning. Believe it from start to end.
If you ever have a twin brother, don't go to battle with him.[3]

The historical facts are legendary—on 6 June 1944, the Soldiers of Company A, 1st Battalion, 116th Infantry Regiment, 29th Division were in the first wave of allied troops to hit Omaha Beach in Normandy.[4] Thirty-four of the Soldiers assigned to Company A were from the rural town of Bedford, Virginia.[5] By day's end, nineteen of these brave men died storming the beach;[6] another three died in the days that followed.[7] Alex Kershaw's *The Bedford Boys* is a written memorial to these boys from Bedford and the people they left behind.

The Bedford Boys is a worthy read. Kershaw uses powerful, personal observations from and about the people of Bedford to give a new twist to the very well-documented history of D-Day. These moving interviews separate Kershaw's work from other D-Day oral histories, such as Stephen Ambrose's *D-Day*[8]and Russell Miller's *Nothing Less Than Victory.*[9] This review outlines the story of Company A, discusses the book's strengths and weaknesses, and concludes by recommending *The Bedford Boys* to the reader.

Kershaw paints a vivid picture of life in Bedford prior to the war. Bedford was a small, rural town of three thousand, located near Virginia's Blue Ridge Mountains. In the 1930s, money was short so many joined Company A for the "dollar-a day" they received while training to help supplement their primary income.[10] Those serving with Company A did not see this reserve duty as combat training, but instead, looked at their training time as a chance to "play soldier" with their friends.[11] Kershaw portrays the peace time nature of the Company A's pre-war training[12] and provides insight into the anticipation the men and their families felt when it became clear that Company A would be called into federal duty.[13] *The Bedford Boys* explains how the focus of training changed once the unit was activated before Company A headed overseas. Upon arrival in England, the training continued for eighteen long months.[14] The men grew frustrated as they spent their first eighteen months training in England, while other units headed off to war.[15]

These long months of training were a prelude to D-Day. Kershaw's interviews with Roy Stevens, Ray Nance, Bob Slaughter and other D-Day survivors provide a terrifying, yet awe-inspiring, image of the hours leading up to D-Day, as the

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[1] ALEX KERSHAW, THE BEDFORD BOYS: ONE AMERICAN TOWN'S ULTIMATE D-DAY SACRIFICE (2003).

[2] U.S. Marine Corps. Written while assigned as a student, 53d Judge Advocate Officer Graduate Course, The Judge Advocate General's Legal Center and School, U.S. Army, Charlottesville, Virginia.

[3] KERSHAW, *supra* note 1, at 187 (quoting Roy Stevens in a poem he sent to his mother telling her that his twin brother had died on D-Day).

[4] *See id*. at 1.

[5] *See id.*

[6] *See id.* at 174.

[7] *See id.* at 208.

[8] STEPHEN AMBROSE, D-DAY JUNE 6, 1944: THE CLIMATIC BATTLE OF WORLD WAR II (1994).

[9] RUSSELL MILLER, NOTHING LESS THAN VICTORY—THE ORAL HISTORY OF D-DAY (1993).

[10] *See* KERSHAW, *supra* note 1, at 7.

[11] *See id.*

[12] *See id.* at 10.

[13] *See id.* at 17.

[14] *See id*. at 27.

[15] *See id.* at 79.

landing crafts headed away from their ships and hit the fateful shores of Omaha Beach.[16] The survivors describe the carnage at Dog Green that took the lives of nineteen of Bedford's sons.[17] The interviews tell the tale of the seemingly needless deaths caused by Soldiers overloaded with gear and of the horror of watching a fellow soldier drown.[18] Kershaw relates the heroics of men such as medic Cecil Breeden[19] and Brigadier General Norman Cota[20] as the assault progresses. Perhaps the most moving portion of the book's D-Day section is Roy Stevens's description of scraping the mud from a dog tag on a temporary grave a week after D-Day and seeing his twin brother's name emerge underneath.[21] Through his many hours of interviews with Stevens, Kershaw does an excellent job of describing the survivor's guilt Stevens felt that day and which followed him throughout his life.[22] The personal accounts from surviving veterans, describing the wounds they suffered and their memories of watching their friends die, make the book worth reading.

Kershaw does not let the reader forget that war causes significant stresses on the home front as well. On 6 June 1944, radio accounts informed Bedford's citizens that the invasion of France had begun.[23] For the next several weeks, the news reports informed the people of Bedford that the cost of the invasion was high, but told nothing specific about Company A.[24] Apprehension began to build when some letters sent to their Soldiers were returned home in early July.[25]

On 17 July 1944, life in Bedford changed forever when the local telegraph operator turned on her machine and saw the words, "[w]e have casualties," print across the paper.[26] Prior to this day, there was normally about one telegram a week announcing a Bedford war death.[27] As the machine printed telegraph after telegraph, it became clear "that something terrible had happened to Company A."[28] In all, nine telegrams came that fateful day.[29]

Kershaw shares the heart-wrenching stories of families being notified about the deaths of so many of Bedford's sons, fathers, and husbands. There was no common reaction to the news, although the local paper assisted many in sharing their grief by publishing letters and memorials to the fallen Soldiers in the days and weeks that followed. A good example is a poem written by Mrs. J.S. Hoback, who lost her sons Bedford and Raymond on D-Day:

> Do not say my sons are dead;
> They only sleepest . . .
> They loved each other, stayed together
> And with their comrades crossed together
> To that great beyond;
> So weep not, mothers,
> Your sons are happy and free . . .[30]

Kershaw explains that many families, such as the Hobacks, remained outwardly stoic, but suffered greatly when outside the public eye.[31]

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[16] *See id.* at 121-28.

[17] *See id.* at 129-37.

[18] *See id.* at 125.

[19] *See id.* at 152-54.

[20] *See id*. at 155.

[21] *See id*. at 174.

[22] *See id.* at 216-21.

[23] *See id*. at 165.

[24] *See id.* at 190.

[25] *See id*. at 191.

[26] *See id*. at 199.

[27] *Id.*

[28] *Id*.

[29] *See id*. at 205.

[30] *Id*. at 207.

As the war comes to an end, Kershaw describes the difficulty that some families of the fallen had when they saw surviving Soldiers come back to Bedford.[32] Kershaw tells of the guilt that racked the few Company A men who survived D-Day and the difficulty this guilt caused many of them.[33] Company A's sole surviving officer, Ray Nance, would lie awake at night and ask himself what more he could have done to save the men under his command.[34] Another survivor quickly turned to alcohol to "tr[y] to forget, wash the memories away . . . [b]ut [he couldn't]. As soon as that whiskey drie[d] out it all [came] right back."[35] The struggle of these survivors was not lost on their family members. As one survivor's sister explained "[p]eople say the men who died on the beach were the heroes. I think the heroes are the ones who came back and had to live with it for the rest of their lives."[36]

The survivors took pains to remember their fallen comrades in the years after coming home. Ray Nance, in particular, worked to ensure the sacrifice of Company A would not be forgotten.[37] In the l948, Nance oversaw the re-formation of Company A, which had been disbanded after the war.[38] Ten years later, Nance was instrumental in getting a permanent monument to Bedford's fallen built in town.[39]

Kershaw concludes by fast forwarding fifty years and addressing the attention surrounding the fiftieth anniversary of D-Day. Kershaw shares stories of the trips different groups of survivors have taken back to the beaches of Normandy and the memories these trips re-kindled.[40] Finally, he explains the successful effort to locate the National D-Day Memorial in Bedford as a means of honoring the sacrifice Bedford made on Omaha Beach.[41]

The main strength of *The Bedford Boys* is Kershaw's use of the personal accounts elicited during the course of his research for the book. Kershaw conducted over thirty interviews with the survivors and their families.[42] It is not the number of interviews that is impressive, but instead it is the impact the interviews had on these families that makes *The Bedford Boys* such a compelling read. The act of telling their stories to Kershaw affected the survivors deeply, causing some "eighty-year-old men" to cry as they relived their memories.[43] Kershaw's research touched these men and their families greatly. They sent Kershaw letters to assist him in his research,[44] shared clippings from their scrapbooks,[45] and provided copies of letters sent home during the war.[46]

The Bedford Boys is a relevant story today. The United States recently observed the third anniversary of the September 11th terrorist attacks; the country continues to regularly hear of the one thousand plus service members who have died in Iraq. *The Bedford Boys* gives the families involved a sense of how to cope with a tragic loss. As stop-loss policies and involuntary extensions on active duty are announced, the affected service members can look at the citizen soldiers from

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[31] *See id.* at 208.

