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Article

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Lieutenant Colonel J Thomas Parker

TJAGLCS Practice Note

Tax Law Note

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Congress Amends Performance of Civil Functions Restriction

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Introduction

Most judge advocates are undoubtedly familiar with the general prohibition against engaging in the private practice of law while serving on active duty as a judge advocate.¹ Most also know that this rule becomes applicable to reserve component judge advocates when they are on active duty for periods in excess of thirty days.² Along these same lines is a proscription against the pursuit and even the holding of certain positions while on active duty. Affected positions include: elected Federal officials, elected state officials, Presidential appointees, executive schedule employees, and appointed state officials.

The prohibitions placed on these individuals are found in section 973 of title 10.³ When one first considers this relatively commonsensical notion,⁴ there is an impulse to wonder whether the law has any true practical significance. How often would one run across an individual serving, for example, as an officer in the Army and as a congressman? As it turns out, those

¹ U.S. DEP'T OF ARMY, REG. 27-1, JUDGE ADVOCATE LEGAL SERVICES para. 4-3c (30 Sept. 1996) ("An attorney of the [Judge Advocate Legal Service] will not engage in private law practice without the prior written approval of [The Judge Advocate General].")

² *Id.*

³ The text of the legislation is as follows:

- (a) No officer of an armed force on active duty may accept employment if that employment requires him to be separated from his organization, branch, or unit, or interferes with the performance of his military duties.
- (b) (1) This subsection applies----
 - (A) to a regular officer of an armed force on the active--duty list (and a regular officer of the Coast Guard on the active duty promotion list);
 - (B) to a retired regular officer of an armed force serving on active duty under a call or order to active duty for a period in excess of 270 days; and
 - (C) to a reserve officer of an armed force serving on active duty under a call or order to active duty for a period in excess of 270 days.
- (2)
 - (A) Except as otherwise authorized by law, an officer to whom this subsection applies may not hold, or exercise the functions of, a civil office in the Government of the United States----
 - (i) that is an elective office;
 - (ii) that requires an appointment by the President by and with the advice and consent of the Senate; or
 - (iii) that is a position in the Executive Schedule under sections 5312 through 5317 of title 5.
 - (B) An officer to whom this subsection applies may hold or exercise the functions of a civil office in the Government of the United States that is not described in subparagraph (A) when assigned or detailed to that office or to perform those functions.
 - (3) Except as otherwise authorized by law, an officer to whom this subsection applies by reason of subparagraph (A) of paragraph (1) may not hold or exercise, by election or appointment, the functions of a civil office in the government of a State (or of any political subdivision of a State).
 - (4) (A) An officer to whom this subsection applies by reason of subparagraph (B) or (C) of paragraph (1) may not hold, by election or appointment, a civil office in the government of a State (or of any political subdivision of a State) if the holding of such office while this subsection so applies to the officer----
 - (i) is prohibited under the laws of that State; or
 - (ii) as determined by the Secretary of Defense or by the Secretary of Homeland Security with respect to the Coast Guard when it is not operating as a service in the Navy, interferes with the performance of the officer's duties as an officer of the armed forces.
 - (B) Except as otherwise authorized by law, while an officer referred to in subparagraph (A) is serving on active duty, the officer may not exercise the functions of a civil office held by the officer as described in that subparagraph.
 - (5) Nothing in this subsection shall be construed to invalidate any action undertaken by an officer in furtherance of assigned official duties.
 - (6) In this subsection, the term "State" includes the District of Columbia and a territory, possession, or commonwealth of the United States.
 - (c) An officer to whom subsection (b) applies may seek and hold nonpartisan civil office on an independent school board that is located exclusively on a military reservation.
 - (d) The Secretary of Defense, and the Secretary of Homeland Security with respect to the Coast Guard when it is not operating in the Navy, shall prescribe regulations to implement this section.

10 U.S.C. § 973 (LEXIS 2004).

⁴ Section 973 dates back to 1870. Lieutenant John H. Stassen, *The Civil Office Prohibition (10 U.S.C. § 973(b): Applicability to Office of Notary Public*, 26 JAG. J. 268, 269 (1972). Congress believed that a military officer could not suffer militarily for the consequences of an illegal act performed while serving in a civil office. *Id.* Additionally, they felt that a concurrent holding might serve to supplant civilian control of the government. *Id.* See also Riddle v. Warner, 522 F.2d 882, 884 (9th Cir. 1975).

times—when an individual wants to run for public office prior to terminating a period of active duty or concluding a military career—are rare,⁵ but the law has come into focus following the mobilization of many reserve component members.⁶ This note explains section 973’s application, including a recent amendment to section 973 which removed a restriction on activated guardsmen, reservists and retirees serving on tours of active duty for more than 270 days, and the regulatory implementation.

Section 973’s Main Provisions

As a preliminary matter, it is well to keep in mind that section 973 applies not only to those who would mobilize—come to active duty—from the reserve components, but also to Soldiers in the regular active-duty component. The law sets out a fundamental notion that officers on active duty, from a reserve or regular component, should not go about trying to engage in additional employment if it interferes with their duties and assignments.⁷

Section 973 next outlines more specific proscriptions against holding public office. First, the statute states that it is applicable to regular active duty officers, retired regular officers who are back on active duty for more than 270 days,⁸ and reserve officers who are on active duty for more than 270 days.⁹ Next, the statute prohibits those three categories of officers from holding Federal elective offices, a Presidential appointment requiring Senate confirmation, or an executive schedule position.¹⁰ Finally, it also carries a prohibition against “hold[ing] or exercise[ing]” state¹¹ and local government positions.¹²

The statute indicates, however, that “[a]n officer . . . may seek and hold nonpartisan civil office . . . on an independent school board that is located exclusively on a military reservation.”¹³ Additionally, officers can serve in other Federal positions—non-senior executive service positions not requiring a Presidential appointment or executive schedule positions—“when assigned or detailed to that office or to perform those functions.”¹⁴

There are several practical upshots to these portions of the legislation. One is that officers on active duty could not campaign for public office in advance of a pending retirement or release from active duty, let alone be elected and begin performing the function of that office. Similarly, elected officials who happen to be members of the reserve component or retired regular officers brought to active duty¹⁵ for more than 270 days¹⁶ would not be allowed to hold or exercise the

⁵ See, e.g., *Jolley v. Grantham*, 206 Ga. App. 100, 424 S.E.2d 362 (Ga. Ct. App. 1992).

⁶ Normally, members of the reserve components, the Army, the Air Force, the Navy, the Marine Corps, and Coast Guard Reserves and the Army and Air National Guards of the United States, are protected under the Uniformed Services Employment and Reemployment Rights Act (USERRA). See generally, 38 U.S.C. §§ 4301-4333 (2000). This law offers a range of benefits to members of the reserve components and, as its name implies, guarantees the reemployment of guardsmen and reservists following tours of duty. See *id.* at § 4312. It works much like any other anti-discriminatory legislation. Among its stated purposes is one “prohibit[ing] discrimination against persons because of their service in the uniformed services.” *Id.* at § 4301(a)(3). On the other hand, even USERRA does not offer all of its protections to everyone as it excepts or otherwise limits the rights of certain members of the intelligence community. See *id.* at § 4315. Although this does not affect all members of the intelligence community, those who are affected would be from the FBI, CIA, DIA, NSA, and the National Imagery and Mapping Agency. *Id.* See also 5 U.S.C. § 2302(a)(2)(C)(ii) (2000). Additionally, there is some doubt concerning whether USERRA is enforceable against the states as employers under the 11th Amendment. See Lieutenant Colonel H. Craig Manson, *The Uniformed Services Employment and Reemployment Rights Act of 1994*, 47 A.F.L. REV. 55, 81-3 (1999). See also Lieutenant Colonel Paul Conrad, *The 1998 USERRA Amendments*, ARMY LAW., Aug. 1999, at 52.

⁷ 10 U.S.C. § 973(a).

⁸ See *id.* § 688.

⁹ *Id.* § 973(b)(1).

¹⁰ *Id.* § 973(b)(2).

¹¹ The definition of “State includes the District of Columbia and a territory, possession or commonwealth of the United States.” *Id.* § 973(b)(6).

¹² *Id.* § 973(b)(3).

¹³ *Id.* § 973(c).

¹⁴ *Id.* § 973(b)(2)(B). See also U.S. DEP’T OF DEFENSE, DIR. 1000.17, DETAIL OF DoD PERSONNEL TO DUTY OUTSIDE THE DEPARTMENT OF DEFENSE (24 Feb. 1997 (C1, 24 Nov. 1998).

¹⁵ There are a number of ways for an officer to be called to active duty. See, e.g., 10 U.S.C. § 12301(a) (full mobilization); *id.* at § 12302 (partial mobilization); *id.* at § 12304 (Presidential reserve call-up).

¹⁶ The 270-day benchmark of Section 973 obviously means to bring the provision in line with the Presidential reserve call-up authority, an authority which limits the activation period to 270 days. *Id.* at § 12304. See also Exec. Order No. 13076, 63 Fed. Reg. 9719 (Feb. 24, 1998) (“for the effective conduct of operations in and around Southwest Asia”), amended by Exec. Order No. 13286, 68 Fed. Reg. 10,623 (Feb. 28, 2003); Exec. Order No. 13,286, 64 Fed. Reg. 23,007 (Apr. 27, 1999) (for “operations in and around the former Yugoslavia”), amended by Exec. Order No. 13,286, 68 Fed. Reg. 10,623 (Feb. 28, 2003).

functions of the civilian office they leave behind. Retired regular officers and members of the reserve components brought to active duty for periods of 270 days or less, on the other hand, would be able to hold and exercise their elected or appointed civilian positions unless they were to run afoul of the fundamental requirement that any additional employment must not interfere with their official duties.¹⁷

The prohibitions and restrictions found in section 973 may seem to be of little practical consequence, but occasions where one might wish to seek an elected governmental position do arise¹⁸ and, under the current two-year partial mobilization for the war against terrorism,¹⁹ there is a possibility that a significant number of activated reservists could currently be serving as elected or appointed state and local officials.²⁰ Fortunately, there is some leeway built into the remainder of section 973. The applicable regulatory provisions likewise soften some of the statute's main provisions.

Further Implementation

In late 2003, Congress passed the National Defense Authorization Act for Fiscal Year 2004.²¹ Among its many provisions is section 545,²² which amended section 973. The amendment works to remove any strict prohibition for retired regular army officers and reserve component officers on active duty for more than 270 days from merely holding a state office.²³ These officers may not hold the office, however, if doing so is prohibited by state law²⁴ or if the Secretary of Defense or Secretary of Homeland Security determines that there is "inter[ference] with the performance of the officer's duties as an officer of the armed forces."²⁵

The Department of Defense (DoD) implements section 973 in its recently updated *DoD Directive Number 1344.10, Political Activities by Members of the Armed Forces on Active Duty. (DoD Dir. 1344.10)*.²⁶ This publication echoes much of

¹⁷ 10 U.S.C. § 973(a).

¹⁸ See, e.g., *Jolley v. Grantham*, 206 Ga. App. 100, 424 S.E.2d 362 (Ga. Ct. App. 1992).

¹⁹ See 10 U.S.C. § 12302. See also Proclamation No. 7463, 66 Fed. Reg. 48,199 (Sept. 18, 2001) ("Declaration of National Emergency by Reason of Certain Terrorist Attacks"); Exec. Order No. 13,223, 66 Fed. Reg. 48,201 (Sept. 18, 2001) (authorizing activation of Ready Reserve to active duty in response to terrorist attacks against the United States).

²⁰ A partial mobilization allows for the augmentation of the active armed forces with the activation of up to 200,000 members of the selected reserve. 10 U.S.C. § 12302. In response to the current crisis, the numbers of those on active duty has waxed and waned. At this writing, the number of reservists on active duty totaled 159,702. U.S. DEP'T OF DEFENSE, News Release: National Guard and Reserve Mobilized as of August 18, 2004 (Aug. 18, 2004), available at <http://www.defenselink.mil/news/Aug2004/d20040818ngr.pdf> (also on file with the author). Unfortunately, these statistics, published weekly, do not reveal the numbers of officers or retired officers activated.

²¹ National Defense Authorization Act for Fiscal Year 2004, Pub. L. No. 108-136, 117 Stat. 1392 (2003).

²² *Id.* § 545, 117 Stat. 1479 (codified as amended at 10 U.S.C. § 973(b)(4)(A) (LEXIS 2004)).

²³ 10 U.S.C. § 973(b)(4)(A).

²⁴ Georgia prohibits the simultaneous holding of a state "civil office" and most federal offices. Those precluded from holding civil office include

Persons holding any office of profit or trust under the government of the United States other than that of postmaster and officers and enlisted men of the reserve components of the armed forces of the United States, or of either of the several states, or of any foreign state; provided however, that without prejudice to his right to hold public office, any person may accept appointment to, and may receive his expenses and compensation arising from, membership upon any commission, board, panel, or other fact-finding or policy-making agency appointed by the President of the United States or other federal authority, where such appointment is of a temporary nature and the duties are not such as to interfere materially with the person's duties as a public officer.

GA. CODE ANN. § 45-2-1(4) (2004). The Georgia Supreme Court has held, however, that an enlisted active duty member of the U.S. Navy could exercise and hold a position as a city councilman because that position was not included within the meaning of "civil office." Only state offices are considered within the statute's reach. See *Westberry v. Saunders*, 250 Ga. 240, 241, 296 S.E.2d 596, 598 (1982). Other states seem to take a different approach. See, e.g., IDAHO CODE § 59-407 (2004) (elective state officials who cannot appear to take their oaths of office because of military service may nonetheless take their oath and be sworn in). Still other states fail to address the question directly, but they too tend to indicate that the mere absences for periods of military service will not terminate a person's holding of a civil office. See, e.g., CAL. MIL & VET. § 1690 (2004) ("Any elected officer of the State who is called to serve with the armed forces of the United States has a right to return to and to re-enter upon his office after the termination of his active service with the armed forces if the term for which he is elected has not expired."). See also *id.* § 395.8 (providing city elective and other officers right to restoration following military service).

²⁵ 10 U.S.C. § 973(b)(4)(B).

²⁶ U.S. DEP'T OF DEFENSE, DIR. 1344.10, POLITICAL ACTIVITIES BY MEMBERS OF THE ARMED FORCES ON ACTIVE DUTY (2 Aug. 2004) [hereinafter DOD DIR. 1344.10]. Section 973 serves as a centerpiece for this directive, but the directive also, and perhaps more importantly, contains general guidance on political activities:

4.1.1. A member on active duty may:

section 973. For example, it restates the prohibition against holding Federal elective office, an office requiring a Presidential appointment with Senate confirmation, or an executive schedule position.²⁷ It also reaffirms that retirees and reservists on active duty for less than 270 days can hold and exercise their Federal elective, appointed, and executive service offices so long as their activities do not interfere with the performance of their active duty responsibilities.²⁸ The same treatment is also given to state and local positions.²⁹ The regulation expresses the inherent logic of section 973 against members of the armed forces becoming candidates for partisan office.³⁰

One major step the directive takes, however, is to extend section 973 prohibitions to enlisted members of the armed forces. In many of its provisions, it makes no distinction between officers and enlisted personnel in its reference to “members of the Armed Forces” and “members.”³¹ The directive also goes beyond the statutory language in other ways. It echoes the statute when it allows officers to participate on installation school boards,³² but it goes further, stating, “enlisted member[s] may seek, hold, and exercise the functions of nonpartisan³³ civil office as a notary public or member of a school board, neighborhood planning commission, or similar local agency, provided that the office is held in a non-military capacity and there is no interference with the performance of military duties.”³⁴ Most importantly, *DoD Dir. 1344.10* defines the 270 day activation period. It clarifies that any such period of active duty for reservists and retirees begins on the first day of active duty. This means that Soldiers on tours in excess of 270 days are precluded from exercising their civilian office from the first day of active duty.³⁵ In other words, they receive no grace period during the first 270 days.³⁶

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- 4.1.1.1. Register, vote, and express his or her personal opinion on political candidates and issues, but not as a representative of the Armed Forces.
 - 4.1.1.2. Make monetary contributions to a political organization.
 - 4.1.1.3. Attend partisan and nonpartisan political meetings, rallies, or conventions as a spectator when not in uniform.
 - 4.1.2. A member on active duty shall not:
 - 4.1.2.1. Use his or her official authority or influence for interfering with an election; affecting the course or outcome of an election; soliciting votes for a particular candidate or issue; or requiring or soliciting political contributions from others.
 - 4.1.2.2. Be a candidate for, hold, or exercise the functions of civil office except as authorized in paragraphs 4.2. and 4.3., below.
 - 4.1.2.3. Participate in partisan political management, campaigns, or conventions (unless attending a convention as a spectator when not in uniform).
 - 4.1.2.4. Make campaign contributions to another member of the Armed Forces or an employee of the Federal Government.