[32] *See id.* at 218.

[33] *See id*. at 215-18.

[34] *See id*. at 215.

[35] *Id*. at 216.

[36] *Id*. at 217.

[37] *See id*. at 225.

[38] *See id.* Company A's long heritage continues today. On 4 March 2004, the men from Company A, who had recently been called to active duty to deploy to the Persian Gulf, marched through Bedford to the National D-Day Memorial, in memory of their predecessors who died on Omaha Beach. *See* John Cramer, *Bedford Bids Its Boys Farewell*, ROANOKE TIMES (Va.), Mar. 4, 2004, at 1.

[39] *See* KERSHAW, *supra* note 1, at 225.

[40] *See id.* at 230-31.

[41] *See id.* at 233-34.

[42] *See id.* at 243-62.

[43] *See id.* at 275.

[44] *See id.* at 9 n.6.

[45] *See id.* at 45 n.11.

[46] *See id.* at 46 n.15.

Bedford as an example of how to proudly serve their nations in a time of war. As policy makers and combatant commanders decide where and when to engage the enemy, they should consider *The Bedford Boys* in order to gain an appreciation for the human cost of war. In short, Kershaw's work is not simply a book of memories, but a relevant story with guidance that all can appreciate.

The Bedford Boys is not without flaws. One of the book's primary weaknesses is the scope of the project. While a group biography about the members of Company A provides Kershaw with a unique twist on D-Day, he does not fully take advantage of this opportunity to introduce enough of the boys from Bedford. Kershaw cuts many corners to provide his memorial to the people of Bedford in two hundred and forty pages of text. Although he does an excellent job of introducing the reader to his main characters, Kershaw often rattles off too many names in too little space.[47] This rapid fire name throwing is overwhelming and causes the reader to constantly flip back through the book to figure out who is who. As one critic explained in making a similar point, "[t]oo many men are as blurred in print as their faces are in the photo insert."[48]

Further exacerbating Kershaw's rapid fire name throwing is his tendency to waste precious pages on seemingly unimportant details. For example, he devotes an entire chapter to the ship ride across the Atlantic, yet provides little information about life on the home front for the families from the time of mobilization until the days following D-Day. In another part of the book, one learns more about the 116th Regimental baseball team, the "116 Yankees,"[49] than one does about the 116th command structure during the training for the D-Day invasion. Similarly, Kershaw spends several pages discussing Eisenhower's decision to postpone the invasion of Normandy.[50] While this is an intriguing topic, this discussion simply did not fit with the flow of *The Bedford Boys*. Finally, near the end of the book, Kershaw detracts from his focus yet again when he describes the fraud investigation and subsequent bankruptcy of the National D-Day Foundation.[51] Readers would have been better served had Kershaw ignored these tangential issues and spent more time focusing on developing the personal histories of the Bedford boys.

Despite these flaws, *The Bedford Boys* is worth reading. Kershaw has written a fitting memorial for the men of Company A and their families. Sixty years have passed since D-Day, and World War II veterans are entering the final stages of their lives. Less than two hundred of the five thousand men who stormed the beach at Normandy with the 116th Regiment are alive today,[52] and "[s]oon no one will be left to tell what it was like to be on Omaha Beach."[53] Through *The Bedford Boys*, Bedford's story of D-Day, etched in the blood-spattered sand at Dog Green on Omaha Beach, will be preserved for future generations.

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[47] For an example of a better World War II group biography, see HAROLD P. LEINBAUGHT & JOHN D. CAMPBELL, THE MEN OF COMPANY K: THE AUTOBIOGRAPHY OF A WORLD WAR II RIFLE COMPANY (1985).

[48] David P. Colley, *The First Casualties*, N.Y. TIMES, Nov. 2, 2003, at 24.

[49] KERSHAW, *supra* note 1, at 69-71.

[50] *See id.* at 112-17.

[51] *See id.* at 235.

[52] *See id*. at 236.

[53] *Id*.

IMPERIAL HUBRIS: WHY THE WEST IS LOSING THE WAR ON TERROR[1]

REVIEWED BY CAPTAIN BRIAN C. BALDRATE[2]

> *Americans are asking, why do they hate us? They hate our freedoms—our freedom of religion, our freedom of speech, our freedom to vote*. — President George W. Bush [3]
>
> *Only when U.S. leaders stop believing and preaching that bin Laden and his allies are attacking us for what we are and what we think, and instead clearly state they are attacking us for what we do, can we put aside our ill-advised and hallucinatory crusade for democracy*.[4]

I. Introduction

Everyone reading *Imperial Hubris* will agree on one point, and perhaps only one point: *Imperial Hubris* is a bold and provocative work. This is especially true, because it is written by a senior intelligence officer in the Central Intelligence Agency (CIA),[5] not by an outside critic or a detached academic. Yet, *Imperial Hubris* should not be read because of its courageousness (or, some might argue, imprudence). Rather, military officers should read *Imperial Hubris*, because it offers brilliant insight into the Islamic mindset and offers persuasive analysis of how America is faring in the current war on terrorism. While *Imperial Hubris* is a fascinating and compelling work, it is also intemperate, disingenuous, and in many instances, outright foolish. Despite these weaknesses, *Imperial Hubris* is essential reading for anyone who truly wants to understand the complex issues facing America in its fight with Islamic terrorism in the twenty-first century.

II. The Good

Imperial Hubris begins with a clear, direct thesis that goes against the political conventional wisdom: contrary to popular belief, Osama bin Laden and his followers are not attacking America for what America is, or what America thinks, but instead for what America does.[6] Accordingly, defeating al Qaeda and winning the war on terror requires Americans to understand that American policy decisions, *not* American values, are fueling anti-American sentiment and increasing support for al Qaeda throughout the Muslim world.[7] From this controversial starting point, Scheuer offers a thought-provoking argument that America's failure to understand al Qaeda is causing America to lose the war on terror.

Imperial Hubris argues that American leaders do not understand who al Qaeda is or what al Qaeda wants. While government officials continue to portray bin Laden and al Qaeda as fanatical terrorists bent on destroying America, many Muslims see bin Laden as a devout, brilliant, and heroic leader.[8] In fact, Scheuer maintains that bin Laden is "the most

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[1] ANONYMOUS, IMPERIAL HUBRIS: WHY THE WEST IS LOSING THE WAR ON TERROR (2004).

[2] U.S. Army. Written while assigned as a student, 53d Judge Advocate Officer Graduate Course, The Judge Advocate General's Legal Center and School, U.S. Army, Charlottesville, Virginia.

[3] President Bush, Address to a Joint Session of Congress (Sept. 20, 2001), *available at* http://www.cnn.com/2001/US/09/20/gen.bush.transcript (last visited Feb. 15, 2005).

[4] ANONYMOUS, *supra* note 1, at 207.

[5] Published under the name of Anonymous, *Imperial Hubris* describes the author as "a senior U.S. intelligence official with nearly two decades of experience in national security issues related to Afghanistan and South Asia." *Id.* at 309. The book maintained that "the author remains anonymous as the condition for securing his employer's permission to publish *Imperial Hubris*." *Id.* Subsequently, a periodical revealed the author's identity as Michael Scheuer, the head of the CIA unit charged with tracking Osama Bin Laden from 1996 to 1999. *See* Jason Vest, *The Secret History of Anonymous*, BOSTON PHOENIX (June 30, 2004), *available at* http://www.boston/news_features/other_stories/multipage/documents/03949394.asp. Mr. Scheuer resigned on 15 November 2004, after clashing with the newly appointed head of the CIA, Porter Goss. After resigning, Mr. Scheuer went public in several media interviews admitting to writing the book and stating that he resigned because he "concluded that there has not been adequate national debate over the nature of the threat posed by Osama bin Laden and the force he leads and inspires, and the nature of the intelligence reform needed to address that threat." Dana Priest, *Former Chief of CIA's Bin Laden Unit Leaves*, WASH. POST, Nov. 12, 2004, at A4; *see also Author of Terrorism Book Quits C.I.A.*, N.Y. TIMES, Nov. 12, 2004, at A2.

[6] *See* ANONYMOUS, *supra* note 1, at xviii ("Bin Laden is out to drastically alter U.S. and Western policies toward the Islamic world, not necessarily to destroy America.").

[7] *See id.* at 166-67. Specifically, the author cites to a Pew Trust Poll showing that Muslims favor some democratic values and concluding, "hostility is toward American policies, not American values." *See id.* at 167 (citing Susan Page, *Foreign Distrust of U.S. Increases*, USA TODAY, June 4, 2003, at 1).

[8] *See id.* at 105-15 (comparing the "Western journalists, historians, 'experts,' editorialists, pundits, politicians, and government officials" who negatively portray bin Laden with the "Muslim journalists, columnists, and scholars" who have long recognized bin Laden's appeal).

respected, loved, romanticized, charismatic, and perhaps, able figure in the last 150 years."[9] Perhaps years of study have drawn Scheuer to bin Laden and colored his analysis. Regardless of any apparent bias, Scheuer provides compelling evidence substantiating his assertion that bin Laden is greatly admired throughout the Muslim world.[10] From this background, Scheuer details how Saudi-backed education programs, along with expanded use of the Internet, have transformed al Qaeda from a small local following to a flourishing international Islamic insurgency.[11] His assessment of al Qaeda as a growing global insurgency is in stark contrast to the statements of other government officials.[12]

Scheuer argues that America is not only ignorant of who al Qaeda is, but also of what it is al Qaeda is actually trying to accomplish. According to Scheuer al Qaeda is not aspiring for an Armageddon-like battle that will destroy America.[13] Instead, al Qaeda is fighting a precise, limited war aimed at directly overturning specific U.S. policies in the Middle East—policies that many Muslims believe are damaging the Islamic world.[14] Specifically, Scheuer points to America's massive support for Israel, her continued military presence in the Middle East, and her protection of corrupt, repressive tyrannies like Saudi Arabia in order to secure inexpensive foreign oil.[15] Scheuer contends that bin Laden's widespread support among Muslims results from his coherent and consistent argument that "an attack on Islam is under way and is being led and directed by America."[16] Bin Laden's call for a defensive jihad (holy war) against America is gaining popularity, because it justifies attacks on America that are grounded in both Islamic law and the widespread Muslim outrage toward America foreign policy.[17]

The author's work in analyzing and explaining al Qaeda is truly superb. Drawing on his vast knowledge of al Qaeda and Islamic culture, Scheuer lucidly and persuasively articulates both al Qaeda's limited goals and explains the reasons behind al Qaeda's continued growth. Many of his current arguments build naturally on similar arguments made in his first book, *Through Our Enemies Eyes*.[18] His well-articulated analysis provides compelling evidence that American foreign policy is increasing al Qaeda's strength. Moreover, he successfully demonstrates that America is failing to grasp this crucial fact.[19] However, when Scheuer moves beyond this theory and attempts to show that America's failure to understand al Qaeda is *causing* her to lose the war on terror, his results become increasingly mixed.

III. The Okay

Imperial Hubris advances several examples of how misunderstanding al Qaeda is causing America to lose the war on terror. While this analysis is intriguing, the author attempts to use his theory to explain too much, thus oversimplifying foreign policy decisions and overemphasizing the consequences of failing to understand al Qaeda. Nonetheless, his cogent arguments make an important contribution to the study of the war on terror.

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[9] *Id.* at 19.

[10] *See id.* at 104 ("bin Laden certainly is the most popular anti-American leader in the world today . . . his face and sayings are emblazoned on T-shirts, CDs, audio and videotapes, posters, photographs, cigarette lighters, and stationary across the earth."). For a general discussion of bin Laden's popularity *see id*. at 104-26.

[11] *See id.* at 70.

[12] *Compare id.* at 71 ("bin Laden's organization continues to exist in areas where it was established before the 11 September attacks") *and id.* at 77 ("Iraq and Lebanon [] provide additional examples of how [al Qaeda can] establish itself in places where it had little if any pre- 11 September presence"), *with* Rebecca Carr, *FBI Says al-Qaida is Decimated*, ATLANTA JOURNAL-CONSTITUTION July 27, 2002, at A8 ("Senior FBI officials believe there are now no more than 200 hard-core al-Qaida members throughout the world."), *and* Fawaz A. Gerges, *Dismantling al-Qaida,* BALTIMORE SUN, Nov. 23, 2003, at C5 ("Since Sept. 11, U.S. officials . . . agree, nearly 65 percent of al-Qaida's leaders have been killed or captured.").

[13] *See* ANONYMOUS, *supra* note 1, at 17 (al Qaeda's goal "is a war against a specific target and for specific, limited purposes").

[14] *See id.* at 240 ("The United States is hated across the Islamic world because of specific U.S. government polices and actions.").

[15] *See id.* at 258.

[16] *Id.* at 7-8.

[17] *See id.* at 231 ("U.S. government actions . . . are seen by Muslims as more proof of bin Laden's claim that America is malignantly inclined toward Islam.").

[18] ANONYMOUS, THROUGH OUR ENEMIES EYES: OSAMA BIN LADEN, RADICAL ISLAM, AND THE FUTURE OF AMERICA (2001). Published before 11 September 2001, *Through Our Enemies Eyes* is regarded by many as the authoritative book on al Qaeda. *See, e.g.*, Benjamin Schwarz, *Wolves, Actors, Jihadis*, ATLANTIC MONTHLY, Sept. 1, 2004, at 125 (maintaining that *Through Our Enemies Eyes* is the best book written on al Qaeda).

[19] *See* ANONYMOUS, *supra* note 1, at 240 ("While important voices in the United States claim the intent of U.S. policy is misunderstood by Muslims . . . America is hated and attacked because Muslims believe they know precisely what the United States is doing to the Islamic world.").

Scheuer first contends that the failure to understand al Qaeda is causing America to treat al Qaeda as a law enforcement problem instead of a wartime enemy. According to Scheuer, America continues to view al Qaeda as an isolated group of terrorists instead of a growing international army.[20] He supports this claim by citing numerous acts and statements from American political leaders. For instance, he cites former Attorney General John Ashcroft's statement that the capture of two al Qaeda fighters is "proof we are winning the war on terrorism."[21] Scheuer argues that this law-and-order approach to fighting terrorism stems directly from policymakers misunderstanding of bin Laden and the al Qaeda network.[22] He maintains that a "bin Laden-incited jihad cannot be defeated, deterred, or worried" by using the law-enforcement tactic of "arrest and conviction."[23] *Imperial Hubris* wisely notes that law enforcement alone is not a winning war strategy against al Qaeda and correctly questions the wisdom of detaining warriors in Afghanistan and Iraq instead of killing them in battle.[24] However, Scheuer fails to acknowledge that much of America's resort to law enforcement tactics stems from an inability to distinguish al Qaeda fighters from innocent civilians. Accordingly, while it is easy to critique the use of law-enforcement techniques to fight a war, Scheuer is unwilling to admit that America's inability to identify friend from foe—especially in countries where America is not at war—is at least partially responsible for the law-enforcement approach used in fighting al Qaeda.

Secondly, Scheuer asserts that the failure to understand al Qaeda is causing America to lose on the battlefields of Afghanistan and Iraq. He argues that American's false belief that "a few Muslim fanatics hate democracy and freedom [is weakening] America's ability to resist by underestimating the brains, patience, and religion-based fortitude of our foes."[25] While critiquing American policy in Afghanistan and Iraq,[26] Scheuer argues that America's misunderstanding of al Qaeda has resulted in two critical flaws with the current war strategy: a misguided attempt to democratize and secularize Islamic countries, and an unwillingness to accept American casualties.[27] Scheuer asserts that American ignorance of al Qaeda's true grievances fosters the following attitude:

> America does not need to reevaluate its policies, let alone change them; it merely needs to better explain the wholesomeness of its views and the purity of its purposes to the uncomprehending Muslim world. What could be more American in the early twenty-first century, after all, then to re-identify a *casus belli* as a communication problem, and then call on Madison Avenue to package and hawk a remedy called "Democracy, Secularism, and Capitalism Are Good for Muslims" to an Islamic world that has, to date, violently refused to purchase.[28]

Scheuer looks at current polices in Afghanistan and Iraq to illustrate how America is pursuing democracy in the Middle East. He then draws on historical analysis to demonstrate why these democratization efforts are likely to fail. In Afghanistan, Scheuer argues that America's decision to install the western-educated Hamid Karzai and exclude ethnic Pashtuns from the political process created an Afghani government with no chance of providing long-term stability.[29] He concludes that instead of recognizing the historical truth that an Islamist must rule Afghanistan, American efforts at democratization are "reinvigorat[ing] a broad, popular, and predictable xenophobia toward foreign occupation."[30] Similarly, he argues America's military occupation of Iraq—Islam's second holiest land—and American policies promoting a democratic, secular,

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[20] *See id.* at 188.

[21] *Id*. (quoting Daniel Byman, *Scoring the War on Terrorism*, NAT'L INT., Summer 2003, at 75).