Id. para. 4.1. See also *id.* para. E3.

²⁷ *Id.* para. 4.3.1.

²⁸ *Id.* para. 4.3.2. The directive also repeats that service members may be detailed to civil offices in the Federal government *Id.* para. 4.3.3.

²⁹ *Id.* para. 4.3.5.3.

³⁰ The directive brings this out in its section dealing with general prohibitions. See *id.* para. 4.1.2.2. It later reiterates this general proposition, but creates four exceptions. *Id.* para. 4.2.1. One exception is for federal offices where the member is not on active duty for more than 270 days. *Id.* paras. 4.2.1.1 and 4.3.2. The others are for enlisted members in nonpartisan positions, for officers in nonpartisan school board positions on the installation, and for state and local positions where the member is on active duty for less than 270 days. *Id.* paras. 4.2.1.2, 4.3.5.1, 4.3.5.2, and 4.3.5.3.

There have been times when Section 973, or an earlier version, has been in issue. In the *Jolley* case for example, an Army Warrant Officer filed for candidacy for the position of the Harris County, Georgia Sheriff. *Jolley v. Grantham*, 206 Ga. App. 100, 424 S.E.2d 362-3, (Ga. Ct. App. 1992). Although the main challenge to his candidacy concerned a portion of the Hatch Act, codified at section 7324(a) of title 5, United States Code, the court went on to address a claim that Jolley had also violated section 973. Normally one might think of section 973 being considered internally within the DoD. In his case, however, the challenge came from outside the DoD. In ruling on the second issue, the court considered the section 973(a) proscription against employment that interferes with assigned duties as well as the public office proscription. *Id.* at 101-2. Considering both, the court held “that the prohibition is on holding the office, not seeking it.” *Id.* at 102. While the Georgia court may have been correct in its interpretation of the statute, it should be noted that the DoD generally restricts how and whether one can file and become a candidate for public office. DoD DIR. 1344.10, *supra* note 26, para. 4.1.2.2.

³¹ See, e.g., DOD DIR. 1344.10, *supra* note 26, para. 4 (“It is DoD policy to encourage members of the Armed Forces . . . to carry out the obligations of citizenship”).

³² *Id.* para. 4.3.5.2

³³ The directive defines “nonpartisan political activity,” as:

Activity supporting or relating to candidates not representing, or issues not specifically identified with, national or State political parties and associated or ancillary organizations. Issues relating to constitutional amendments, referendums, approval of municipal ordinances, and others of similar character are not considered under this Directive as specifically being identified with national or State political parties.

Id. para. E2.1.4.

³⁴ *Id.* para. 4.3.5.1.

³⁵ *Id.* para. 4.3.2.

Department of Defense Directive 1344.10 also better defines what constitutes a “civil office”:

A non-military office involving the exercise of the powers or authority of civil government, to include elective and appointive office in the U.S. Government, a U.S. territory or possession, State, county, municipality, or official subdivision thereof. This term does not include a non-elective position as regular or reserve member of a civilian law enforcement, fire or rescue squad.³⁷

This is an important definition because there have been a few times when this terminology has been in issue³⁸ and of some concern.³⁹

Significant matters, not addressed in the text of the legislation, concern how to handle situations when the member desires to become or remain a candidate for office or must continue to exercise a position that will interfere with that member’s duty performance. *Department of Defense Directive 1344.10* gives those individuals the option to “request retirement (if eligible), discharge, or release from active duty”;⁴⁰ however, any such request is not automatic and must be approved by the Secretary concerned.⁴¹ Requests will not be approved for service members: with an active duty service commitment;⁴² serving in a combat zone or like location;⁴³ under investigation;⁴⁴ accused of an offense;⁴⁵ serving a sentence;⁴⁶ pending administrative separation;⁴⁷ indebted to the United States;⁴⁸ or in violation of *DoD Dir. 1344.10*.⁴⁹ The request could also be denied if the member was from “a Reserve component and serving involuntarily . . . [for] more than 270 days during a period of declared war or national emergency, or other period when a unit or individual of the National Guard or other Reserve component has been involuntarily called or ordered to active duty as authorized by law.”⁵⁰ Those who

³⁶ *Id.* See also *id.* para. 4.3.5.3 (state and local offices).

³⁷ *Id.* para. E2.1.3.

³⁸ In one interesting case involving an earlier version of section 973, the military plaintiff sought to have the legislation applied to him and to thereby bring an end to his service obligation. *Riddle v. Warner*, 522 F.2d 882 (9th Cir. 1975). Lieutenant Riddle graduated from the United States Naval Academy and attended law school. *Id.* at 883. As a consequence of his Naval Academy schooling, he was obligated to “the service for some time to come.” *Id.* During his first assignment as a legal assistance attorney he “was granted a commission as a notary public for the State of California.” *Id.* His argument was that the commission as a notary public amounted to a civil office necessitating the termination of his commission. *Id.* The court found his position to be untenable. Instead, it noted that Section 973 and its historical antecedents were founded on a desire to avoid military control of the civilian government and preventing any interference with military duties. *Id.* at 884. The court summarized the application of these goals to Riddle’s situation:

In our view, the office of notary public when held by a military officer cannot be said to offend either of the purposes underlying the statute. Certainly, there would be no danger that military officers becoming notaries public would threaten the civilian preeminence in government. Nor would the responsibilities of a notary public adversely affect the efficiency of a military officer, especially a military lawyer like Riddle. His value and efficiency, rather than being jeopardized, are perhaps enhanced because of a lawyer’s constant need for notary service.

Id. at 884-5.

³⁹ See Stassen, *supra* note 4.

⁴⁰ DOD DIR. 1344.10, *supra* note 26, para. 4.4.1. Compare this provision with one from the previous version of *DoD Dir1344.10. Directive 1344.10* indicating that a “civil office” was “[a] nonmilitary office involving the exercise of the powers or authority of civil government, to include elective and appointive office in the U.S. Government, a U.S. territory or possession, State, county, municipality, or official subdivision thereof.” U.S. DEP’T OF DEFENSE, DIR. 1344.10, POLITICAL ACTIVITIES BY MEMBERS OF THE ARMED FORCES ON ACTIVE DUTY para. E2.1.2 (15 June 1990) [hereinafter Former DOD DIR. 1344.10].

⁴¹ DOD DIR. 1344.10, *supra* note 26, para. 4.4.1.

⁴² *Id.* para. 4.4.1.1.

⁴³ *Id.* para. 4.4.1.2 In broader terms, the request may be denied if the member is “[s]erving or has been issued orders to serve afloat or in an area that is overseas, remote, a combat zone or a hostile fire pay area.” *Id.*

⁴⁴ *Id.* para. 4.4.1.3.

⁴⁵ *Id.* para. 4.4.1.4.

⁴⁶ *Id.*

⁴⁷ *Id.* para. 4.4.1.5. It is not clear that this separation would have to be adverse or otherwise unfavorable, but logic indicates that it should.

⁴⁸ *Id.* para. 4.4.1.6.

⁴⁹ *Id.* para. 4.4.1.8.

⁵⁰ *Id.* para. 4.4.1.7.

persist with exercising an office or who have a civilian office which interferes could also be found in violation of the directive and be subjected to punitive sanctions.⁵¹

One obvious question that comes from the text of the statutory amendment concerns the statement that the Secretaries of Defense and Homeland Security will determine whether the holding of an office “interferes with the performance of the officer’s duties as an officer of the armed forces.”⁵² The question is whether consideration of interference can be determined at some level below the actual secretary. *Department of Defense Directive 1344.10* answers this in part by establishing that the service secretaries are to make the determination.⁵³ This of course begs another obvious question about how the Army adjudicates or anticipates adjudicating whether the holding of a particular office interferes with a tour of active duty. It currently appears that responsibility would lie within the Office of the Deputy Chief of Staff, G1.⁵⁴

Army Implementation

One matter to still consider is the Army’s implementation of Section 973. The latest version of *Army Regulation 600-20* (*AR 600-20*) came out in 2002.⁵⁵ Thus, it is unfair to discuss whether *AR 600-20* is wholly consistent with either *DoD Dir. 1344.10* or section 973 as amended. Practitioners should, nonetheless, continue to carefully consult *AR 600-20* as well as *DoD Dir. 1344.10*. Despite some archaic usage⁵⁶ and outdated provisions,⁵⁷ *AR 600-20* provides more specific guidance in certain instances. For example, it gives greater detail about how to file for candidacy while on active duty⁵⁸ and in a manner consistent with *DoD Dir. 1344.10*’s prohibition against campaigning for office while on active duty.⁵⁹

Of perhaps greatest importance is *AR 600-20*’s short statement that the political activities provisions are applicable to “[S]oldiers (including full-time National Guard).”⁶⁰ This is significant because *DoD Dir. 1344.10* calls on the “Chief, National Guard Bureau [to] issue policy guidance similar to that included in this Directive that is applicable to members of the National Guard serving in a full-time National Guard duty status.”⁶¹ Given the Secretary of the Army’s guidance, there would seem to be little need to address the Army side of the National Guard. The Secretary of the Army, speaking through *AR 600-20*, confirms that the political activity rules are applicable to members of the Army National Guard serving on full-time National Guard duty.⁶²

⁵¹ *Id.* para. 4.4.4.

⁵² 10 U.S.C. § 973(b)(4)(a)(ii) (LEXIS 2004).

⁵³ DoD DIR. 1344.10, *supra* note 26, para. 4.3.5.4.2.

⁵⁴ The Army provides specific guidance consistent with *DoD Dir. Directive 1344.10* and section 973 in *Army Regulation 600-20, Army Command Policy*. See U.S. DEP’T OF ARMY REG, 600-20, ARMY COMMAND POLICY, para. 5-3 (13 May 2002) [hereinafter *AR 600-20*]. That regulation states that “[t]he DCS, G-1 is responsible for policy on soldier participation in political activities.” *Id.*

⁵⁵ *Id.*

⁵⁶ *Army Regulation 600-20* uses, for example, the terminology of “EAD” or “extended active duty.” *Id.* para. 5-3d(3) (“As long as they are not serving on EAD, enlisted members and Reserve officers may hold partisan and nonpartisan civil office if such office is held in a private capacity and does not interfere with the performance of military duties.”). It does not define what it means by “EAD.” The previous version of *DoD Dir. 1344.10*, however, defined EAD as “a period in excess of 270 days.” Former DoD DIR. 1344.10, *supra* note 40, para. E2.1.4.

⁵⁷ *Army Regulation 600-20* does not, for example, allow reserve officers to hold office if they are on active duty for more than 270 days. *AR 600-20, supra* note 54, para. 5-3d(3). Again, section 973 would at least open up the way for these individuals to hold civil office even if on active duty for more than 270 days. See 10 U.S.C. § 973(b)(4)(A) (LEXIS 2004).

⁵⁸ *AR 600-20, supra* note 54, para. 5-3c. Although *AR 600-20* prohibits campaigning, “[w]hen circumstances warrant, the installation commander (or general court-martial convening authority) may permit the soldier to file such evidence of nomination or candidacy for nomination, as may be required by law.” *Id.* para. 5-3c(1).

⁵⁹ DoD DIR. 1344.10, *supra* note 26, para. 4.1.2.2.

⁶⁰ *AR 600-20, supra* note 54, para. 5-3a. This type of duty is defined in title 10 of the United States Code:

The term “full-time National Guard duty” means training or other duty, other than inactive duty, performed by a member of the Army National Guard of the United States or the Air National Guard of the United States in the member’s status as a member of the National Guard of a State or territory, the Commonwealth of Puerto Rico, or the District of Columbia under section 316, 502, 503, 504, or 505 of title 32 for which the member is entitled to pay from the United States or for which the member has waived pay from the United States.

10 U.S.C. § 101(d)(5) (2000).

⁶¹ DoD DIR. 1344.10, *supra* note 26, para. 5.3.

Conclusion

This article has considered a recent amendment to section 973 of title 10 which removed a restriction on activated guardsmen, reservists, and retirees serving on tours of active duty for more than 270 days. Under the revision, these individuals are no longer precluded from merely holding certain civilian positions unless the holding interferes with their active duty roles.⁶³ What has not changed is the prohibition against exercising the functions of the office. The note also examined the DoD's recent implementation. Judge advocates may rarely have a need to consider these authorities. Careful consideration of and attention to the statutory and regulatory law, however, is warranted when the need does arise.

⁶² The Chief of the National Guard has issued specific instructions to the Air National Guard. *See* NATIONAL GUARD BUREAU, AIR NATIONAL GUARD, INSTR. 36-101, THE ACTIVE GUARD/RESERVE PROGRAM para. 3.10 (3 May 2002).

⁶³ 10 U.S.C. § 973(b)(4)(A) (LEXIS 2004).

JAGLCS Practice Note

Tax Law Note

Important News for Service Members Who Sold Homes after 6 May 1997 and Paid Income Tax on Gains from Those Sales

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Service members who sold homes after 6 May 1997 and paid income tax on gains from those sales may be able to obtain a refund from the Internal Revenue Service; however, 10 November 2004 is the deadline for filing some of the refund claims.

Generally, capital gains derived from the sale of a personal residence are taxable unless deferred or excluded.¹ Before May 1997, taxpayers could only defer payment of tax on capital gains from the sale of their principal residence if the gains were rolled over into purchase of a replacement principal residence of equal or greater value within a designated period of time.² If they lived overseas, military taxpayers could have up to eight years to purchase new residences into which they could roll over gains and defer tax.

The Tax Relief Act of 1997³ created a significant benefit for homeowners by allowing an exclusion of up to \$250,000 of gain (\$500,000 for joint filers) from the sale of a principal residence.⁴ Because service members relocate frequently, this Act was especially beneficial to military personnel. To qualify for the exclusion, a taxpayer must have owned the home during the last five years (Ownership Test) and also lived in the home for at least two of the last five years (Use Test).⁵ The two-year Use Test need not be continuous, and the taxpayer may meet the Ownership and Use Tests during two different two-year periods.⁶ A taxpayer may generally only use the provision for one sale or exchange every two years.⁷ Finally, the sale of the home must have occurred after 6 May 1997.⁸

Many times service members retain ownership of homes after relocating and convert them into rental properties. They might eventually sell these homes without returning to live in them and would therefore fail the Use Test and not qualify for the exclusion. Until recently, no special relief was available for these service members. Last year, however, the Armed Forces Tax Council successfully obtained tax relief for service members who could not meet the Ownership and Use Tests in order to qualify for the exclusion.

On 11 November 2003, the President signed the Military Family Tax Relief Act of 2003.⁹ This Act amended Internal Revenue Code, section 121(d), to suspend the five-year Ownership Test for up to ten years of qualified extended duty for military taxpayers.¹⁰ "Qualified official extended duty" is defined as service at a duty station at least 50 miles from the property as of 11 November 2003.¹¹ "Extended duty" is defined as any period of active duty under a call or order to such

¹ See I.R.C. § 61 (LEXIS 2004).

² See *id.* § 1034 (repealed 1997).

³ Pub. L. No. 105-34, 111 Stat. 788 (1997) (codified in more than 250 new sections and included by modifications to more than 800 existing sections of the I.R.C.).

⁴ I.R.C. § 121(b).

⁵ *Id.* § 121(a).

⁶ I.R.S. PUB. 17, YOUR FEDERAL INCOME TAX FOR INDIVIDUALS (2004).

⁷ I.R.C. § 121(b)(3).

⁸ *Id.* § 121(a).

⁹ Pub. L. No. 108-121, 117 Stat. 1336 (2003).

¹⁰ *Id.* § 101(a).