[22] *See id.* at 185-86 ("[I]n bin Laden's case this [law enforcement] solution is encouraged by our leaders' insistence that bin Laden means to destroy our freedom, liberties, and democracy.").

[23] *Id*. at 188.

[24] *See id*. at 221 ("This [law-enforcement] approach . . . has failed miserably . . . it is the reason we are losing in Afghanistan.").

[25] *Id*. at 249.

[26] *See, e.g.*, *id*. at 24 (arguing that the military was unprepared to attack al Qaeda immediately after the September 11th attacks).

[27] *See id*. at 242 ("Because Americans are not used to a professional military fighting their wars, they are too worried by casualties.").

[28] *Id.* at 166-67.

[29] *See id.* at 202.

[30] *Id*.

government in Baghdad are legitimizing bin Laden's claim that America is directly attacking Islam.[31] He maintains that the Iraqi invasion is "bin Laden's gift from America, one he has long and ardently desired, but never realistically expected."[32]

Scheuer astutely argues that the solution to defeating Islamic extremism is not a "quick transformation of the Muslim world to a Western-style democratic system."[33] However, he fails to address the reality that extremist Islamic states, like the Taliban in Afghanistan, actively assisted al Qaeda. As a result, Scheuer dodges the difficult question of what type of government the United States should encourage in Middle Eastern countries like Afghanistan and Iraq. While he correctly asserts that aggressively installing secular, democratic governments "force[s] upon other peoples a system of government"[34] they do not want, it is also true that, left alone, extreme Islamic governments will continue to harbor terrorists determined to attack the United States.

A third contention by Scheuer is that the United States' misunderstanding of al Qaeda is preventing Americans from using the U.S. military's full capabilities. Scheuer denounces America's decision to use massive air strikes and limit ground troops in Afghanistan.[35] Similarly, he claims the Iraqi invasion was fought using "admirable speed" but "little killing" that left much of Saddam's 400,000 soldier army intact.[36] Scheuer argues that America's aversion to casualties results in today's military fighting a doctrine of nonwars, a term he defines as follows: "[F]ight and win quickly; do not kill many of the enemy, destroy much of his property, or kill many of his civilians; and, above all, lose the barest minimum of U.S. soldiers."[37] He argues that these quick, bloodless wars leave the enemy unbeaten and fail to deliver a total victory over the enemy population.[38]

Scheuer fairly asserts that the U.S. military has not decisively defeated the enemy in Afghanistan or Iraq. He also raises legitimate concerns about whether the decision to limit ground troops and minimize casualties inhibits military victories in general.[39] However, Scheuer ignores the fact that using too much military force would alienate friends within Afghanistan and Iraq as well as Muslim allies throughout the world.[40] While he advocates a Sherman-like solution of "caus[ing] so much suffering to the [population] that they will long for peace,"[41] Scheuer fails to recognize that overwhelming military force would further incite Muslim anger and increase the popularity of al Qaeda. This oversight is surprising and ironic, because the rationale behind limiting military force is the exact same rationale Scheuer himself uses to advocate against democratization.

IV. The Bad

The biggest disappointment of *Imperial Hubris* is that despite the author's straight-forward writing style, he fails to clearly articulate his actual policy proposal: America needs to re-evaluate her foreign policy toward the Middle East. Had Scheuer asserted his belief that American foreign policy is harming Islam and then candidly argued that defeating al Qaeda requires Americans to change that policy, readers could follow his argument, even if they did not support it. His failure to

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[31] *See id.* at 213-14 ("The fatwas that greeted the Iraqi invasion essentially validated all bin Laden has said in arguing for a defensive jihad against the United States.").

[32] *Id.* at 212-13.

[33] *Id.* at 205. While elections have recently taken place in both Afghanistan and Iraq, it is too soon to judge their success in establishing stable democratic governments.

[34] *Id.* at 206.

[35] *See id.* at 244.

[36] *See id.* at 181.

[37] *Id.* at 178.

[38] *See id.* at 244.

[39] *See id.* ("By seeking others to do our Afghan dirty work, U.S. national security has been hurt. This probably is a lesson that is globally applicable."); *cf.* RALPH PETERS, FIGHTING FOR THE FUTURE: WILL AMERICA TRIUMPH (1999) (providing a similar argument that America and its soldiers are unprepared for the mercilessness required in modern warfare).

[40] *See* Richard A. Clarke, *Is the War on Terror a Failure?*, CHI. SUN-TIMES, July 4, 2004, at 14 ("Regrettably, [Scheuer} does not write much on working with Islamic friends. He tends to lump all Muslims into a single group, bound by their dogmatic hatred of America. In that, he is surely wrong—although less wrong every day.").

[41] ANONYMOUS, *supra* note 1, at 171.

forthrightly do so makes the reader glean his position from throughout the book. Two examples where Scheuer reveals his true position include his claim that America's support of Middle East tyrants "mock our heritage and mar our democratic example,"[42] and his assertion that America's "obtuse" support of "arrogant" and "racist" Israeli policies further enslaves the Muslim community.[43] Instead of advancing an honest proposal for changing American foreign policy, Scheuer takes an unnecessary and dangerous digression to argue that America must engage in a massive military assault on Islam and the Middle East.[44] Despite the author's acerbic rhetoric, no one should seriously consider the author's argument that America attack the world's 1.3 billion Muslims.[45] As one scholar noted, that solution "would more closely resemble Hitler's march on Moscow than Sherman's March to the Sea." [46] If this were the author's true agenda, the reader would indeed complete the book "grateful that as an intelligence analyst [Scheuer] has no direct role in actual policy formulation."[47] More likely, Scheuer's talk of epic battles is meant to illustrate his view of just how badly things will deteriorate if America refuses to rethink the way its policies are affecting the Islamic world.[48] If Scheuer had more honestly presented his viewpoint, he would have fostered a more meaningful discussion about how America should proceed in winning the war on Islamic terrorism.

V. The Ugly

A second problem with *Imperial Hubris* is the author's many unhelpful accusations and unnecessary diatribes throughout the book. During the course of the book, Scheuer belittles Statesmen,[49] attacks colleagues,[50] criticizes journalists,[51] and indicts sources as "damnable traitors."[52] Equally troubling, he assails military officers for passively accepting Secretary of Defense Donald Rumsfeld's "flawed" strategy of waging lighter, faster wars.[53] Amazingly, in leveling this last accusation, Scheuer fails to mention former Army Chief of Staff, General Eric Shinseki, who candidly assessed the Iraqi war plan before Congress.[54] Many believe this critique is what caused General Shinsheki's early retirement.[55] These insensitive and unenlightened comments weaken Scheuer's credibility and detract from his otherwise important and informative work.

VI. Conclusion

Imperial Hubris persuasively argues that America is misunderstanding both al Qaeda's nature and its goals. The book succeeds by providing rich insights into the growth of al Qaeda and describing American foreign policy from the perspective of the Islamic world. Additionally, *Imperial Hubris* demonstrates how America's failure to understand al Qaeda is limiting

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[42] *Id*. at 247.

[43] *Id*. at 230; *see also id. passim*.

[44] *See id.* at 241.

[45] Several Internet sites have identified the number of Muslims in the world by aggregating the population of Muslims in every country from data provided in *The CIA World's Facts Book*. For example, *see* http://www.islamicweb.com/begin/results.htm (identifying the number of Muslims in the world at 1.6 billion by aggregating the population of Muslims in every country relying on data provided in *The CIA World's Facts Book*) (last visited Feb. 15, 2005).

[46] Andrew J. Bacevich, *Soft Words or the Big Stick*, L.A. TIMES, July 25, 2004, at 6.

[47] *Id.*

[48] For example, at one point Scheuer argues America should revise those "foreign polices now endangering national security and leaving us with only the military option to pursue." ANONYMOUS, *supra* note 1, at 207.

[49] *See id.* at 206, 223 (calling President Woodrow Wilson a "bloody-handed fantasist," and Henry Kissinger "droning" and "oracular").

[50] *See id.* at xii, 216 (alleging that the intelligence community is filled with moral cowards who lack the courage to tell policymakers the truth about al Qaeda).

[51] *See id.* at 196 (calling journalists the "world's gossips").

[52] *Id.* at 199 (maintaining many who leak information are "deliberately giving the enemy aid and comfort").

[53] *See id.* at 178-79 (criticizing U.S. generals for careerism and moral cowardice for failing to resign when civilian leadership in the Defense Department insists on fighting quick, low-casualty wars).