¹¹ I.R.C. § 121(d)(9)(C)(i).

duty for a period in excess of ninety days or for an indefinite period.¹² The service member must elect to suspend the running of the five-year ownership period and may only make one election at a time.¹³

This change for military taxpayers applies to home sales after 6 May 1997. To obtain a refund, taxpayers normally only have three years (calculated from the due date for filing that year's return) to file an amended income tax return.¹⁴ Qualifying service members, however, who sold a residence before 2001 (for which the three-year limitations period would have lapsed), have until 10 November 2004 to amend their prior year income tax returns to take advantage of this provision and obtain a refund (with interest) for any tax paid on gains from qualifying sales.¹⁵ Taxpayers should write "Military Family Tax Relief Act" in red in the top margin of the Form 1040X, Amended U.S. Individual Income Tax Return.¹⁶

¹² *Id.* § 121(d)(9)(C)(iv).

¹³ *Id.* § 121(d)(9)(D)(i).

¹⁴ *Id.* § 6511.

¹⁵ Pub. L. No. 108-121, § 101(b)(2), 117 Stat. 1336 (2003).

¹⁶ I.R.S. PUB. 3, ARMED FORCES' TAX GUIDE (2003), available at <http://www.irs.gov/pub/irs-pdf/p3.pdf> (last visited September 16, 2004).

The Art of Advocacy

The Thrill and Excitement of Impeachment by Contradiction

Major Christopher W. Behan

Introduction

Wednesday afternoon, the Fort Swampy courtroom. You are in the second day of a contested general court-martial before a panel of officer and enlisted members. The accused—your client—has been charged with conspiracy to distribute cocaine in violation of Article 81 of the Uniform Code of Military Justice. Your client claims he had no involvement in the conspiracy and has been set up by a confidential informant intent on saving her own skin. For the past two days, you have heard a mind-numbing procession of expert witnesses and CID agents talking about cocaine, surveillance procedures, suspects, and “late-model, red-in-color vehicles” (your client, of course, owns one of the many on post). You have not made much headway in the case, and both you and your client are starting to get discouraged.

The government calls its final witness, Specialist (SPC) Sheera M’endassity, the confidential informant. Specialist M’endassity is testifying under a grant of immunity, and she has been the government’s key witness in the trials of three other alleged co-conspirators. Specialist M’endassity has committed all sorts of misconduct, both drug-related and not, about which you would love to cross-examine her to taint her as a witness in the eyes of the panel. However, your worthy opponent prevailed in a motion in limine under Military Rule of Evidence (MRE) 608(b), and the judge has ruled that you may only question SPC M’endassity about specific instances of misconduct that are directly related to her character for truthfulness or untruthfulness. “Specialist M’endassity is not on trial here,” said the judge in her ruling. “I am not going to let you turn this trial into a circus.”

Specialist M’endassity testifies on direct that your client was heavily involved in the conspiracy. She modestly admits to her own minor role in the conspiracy. In an effort to remove the “sting” of your expected cross-examination, the prosecutor questions her about the grant of immunity. M’endassity discusses her own arrest, the maximum punishment she would have faced at trial, and the fact that she is testifying under immunity. The following exchange then occurs:

Q: Specialist M’endassity, I would like you to discuss your grant of immunity. Why are you testifying here today?

A: Because I feel bad about what happened and I want to help make things right. Also, the CG ordered me to testify and cooperate in this case. And that is what I am doing.

Q: In return for your testimony and cooperation, what will happen to you?

A: Well, I will not be prosecuted for what I did.

Q: And what else does the agreement require you to do?

A: I have to tell the truth. Which I have done. And I also have to stay clean—I cannot use drugs or be around people who use or sell them. And I have to stay away from the DISCOM area.

Q: And have you done those things?

A: Yes. All of them. In fact [she adds with a smirking look of self-righteousness], since the day I was arrested, I have not even had anything to drink. I have really turned myself around.

Q: Thank you. No further questions.

You grip your pen tightly. Specialist M'endassity has just told a whopper. She is a regular fixture at the DISCOM barracks party scene, and you have witnesses who have seen her in the barracks area as recently as last weekend. These witnesses also saw her drinking on several occasions since her arrest. You know she is a liar. You want desperately to prove it, but you are not sure how. You think back to your days at the Criminal Law Advocacy Course at the JAG School, draw a mental blank, and then ask yourself: What am I going to do?

In order to destroy SPC M'endassity's credibility as a witness, you need to understand and apply the principle of impeachment by contradiction. Impeachment by contradiction is a potentially valuable weapon in your advocacy arsenal. Because it is not specifically listed in either the Federal Rules of Evidence (FRE) or Military Rules of Evidence (MRE), it is "often misunderstood and either misused or not used at all."¹ The purpose of this article is to equip counsel with the ability effectively to use impeachment by contradiction at military courts-martial.

Impeachment by contradiction: Definition and Legal Framework

Definition

Impeachment by contradiction, or impeachment by specific contradiction as it is sometimes known, is one of the five primary modes of impeachment at trial.² In concept, impeachment by contradiction is rather simple. When a witness makes an assertion of fact, the attorney can impeach him by showing that the fact is not true; this can be done either by cross-examining the witness, using extrinsic evidence, or both. For example, if the witness testifies that an incident occurred at "high noon at the OK Corral," the attorney can show by cross-examination or by calling witnesses that the incident actually occurred at midnight at the Circle K convenience store. If the fact-finder believes the counterproof offered by the attorney, the witness has been impeached in two ways. First, the fact-finder will believe that the witness lied or made a mistake on the specific fact contradicted.³ But second, and perhaps more significantly, the fact-finder may begin to doubt everything else the witness has said.⁴ Because the attorney can use extrinsic evidence rather than simply relying on cross-examination, impeachment by contradiction can be devastating to a witness's credibility.

Legal Framework

In order to make the argument for the use of impeachment by contradiction at trial, counsel must understand and be able to explain to a military judge what the doctrine is and why it is appropriate in their particular case. The following framework will assist counsel in this endeavor:

Requirement of Significant Factual Statement that Demands Contradiction

In order for an attorney to use impeachment by contradiction, the witness must make a statement of fact that is significant to the case at hand. The normal rule, drawn from the common law, is that impeachment by contradiction should not be used for collateral matters.⁵ Thus, if a complaining witness testifies that on the morning of the alleged rape she had oatmeal for breakfast, defense counsel would probably not be permitted to use impeachment by contradiction to demonstrate that the witness actually had cornflakes. A good rule of thumb is that the statement should either relate closely to the facts of

¹ Lieutenant Colonel James Moody & Lieutenant Colonel Leellen Coacher, *A Primer on Methods of Impeachment*, 45 A.F. L. REV. 161, 181 (1998).

² The five modes of impeachment are (1) attacking a witness's bias, (2) demonstrating defective mental or sensory capacity, (3) showing the witness's character for truthfulness, (4) pointing out inconsistent statements, and (5) specific contradiction of statements the witness has made in the courtroom. CHRISTOPHER MUELLER & LAIRD KIRKPATRICK, *EVIDENCE* § 6.18, at 464-65 (3d. ed. 2003).

³ *See id.* § 6.43, at 529.

⁴ *See id.*

⁵ *See* MUELLER & KIRKPATRICK, *supra* note 2, at 530-31.

the case or be so closely tied to the witness's credibility that impeachment by contradiction is necessary.⁶ The statement can arise either on direct examination or cross-examination.⁷

Counsel should be particularly alert for broad, gratuitous statements in which a witness attempts to bolster his own character or credibility. For example, in *United States v. Trimper*,⁸ the accused, an Air Force JAG captain, was on trial for cocaine use. He made a broad statement on direct that he had never in his life used cocaine. This permitted trial counsel to introduce extrinsic evidence as impeachment by contradiction that the accused had gone to an off-base hospital and requested a private urinalysis to screen for cocaine metabolites.⁹

Impeachment by Contradiction and the Military Rules of Evidence

Drafters Analysis and Case Law Provide Basis

As previously mentioned, impeachment by contradiction is not specifically listed in either the FRE or MRE. This has led to some confusion about impeachment by contradiction's availability and operation under both sets of rules.¹⁰ The analysis of the MRE in the *Manual for Courts-Martial* (MCM), however, makes it clear that the drafters of the Rules intended for impeachment by contradiction to retain a valid role at courts-martial. The analysis notes that the FRE (from which the MRE were taken) "are not exhaustive, and that a number of different types or techniques of impeachment are not explicitly codified."¹¹ Specifically, "impeachment by contradiction . . . remain[s] appropriate . . . to the same extent it is permissible in the Article III courts."¹² Military case law also supports this proposition.¹³

MREs 401 and 402 Support Admissibility of the Evidence

The Military Rules of Evidence favor the admissibility of relevant evidence. Military Rule of Evidence 401 defines "relevant evidence" as "evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence."¹⁴ Military Rule of Evidence 402 states the general rule that all relevant evidence is admissible.¹⁵ These two rules form the theoretical foundation of the MRE in their emphasis on the admissibility of relevant evidence. The default rule for any piece of evidence is admissibility (unless, of course, a specific rule or policy says otherwise).¹⁶

Thus, counsel should argue that impeachment by contradiction evidence is relevant because of its tendency to make a fact of consequence in the trial (either a statement of an opposing witness or the credibility of the witness) less probable.

⁶ Cf. *United States v. Banker*, 15 M.J. 201, 211 (1983) (citing several treatises for the proposition that impeachment by contradiction should not apply to a collateral matter). Neither the facts of the case nor witness credibility are collateral matters. *Id.*

⁷ Some courts will not permit impeachment by contradiction of facts asserted during a cross-examination. In the military, however, impeachment by contradiction is available for facts asserted on cross-examination so long as the fact is not collateral. *Moody & Coacher, supra* note 1, at 190.

⁸ 28 M.J. 460 (C.M.A. 1989).

⁹ *Id.* at 467.

¹⁰ In a recent article, two distinguished evidence scholars discuss the tendency to overlook the specific contradiction doctrine in modern evidence law. They note that judges and attorneys tend to forget about the doctrine or blur it together with other doctrines such as "opening the door" or "curative admissibility". See generally Francis J. Gilligan & Edward J. Imwinkelreid, *Bringing the "Opening the Door" Theory to a Close: The Tendency to Overlook the Specific Contradiction Doctrine in Evidence Law*, 41 SANTA CLARA L. REV. 807 (2001). See also *Moody and Coacher, supra* note 1, at 182 (noting that impeachment by contradiction is often misunderstood, misused, or not used at all).

¹¹ MANUAL FOR COURTS-MARTIAL, UNITED STATES, MIL. R. EVID. 608 analysis, at A22-46 (2002) [hereinafter MCM].

¹² *Id.*

¹³ See, e.g., *United States v. Hall*, 58 M.J. 90 (2003) (discussing the interplay between impeachment by contradiction and hearsay); *United States v. Swift*, 53 M.J. 439, 450 (2000), *cert denied*, 531 U.S. 1150 (2001) (observing that an accused who testifies risks impeachment by contradiction or even a later prosecution for perjury); *United States v. Sojfer*, 47 M.J. 425, 427 (1998) (noting that impeachment by contradiction is one of several available methods at military courts-martial).

¹⁴ MCM, *supra* note 11, MIL. R. EVID. 401.

¹⁵ See *id.* MIL. R. EVID. 402.

¹⁶ Military Rule of Evidence 402 provides that all relevant evidence is admissible, "except as otherwise provided by the Constitution of the United States . . . , the code, these rules, this Manual, or any Act of Congress applicable to members of the armed forces." *Id.*

Impeachment by contradiction evidence is admissible because MRE 402 favors admissibility.¹⁷ The argument is simple, but it is sound. Military Rules of Evidence 401 and 402 form the theoretical foundation of the MRE, and counsel should have those rules engraved on their hearts (or at least tattooed on the backs of their eyelids), always ready for use in arguing the admissibility of evidence.

MRE 403 Analysis

Military Rule of Evidence 403 permits a judge to exclude even relevant evidence if “its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the members, or by considerations of undue delay, waste of time, or needless presentation of cumulative evidence.”¹⁸ Counsel should keep in mind two important considerations when facing the MRE 403 hurdle with impeachment by contradiction evidence. First, MRE 403 favors admissibility of relevant evidence. Once an attorney has successfully argued that the evidence is relevant, it should come in absent the existence of any of the factors listed in 403.¹⁹ Second, the burden of persuading the judge that MRE 403 requires the exclusion of evidence rests with the opponent of the evidence.²⁰ In other words, the attorney *opposing* admissibility of impeachment by contradiction evidence must persuade the judge that MRE 403 requires its exclusion.

In general, counsel can avoid MRE 403 problems by concentrating their impeachment by contradiction efforts on significant issues in the case. The more significant the evidence—the more closely related to the core facts of the case or critical witness credibility issues—the less likely a judge is to find that the probative value of the evidence is substantially outweighed by the danger of unfair prejudice, confusion of the issues, waste of time, and so forth.

MRE 102 Supports Admissibility

Military Rule of Evidence 102 provides additional guidance on evaluating the admissibility of impeachment by contradiction evidence at trial. According to MRE 102, the rules of evidence “shall be construed to secure fairness in administration, elimination of unjustifiable expense and delay, and promotion of growth and development of the law of evidence to the end that the *truth may be ascertained and proceedings justly determined.*”²¹ Military Rule of Evidence 102 sets a high standard—nothing less than truth and justice—for military judges to follow in deciding evidentiary issues, and counsel should not hesitate to remind them of it.

Military Rule of Evidence 102 is not an affirmative rule of admissibility, but it provides a useful reference point for examining an impeachment by contradiction evidentiary issue. Counsel should point out how the impeachment by contradiction evidence will assist the panel in determining the true facts of the case. For issues involving the credibility of witnesses, counsel should connect the concept of justice to the admission of impeachment by contradiction evidence.

Suggested Impeachment by Contradiction Methodology

Preparation

The key to successfully impeaching a witness by any method is preparation.²² This is particularly true with impeachment by contradiction because of the possibility of using extrinsic evidence. In the open discovery system of a military court-martial,²³ there is little excuse for counsel to be taken totally unaware by a witness’s performance on the stand.

¹⁷ For a more detailed discussion of the interplay of MRE 401, MRE 402, and impeachment by contradiction, see Gilligan & Imwinkelreid, *supra* note 10, at 811-16, and Moody & Coacher, *supra* note 1, at 183.

¹⁸ MCM, *supra* note 11, MIL. R. EVID. 403.

¹⁹ See Gilligan & Imwinkelreid, *supra* note 10, at 815. Gilligan & Imwinkelreid note that the list of factors in MRE 403 is exhaustive. *Id.*

²⁰ See *id.*

²¹ MCM, *supra* note 11, MIL. R. EVID. 102 (emphasis added).

²² See Lieutenant Colonel Stephen Henley, *The Art of Trial Advocacy: Impeachment by Prior Inconsistent Statement*, ARMY LAW., Feb. 1998, at 35 (providing an excellent example of how to prepare for another type of impeachment—impeachment by prior inconsistent statement). Colonel Henley’s article provides suggested questions, trial notebook formats, and other materials to assist counsel in preparing to impeach with prior inconsistent statements.

²³ See, e.g., UCMJ art. 46 (2002) (stating that “trial counsel, defense counsel, and the court-martial shall have equal opportunity to obtain witnesses and other evidence . . .”) and MCM, *supra* note 11, R.C.M. 703 (stating that the prosecution, defense, and court-martial shall have equal opportunity to obtain witnesses and evidence).

By interviewing witnesses and conducting pretrial investigation of the case, counsel will be able to determine if a particular witness's story will vary significantly from other evidence that could be offered at trial.²⁴

Once an impeachment by contradiction opportunity is identified, counsel should determine whether to go ahead with that method of impeachment. The chief consideration should be the significance of the matter at issue: if it is central to the facts of the case or in determining the credibility of the witness, it will be worthwhile to plan the impeachment. If not, there is little point in wasting anyone's time with a meaningless attempt to impeach a witness on a trivial matter.

Counsel should have witnesses or other admissible evidence identified and ready for presentation at the court-martial. Trial counsel must pay special attention to potential impeachment by contradiction issues in order to be prepared for rebuttal. For example, if the accused claims in a drug case never to have used drugs in his life, a trial counsel will want to be ready with witnesses or admissible evidence to impeach the accused's testimony. The opportunity to impeach with extrinsic evidence will disappear forever if the witnesses and evidence are not at hand.

Listen Carefully

Listen at trial for broad factual assertions on direct that cry out for impeachment by contradiction. Words such as "always," "never," or "not since [insert date or event]" are statements of fact that, in many cases, beg for contradiction. Counsel who have carefully prepared their case will recognize these phrases as the red flags that they are.

Cross-examination can also be a fruitful source for impeachment by contradiction opportunities. Consider the O.J. Simpson trial, when F. Lee Bailey set up Mark Furman, the LAPD detective, for impeachment by getting Mr. Furman to state unequivocally on cross-examination that he had never used a particular racial epithet during the previous ten years.²⁵ The defense was then able to call witnesses who testified that they had heard Mr. Furman use that epithet within the ten-year period.²⁶ Counsel will need to carefully plan impeachment by contradiction opportunities for facts elicited on cross-examination; military courts will permit such impeachment only so long as the fact is not collateral.²⁷

Effectively Use Cross-Examination to Develop the Impeachment

Once a witness has made a factual assertion on direct, counsel must decide whether to pursue the matter on cross-examination, wait until later to introduce extrinsic evidence, or both. Counsel must perform a cost-benefit analysis to determine whether the benefits of cross-examination outweigh the risks.

It may be possible, for example, to get a witness to admit on cross-examination that what he said on direct was wrong.²⁸ For example, a skilled cross-examiner could conceivably force a witness who just testified "the light was red" to admit that it was actually green. "[D]ramatic turnarounds are more the stuff of fiction than courtroom life,"²⁹ however, and there is plenty of potential for counsel, to embarrass themselves trying to get a witness to change his mind on the stand. In some cases, the better course might be to leave the matter alone and call several other witnesses to testify about the light being green.

Cross-examination, however, does serve a useful function in setting up an impeachment by contradiction by fleshing out factual assertions that the witness made on direct. This sets the witness up for a potentially devastating impeachment when

²⁴ For example, in the author's first general court-martial as lead prosecutor, the complaining witness in an indecent assault case made the statement that she had never dated or had any type of relationship with the accused. Several other people, however, had seen them attending social functions together and had specifically observed them kissing and closely touching each other at a party. Through pre-trial interviews of the witnesses, both the trial and defense counsel were aware of the areas in which the complaining witness's testimony differed from the other witnesses at the party. The trial was much like watching the old Nebraska offense: one knew what was coming but could do nothing to stop it. The complaining witness testified as expected, and on the defense case-in-chief, her testimony was impeached by that of three disinterested witnesses. Her credibility—and with it, the government's case—was totally destroyed.

²⁵ See *Live Report: Simpson Trial* (CNN television broadcast, July 27, 1995) (transcript #120-1) (LEXIS, Newsgroup All). In the transcript of the court hearing, Mr. Gerald Uelman, a member of O.J. Simpson's defense team, told the judge that the impeachment witnesses were intended not to prove that Mr. Furman was a racist, but rather that he was a liar. See *id.*

²⁶ See *id.*

²⁷ Moody & Coacher, *supra* note 1, at 190.

²⁸ Mueller & Kirkpatrick refer to this as "close questioning" on cross-examination, and they note that it is a rare thing indeed to succeed at it. See Mueller & Kirkpatrick, *supra* note 2, § 6.43, at 530.

²⁹ *Id.*

the attorney later introduces specific extrinsic evidence contradicting the witness's testimony. Returning to the SPC M'endassity example from the beginning of this article, counsel could structure the cross-examination as follows:

Q: Didn't you say in your earlier testimony that the CG ordered you to stay away from the DISCOM area?

A: Yes.

Q: This order was effective on 1 May 200x?

A: Yes.

Q: And you testified that you have stayed away from the DISCOM area since 1 May 200X?

A: Yes.

Q: You did not attend a party at the HHC DISCOM barracks on 15 May 200x?

A: No.

Q: And you didn't visit the barracks room of SPC John Johnson on the 18th of May 200X?

A: No.

Q: Of course, you were not at the party in the 555th Forward Support Battalion barracks this past weekend?

A: No.

At this point, the trap has been set, and all the attorney needs to do is introduce extrinsic evidence that SPC M'endassity appeared at these locations at a specific date and time. This evidence is not admitted to prove that SPC M'endassity has the character trait of being a party animal, but rather to prove that SPC M'endassity is a liar. It is a subtle distinction, but a critical one.

Counsel should keep in mind that impeachment by contradiction is not the same as impeachment by specific instances of conduct under MRE 608(b). Under MRE 608(b), a cross-examiner can ask a witness about specific instances of conduct that are themselves probative of truthfulness or untruthfulness.³⁰ This would include, for example, questions about a witness falsifying an employment application or lying to a supervisor. When asking these types of questions, the examiner is bound by the witness's answer; MRE 608(b) specifically prohibits the introduction of extrinsic evidence.³¹

Present the Contradictory Evidence

In most cases, an attorney using impeachment by contradiction will seek to introduce extrinsic evidence to complete the impeachment. It is critical to remember, however, that the rules of evidence still apply. A document that impeaches a factual assertion made by a witness, for example, is not independently admissible in evidence unless it has been properly authenticated under Section IX of the MRE.³² Hearsay rules,³³ privileges,³⁴ and MRE 412³⁵ still apply to impeachment by contradiction evidence.

³⁰ MCM, *supra* note 11, MIL. R. EVID. 608(b).

³¹ *Id.*

³² *See id.* sec. IX., at III-43.

³³ *See id.* sec. VIII, at III-39. In fact, in a recent case, the CAAF held that when an out-of-court assertion by a witness is introduced as impeachment by contradiction, it will violate the hearsay rule if the manner of the evidence's presentation makes it inevitable that the fact-finder will have to consider it for its truth. In *United States v. Hall*, the appellant testified that her mother had given her an herbal tea that might have accounted for the cocaine metabolites in her system. The government called a CID agent to testify that the appellant's mother had told him she had never given any such herbal teas to the appellant. The evidence did not fit within any of the hearsay exceptions. The military judge admitted this statement not for the truth of the matter asserted, but as impeachment by contradiction. The CAAF reversed, holding that it was impossible for the members not to consider the statement for the truth of the matter asserted therein. *United States v. Hall*, 58 M.J. 90 (2003).

³⁴ *See MCM, supra* note 11, sec. V, at III-23.

³⁵ *Id.* MIL. R. EVID. 412.

As part of the pretrial preparation process, counsel should ensure that they know how to admit extrinsic evidence as impeachment by contradiction. Few things can damage an attorney's credibility in the courtroom so much as inept and unsuccessful attempts to introduce evidence.

Present Proper Argument

Although not technically part of the impeachment itself, closing argument is nevertheless a critical component of impeachment by contradiction. Counsel should point out the impeachment and its significance to the fact-finder; otherwise, there is little point in doing it. For instance, in the SPC M'endassity case, counsel could exploit the impeachment as follows:

Let's talk about SPC M'endassity's credibility. She came into this courtroom and testified under a grant of immunity. She told you that she was telling the truth, but she also said a couple of other things. She said she had stayed away from the DISCOM barracks area after May of 200x. But you heard testimony from five other witnesses who saw her in the DISCOM barracks after May 200x. She was at a party at HHC on 15 May. She visited SPC Johnson in his room on 18 May. Just last weekend, she attended a party at the 555th FSB barracks. She lied to you when she testified she had stayed away from the DISCOM barracks. And so you must ask yourselves: what else did she lie about? Or better yet: did she tell the truth about anything?

Conclusion

Impeachment by contradiction can be a valuable part of an attorney's advocacy arsenal. Effective use of it requires preparation, planning, and a sound understanding of the evidentiary rules relating to impeachment. The ability to use extrinsic evidence makes this method of impeachment especially powerful. For significant evidentiary or credibility issues, impeachment by contradiction may well be the best tactical choice for counsel to make.

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

The Pursuit to Bring War Criminals to Justice

Major Russell L. Miller

Background

There was rioting in cities across the country; coalition forces were under fire and taking casualties; there were multiple civilian deaths as a result of the newly erupted violence. This was neither Iraq nor Afghanistan—it was Kosovo. On 17 March 2004, and for several weeks thereafter, ethnic violence between Kosovar Serbs and Albanians resumed throughout the province of Kosovo.¹ One newspaper described it as follows:

The troubles began in the divided town of Mitrovica in northern Kosovo, where Serbs and Albanians exchanged gunfire and grenades in clashes. Nearly 300 were injured, including 11 French peacekeepers - two seriously. Violence has spread to several towns, with Serbs' houses being set on fire and attacks on offices of the United Nations administration, Unmik. Tensions resurfaced in the flashpoint town of Mitrovica on Tuesday when three Albanian children drowned, allegedly as they were trying to escape from Serbs who chased them with a dog. The boys' deaths came a day after an 18-year-old Serb was wounded in a drive-by shooting in the village of Caglavica in central Kosovo, prompting clashes between Serbs and Nato peacekeepers.²

Since most Americans have been focused on the global war on terrorism in Iraq and Afghanistan, little media attention has been paid to the on-going U.S. deployment in Kosovo. As highlighted by the recent renewal of ethnic tension and resultant violence, however, we should keep in mind that this flashpoint in southeastern Europe is far from being settled. Unfortunately, the virulent enmity on both sides also manifested itself in a host of war crimes. In 1999, Albanian and Serbian families who had been neighbors for years turned on each other. Atrocities were inflicted and committed on both sides. Victims were not spared due to age or gender. Mass graves revealed that entire families were wiped out. Many of these atrocities have been investigated and continue to be the subject of ongoing prosecution as war crimes.³ For judge advocates (JA) of all services, a deployment to Kosovo provides a unique opportunity to gain experience in war-crimes prosecution.

Because it has been five years since American intervention, as a part of a North Atlantic Treaty Organisation (NATO)⁴ force seeking to quell ethnic violence in Kosovo, it is useful to briefly review the history of the conflict. The "Kingdom of the Serbs, Croats, and Slovenes" was also known as the "Kingdom of the Southern Slavs" or Yugoslavia.⁵ Yugoslavia resulted from the Treaty of Versailles (and related international agreements) at the end of the First World War.⁶ During World War II, German and Italian forces invaded and conquered Yugoslavia.⁷ Following the Axis defeat in World War II, Yugoslavia became a communist republic under Marshal Josip Broz Tito and was known as the Federal People's Republic of

¹ BBC News, *Many Die as Kosovo Clashes Spread* (Mar. 17, 2004), available at <http://news.bbc.co.uk/1/hi/default.stm>.

² *Id.*

³ This comment is based on the author's recent professional experiences while deployed to Kosovo from January through March, 2004 [hereinafter Professional Experiences]. The purpose of the deployment was to provide assistance in the prosecution of war crimes with the United Nations Mission in Kosovo (UNMIK) International Prosecutors and law enforcement officials.

⁴ The North Atlantic Treaty Organisation is an alliance of twenty-six countries from North America and Europe committed to fulfilling the goals of the North Atlantic Treaty signed on 4 April 1949. North Atlantic Treaty, Apr. 4, 1949, 63 Stat. 2241, 34 U.N.T.S. 243. Under the Treaty, NATO's fundamental role is to safeguard the freedom and security of its member countries by political and military means. North Atlantic Treaty Organisation, *Frequently Asked Questions*, at <http://www.nato.int/issues/faq/index.html#A1> (last visited 16 June 2004). The NATO is playing an increasingly important role in crisis management and peacekeeping. *Id.*

⁵ See CENTER FOR LAW AND MILITARY OPERATIONS, LAW AND MILITARY OPERATIONS IN KOSOVO: 1999-2001, LESSONS LEARNED FOR JUDGE ADVOCATES (December 2001) [hereinafter LESSONS LEARNED] (containing a concise, but accurate, synopsis of the history of the Kosovo conflict).

⁶ *Id.* at 25 (citing G. RICHARD JANSEN, ALBANIANS AND SERBS IN KOSOVO, AN ABBREVIATED HISTORY 1 (June 1999). Included in the Kingdom of the Southern Slavs were Serbia, Slovenia, Croatia, Bosnia, Herzegovina, Montenegro, Macedonia, Kosovo, and Vojvodina. *Id.*

⁷ *Id.* at 26 (citing WILLIAM T. JOHNSON, DECIPHERING THE BALKAN ENIGMA: USING HISTORY TO INFORM POLICY 9, 22 (1995)).

Yugoslavia.⁸ The country experienced a period of relative calm, owing to Tito's authoritarian regime, which quickly and effectively suppressed any form of rebellion.⁹

Kosovo is a province within Serbia, a republic within Yugoslavia.¹⁰ The vast majority of Kosovars are ethnic Albanians, however, Serbia has deeply entrenched religious and historical ties to the province of Kosovo. Many of the most holy Serbian monasteries lie within Kosovo, which is also the home of the Serbian Orthodox Church.¹¹ The Battle of Kosovo in 1389 marked what many Serbs consider the high-water mark in Serbian history.¹²

Under Tito's regime, the 1974 Yugoslav Constitution made Kosovo an autonomous province within Serbia.¹³ This status sparked a revival of Kosovar Albanian nationalism and a thirst for outright independence. Tito's death in 1980, however, resulted in regional instability and ethnic violence throughout Yugoslavia, including Kosovo.¹⁴ The Albanian thirst for independence collided with traditional Serbian control. Serb nationalism manifested in the rise of Slobodan Milosevic.¹⁵ Milosevic stripped Kosovo of its autonomy causing Kosovar Albanian rioting.¹⁶ He ordered the Serb Army and police units into Kosovo to maintain control and order.¹⁷ By 1992, Milosevic had imposed an effective suppression of Albanian media, language education, protests, and strikes.¹⁸

Meanwhile, Kosovar Albanian leaders met secretly and declared the existence of the Republic of Kosovo.¹⁹ They created a "shadow" Kosovar government, led by Dr. Ibrahim Rugova.²⁰ Rugova employed nonviolent policies and practices, seeking NATO intervention to relieve human rights abuses under the Milosevic regime.²¹ Eventually, Kosovar frustration with Rugova's passive measures manifested itself in the formation of the Kosovo Liberation Army (KLA).²² The KLA began a series of attacks on Serbian authorities, including the Serbian police, border guards, and prominent Serbian leaders.²³ By 1998, the conflict escalated into an internal armed conflict. Thousands were killed and many more were forced from their homes into neighboring Macedonia, Montenegro, and Albania.²⁴

⁸ *Id.*

⁹ *Id.* at 27.

¹⁰ See generally North Atlantic Treaty Organisation, *NATO's Role in Relation to the Conflict in Kosovo*, at <http://www.nato.int/kosovo/history.htm> (last visited Aug 11, 2004) [hereinafter NATO] (providing background information on the Kosovo conflict and an overview of NATO's objectives in the region).

¹¹ NOEL MALCOLM, *KOSOVO: A SHORT HISTORY* 45-46 (N.Y. Univ. Press 1998).

¹² *Id.* at 58-59. Malcolm does an excellent job in identifying and analyzing several accounts of the battle and produces a somewhat comprehensive report. See *id.*

¹³ LESSONS LEARNED, *supra* note 5, at 27.

¹⁴ *Id.* at 28.

¹⁵ *Id.* Milosevic was the product of the Yugoslav Communist regime. He was the protégé of Ivan Stambolic, who became the Prime Minister of Serbia after Tito's death. Milosevic later replaced Stambolic and became the leader of the Serbian Communist Party. Milosevic ultimately became the Yugoslavian President. *Id.*

¹⁶ See NATO, *supra* note 10.

¹⁷ *Id.* As an illustration of Milosevic's reclamation of Serbian control of Kosovo, he conducted a rally at the site of the Battle of Kosovo, near Pristina. Nearly one million Serbs attended the strongly nationalistic Serbian rally. *Id.* In reference to this rally, Noel Malcolm writes: "the adulation he received at the massive Serbian celebration of the 600th anniversary of the Battle of Kosovo on 28 June was comparable, in Yugoslav experience, only to the cult of Tito." MALCOLM, *supra* note 11, at 344.

¹⁸ LESSONS LEARNED, *supra* note 5, at 29.