[54] When asked by a Senate committee to estimate the number of troops needed for the operation, General Eric Shinseki said "several hundred thousand." *See* Eric Schmitt, *Pentagon Contradicts General On Iraq Occupation Force's Size,* N.Y. TIMES, Feb. 28, 2003, at A4.

[55] For example, see the statement of Senate Democratic Leader Tom Daschle (Mar. 23, 2004) (stating "General Shinseki seems to have become a target when he spoke honestly about the number of troops that would be needed in Iraq"), *available at* http://democrats.senate.gov/~dpc/releases/2004323740.html (last visited Feb. 15, 2005).

America's success in the war on terror. *Imperial Hubris* is so compelling it tempts the reader into believing its claim that America now has no choice but to engage in "relentless, brutal, and [] blood-soaked offensive military actions until we have annihilated the Islamists who threaten us."[56] However, that approach is not only unwise, but in fact incongruent with Scheuer's own analysis. Rather, *Imperial Hubris* demonstrates that in order to win the war on terror, America must reevaluate "her failed polices toward the Muslim world."[57] There is no doubt that rethinking America's relationship with both Israel and tyrannical Middle Eastern governments will involve difficult, complex policy decisions. While there are no easy solutions, *Imperial Hubris* makes an important and necessary first step: identifying the problem, and beginning the dialogue.

[56] ANONYMOUS, *supra* note 1, at 85.

[57] *Id.* at 242.

SOLVING THE WAR PUZZLE: BEYOND THE DEMOCRATIC PEACE[1]

REVIEWED BY MAJOR BILLY B. RUHLING, II[2]

> *We see, therefore, that war is not merely an act of policy but a true political instrument, a continuation of political intercourse, carried on with other means. What remains peculiar to war is simply the peculiar nature of its means . . . . The political object is the goal, war is the means of reaching it, and means can never be considered in isolation from their purpose.*[3]

War is a means to a political end, measured on a continuum with state-sponsored aggression merely one extreme to accomplish collective goals.[4] *Solving the War Puzzle*, by John Norton Moore, breaks from this conceptualization to elucidate a new theory of why nations engage in war.[5] In so doing, Moore critiques traditionalist, idealist, and realist paradigms, as well as the theory of democratic peace, which have been used to explain and predict the behavior of international actors with respect to the decision to engage in war. After challenging the underpinnings of these various theories Moore proposes a refinement to the democratic peace initiative, which he refers to as "incentive theory," in an effort to produce a "more predictive and workable theory about the causes of war."[6] To this end, Moore concludes that "[t]he absence of democracy, the absence of effective deterrence, and, most importantly, the synergy of an absence of both are conditions or factors that predispose to war."[7]

Much of the research for his book was conducted by Moore and students enrolled in his war and peace seminar at the University of Virginia and Georgetown Law Schools.[8] The book builds upon research he began while working at the U.S. Institute of Peace and much of the writing has appeared piecemeal through various articles in scholarly journals.[9]

This review explores earlier explanations of the factors affecting the decision to wage war and analyzes Moore's critiques of these factors. It then considers the contribution to the intellectual pursuit offered by Moore's new model to explain decision-making in this important aspect of nation-state interaction. Finally, it discusses the applicability of Moore's incentive theory to the contemporary operational environment[10] facing the United States.

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[1] JOHN NORTON MOORE, SOLVING THE WAR PUZZLE: BEYOND THE DEMOCRATIC PEACE (2004). Moore is the Walter L. Brown Professor of Law at the University of Virginia. He previously served as Chairman of the Board of the U.S. Institute of Peace, Counselor on International Law to the U.S. Department of State, U.S. Ambassador to the United Nations Conference on the Law of the Sea, and member of the U.S. Delegation to the United Nations General Assembly and the Athens round of the Conference on Security and Cooperation in Europe. *See id*. at 173.

[2] U.S. Army. Written while assigned as a student, 53d Judge Advocate Officer Graduate Course, The Judge Advocate General's Legal Center and School, U.S. Army, Charlottesville, Virginia.

[3] CARL VON CLAUSEWITZ, ON WAR 87 (Michael C. Howard & Peter Paret trans. & eds., 1976).

[4] *See id*.

[5] *See* MOORE, *supra* note 1, at xiii.

[6] *Id*. at xix.

[7] *Id*. at 67.

[8] *See id.* at xiv, 99-100 nn.34-36, 102 n.1. Such techniques call into question the intellectual rigor of some of Moore's writing because he draws support for key portions of his thesis from his own writings and those of students writing in furtherance of their participation in his war and peace seminar.

[9] *See, e.g.*, John Norton Moore, *Toward a New Paradigm: Enhanced Effectiveness in United Nations Peacekeeping, Collective Security, and War Avoidance*, 37 VA. J. INT'L L. 811 (1997); John Norton Moore, *Solving the War Puzzle*, 97 AM. J. INT'L L. 282 (2003); John Norton Moore, *Beyond the Democratic Peace: Solving the War Puzzle*, 44 VA. J. INT'L L. 341 (2004); John Norton Moore, *Newer Theories in Understanding War: From the Democratic Peace to Incentive Theory*, NAT'L SECURITY L. (John Norton Moore & Robert F. Turner eds., 2d ed. 2005).

[10] The phrase contemporary operational environment is a doctrinal term developed by the U.S. Army Training and Doctrine Command. It refers to

> the overall operational environment that exists today and in the near future (out to the year 2020). The range of threats during this period extends from smaller, lower-technology opponents using more adaptive, asymmetric methods to larger, modernized forces able to engage deployed U.S. forces in more conventional, symmetrical ways. In some possible conflicts (or in multiple, concurrent conflicts), a combination of these types of threats could be especially problematic.

U.S. Army Center for Army Lessons Learned, OPERATION ENDURING FREEDOM TACTICS, TECHNIQUES, AND PROCEDURES HANDBOOK NO. 02-08 ch. 1, sec. 1, *available at* https://call2.army.mil/products/handbook/02-8/02-8ch1.asp (last visited Feb. 15, 2005) [hereinafter CALL Handbook] (on file with author).

Early Solutions to the War Puzzle

War has been waged from the earliest dawn of civilization, giving rise to an analysis of its causes and ways to prevent such conflicts.[11] Early philosophers devoted volumes to the subject.[12] Unfortunately, the question of why war persists remains unsolved. For members of the profession of arms, seeking to solve this "puzzle" is, and should be, of paramount concern. For this reason *Solving the War Puzzle*, deserves consideration.

Three primary schools of thought have dominated thinking about the war puzzle. Followers of the first two paradigms, "idealists" and "realists," struggled against one another throughout much of the early modern era.[13] The former "focus[ed] on the role of third party dispute settlement, creation of international organizations, enhancing trade and other peaceful interactions among nations, and the role of democratic governance."[14] Meanwhile, realists focused on international factors, particularly the complexities of competition between, and interaction among, nation states.[15] Early in his analysis, Moore dismisses these two schools of thought, but fails to provide any academic or intellectual rationale for doing so.[16] He merely concludes that neither theory adequately explains real-life experience.[17]

As early as 1795, philosopher Immanuel Kant posited that governmental form could influence the overall characteristic for peacefulness of a particular state.[18] Largely ignored until relatively recently by modern international relations scholars, this concept formed the basis for the "democratic peace" theory.[19] This newest paradigm has gained nearly universal acceptance among academicians.[20] It relies upon two primary principles. First, it "posits that major war (over 1000 total casualties) has been occurring between democracies at an extremely low rate."[21] In supporting this proposition scholars rely upon a definition of what constitutes major war that limits it to conflicts that resulted in greater than 1000 casualties.[22] Of course, this opens this theory up to criticism because it is unclear why an act of aggression resulting in fewer than 1000 casualties should be ignored in the evaluation.[23] Moore further elects to focus on wars that have occurred since the adoption of the United Nations Charter.[24] Such a distinction seems to arbitrarily restrict the period of consideration to that after which the threat of nuclear annihilation had been exposed, and also to that time period wherein collective security agreements seriously undermined the need for aggressive combat actions.

Second, the theory of the democratic peace relies upon the assumption that democracies do not initiate wars, but rather, respond in self-defense to actions by non-democracies.[25] Moore acknowledges that many social scientists would quibble

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[11] *See* Francis T. Underhill, Jr., *Modernized Societies and the Uses of War*, *in* THE FUTURE OF CONFLICT 1 (Captain John J. McIntyre ed., 1979) (arguing that while the human trait of violence persists, armed conflict, has lost its utility as an means for state accomplishment of political goals).