¹⁹ *Id.*

²⁰ *Id.*

²¹ *Id.*

²² *Id.*

²³ *Id.* The KLA was locally known as the UCK (Ushtria Clirimtare e Kombatare). The UCK or KLA was a paramilitary group consisting of Kosovar Albanian nationalists. Their stated purpose was to resist Serbian authority and to establish Kosovar independence through the use of armed conflict. *Id.*

²⁴ *Id.* at 34. The conflict yielded an estimated 400,000 refugees. Trained Serb "security" forces in Kosovo responded to KLA attacks in kind with large-scale attacks in Drenica and other regions using military vehicles and weapons and vicious house-to-house raids in which Albanians were killed, beaten, or forced from their homes. *Id.* See ORGANIZATION FOR SECURITY AND COOPERATION IN EUROPE (OSCE), *KOSOVO: THE HISTORICAL AND POLITICAL BACKGROUND, KOSOVO/KOSOVA: AS SEEN, AS TOLD* (1999).

Concern grew in the international community. The United Nations Security Council (UNSC) adopted Security Council Resolution (UNSCR) 1199 on 23 September 1998, which called for an immediate cease-fire, an international presence, and an immediate withdrawal of Serbian security forces from Kosovo.²⁵ On 13 October 1998, member nations of NATO authorized air strikes against Serbia if Milosevic refused to comply with the terms of UNSCR 1199. Milosevic relented and agreed to a cease-fire. The Organization for Security and Cooperation in Europe (OSCE) sent in a team to verify Serbia's compliance with the terms of the cease-fire.²⁶ During the resultant cease-fire, the KLA smuggled weapons in from Albania and continued operations.²⁷ The cease-fire broke down and hostilities (and atrocities on both sides) continued. On 15 January 1999, the Serbs massacred forty-five Albanian civilians in the village of Racak.²⁸ This led to a peace conference at Rambouillet, France; wherein the parties were called on to comply with another peace proposal.²⁹ Ultimately, the Serbs refused to agree to the terms of the proposals at Rambouillet, and the violence intensified.

North Atlantic Treaty Organisation efforts to broker a peaceful solution failed. On 24 March 1999, NATO forces launched Operation Allied Force.³⁰ Operation Allied Force constituted an air campaign against Serbian military targets to end hostilities and allow ethnic Albanians to return to their homes.³¹ Initially, the Serbs intensified their assaults on the Kosovar Albanian forces. After seventy-eight days of bombing, however, the Serbs relented. Serb forces began withdrawal following their agreement to a Military Technical Agreement on 9 June 1999.³² On 10 June 1999, the UNSC passed UNSCR 1244,³³ which thereafter served as the legal authority for both NATO's Kosovo Force (KFOR) and for the United Nations Mission in Kosovo (UNMIK).

KFOR—Then and Now

When initially organized and mobilized in 1999, the NATO-led KFOR was composed of 50,000 troops from over thirty countries.³⁴ Another 7,500 troops deployed to the former Yugoslav Republic of Macedonia, Albania, and Greece to provide rear area support.³⁵ NATO's KFOR was organized into five multinational brigades (MNBs); a lead nation was designated for each MNB.³⁶ Each MNB was assigned to a specific geographic sector.³⁷ The KFOR headquarters is located on a hill overlooking the Kosovar provincial capital of Pristina.³⁸

²⁵ S.C. Res. 1199, U.N. SCOR, 3930th meeting, at 2-3, U.N. Doc. S/RES/1199 (1998). The UNSC acted under Chapter VII of the U.N. Charter and the vote was unanimous, with China abstaining. The resolution "highlighted the impending human catastrophe" and expressed great concern over Serbia's indiscriminate use of excessive force. *Id.*

²⁶ LESSONS LEARNED, *supra* note 5, at 35. The Kosovo Verification Mission (KVM), consisting of an unarmed force of 2,000 members, was charged with the responsibility to monitor and report compliance (and non-compliance) of the terms of the cease-fire. *Id.*

²⁷ *Id.* at 36.

²⁸ *Id.*; see Human Rights Watch, *Yugoslav War Crimes in Racak* (Jan. 29, 1999), available at <http://www.hrw.org/press/1999/jan/yugo0129.htm>. Some of those injured or killed, most of whom were shot in the head at close range or in the back attempting to run away, were children. Many were tortured before they were killed. *Id.* at 3-4. Some critics have disputed the allegations that what occurred in Racak was a massacre. *Id.* at 4-5. Their arguments, however, appear to lack merit. Notably, after the leader of the OSCE's KVM accused the Serbs of responsibility for the massacre, Serbian authorities ordered him out of the country but he refused to leave, setting the stage for a final showdown between the international community and Milosevic. OSCE, *supra* note 24, at 6.

²⁹ LESSONS LEARNED, *supra* note 5, at 36.

³⁰ NATO, *supra* note 10.

³¹ *Id.* at 37.

³² North Atlantic Treaty Organisation, *Military Technical Agreement between the International Security Force (KFOR) and the Governments of the Federal Republic of Yugoslavia and the Republic of Serbia* (June 9, 1999), available at <http://www.nato.int/kosovo/docu/a990609a.htm> [hereinafter MTA]. The MTA contemplated the deployment of the International Security Force (KFOR), into Kosovo as soon as the UNSC adopted UNSCR 1244. The KFOR would "take all necessary action to establish and maintain a secure environment for all citizens of Kosovo" without hindrance from any party. *Id.* art. I, ¶ 2.

³³ S.C. Res. 1244, U.N. SCOR, 54th Sess., 4011th mtg., U.N. Doc. S/RES/1244 (1999).

³⁴ U.S. DEP'T OF DEFENSE COMMAND AND CONTROL RESEARCH PROGRAM, LESSONS FROM KOSOVO: THE KFOR EXPERIENCE 35 (July 2002).

³⁵ *Id.*

³⁶ *Id.*

³⁷ *Id.* at 37.

³⁸ Professional Experiences, *supra* note 3. Kosovo Force headquarters is called "Film City," because the actual headquarters facility is housed in what was formerly a film studio. *Id.*

The National Atlantic Treaty Organisation designated the U.S. as the lead nation for MNB East (MNB(E)) in southeastern Kosovo.³⁹ The U.S. contingent to KFOR was designated “TASK FORCE FALCON” and initially consisted of approximately 8,100 Soldiers from the 1st Infantry Division.⁴⁰ Multinational brigade East headquarters is located at Camp Bondsteel, near the city of Urosevac.

Today, KFOR has a slightly different configuration. There are currently four MNBs. MNB-Center (United Kingdom as the lead nation) is located in Pristina; MNB-Northeast (France as the lead nation) is headquartered in Mitrovica; MNB-Southwest (Germany as the lead nation) is headquartered in Prizren; and MNB-East, which remains at Camp Bondsteel under U.S. command and control.⁴¹ The Kosovo Security Force also includes a non-geographically affiliated MNB known as the Multinational Specialized Unit (MSU), which is a police force with military status and an overall police capability.⁴² The lead nation for the MSU is Italy.⁴³ The MSU conducts patrols throughout the entire province.⁴⁴

The current U.S. contingent at MNB(E) is the 34th Infantry Division, part of the Minnesota National Guard. The 34th “Red Bull” Division assumed its duties on 25 February 2004 from the 28th “Keystone” Division, part of the Pennsylvania National Guard.⁴⁵ The chief legal advisor (LEGAD) at KFOR headquarters in Pristina, currently a German colonel (COL) (an OF-5 position), is appointed on a three-month rotational basis.⁴⁶ The Deputy LEGAD is currently a U.S. Army lieutenant colonel (an OF-4 position) with a longer tour of duty.⁴⁷ Also manning the office of the LEGAD are a British major, a French lieutenant, and a U.S. Army paralegal.

U.N. Prosecutors in Kosovar Courts

This section outlines the source of legal authority under which the NATO sponsored KFOR is established and how U.N. prosecutors are entitled to prosecute criminals, including war criminals, in local Kosovar courts.

United Nations Security Council Resolution 1244 was enacted under Chapter VII of the U.N. Charter.⁴⁸ In particular, the resolution provided the following: (1) “Authorizes Member States . . . to establish the international security presence in Kosovo”⁴⁹ (2) “Requests the Secretary General to appoint . . . a Special Representative to control the implementation of the international civil presence”⁵⁰ and (3) “Authorizes the Secretary General . . . to establish an international civil presence in Kosovo in order to provide an interim administration for the people of Kosovo”⁵¹

³⁹ *Id.*

⁴⁰ LESSONS LEARNED, *supra* note 5, at 41.

⁴¹ North Atlantic Treaty Organisation, *KFOR Structure*, available at <http://www.nato.int/kfor/kfor/structure.htm> (last visited May 18, 2004).

⁴² *Id.*

⁴³ *Id.*

⁴⁴ *Id.*

⁴⁵ North Atlantic Treaty Organisation, *Change of Command at MNB E - “Keystone” Division Relinquishes Authority to “Red Bull” Division in MNB East*, available at www.nato.int/kfor/chronicle/2004/chronicle_02/09.htm (last visited May 18, 2004).

⁴⁶ North Atlantic Treaty Organisation, Standardization Agreement 2116, NATO CODES FOR GRADES OF MILITARY PERSONNEL (1992, ed. 5). An OF-5 is the NATO equivalent of a U.S. Army colonel (O-6).

⁴⁷ An OF-4 is the NATO equivalent of a U.S. Army lieutenant colonel (LTC) (O-5). *Id.* Lieutenant Colonel Amisi Mubangu currently fills this position.

⁴⁸ S.C. Res. 1244, *supra* note 33.

⁴⁹ *Id.* at ¶ 7. The authorization to establish an international security force is further amplified in Annex 2, ¶ 4: “The international security presence with substantial North Atlantic Treaty Organization participation must be deployed under unified command and control and authorized to establish a safe environment for all people in Kosovo and to facilitate the safe return to their homes of all displaced persons and refugees.” *Id.*

⁵⁰ *Id.* ¶ 6. The Special Representative of the Secretary General (SRSG) issues the regulations for the United Nations Mission in Kosovo (UNMIK) that will empower UN prosecutors to practice in local courts. *Id.* ¶ 10.

⁵¹ S.C. Res. 1244, *supra* note 33, at ¶ 10 (providing the legal authority for the establishment of UNMIK). This provision is further amplified by Annex 2, ¶ 5: “Establishment of an interim administration for Kosovo as a part of the international civil presence under which the people of Kosovo can enjoy substantial autonomy within the Federal Republic of Yugoslavia.” *Id.*

United Nations Mission in Kosovo (UNMIK) Regulation 1999/1 vests “all legislative and executive authority with respect to Kosovo, including the administration of the judiciary” in UNMIK.⁵² The Special Representative of the Secretary General exercises UNMIK’s legislative and executive authority.⁵³

The United Nations Interim Administration Mission in Kosovo, international judges, and prosecutors first appeared in the Kosovar district court in Mitrovica.⁵⁴ Soon thereafter, the SRSG expanded appointments of international judges and prosecutors “to any court or public prosecutor’s office in the territory of Kosovo.”⁵⁵ Incorporating by reference the authority from earlier regulations, *UNMIK Regulation 2001/2* spelled out the authority of the UNMIK international prosecutor as follows:⁵⁶

In exercising such a power, a [sic] international prosecutor shall:

(a) have full rights as a public prosecutor acting as an officer of the government;

(b) undertake, resume or continue a prosecution within 30 days from the date of receipt of the notification referred to in section 1.6; and

(c) not be constrained by requirements or procedures of Articles 403 – 407, inclusive, of the applicable Yugoslav Criminal Procedure Code.⁵⁷

In April 2004, the Kosovars transitioned to an updated criminal procedural code.⁵⁸ The Kosovar criminal laws and procedural codes in existence before hostilities were in effect until April 2004.

Opportunities for JAs

Current operations in Kosovo provide JAs from all services the opportunity to gain first-hand experience in war crimes prosecutions. United Nations Interim Administration Mission in Kosovo prosecutors exercise coextensive authority with Kosovar public prosecutors. Yugoslav criminal law contains several offenses pertaining to the prosecution of war crimes, including genocide,⁵⁹ war crimes against the civilian population,⁶⁰ war crimes against the wounded and sick,⁶¹ war crimes against prisoners of war,⁶² unlawful killing or wounding of the enemy,⁶³ and making use of forbidden means of warfare.⁶⁴ As

⁵² United Nations Interim Administration Mission in Kosovo, *Regulation No. 1999/1* (July 25, 1999), at <http://www.unmikonline.org/regulations/1999/reg01-99.htm>.

⁵³ United Nations Interim Administration Mission in Kosovo, *About UNMIK*, at <http://www.unmikonline.org/intro.htm> (last visited Sept. 24, 2004).

⁵⁴ United Nations Interim Administration Mission in Kosovo, *Regulation No. 2000/6 On the Appointment and Removal from Office of International Judges and International Prosecutors* (February 15, 2000), at http://www.unmikonline.org/regulations/2000/re2000_06.htm. The appointed judges were given authorization “to perform the functions of their office, including the authority to select and take responsibility for new and pending criminal cases within the jurisdiction of the court to which he or she is appointed.” *Id.* Likewise, the prosecutors were given authority “to perform the functions of their office, including the authority and responsibility to conduct criminal investigations and to select and take responsibility for new and pending criminal investigations or proceedings within the jurisdiction of the office of the prosecutor to which he or she is appointed.” *Id.*

⁵⁵ United Nations Interim Administration Mission in Kosovo, *Regulation No. 2000/34 Amending UNMIK Regulation No. 2000/6 on the Appointment and Removal from Office of International Judges and International Prosecutors* (27 May 2000), at http://www.unmikonline.org/regulations/2001/re2000_.htm.

⁵⁶ United Nations Interim Administration Mission in Kosovo, *Regulation No. 2001/2 Amending UNMIK Regulation No. 2000/6, as amended, on the Appointment and Removal from Office of International Judges and International Prosecutors* (12 Jan. 2001), at <http://www.unmikonline.org/regulations/2001/reg02-01.html>.

⁵⁷ *Id.* Articles 403–407 of the Yugoslav Criminal Procedure Code deal with case termination by dismissal, re-initiation of charges, and re-opening of proceedings. LAW ON CRIMINAL PROCEEDINGS (Official Gaz. SFRY, July 1, 1977) (on file with CLAMO).

⁵⁸ PROVISIONAL CRIMINAL PROCEDURE CODE OF KOSOVO (Apr. 6, 2004) (on file with CLAMO).

⁵⁹ CRIMINAL CODE OF THE SOCIALIST FEDERAL REPUBLIC OF YUGOSLAVIA art. 141 (1976).

⁶⁰ *Id.* art. 142.

⁶¹ *Id.* art. 143.

⁶² *Id.* art. 144.

⁶³ *Id.* art. 146.

⁶⁴ *Id.* art. 148.

the UNMIK began administration as the interim civil authority under UNSCR 1244, a host of potential war crimes cases were determined worth pursuing.⁶⁵

Due to the large volume of potential war crimes cases, the chief legal advisor for Allied Forces South (AFSOUTH), COL Richard Pregel, and then-Director of the UNMIK Department of Justice (DOJ), Mr. Paul Coffey, arranged a program to send JAs on temporary duty to Pristina. Their mission was to assist in legal analysis and selection of the best cases to pursue.⁶⁶ Judge advocates from all U.S. services have taken advantage of this unique opportunity.⁶⁷ A JA's duties on this deployment include working with members of UNMIK DOJ's Criminal Division and the Central Criminal Investigation Unit (CCIU).⁶⁸

The Central Criminal Investigation Unit initially had the largest volume of cases for selection and review. One JA reported more than 500 open cases requiring case analysis and review.⁶⁹ The CCIU created a case analysis cell, which included JAs, whose mission was to conduct case analysis and prioritization.⁷⁰ The case analysis cell closed cases not worth pursuing, referred non-war crimes cases to other agencies, and retained the top war crimes cases for additional investigation.⁷¹ After filtering the cases through the case analysis cell, the CCIU forwarded those retained to the DOJ. In an effort to maximize resources on the most important cases, the DOJ also created an analysis cell for further prioritization.⁷² This cell included the DOJ Director, the Chief of the Criminal Division, the Deputy Chief of the Criminal Division, the Director of the CCIU and one JA. This process culminated in a prioritization of the top twenty-five war crimes cases for prosecution in Kosovo.

A JA's duties also include review of cases still under investigation by the CCIU. Reviewing cases and advising investigators on legal issues before a case is referred to a prosecutor enhances the efficacy of a case before formal initiation of proceedings. Judge advocates assist international prosecutors by evaluating the sufficiency of evidence in on-going cases and making recommendations on litigation strategy. Judge advocates also have been involved in drafting motions to initiate war crimes cases in district court and responsive pleadings for cases on appeal.⁷³

For example, one case involved a somewhat detailed analysis of issues involving the applicability of prisoner of war status, combatant immunity, and command responsibility within the context of a daytime assault.⁷⁴ A group of Serbs, led by the accused, swept into a small village. The Serbs came across a group of Albanian men. None of the Albanians were in uniform of any kind. All of the Albanians were members of the KLA, except one. At the approach of the Serbs, the Albanians initially feigned surrender. Yet suddenly, they took up arms and a firefight ensued. One Albanian was killed on the scene and four others were captured. One of those captured was the non-KLA civilian, who had apparently not taken an active part in the hostilities. The bodies of all those captured were unearthed several weeks later.

⁶⁵ Interview with COL Richard Pregel, Legal Advisor, Allied Forces South (AFSouth), in Naples, Italy (Jan. 15, 2004).

⁶⁶ *Id.* Colonel Pregel and Mr. Coffey coordinated this arrangement in the Summer of 2003. *Id.*

⁶⁷ As an illustration of the "purple" nature of this opportunity, Captain Bob Coffey, U.S. Army, Captain Heather Larson, U.S. Air Force, and Lieutenant Bernard Booth, U.S. Navy, have undertaken this deployment. The deployments have ranged from two to four months. Professional Experiences, *supra* note 3

⁶⁸ Professional Experiences, *supra* note 3. The United Nations International Prosecutors and staff constitute UNMIK's Criminal Division. The CCIU members are the law enforcement element at UNMIK. For the organizational structure of UNMIK police, *see* United Nations Interim Administration Mission in Kosovo, *Police Structure*, at <http://www.unmikonline.org/civpol/structure.htm> (last visited Aug. 30, 2004).

⁶⁹ Memorandum for Record, Captain Bobby J. Coffman, subject: After Action Report, Kosovo United Nations Department of Justice (UNDOJ) Legal Support Mission (14 Jan. 2004) (on file with CLAMO).

⁷⁰ Professional Experiences, *supra* note 3.

⁷¹ *Id.* The lack of sufficient admissible evidence led to the decision to close the overwhelming majority of cases. Cases referred to other agencies were non-war crimes cases. The criteria for retaining a case for further investigation and prosecution included the seriousness of the crime, the number of victims, the weight and sufficiency of the evidence, and the availability of resources. *Id.*

⁷² *Id.*

⁷³ *Id.*

⁷⁴ This case is on-going and has been assigned to an international prosecutor. Because the case is on-going, the author elects to omit personal information, dates and exact locations. Professional Experiences, *supra* note 3.

In another case, local Kosovar Albanian villagers vacated their homes after Serbian tanks and paramilitary forces occupied their town.⁷⁵ Many families fled into the hills to live until a safe return was assured. One family sent three teenagers (two girls, one boy) back into the village to collect food from their house. As they were returning to the mountains, they were stopped by five Serbian paramilitaries. The youngest member of the group, the boy, fled immediately. The girls did not flee initially as they were unsure of whether those in the other group were KLA or Serbian.

After determining the group consisted of Serbian paramilitaries, one of the girls (sixteen-years-old) attempted to escape. She was shot from behind as she ran. The bullet entered her hip from behind and exited her thigh. She struggled to hide, finally secreting herself in a streambed approximately 100 meters away.

The Serbs did not pursue the injured girl but detained her older eighteen year-old cousin and took turns raping her. Hiding in the streambed, the other girl was forced to listen to her cousin's screams for more than an hour. When they were done raping her, the Serbs shot their captive. The Serbs also removed one of her eyes, but it was unclear at what point this occurred. The primary suspect was arrested on other charges after termination of NATO bombing. He was awaiting trial on the other charges when he escaped and remains at large.

Conclusion

As recent events have illustrated, the mission in Kosovo is not yet complete. Ethnic tension and cultural divisiveness remain as KFOR and UNMIK continue to strive for a peaceful and lasting resolution in this war-torn province. Bringing war criminals to justice is an important component in asserting the rule of law. A deployment to Kosovo provides JAs with the challenging opportunity to become actively engaged in the prosecution of war crimes. Moreover, it supplies the opportunity to enrich a JA's perspective and experiences by living and working in a NATO command and with U.N. representatives.

⁷⁵ The facts reported here are summarized from the case file from CCIU after it was referred to DOJ for prosecution. This case was assigned to the author after the International Prosecutor to which the case initially had been assigned completed his contract and was re-assigned elsewhere. Because the case is on-going, the author elects to omit personal information, dates and exact locations. *Id.*

Book Reviews

THE RIGHT THING¹

REVIEWED BY LIEUTENANT COLONEL ANTHONY R. TEMPESTA²

On February 9, 2001, Navy Commander (CDR) (O-5) Scott Waddle, captain³ of the U.S.S. *Greeneville*,⁴ did not do the right thing.

On that day, CDR Waddle took his ship from Pearl Harbor, Hawaii, out on a “distinguished visitors’ cruise,”⁵ a Navy-approved public relations program permitting passengers, generally civilians, to ride aboard a nuclear submarine. The Navy instituted the several-hour trip to impress sixteen civilian visitors with the ship’s capabilities and the crew’s proficiency.⁶ Regrettably, the day’s events turned tragic. Having fallen behind schedule, CDR Waddle, in an attempt to make up time, rushed through established procedures designed to ensure that the surface was clear before ascending the submarine.⁷ Commander Waddle gave the order to ascend rapidly to the surface,⁸ and as the submarine did, it collided with the *Ehime Maru*, a Japanese fishing boat.⁹ The *Ehime Maru* sank within minutes,¹⁰ and nine Japanese¹¹ were lost at sea.¹² The collision became an international incident and the first foreign policy test of George W. Bush’s presidency.¹³

The book, which is characterized as an “Inspiration/Motivational/Autobiography,”¹⁴ has value to the military reader for its insight into the military justice process and a military commander’s mindset.

Commander Waddle traces the story of his youth and military career for the first hundred pages of the book, providing glimpses of the strengths and weaknesses of his character. At one point, CDR Waddle describes himself as being part Boy Scout and part rebel,¹⁵ but he neglects to mention a third element: Commander Waddle was part showman, and he craved the

¹ SCOTT WADDLE (COMMANDER, UNITED STATES NAVY (RETIRED)) WITH KEN ABRAHAM, *THE RIGHT THING* (Integrity Publishers 2002).

² Judge Advocate General’s Corps, Lieutenant Colonel, United States Army Reserve. Currently serving on active duty in Iraq as Command Judge Advocate, 926th Engineer Group, on a 485-day mobilization in support of Operation Iraqi Freedom.

³ The reader should not confuse the term “captain,” meaning the commanding officer of a ship, with the Navy rank of “captain,” which is the equivalent of an O-6 or colonel in any of the other branches. Waddle was the captain (commanding officer) of the *Greeneville*, but had the rank of Navy commander. See Ed Offley, *Understanding Military Rank*, available at <http://www.journalism.org/resources/tools/ethics/wartime/rank.asp> (last visited Sept. 22, 2004).

⁴ The U.S.S. *Greeneville* (SSN 772) is a *Los Angeles*-class nuclear fast-attack submarine. WADDLE, *supra* note 1, at 81, 114. The Navy commissioned the ship in 1996 at a cost of more than \$900 million. *Id.* at 70. Many in the Navy viewed the submarine and her crew as the pride of the Pacific Fleet. Jean Christensen, *Sub Was Pride of the Fleet*, CORPUS CHRISTI CALLER-TIMES, Mar. 19, 2001, available at <http://www.caller2.com/2001/march/19/today/national/20697.html>.

⁵ WADDLE, *supra* note 1, at 108.

⁶ *Id.*

⁷ *Id.* at 122-23.

⁸ Technically, the order is for an emergency main ballast blow, but it is commonly referred to as an “emergency blow.” *Id.* at 127.

⁹ *Id.* at 127-28, 136.

¹⁰ *Id.* at 129. While the watertight integrity of the *Greeneville* was not compromised in the collision, it sustained over two million dollars’ worth of damage. *Id.* at 236.

¹¹ Those missing included four teenage male students (Toshiya Sakashima, Yusuke Terata, Takeshi Mizuguchi, and Katsuya Nomoto) and five adult male crewmembers and teachers (Hiroataka Segawa, Toshimichi Furuya, Hiroshi Nishida, Hiroshi Makisawa, and Jyun Nakata). *A Tribute to the Missing*, HONOLULU ADVERTISER, Feb. 9, 2001, available at <http://www.honoluluadvertiser.com/specials/ehimemissing/missing.html>.

¹² Mike Gordon, *Survivor Search Halted*, HONOLULU ADVERTISER, Mar. 3, 2001, available at <http://the.honoluluadvertiser.com/2001/Mar/03/localnews12.html>. Eight of the nine bodies were eventually recovered; the ninth was never found. CBSNews.com, *Ehime Maru Laid to Rest*, Nov. 26, 2001, at <http://uttm.com/stories/2001/11/08/world/main317373.shtml>.

¹³ WADDLE, *supra* note 1, at 2.

¹⁴ *Id.* at back cover of dust jacket.

¹⁵ *Id.* at 36.

spotlight.¹⁶ That fact is immediately evident from an April 21, 2001 photograph¹⁷ that appears on the rear side of the book's dust jacket showing a dejected CDR Waddle looking down as his former ship heads out to sea without him.¹⁸ It is a poignant photograph, yet sullied by the realization that the crew of the *Greeneville* crowded the deck to wave goodbye to the man who had been their captain without knowing that he had turned the moment into a photo-op.¹⁹

Before the incident, Commander Waddle had a stellar career, and it appeared that he would one day reach the rank of admiral.²⁰ Yet Commander Waddle admits he was not free from criticism from his superiors after he received an adverse fitness report early in his career²¹ and later received a letter of caution for jumping his chain of command.²² An often-referenced critique came less than a year before the collision, in which a senior officer remarked to him that he was the only one who was informal on the ship.²³ Commander Waddle refers to this as a laid-back style of leadership,²⁴ but that informality did not flow both ways.²⁵

It seems that this shortcoming in his leadership skills was at the heart of the collision. Given the benefit of hindsight, one can see how a number of errors, each individually small, combined to cause a huge tragedy.

In recounting the events leading to the collision, CDR Waddle tracks the actions of four personnel: himself; his executive officer, Lieutenant Commander (LCDR) (O-4) Gerald K. Pfeifer; officer of the deck, Lieutenant Junior Grade (O-2) Michael J. Coen; and the ship's fire control technician, Petty Officer First Class (PO1) (E-6) Patrick T. Seacrest. Approximately one hour before the collision, LCDR Pfeifer approached CDR Waddle in his stateroom where he was autographing souvenir photos of the ship for the distinguished visitors.²⁶ Lieutenant Commander Pfeifer informed CDR Waddle that the day's events were running behind schedule.²⁷ Commander Waddle responded, "I know what I'm doing, XO.²⁸ We'll deal with it."²⁹

Commander Waddle's response to his XO seems to set the tone for how he dealt with his subordinates: he is in charge, and while he has a plan to deal with the situation, he need not inform his subordinates of it nor empower them to act. This chilling atmosphere of command, where the senior leader brusquely dismisses input from his subordinates, explains a great deal of the miscommunications that occurred on February 9, 2001.

In theory, two independent and somewhat redundant safeguards should have prevented the collision between the *Greeneville* and the *Ehime Maru*. The first was a periscope scan of the surface, in which the surface water is visually scanned for other ships in the vicinity.³⁰ The second was a sonar scan of the area, which would note the presence of other

¹⁶ Commander Waddle understandably did not use such language to describe himself, though he did characterize himself as "somebody . . . who had sought approval all my life." *Id.* at 77. His critics were less charitable, however, and stated that his actions shortly after the *Ehime Maru-Greeneville* collision showed that "(e)ven at the end, (Commander) Scott Waddle didn't have the ability to turn off the public relations persona." *Id.* at 139.

¹⁷ The photograph can be dated based on the discussion of the day's events. *Id.* at 209-210.

¹⁸ The same photograph and at least two others from that day, also appear in the book's photo section. *Id.* at photo sec. 12-14 and back cover of dust jacket.

¹⁹ Commander Waddle states that "some friends . . . had gathered with me for the special occasion," but curiously fails to mention that a professional photographer happened to be among them. *Id.* at 210.

²⁰ A Navy admiral is a flag officer, equivalent to an Army general.

²¹ *Id.* at 61.

²² *Id.* at 76.

²³ *Id.* at 101.

²⁴ *Id.*

²⁵ *Id.*

²⁶ *Id.* at 120.

²⁷ *Id.*

²⁸ "XO" is a military abbreviation for executive officer. See LtCol Eric L. Rolaf, *Defining the Executive Officer's Role: Co's Secretary Or Second In Command?*, at http://wwwnt.cnet.navy.mil/cls/defining_the_executive_officer.htm (last visited Aug. 12, 2004).

²⁹ WADDLE, *supra* note 1, at 120.

³⁰ *Id.* at 122-23.

ships in the area, and, over time, the ship's speed and direction of travel.³¹ Why then, since CDR Waddle performed a surface scan and PO1 Seacrest monitored the sonar equipment, did the accident occur?

The answer is human error. A three- to five-minute surface scan was normal, but CDR Waddle conducted a 360-degree sweep in just 80 seconds.³² Visibility was also less than ideal, as the sun was beginning to set and the sky was hazy.³³ As CDR Waddle explained:

It [the *Ehime Maru*] was a white ship with a narrow aspect—which means it was pointed in our direction, coming straight at us—against the background of a hazy sky on a February afternoon in Hawaii. Had the *Ehime Maru* been moving across the plane of our vision, I'd have seen it, but the white ship against the white horizon was difficult to see two miles away, and I simply missed it.³⁴

Regarding the sonar scan, there was a standing order aboard the *Greeneville* that the fire control technician report any nonmilitary vessel within four thousand yards of the ship to the executive officer, the officer of the deck, or the commanding officer.³⁵ Accordingly, PO1 Seacrest should have reported the presence of Sierra 13,³⁶ which turned out to be the *Ehime Maru*,³⁷ to LCDR Pfeifer, Lieutenant Coen, or CDR Waddle. Yet PO1 Seacrest did not report the other ship.

Commander Waddle speculates that since his surface scan did not note any ships within 4,000 meters, a fact of which PO1 Seacrest was well aware, PO1 Seacrest doubted what his instruments were telling him, and therefore he changed Sierra 13's distance on the sonar screen from 4,000 meters to 9,000 meters.³⁸ Why did PO1 Seacrest take an affirmative action like physically changing a sonar entry without first confirming that action with the ship's captain? The most likely answer is that he was cowed into silence; that just as CDR Waddle abruptly dismissed LCDR Pfeifer's observation on time, PO1 Seacrest may have feared that if he questioned the ship captain's visual observations, particularly in front of a large contingent of distinguished visitors, he, too, might receive a stinging rebuke. So PO1 Seacrest relied on an assumption rather than confirm it with CDR Waddle.

The officer of the deck, Lieutenant Coen, should have noticed the presence of Sierra 13 and its outspotting,³⁹ but he also failed to raise the issue to CDR Waddle. Commander Waddle derisively refers to Lieutenant Coen as a slow officer, who was "notoriously methodical" and "by the book,"⁴⁰ yet overlooks the fact that a by-the-book officer did not go by the book in this instance. Why might this have been? Presumably, Lieutenant Coen did not mention the contact, because he observed that CDR Waddle failed to identify any contacts during his abbreviated periscope scan of the surface.⁴¹ As with PO1 Seacrest, CDR Waddle's style of leadership may have led Lieutenant Coen to choose not to raise what appeared to be a discrepancy between CDR Waddle's visual observations and the instruments. Once PO1 Seacrest outspotted Sierra 13, the discrepancy resolved itself—though incorrectly—thereby sealing the fate of the *Ehime Maru*.

Following the collision, the Navy relieved CDR Waddle of his command.⁴² As the Navy launched an investigation into the matter, CDR Waddle sought legal counsel from a Navy judge advocate, with whom he established a rapport but an unclear attorney-client relationship.⁴³ Shortly thereafter, the Navy announced that an official court of inquiry⁴⁴ would be

³¹ *Id.* at 123-24.

³² *Id.* at 122.