[12] *See, e.g.*, HUGO GROTIUS, THE LAW OF WAR AND PEACE (Francis W. Kelsey trans., 1925) (1646).

[13] *See id*. at xviii-xix.

[14] MOORE, *supra* note 1, at xvii-xviii.

[15] *See id*. at xviii.

[16] *See id*. at xviii-xix.

[17] *See id*. at xvii-xviii.

[18] *See generally* Immanuel Kant, *Eternal Peace*, *in* ETERNAL PEACE AND OTHER INTERNATIONAL ESSAYS (Boston: World Peace Found. 1981).

[19] *See, e.g.*, BRUCE RUSSETT, GRASPING THE DEMOCRATIC PEACE: PRINCIPLES FOR A POST-COLD WAR WORLD (1993) (outlining the general theory that democratic nations do not wage aggressive wars); DEBATING THE DEMOCRATIC PEACE (Michael E. Brown, et al. eds., 1996, second printing 1997) (exploring the historical foundation upon which the democratic peace theory is based and challenging its applicability).

[20] *See* Steven Geoffrey Gieseler, *Debate on the 'Democratic Peace': A Review*, AM. DIPL., vol ix, no. 1 (2004), *at* http://www.cianet.org/olj/ad/ad_v9_1/gis01.html (last visited Feb. 15, 2005).

[21] MOORE, *supra* note 1, at xviii.

[22] *See id*. at 20.

[23] Such a definition ignores the U.S.'s involvement in operations in both Panama and Grenada. *See, e.g.*, Michael E. O'Hanlon and James Reed, *Panama's Combat Lessons Apply to Iraq*, JAPAN TIMES, Mar. 15, 2003, *available at* http://www.brookings.edu/views/op-ed/ohanlon/20030315.htm (last visited Feb. 15, 2005); Julie Wolfe, *People and Events: The Grenada Invasion*, *available at* http://pbs.org/wgbh/amex/Reagan/peopleevents/pande07.html (last visited Feb. 2, 2005). It is hard to imagine a scenario wherein a reasonable person would not call these actions aggressive or even refer to them as wars. Certainly Soldiers in those countries would not call them anything else.

[24] *See* MOORE, *supra* note 1, at 14.

[25] *See id*. at 13.

with this claim, and it is probably the tenant of the theory most open to criticism.[26] The concept relies upon the idea that in a democracy, the electorate bears the costs of any decision to engage in aggressive military behavior.[27] Certainly this appears to be the case as Lyndon Johnson discovered in 1968 wherein the Vietnam conflict played a major role in the election.[28] Proponents of the democratic peace claim, on the other hand, that leaders in non-democratic nations are able to externalize these costs upon the populace.[29] Once again, Moore imposes an artificially restrictive methodology on the analysis. As he weighs critiques of the democratic peace theory that point to democratic nations that have engaged in aggressive war, he concludes that this paradigm should really only be used to evaluate "liberal democracies."[30] As the book unfolds, and Moore elaborates upon his theory, it appears that if the model does not quite account for reality, Moore will redefine the experiment.[31] Unfortunately, as a result, the book rambles and fails to engage the reader.

The frailties in these areas, as well as others, allow Moore to conclude that, despite his earlier advocacy of the democratic peace theory, the current models being used to solve the war puzzle are insufficient.[32] The factor that he finds missing is that of deterrence.[33] In particular, he highlights the need to incorporate the concept that international factors can balance the internal decisions of regime elites.[34] In the end, Moore's theory claims that "major interstate war seems predominantly to be a synergy between a potential aggressive nondemocratic regime and an absence of effective levels of deterrence."[35] Unfortunately, it takes two-thirds of the book before he finally makes this point and delineates exactly what the theory entails. Throughout the latter portion of the book, Moore continues to refine his theory by addressing potential criticisms until he acknowledges that his theory really posits a continuum of interaction between the democratic nature of the regime and the existence of an *effective* level of deterrence.[36]

Incentive Theory for the Professional Military Officer

Moore's theory is designed to provide a model through which one can predict, explain, or even prevent, the decision by a government to engage in war, a worthwhile consideration for any professional military officer. As instruments of government policy, officers often find themselves involved in discourse with a much more lasting impact upon the diplomatic process.[37] As recent experience in Iraq has proven, even relatively junior company grade officers may find themselves involved in the diplomatic process through the still violent post-conflict phase of operations.[38] Having a paradigm in place

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[26] *See id*. at 16.

[27] *See id*. at 11.

[28] *See* Richard W. Stevenson, *White House Again Backs Amendment on Marriage*, N.Y. TIMES, Jan. 17, 2005, at A1 (drawing parallels between the Vietnam war's effect on Johnson's presidency and President Bush's situation vis-a-vis Iraq).

[29] *See id*. at 60-61.

[30] *See id*. at 85.

[31] This concept of a self-fulfilling prophecy in theories that try to explain wars has been explained as:

> persistent patterns in war and peace have not been found for the simple reason that they do not exist. Many historians, reacting against shoddy generalizations, argue that the causes of each war and each period of peace are different. In their mind a search for strong patterns is a search for a mirage.

GEOFFREY BLAINEY, THE CAUSES OF WAR 35 (1973).

[32] *See* MOORE, *supra* note 1, at 38.

[33] *See id*. at 27.

[34] *See id*.

[35] *Id*. at 39.

[36] *See id*. at 78.

[37] *See, e.g.*, Chris Tomlinson, *Criminal Court Resumes Work in Iraq*, *available at* http://www.wtopnews.com/index.php?sid=839&nid=105&template=print (last visited Feb. 2, 2005) (describing the involvement of Army judge advocates in vetting judges, identifying courtrooms, and reconstituting the Iraqi criminal court system after Operation Iraqi Freedom).

[38] *See, e.g.*, George Packer, *War After the War: What Washington Doesn't See in Iraq*, NEW YORKER, Nov. 24, 2003, at 59, *available at* http://www.newyorker.com/fact/content/?031124fa_fact1_3 (last visited Feb. 15, 2005) (detailing the infrastructure and local council interactions of one company commander and his unit in Iraq).

through which such an officer may consider his actions can enable him to be more effective in such a role. Hopefully, this more reasoned approach will lead to a more rich discourse in order to avoid future conflict.

The contemporary operational environment (COE) in which members of the profession of armsexist does not necessarily involve traditional state-on-state aggressive military action. Far more likely, under the COE, military conflicts occur between non-linear military organizations or non-state actors, such as al Queda.[39] Moore argues that the incentive theory still applies in such a scenario, because the same ability to externalize costs exists for decision elites,[40] and there is a lack of effective deterrence.[41] Applying incentive theory to such a scenario highlights one of the primary weaknesses of Moore's theory in that it assumes the regime elites recognize and acknowledge the level of deterrence, and will then avoid aggressive war. When one is dealing with extremists or fanatics, it is unclear that any level of deterrence will ever be sufficient to deter their aggression.[42] This is particularly true where the attacker is engaged in a religiously-motivated critique of another society's value structure, for example a jihad. In such a case, it is easy to envision a paradigm in which the elites may actually desire to internalize the costs of their decision-making in order to enrich their position within the view of their deity. Moore asserts that adequate deterrence can be brought to bear upon terrorist leaders, but there is no explanation of how to do so.[43] If one believes Moore's explanation for the September 11th attacks, expanding the influence of "democracy, the rule of law, and human dignity" can prevent a recurrence of this type of tragedy.[44] This runs counter to the conventional wisdom that characterized the attacks by Islamic fundamentalists as an attempt to strike out at the excesses flaunted by a democratic society.[45] Moore fails to provide any insight into how incentive theory can serve to explain either this event or the response by democratic nations in Afghanistan and Iraq other than to boast that his approach "offers a significantly better paradigm . . . than contemporary prevailing approaches to international relations theory."[46]

Throughout the critique of existing paradigms and Moore's development of his own incentive theory, he relies upon mathematical models developed by noted scholars in the field.[47] These models are not adequately explained in the body of the book, though they are thoroughly documented in the extensive endnotes.[48] He reinforces this academic work with research conducted by his seminar students. Together, they create a rambling approach to the questions of why wars have occurred, and why will they happen in the future. In the end, it reads like a sales pitch rather than a balanced intellectual inquiry into what is the best methodology for explaining this age old problem. Even so, it lays out a methodology that can be understood and applied by an officer, even if he has no formal educational training in international relations theory.