³³ *Id.* at 123.

³⁴ *Id.* at 180.

³⁵ *Id.* at 123.

³⁶ "Sierra 13" was one of three sonar contacts the *Greeneville* tracked at the time leading up to the collision. *Id.*

³⁷ *Id.*

³⁸ *Id.* at 124.

³⁹ "Outspotting" refers to the process by which the distance of a sonar contact changes from its present location to another that is farther away. *Id.*

⁴⁰ *Id.* at 121-22.

⁴¹ *Id.* at 122.

⁴² *Id.* at 144.

⁴³ *Id.* at 155-56.

convened, consisting of three Navy flag officers, and surprisingly,⁴⁵ in an advisory role,⁴⁶ a Japanese Maritime Self-Defense Force flag officer.⁴⁷

Higher headquarters exacerbated CDR Waddle's worries when they told him that they assigned his initial judge advocate—she had not formed an attorney-client relationship with him—and another attorney as lead counsel to the case.⁴⁸ Commander Waddle met his new attorney, but was not favorably impressed.⁴⁹ While the basis for his assessment was purely subjective—the first attorney “march(ed) to her own drumbeat,”⁵⁰ while the new attorney was “by-the-book,”⁵¹ and the two of them would not click as a team⁵²—perceptions can become reality, and the two of them never clicked.

Commander Waddle not only faced that predicament, but the Navy also denied his by-name request⁵³ for a Navy judge advocate out of Norfolk.⁵⁴ Commander Waddle complained, with justification, that while the Navy told him his attorney had to come from within a 100-nautical-mile radius of his command, the other parties to the court of inquiry had assigned attorneys from California and Florida.⁵⁵ Ultimately, CDR Waddle retained civilian counsel to assist in his case.⁵⁶

At the court of inquiry, contrary to his civilian and military attorney's sound advice, CDR Waddle chose to testify before the court without testimonial immunity.⁵⁷ This is part of what CDR Waddle refers to in doing “the right thing;” specifically, that he needed to tell his side of the story about what happened for the sake of the families of those who had died in the accident.⁵⁸ By disregarding his attorneys' advice, however, CDR Waddle did not do the right thing as a client. Judge advocates, particularly those who have served in litigation positions, can well appreciate the dangers faced by a defendant who takes the stand and subjects himself to cross-examination. Commander Waddle admits that his attorneys were thoroughly opposed to him testifying,⁵⁹ but he did so nevertheless and was a stunning success.⁶⁰

⁴⁴ A Navy court of inquiry is analogous in purpose to an Army Article 32 hearing, both designed to find facts and make a recommendation as to the disposition of the case. See generally UCMJ art. 135 (2002). The parties to the inquiry were CDR Waddle, LCDR Pfeifer, and Lieutenant Coen. WADDLE, *supra* note 1, at 157.

⁴⁵ Commander Waddle characterizes the significance of this decision as follows: “(I)t meant for the first time in naval history, a Japanese naval officer, with no allegiance to the United States and no oath to uphold the Constitution of the United States, was going to be sitting in as an adviser in a U.S. naval court of inquiry!” WADDLE, *supra* note 1, at 158. Commander Waddle states that this announcement “shocked the world of jurisprudence.” *Id.* at 157. More tempered analysts pointed out, however, that it was not unheard of for an officer of another nation's armed forces to take part in a U.S. Navy court of inquiry, citing Turkish participation in the 1992 case of the U.S.S. *Saratoga*, where a U.S. Navy ship accidentally launched a missile against a Turkish vessel. Martin Savidge, *Waddle's Family Worried About Sub Skipper's Fate*, CNN.com, Mar. 11, 2001, available at <http://cgi.cnn.com/2001/US/03/11/savidge.debrief/>.

⁴⁶ The Japanese naval officer was allowed to be present for the proceedings, to suggest questions to be asked by one of the three U.S. Navy admirals comprising the court of inquiry, and to participate in the court's deliberations. He did not, however, have a vote in the court's final decision. Savidge, *supra* note 45.

⁴⁷ WADDLE, *supra* note 1, at 157.

⁴⁸ *Id.* at 158.

⁴⁹ *Id.* at 159-60.

⁵⁰ *Id.* at 156.

⁵¹ *Id.* at 158.

⁵² *Id.* at 159.

⁵³ See MANUAL FOR COURTS-MARTIAL, UNITED STATES, R.C.M. 506 (2002) [hereinafter MCM] (detailing the accused's right to request individual military counsel and the procedures for approving or disapproving such a request).

⁵⁴ WADDLE, *supra* note 1, at 158-59.

⁵⁵ *Id.* at 159.

⁵⁶ *Id.* at 168.

⁵⁷ *Id.* at 189-90.

⁵⁸ *Id.* at 190.

⁵⁹ *Id.* at 1-2, 189-90.

⁶⁰ Regarding his testimony, CDR Waddle quotes his civilian attorney as saying, “You kicked butt! Scott, you were awesome! Really great job!” *Id.* at 203.

In the end, the court of inquiry did not recommend a court-martial but the Navy punished CDR Waddle using an admiral's mast.⁶¹ The admirals' mast found him not guilty of negligent homicide,⁶² but guilty of dereliction of duty⁶³ and improper hazarding of a vessel,⁶⁴ and punished him with a verbal reprimand and forfeiture of a half-month's pay for two months, suspended for six months.⁶⁵ Of the seven individuals punished for the incident, CDR Waddle received the most serious punishment.⁶⁶

Commander Waddle claims that his request for retirement was stonewalled until he went to the staff judge advocate for the Pacific Submarine Fleet and threatened to file "Article 113 charges against the chief of staff for harassment,"⁶⁷ as well as taking his case to the press and to Congress.⁶⁸ The Navy granted his request to retire shortly thereafter,⁶⁹ leaving CDR Waddle to lament that he never received a retirement ceremony.⁷⁰

The reader cannot help but wonder: was CDR Waddle's punishment and subsequent separation from military service appropriate? Did the Navy treat him too severely or perhaps too leniently? Does the premature end to a promising career adequately account for nine lives lost and the cost of hundreds of millions of dollars? Some say no, and described CDR Waddle's punishment as "a slap on the wrist."⁷¹ Critics noted that while the incident ended CDR Waddle's naval career, the punishment he received left his military retirement benefits intact.⁷²

Some saw the way the Navy handled the incident as an indictment of the military and of the military justice system as well. One author speculated that Navy leadership, "fearing that a criminal trial would jeopardize their 'distinguished visitor[s]' program," decided against a court-martial, a decision which actually benefited CDR Waddle.⁷³ Another commentator stated that the severity of CDR Waddle's punishment "raises questions about the equity of the military justice system."⁷⁴ Prominent criminal defense attorney, Philip Cave, commented on the perceived disparate treatment of officers and

⁶¹ An "admiral's mast" is the Navy's equivalent of the Army's Article 15, Uniform Code of Military Justice (UCMJ) proceeding. MCM, *supra* note 53, at pt. V.

⁶² UCMJ art. 134 (2002).

⁶³ *Id.* art. 92.

⁶⁴ *Id.* art. 110. Article 110 consists of two offenses: willful and wrongful hazarding, and negligent hazarding. Negligent hazarding is a lesser-included offense of willful and wrongful hazarding. *Id.* The admiral's mast found Waddle guilty of negligently hazarding a vessel, not willfully and wrongfully hazarding a vessel.

⁶⁵ WADDLE, *supra* note 1, at 215.

⁶⁶ Also receiving reprimands, admonishments, or rebukes, were Senior Chief Petty Officer Douglas Coffman, Petty Officer Edward McGiboney, Petty Officer Patrick Seacrest, Captain Robert Brandhuber, LCDR Gerald Pfeifer, and Lieutenant Junior Grade Michael Coen. Gregg K. Kakesako, *Ehime Memorial Unveiled as Sub Returns*, HONOLULU STAR-BULL., Feb. 7, 2002, available at <http://starbulletin.com/2002/02/07/news.story4.html>.

⁶⁷ WADDLE, *supra* note 1, at 229. This is obviously a typographical error, as UCMJ Article 113 relates to misbehavior of a sentinel or lookout. See UCMJ art. 113. Commander Waddle's exact meaning is unclear. It is possible that CDR Waddle meant UCMJ Article 133, referring to conduct unbecoming an officer and a gentleman, under the theory that an officer had a certain duty to act in processing the paperwork, and the omission of this duty, equated to misconduct. If this was CDR Waddle's intent, he displayed a common misperception regarding the military justice system in that somehow he could "file charges." See UCMJ art. 133. More likely, CDR Waddle meant that he would file an UCMJ Article 138 complaint, which attempts to provide redress for a military member who believes himself wronged by his commanding officer. See *id.* art. 138. Similarly, however, if this was CDR Waddle's intent, he misunderstood the process. An Article 138 complaint is elevated to the next higher superior commissioned officer above the complainant's commanding officer, who in turn forwards the complaint to the officer with general court-martial convening authority over the commanding officer. In short, it is a tool to utilize the chain of command. Commander Waddle's threat to file a complaint against the chief of staff is therefore sheer histrionics, unless the chief of staff was CDR Waddle's commanding officer. It is another insight into CDR Waddle's character that even in an avenue designed to provide relief to a military member, he was unwilling to work within its parameters, bypassing his chain of command, and going to the command staff judge advocate to threaten action against the command chief of staff.

⁶⁸ Once again, CDR Waddle's penchant for grandstanding has him threatening to involve Congress and the press, even before he filed a complaint and given the system a chance to work. WADDLE, *supra* note 1, at 230.

⁶⁹ *Id.*

⁷⁰ *Id.*

⁷¹ Matt Nichter, Socialist Worker Online, *Deadly Joyride on a Nuclear Sub*, Mar. 11, 2001, available at http://www.socialistworker.org/2001/368_02_Navy.shtml.

⁷² Brad Knickerbocker, CHRISTIAN SCI. MONITOR, *Sub Inquiry Leaves Unanswered Questions*, Apr. 25, 2001, available at <http://csmonitor.com/cgi-bin/durableRedirect.pl?durable/2001/04/25/p3s1.htm>.

⁷³ Nichter, *supra* note 71.

⁷⁴ Knickerbocker, *supra* note 72.

enlisted in military justice matters, saying, “I’ve got a lot of [military] clients who’ve done far less than [Commander Waddle] has and they’re in jail. Most of them are enlisted people.”⁷⁵

In terms of precedent, accidents involving submarines are extremely rare,⁷⁶ and the added international ramifications of the *Greenville-Ehime Maru* accident made the incident unique. There have been several cases of accidental loss of life involving U.S. Navy vessels during recent years. For example, the 1988 shutdown of an Iranian airliner by the *U.S.S. Vincennes* killed 290 people; the 1992 firing upon a Turkish destroyer by the *U.S.S. Saratoga* killed five people; and the 2000 suicide bombing of the *U.S.S. Cole* in Yemen killed seventeen Sailors.⁷⁷ “In none of those cases was the ship’s captain court-martialed.”⁷⁸ Accordingly, while the decision to handle the *Greenville-Ehime Maru* accident administratively instead of judicially resulted in some criticism, it appears correct under the circumstances.

Finally, did CDR Waddle do “the right thing” following the accident, as the book’s title suggests? It appears that he did. He formally apologized in person to the families of those who perished in the collision, which is extremely important in Japanese culture.⁷⁹ He even traveled to Japan at personal expense to make his apology.⁸⁰ He disregarded his attorneys’ advice and accounted for his actions before a court of inquiry without testimonial immunity, and while this was not “the right thing” for a client to do, he displayed courage by doing it at great personal risk.

In conclusion, *The Right Thing* is highly recommended to military readers who want to learn more about the culture of U.S. Navy submariners. The book’s greatest strength lies in this regard. Judge advocates in litigation positions can benefit from the author’s perspective of the military justice system. Written from the client’s perspective, it shows the challenges faced by trial attorneys with a strong-willed client of senior rank. Finally, the book provides military commanders with positive as well as negative lessons on leadership. CDR Waddle comes across as a military officer with some shortcomings in his leadership skills that precipitated a tragedy, but who did what he could afterward to make things right.

⁷⁵ *Id.*

⁷⁶ Nevertheless, on 27 August 2001, less than six months after the *Greenville-Ehime Maru* collision, the *Greenville* was involved in another accident, becoming grounded off the coast of Saipan while attempting to enter port. The Navy relieved the ship’s executive officer, navigator, and commanding officer. WADDLE, *supra* note 1, at 234-35; see also Gregg K. Kakesako, HONOLULU STAR-BULL., *Greenville’s New Skipper Relieved of Command*, Sept. 13, 2001, available at <http://starbulletin.com/2001/09/13/news.story16.html>.

⁷⁷ Knickerbocker, *supra* note 72.

⁷⁸ *Id.*

⁷⁹ The book further explains that the Japanese people view an apology as “a gesture of integrity, humility, and honor.” WADDLE, *supra* note 1, at 242.

⁸⁰ *Id.*

THE BOWDEN WAY¹

REVIEWED BY MAJOR JOHN P. JURDEN²

*Here's one insight that every leader should accept at a deep emotional level—namely, EVERYTHING THAT OCCURS WITHIN AN ORGANIZATION REFLECTS BACK UPON ITS LEADER.*³

Managers and supervisors in virtually every type of organization likely have read one or more books that synthesize leadership techniques and recommend how to improve those techniques. Such books as *The One Minute Manager*⁴ propose methods for improving supervisory skills, cultivating effective and efficient subordinates, and developing and maintaining cohesive organizations.⁵ Many of these books are specialized, in that they provide recommendations for improving corporate productivity⁶ or military leadership traits.⁷ Florida State University football coach Bobby Bowden's book, *The Bowden Way*, offers Bowden's perspective on leadership and the techniques he deems necessary to build effective, efficient organizations.

Bowden offers his insight based on the experiences he gained during a coaching career spanning more than fifty years. While Bowden's book describes leadership from a coaching perspective, its leadership principles and lessons transcend the coaching profession. Bowden narrates his book in the tradition of leadership primers like *The One Minute Manager*⁸ and leadership books that other coaching legends have written.⁹

Some readers may deem Bowden's philosophy—and the book's disjointed structure¹⁰—as merely a compilation of trite, common sense absolutisms. Readers may view his book as a collection of philosophies with which no rational person may argue. Others may find both self-righteous and self-serving his reliance on moral and religious principles,¹¹ and his often vigorous defense of his past practices.¹² However, Bowden excels at placing his leadership philosophy in context by describing episodic examples from his coaching and life experiences. He thus succeeds at permitting readers to “see” and “learn” leadership through his eyes.

Bowden, admittedly having written his book at the sunset of his career, chose to record his leadership philosophy in order to provide other leaders a framework with which to shape their own organizations.¹³ The second-winningest active college coach at the time he wrote *The Bowden Way*,¹⁴ Bowden possesses the professional competence and success required to write as a leadership authority. In Bowden's view, he has already encountered many of the pitfalls lining the path to success; his book merely reminds leaders of the unalterable principles and traits of leadership that make the journey easier.¹⁵ Ultimately, Bowden's book provides leaders at all levels an entertaining and often enlightening roadmap for personal and professional growth, as well as for organizational improvement.

¹ BOBBY BOWDEN, *THE BOWDEN WAY* (2001)

² United States Army. Written while assigned as a Student, 52d Judge Advocate Officer Graduate Course, The Judge Advocate General's Legal Center and School, United States Army, Charlottesville, Virginia.

³ BOWDEN, *supra* note 1, at 11.

⁴ KENNETH BLANCHARD & SPENCER JOHNSON (1981).

⁵ See, e.g., THOMAS J. PETERS & ROBERT H. WATERMAN, JR., *IN SEARCH OF EXCELLENCE: LESSONS FROM AMERICA'S BEST-RUN COMPANIES* (1982); BLANCHARD & JOHNSON, *supra* note 4; AUBREY NEWMAN, *FOLLOW ME: THE HUMAN ELEMENT IN LEADERSHIP* (1981).

⁶ See, e.g., BLANCHARD & JOHNSON, *supra* note 4.

⁷ See, e.g., NEWMAN, *supra* note 5. See generally DEAN HOHL & MARYANN KARINCH, *RANGERS LEAD THE WAY: THE ARMY RANGERS' GUIDE TO LEADING YOUR ORGANIZATION THROUGH CHAOS* (2003), for an analysis of the application of military leadership skills to the corporate environment.