Despite its weaknesses, Moore's book ultimately provides a thought-provoking discourse for readers. While his ultimate conclusion is not earth-shattering in its originality, it highlights subtleties of nation state interaction that other authors fail to address in mainstream literature. He pulls back from the traditional concept that war is a legitimate method of accomplishing state goals, arguing instead that such violence should be removed from the continuum of potential options. As such, *Solving the War Puzzle* certainly has the potential to open a more robust discourse both within and beyond the academic realm. As the roles being filled by military officers in current operations expand to involve tasks that more closely resemble diplomacy

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[39] *See* CALL Handbook, *supra* note 10, at ch. 1, sec. 1.

[40] Decision elites are the regime personnel that control the decision to commit force in a given situation. For example, Moore identifies George W. Bush, Tony Blair, Saddam Hussein, and the leaders of the UN Security Council member countries as having been the decision elites in the Iraq War. *See* MOORE, *supra* note 1, at 78.

[41] *See id*. at 69.

[42] *See id*. at 37. Moore attempts to make his theory fit the terrorist model by stating that "extreme ideology is a factor to be considered in assessing levels of deterrence, it does not mean that deterrence is doomed to fail in such settings but only that it must be at higher levels . . . to be effective . . . ." *Id.* Recent experience, though, runs counter to this explanation. Moore never defines when this deterrence is sufficient nor does he provide any concrete examples of it working.

[43] *See id*. at 71-72.

[44] *See id*. at 71.

[45] *See, e.g.*, Duncan Campbell, *US Shifts Bases to Eastern Europe*, GUARDIAN (London), May 2, 2003, at 20 (citing resentment of the U.S. presence in the middle east and citing this as one of the reasons for the attacks of September 11); Ching Cheong, *New Chapter for the American Empire*, STRAITS TIMES (Singapore), Sept. 12, 2002, at analysis sec. (analyzing the change in policy style in the United States after the September 11th terrorist bombings and characterizing it as an empire building mentality); Jim Landers, *Coping with Reform in Qatar*, DALLAS MORNING NEWS, Aug. 4, 2002, at 1A (documenting Qatari resentment of U.S. efforts in the middle east).

[46] MOORE, *supra* note 1, at 82.

[47] *See, e.g.*, *id*. at 147-51.

[48] *See, e.g.*, *id*. at 110 nn.25-26.

or nation-building,[49] it is important to have a mental image of how these processes can best promote peace. *Solving the War Puzzle* gives readers exactly that foundation, and critical reflection will enable readers to approach the puzzle with a view toward its successful resolution.

[49] *See, e.g.*, Tomlinson, *supra* note 37.

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2. TJAGSA CLE Course Schedule (August 2004 - September 2006)

Course Title	Dates	ATTRS No.
GENERAL		
53d Graduate Course	16 August 04—25 May 05	5-27-C22
54th Graduate Course	15 August 05—25 May 06	5-27-C22
166th Basic Course	4—27 January 05 (Phase I—Ft. Lee)	5-27-C20
	28 January—8 April 05 (Phase II—TJAGSA)	5-27-C20
167th Basic Course	31 May—23 June 05 (Phase I—Ft. Lee)	5-27-C20
	24 June—1 September 05 (Phase II—TJAGSA)	5-27-C20
168th Basic Course	13 September—6 October 05 (Phase I—Ft. Lee)	5-27-C20
	7 October—15 December 05 (Phase II—TJAGSA)	5-27-C20
169th Basic Course	3—26 January 06 (Phase I—Ft. Lee)	5-27-C20
	27 January—7 April 06 (Phase II—TJAGSA)	5-27-C20
170th Basic Course	30 May—22 June (Phase I—Ft. Lee)	5-27-C20
	23 June—31 August	

	(Phase II—TJAGSA)	5-27-C20
171st Basic Course	12 September 06—TBD (Phase I—Ft. Lee)	5-27-C20
10th Speech Recognition Training	17—28 October 05	512-71DC4
16th Court Reporter Course	24 January—25 March 05	512-27DC5
17th Court Reporter Course	25 April—24 June 05	512-27DC5
18th Court Reporter Course	1 August—5 October 05	512-27DC5
19th Court Reporter Course	31 January—24 March 06	512-27DC5
20th Court Reporter Course	24 April—23 June 06	512-27DC5
21st Court Reporter Course	31 July—6 October 06	512-27DC5
6th Court Reporting Symposium	31 October—4 November 05	512-27DC6
186th Senior Officers Legal Orientation Course	28 March—1 April 05	5F-F1
187th Senior Officers Legal Orientation Course	13—17 June 05	5F-F1
188th Senior Officers Legal Orientation Course	12—16 September 05	5F-F1
189th Senior Officers Legal Orientation Course	14—18 November 05	5F-F1
190th Senior Officers Legal Orientation Course	30 January—3 February 06	5F-F1
191st Senior Officers Legal Orientation Course	27—31 March 06	5F-F1
192d Senior Officers Legal Orientation Course	12—16 June 06	5F-F1
193d Senior Officers Legal Orientation Course	11—15 September 06	5F-F1
12th RC General Officers Legal Orientation Course	25—27 January 06	5F-F3
35th Staff Judge Advocate Course	6—10 June 05	5F-F52
36th Staff Judge Advocate Course	5—9 June 06	5F-F52
8th Staff Judge Advocate Team Leadership Course	6—8 June 05	5F-F52S
9th Staff Judge Advocate Team Leadership Course	5—7 June 06	5F-F52S
2006 JAOAC (Phase II)	8—20 January 06	5F-F55
36th Methods of Instruction Course	31 May—3 June 05	5F-F70
37th Methods of Instruction Course	30 May—2 June 06	5F-F70
2005 JAG Annual CLE Workshop	3—7 October 05	5F-JAG
16th Legal Administrators Course	20—24 June 05	7A-270A1
17th Legal Administrators Course	19—23 June 06	7A-270A1
3d Paralegal SGM Training Symposium	6—10 December 2005	512-27D-50
16th Law for Paralegal NCOs Course	28 March—1 April 05	512-27D/20/30
17th Law for Paralegal NCOs Course	27—31 March 06	512-27D/20/30
16th Senior Paralegal NCO Management Course	13—17 June 05	512-27D/40/50
9th Chief Paralegal NCO Course	13—17 June 05	512-27D- CLNCO
2d 27D BNCOC	27 January—24 February 05	
3d 27D BNCOC	18 March—14 April 05	
4th 27D BNCOC	20 May—17 June 05	
5th 27D BNCOC	23 July—19 August 05	
6th 27D BNCOC	10 September—9 October 05	
2d 27D ANCOC	18 March—10 April 05	

3d 27D ANCOC	24 July—16 August 05	
4th 27D ANCOC	17 September—9 October 05	
12th JA Warrant Officer Basic Course	31 May—24 June 05	7A-270A0
13th JA Warrant Officer Basic Course	30 May—23 June 06	7A-270A0
JA Professional Recruiting Seminar	12—15 July 05	JARC-181
JA Professional Recruiting Seminar	11—14 July 06	JARC-181
6th JA Warrant Officer Advanced Course	11 July—5 August 05	7A-270A2
ADMINISTRATIVE AND CIVIL LAW		
4th Advanced Federal Labor Relations Course	19—21 October 05	5F-F21
59th Federal Labor Relations Course	17—21 October 05	5F-F22
56th Legal Assistance Course (Family Law focus)	16—20 May 05	5F-F23
57th Legal Assistance Course (Estate Planning focus)	31 October—4 November 05	5F-F23
58th Legal Assistance Course (Family Law focus)	15—19 May 06	5F-F23
2005 USAREUR Legal Assistance CLE	17—21 October 05	5F-F23E
29th Admin Law for Military Installations Course	14—18 March 05	5F-F24
30th Admin Law for Military Installations Course	13—17 March 06	5F-F24
2005 USAREUR Administrative Law CLE	12—16 September 05	5F-F24E
2006 USAREUR Administrative Law CLE	11—14 September 06	5F-F24E
2005 Maxwell AFB Income Tax Course	12—16 December 05	5F-F28
2005 USAREUR Income Tax CLE	5—9 December 05	5F-F28E
2005 Hawaii Income Tax CLE	10—14 January 05	5F-F28H
2006 Hawaii Income Tax CLE	TBD	5F-F28H
2005 USAREUR Claims Course	28 November—2 December 05	5F-F26E
2006 PACOM Income Tax CLE	9—13 June 2006	5F-F28P
23d Federal Litigation Course	1—5 August 05	5F-F29
24th Federal Litigation Course	31 July—4 August 06	5F-F29
3d Ethics Counselors Course	18—22 April 05	5F-F202
4th Ethics Counselors Course	17—21 April 06	5F-F202
CONTRACT AND FISCAL LAW		
7th Advanced Contract Attorneys Course	20—24 March 06	5F-F103
154th Contract Attorneys Course	Not conducted	
155th Contract Attorneys Course	25 July—5 August 05	5F-F10
156th Contract Attorneys Course	24 July—4 August 06	5F-F10
5th Contract Litigation Course	21—25 March 05	5F-F102
7th Contract Litigation Course	20—24 March 06	5F-F102

2005 Government Contract & Fiscal Law Symposium	6—9 December 05	5F-F11
71st Fiscal Law Course	25—29 April 05	5F-F12
72d Fiscal Law Course	2—6 May 05	5F-F12
73d Fiscal Law Course	24—28 October 05	5F-F12
74th Fiscal Law Course	24—28 April 06	5F-F12
75th Fiscal Law Course	1—5 May 06	5F-F12
1st Operational Contracting Course	28 February—4 March 05	5F-F13
2d Operational Contracting Course	27 February—3 March 06	5F-F13
12th Comptrollers Accreditation Course (Hawaii)	26—30 January 04	5F-F14
13th Comptrollers Accreditation Course (Fort Monmouth)	14—17 June 04	5F-F14
7th Procurement Fraud Course	31 May —2 June 06	5F-F101
2005 USAREUR Contract & Fiscal Law CLE	29 March—1 April 05	5F-F15E
2006 USAREUR Contract & Fiscal Law CLE	28—31 March 06	5F-F15E
2005 Maxwell AFB Fiscal Law Course	7—10 February 05	
2006 Maxwell AFB Fiscal Law Course	6—9 February 06	
CRIMINAL LAW		
11th Military Justice Managers Course	22—26 August 05	5F-F31
12th Military Justice Managers Course	21—25 August 06	5F-F31
48th Military Judge Course	25 April—13 May 05	5F-F33
49th Military Judge Course	24 April—12 May 06	5F-F33
23d Criminal Law Advocacy Course	14—25 March 05	5F-F34
24th Criminal Law Advocacy Course	12—23 September 05	5F-F34
25th Criminal Law Advocacy Course	13—17 March 06	5F-F34
26th Criminal Law Advocacy Course	11—15 September 06	5F-F34
29th Criminal Law New Developments Course	14—17 November 05	5F-F35
2006 USAREUR Criminal Law CLE	9—13 January 06	5F-F35E
INTERNATIONAL AND OPERATIONAL LAW		
5th Domestic Operational Law Course	24—28 October 05	5F-F45
84th Law of War Course	11—15 July 05	5F-F42
85th Law of War Course	30 January—3 February 06	5F-F42
86th Law of War Course	10—14 July 06	5F-F42
43d Operational Law Course	28 February—11 March 05	5F-F47
44th Operational Law Course	8—19 August 05	5F-F47
45th Operational Law Course	27 February—10 March 06	5F-F47
46th Operational Law Course	7—18 August 06	5F-F47
2004 USAREUR Operational Law Course	29 November—2 December 05	5F-F47E

3. Civilian-Sponsored CLE Courses

For addresses and detailed information, see the September 2004 issue of *The Army Lawyer*.

4. Phase I (Correspondence Phase), RC-JAOAC Deadline

The suspense for submission of all RC-JAOAC Phase I (Correspondence Phase) materials is ***NLT 2400, 1 November 2005***, for those judge advocates who desire to attend Phase II (Resident Phase) at TJAGLCS in the year 2006 ("2006 JAOAC"). This requirement includes submission of all JA 151, Fundamentals of Military Writing, exercises.

This requirement is particularly critical for some officers. The 2006 JAOAC will be held in January 2006, 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 2005). If the student receives notice of the need to re-do any examination or exercise after 1 October 2005, 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 2005 will not be cleared to attend the 2006 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 further questions, contact Lieutenant Colonel JT. Parker, telephone (434) 971-3357, or e-mail JT.Parker@hqda.army.mil.

5. Mandatory Continuing Legal Education Jurisdiction and Reporting Dates

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

Kentucky	10 August; completion required by 30 June
Louisiana**	31 January annually; credits must be earned by 31 December
Maine**	31 July annually
Minnesota	30 August annually
Mississippi**	15 August annually; 1 August to 31 July reporting period
Missouri	31 July annually; reporting year from 1 July to 30 June
Montana	1 April annually
Nevada	1 March annually
New Hampshire**	1 August annually; 1 July to 30 June reporting year
New Mexico	30 April annually; 1 January to 31 December reporting year
New York*	Every two years within thirty days after the attorney's birthday
North Carolina**	28 February annually
North Dakota	31 July annually for year ending 30 June
Ohio*	31 January biennially
Oklahoma**	15 February annually
Oregon	Period end 31 December; due 31 January
Pennsylvania**	Group 1: 30 April Group 2: 31 August Group 3: 31 December
Rhode Island	30 June annually
South Carolina**	1 January annually
Tennessee*	1 March annually
Texas	Minimum credits must be completed and reported by last day of birth month each year
Utah	31 January annually
Vermont	2 July annually

Virginia	31 October completion deadline; 15 December reporting deadline
Washington	31 January triennially
West Virginia	31 July biennially; reporting period ends 30 June
Wisconsin*	1 February biennially; period ends 31 December
Wyoming	30 January annually

* Military Exempt
** Military Must Declare Exemption
For addresses and detailed information, see the September 2004 issue of *The Army Lawyer*.

1. The Judge Advocate General's On-Site Continuing Legal Education Training and Workshop Schedule (2004-2005).

4 - 6 Feb 05	San Antonio, TX 90th RRC	Contract Law, Administrative and Civil Law	MAJ Charmaine E. Betty-Singleton (501) 771-8962 (work) (501) 771-8977 (office) charmaine.bettysingleton@us.army.mil
26 - 27 Feb 05	Denver, CO 87th LSO	Criminal Law, International and Operational Law	CPT Bret Heidemann (303) 394-7206 bret.heidemann@us.army.mil
5 - 6 Mar 05	Washington, DC 10th LSO	Contract Law, Administrative and Civil Law	LTC Philip Luci, Jr. (703) 482-5041 pluci@cox.net
11 - 13 Mar 05	Columbus, OH 9th LSO	Criminal Law, International and Operational Law	1LT Matthew Lampke (614) 644-8392 MLampke@ag.state.oh.us
16 - 17 Apr 05	Ayer, MA 94th RRC	International and Operational Law, Administrative and Civil Law	SFC Daryl Jent (978) 784-3933 darly.jent@us.army.mil
23 - 24 Apr 05	Indianapolis, IN INARNG	Contract Law, Administrative and Civil Law	COL George Thompson (317) 247-3491 george.thompson@in.ngb.army.mil
14 - 15 May 05	Nashville, TN 81st RRC	Contract Law, Administrative and Civil Law	CPT Kenneth Biskner (205) 795-1511 kenneth.biskner@us.army.mil
14 - 15 May 05	Chicago (Oakbrook) IL 91st LSO	Administrative and Civil Law, International and Operational Law	CPT Frank W. Ierulli (309) 999-6316 Frank.ierulli@us.army.mil
20 - 23 May 05	Kansas City, KS 89th RRC	Criminal Law, Administrative and Civil Law, Claims	MAJ Anna Swallow (800) 892-7266, ext. 1228 (316) 681-1759, ext. 1228 lynette.boyle@us.army.mil

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

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

b. Access to the JAGCNet:

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

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

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

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

(d) FLEP students;

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

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

LAAWSXXI@jagc-smtp.army.mil

c. How to log on to JAGCNet:

(1) Using a Web browser (Internet Explorer 4.0 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 your legal administrator or e-mail 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 TJAGSA Publications Available Through the LAAWS XXI JAGCNet, see the September 2004 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 2000 Professional and Microsoft Office 2000 Professional.

The TJAGLCS faculty and staff are available through the Internet. Addresses for TJAGLCS personnel are available by e-mail at jagsch@hqda.army.mil or by accessing the JAGC directory via JAGCNET. If you have any problems, please contact LTMO at (434) 971-3314. 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.

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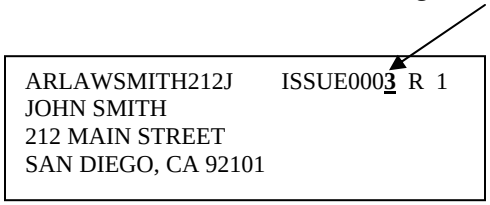

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