⁸ BLANCHARD & JOHNSON, *supra* note 4.

⁹ See, e.g., LOU HOLTZ, *WINNING EVERY DAY: THE GAMEPLAN FOR SUCCESS* (1998).

¹⁰ See *infra* notes 16-21 and accompanying text.

¹¹ See *infra* notes 22-26 and accompanying text.

¹² See, e.g., *infra* notes 43-46 and accompanying text.

¹³ BOWDEN, *supra* note 1, at vii-viii.

¹⁴ R. Stephen Bowden, *Foreword* to BOBBY BOWDEN, *THE BOWDEN WAY* IX (2001).

¹⁵ See BOWDEN, *supra* note 1, at 1-2.

The Bowden Way is a compendium of twenty-six distinct leadership principles and factors that, in Bowden's opinion, bear on leadership.¹⁶ Bowden neither prioritizes nor logically groups these principles and factors, and he does not explain his rationale for their order of precedence in the book. Readers therefore may find that Bowden careens from one distinct topic to another throughout the book, without thought to smooth progression and transition. A proposed grouping segregates the twenty-six chapters into the following six general themes: improving personal and professional effectiveness;¹⁷ practicing moral virtues;¹⁸ developing and maintaining a leadership persona;¹⁹ developing institutional efficiency and effectiveness;²⁰ developing subordinate leaders;²¹ and factoring the intangibles that bear on leadership.²² Military and civilian organization leaders will recognize that many, if not all, of these themes influence their own organizational leadership models.

Bowden also provides, at the book's conclusion, a separate list of the "Thirty-Five Rules" that have guided him from the onset of his collegiate Division I coaching career in 1970.²³ These separate rules place into context the leadership principles Bowden discusses throughout his book. *The Bowden Way* is replete with implicit references to these thirty-five separate leadership canons, which rely heavily on religious passages and allegories.²⁴ Some readers doubtless will find fault with Bowden's heavy emphasis on religious principles throughout the book. Readers may find that Bowden's personal religious beliefs taint, for example, his approach to the moral virtues he views as so integral to leadership and to organizational cohesion.²⁵ It is impossible, however, to fully comprehend Bowden's leadership philosophy without understanding the importance he places on religion. Readers thus should approach *The Bowden Way* understanding that Bowden is both unapologetic²⁶ for the importance he places on religion and cognizant that evolving societal norms now require a higher degree of tolerance and understanding from him.²⁷

Readers may be surprised that Florida State University, a state institution, permits Bowden to infuse his football program with religious ceremonies and traditions.²⁸ Bowden's emphasis on the importance of religion likely would be less effective and less accepted in the military profession due to the military's emphasis on the importance of individual religious freedom. The right to choose not to participate in religious ceremonies is common in most institutions, especially where such ceremonies may be viewed as sanctioned by the government. Bowden, in fact, makes no mention of any dissent within his football program—among either players or staff—regarding the importance he places on religion.

Bowden's emphasis on personal and professional effectiveness begins with a description of the importance of developing an overall "game plan."²⁹ This culminates in a rather short-term, one-year plan that establishes a schedule of events, incorporates high-quality subordinates, and establishes a roadmap for execution. Bowden implements a rigorous, structured

¹⁶ "My recipe for leadership existed long before I came on the scene In every job I've held as a head coach, I have used this recipe to help build my program." *Id.* at 1.

¹⁷ The rubric "Personal Effectiveness," for example, might incorporate Chapters 1, 7, and 8 of Bowden's book, respectively: "Having a Game Plan"; "Work habits"; and "Time Management."

¹⁸ The rubric "Moral Virtues" might incorporate Chapters 4, 6, and 17 of Bowden's book, respectively: "Living with Integrity"; "Humility"; and "Confidentiality."

¹⁹ This grouping might incorporate chapters 2, 3, 9, 12, and 18 of Bowden's book, respectively: "Taking Charge"; "Setting a Personal Example"; "The Art of Persuasion"; "Staff Meetings"; and "Keeping a Professional Distance."

²⁰ This grouping might include chapters 10, 11, and 14 of Bowden's book, respectively: "Hiring"; "Firing"; and "Meting Out Discipline."

²¹ This grouping might include chapters 5, 13, 15, 16, and 19 of Bowden's book, respectively: "Loyalty"; "Evaluating Performance"; "Morale"; "Salaries and Promotions"; and "Enthusiasm."

²² These "intangibles" might incorporate chapters 20 through 26 of Bowden's book, respectively: "Relating to Superiors"; "Dealing with the Public"; "The Media"; "Handling Success"; "Dealing with Adversity"; "Changing with the Times"; and "Age—The Caveat."

²³ BOWDEN, *supra* note 1, at 247-51.

²⁴ For example, Bowden instructs that "Christ calls us to be servants, not masters," in one rule. *Id.* at 249. Eight of the rules, moreover, quote *Bible* passages directly. *See id.* at 248-50.

²⁵ *See, e.g., id.* at 35 (describing Bowden's firing of an unmarried subordinate who consumed alcohol with college cheerleaders); *id.* at 238 (noting that Bowden's conservative religious upbringing contributed to him "living a morally good life").

²⁶ *See id.* at 248 (remarking that Bowden offers "no apology" for the strong religious themes that dominate his "Thirty-Five Rules").

²⁷ *See, e.g., id.* at 238-39 (acknowledging that for most of Bowden's career, he refused to hire divorced coaches, but confiding that he now understands how societal conventions shaped his views on divorce).

²⁸ *See, e.g., id.* at 110 (describing Bowden's practice of beginning each staff meeting with a devotional and prayer which coaches and trainers take turns leading).

²⁹ *See id.* at 3-9.

work schedule for himself, and expects his subordinates to do so as well. He acknowledges the importance of time management, and understands the value of delegation to competent subordinates to ensure critical task completion.

According to Bowden, successful implementation of his strategy requires that the subordinates he handpicks to perform in his organization possess the highest moral character. For Bowden, professional competence seems more the product of—not tangential to—an individual’s moral character.³⁰ Integrity, loyalty, and the ability to maintain professional confidences, for example, are indicators of a person’s moral character, in Bowden’s opinion.

Readers will likely find no fault with Bowden’s personal views on the importance of moral character. Readers may question, however, whether certain professions can more easily accommodate employees possessing supposedly “low” moral character who, nevertheless, are capable of producing a superior product or performing to or above established standards. Arguably, even members of Bowden’s own coaching profession may be able to divorce themselves of morals and yet produce outstanding records, at least until their indiscretions become public. However, Bowden’s philosophy—that professional competence and moral character are intertwined—appears well suited to the military profession, at least, due to the importance the military places on core leadership virtues such as honor.

Bowden may surprise readers by his descriptions of actions that, in his opinion, reveal moral failings. Bowden recounts one instance, for example, in which he fired a subordinate coach who shared alcohol with several college cheerleaders.³¹ Bowden recounts another instance in which he fired a subordinate coach after that coach divorced his wife.³² In fairness to Bowden with regard to the latter instance, he now recognizes that changing social norms dictate that he alter his outlook toward divorce.³³ First and foremost, Bowden demands these moral qualities of himself, as the organizational leader.³⁴

Bowden continuously strives to develop and maintain his own leadership persona. He acknowledges the difficulty of this task, recognizing that leaders who may work years to develop the persona can lose it in an instant for a variety of reasons.³⁵ For Bowden, development of this leadership persona begins with the staff meetings that he plans and runs.³⁶ Staff meetings provide subordinates an opportunity to observe their leaders’s philosophies and problem-solving techniques. Bowden instructs that leaders can cultivate the proper leadership persona by understanding their organization’s mission better than anyone else³⁷ and maintaining a distance, professionally, from subordinates in order to preserve organizational hierarchy.³⁸ Bowden places a premium on the latter; as he notes, subordinates simply “expect more out of you than they do of their peers.”³⁹ As Bowden notes, when leaders choose to lead by building coalitions rather than by preserving hierarchical structures, the organization’s efficiency and effectiveness will suffer.⁴⁰

Building and increasing the effectiveness and efficiency of an organization, according to Bowden, depends on cultivating a sense of teamwork and togetherness among its members. Bowden uses his hiring process to instill this sense of teamwork in his subordinate leaders. He expects such prospective leaders’s enthusiasm and “team first” mentality to trickle down to each member of the organization.⁴¹ As a leader apparently possessing extraordinary latitude in the hiring and firing process, Bowden has the luxury of handpicking those who he believes will meet his expectations.

³⁰ See, e.g., *id.* at 34 (“When you don’t know the answer, the surest course is to do what you believe is right.”). Bowden notes that he foremost demands integrity from himself and his staff if he is to succeed in his profession, and he ensures prospective hires know this, as well. *Id.* at 34-35.

³¹ *Id.* at 35.

³² *Id.* at 103.

³³ *Id.*

³⁴ See, e.g., *id.* at 26 (“Such leadership begins with the cultivation of good habits, particularly the habits of good character.”).

³⁵ Bowden cautions, for example, against actions that leaders might regret, because eventually others will become aware of them. *Id.* at 22.

³⁶ *Id.* at 113.

³⁷ Bowden advises leaders to distill their organizational mission to its essence in a three- to five-point summary, in order for them effectively to advocate on behalf of the mission. *Id.* at 86.

³⁸ As Bowden notes, the “gulf separating [leaders] from [subordinates] cannot be removed unless [leaders] choose to abdicate [their] role as leader.” *Id.* at 165.

³⁹ *Id.* at 171.

⁴⁰ See *id.* at 166.

⁴¹ See *id.* at 92.

Bowden uses discipline to enforce the few rules that he imposes on his organization. He admits that he rarely encounters discipline problems among his staff.⁴² However, Bowden confides, he views dismissals as a personal failure on his part, because he—and he alone—made the decision to hire the person. Bowden’s philosophy is revealing in that he leaves unanswered the question whether his “failure” relates simply to poor judgment in the hiring process or to his failure to develop a subordinate he presumably believed possessed potential. Leaders of organizations who do not possess this latitude in “picking and choosing” their members may find Bowden’s views on this subject less helpful than other of his views.

Readers may find most revealing those parts of Bowden’s book detailing how he develops subordinates professionally. From cultivating a sense of loyalty to building and maintaining high morale and enthusiasm, leaders must set the example. According to Bowden, leaders must both demand and practice loyalty in order to create unity. Leaders, likewise, are primarily responsible for the morale and enthusiasm that emanates from an organization, and high levels of both are integral to providing organizations a competitive edge.⁴³

Readers may find Bowden’s emphasis on loyalty interesting for his vigorous defense of past disciplinary practices regarding his players. Throughout his book, Bowden relates a variety of disciplinary sanctions he imposed on former players, and his rationale for each.⁴⁴ At least one of those players disciplined, Laveranues Coles, has since become a professional football player.⁴⁵ Coles remains convinced that Bowden applied a double standard in his case by dismissing him from the team, while merely suspending his co-offender.⁴⁶ Bowden’s reasoning does, in fact, raise questions, as he admits that he merely suspended Coles’s co-offender (a collegiate Heisman Trophy candidate) “pending a final verdict on the case.”⁴⁷ Bowden appears defensive and, perhaps, self-serving in his description of his handling of the incident.

In his book’s final six chapters, Bowden describes certain intangible factors and concepts that may complicate leadership. The intangibles of relating to superiors, dealing with the public and media, handling both success and adversity, adapting to cope with changing times, and aging all impact on leadership to some degree, according to Bowden. Bowden describes his approach to relating to his superiors in the context, presumably, of how he prefers to maintain relations with his own subordinates. In Bowden’s opinion, “If I’m doing my job, and they’re doing their jobs, it’ll all work out fine.”⁴⁸ Bowden provides superb guidance by relating this simple, but incisive, philosophy; subordinates often may be so concerned with how “the boss” perceives them that their work product suffers from a desire to please their superior. Concerns about superior-subordinate relations may, if unchecked, ultimately stifle both creativity and an open and frank exchange of ideas.

Although readers ultimately may view *The Bowden Way* as a mere compendium of common sense leadership canons, the book’s shortcoming also is its strength. Bowden entertains and challenges readers with his first-person account of the leadership challenges, successes, and failures that he has experienced during a career spanning more than fifty years. Bowden borders on self-righteousness in some places, and some readers may interpret him as defensive and self-serving in other places. Nevertheless, he succeeds at instructing leaders at all levels how to maximize their natural strengths and to recognize and adjust to their inherent weaknesses.

I recommend Bowden’s book for leaders wishing to acquaint or reacquaint themselves with basic leadership principles that are not limited to particular organizational leadership models. Bowden is first and foremost a football coach, and *The Bowden Way* is replete with coaching references. The explicit football references, however, do not dilute Bowden’s common sense approach to improving leadership skills and building effective, efficient organizations. Bowden’s philosophy and recommendations, while arguably controversial, are not complicated; putting them into practice, as Bowden’s book instructs, however, may take a lifetime to perfect.

⁴² *Id.* at 133 (noting that if leaders “hire the right people, [they] don’t have discipline problems”).

⁴³ *See id.* at 135 (“High morale may be the greatest advantage you can bring to a game.”); *id.* at 177 (“People perform best when they are excited about their work.”).

⁴⁴ *See, e.g., id.* at 12 (describing his punishment of several players for violating collegiate rules on the acceptance of gifts); *id.* at 201-02 (describing his decision to dismiss a future professional athlete, Randy Moss, from the team due to Moss’s series of disciplinary violations); *id.* at 202 (describing his decision to dismiss a future professional athlete, Laveranues Coles, from the team for accepting discounted merchandise from a department store).

⁴⁵ *See* Sally Jenkins, *Elephants and Coles Never Forget*, WASH. POST, Sept. 6, 2003, at D1, D6 (noting Coles’s professional status with the Washington Redskins football team).

⁴⁶ Coles notes that he feels “abandoned” by his former school which, in his opinion, “cut [him] loose when [he] needed them most.” *Id.* at D6.

⁴⁷ BOWDEN, *supra* note 1, at 202.

⁴⁸ *Id.* at 191.

CLE News

1. Resident Course Quotas

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

Active duty service members and civilian employees must obtain reservations through their directorates of training or through equivalent agencies. Reservists must obtain reservations through their unit training offices or, if they are non-unit reservists, through the U.S. Army Personnel Center (ARPERCEN), ATTN: ARPC-OPB, 1 Reserve Way, St. Louis, MO 63132-5200. Army National Guard personnel must request reservations through their unit training offices.

Questions regarding courses should be directed to the Deputy, Academic Department at 1-800-552-3978, dial 1, extension 3304.

When requesting a reservation, please have the following information:

TJAGSA Code—181

Course Name—155th Contract Attorneys Course 5F-F10

Course Number—155th Contract Attorneys Course 5F-F10

Class Number—155th Contract Attorneys Course 5F-F10

To verify a confirmed reservation, ask your training office to provide a screen print of the ATRRS R1 screen, showing by-name reservations.

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

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

Course Title	Dates	ATRRS 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
165th Basic Course	14 September – 7 October 04 (Phase I – Ft. Lee)	5-27-C20
	8 October – 16 December 04 (Phase II – TJAGSA)	5-27-C20
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 (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
9th Speech Recognition Training	18 – 29 October 04	512-71DC4
10th Speech Recognition Training	17 – 28 October 05	512-71DC4
15th Court Reporter Course	2 August – 1 October 04	512-27DC5
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
5th Court Reporting Symposium	1 – 5 November 04	512-27DC6
6th Court Reporting Symposium	31 October – 4 November 05	512-27DC6
184th Senior Officers Legal Orientation Course	15 – 19 November 04	5F-F1
185th Senior Officers Legal Orientation Course	24 – 28 January 05	5F-F1
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
11th RC General Officers Legal Orientation Course	19 – 21 January 05	5F-F3
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
2005 JAOAC (Phase II)	2 – 14 January 05	5F-F55
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
2004 JAG Annual CLE Workshop	4 – 8 October 04	5F-JAG
2005 JAG Annual CLE Workshop	3 – 7 October 05	5F-JAG
16th Legal Administrators Course	20 – 24 June 05	7A-550A1
17th Legal Administrators Course	19 – 23 June 06	7A-550A1

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
1st 27D BNCOC	12 – 29 October 04	
2d 27D BNCOC	3 – 21 January 05	
3d 27D BNCOC	7 – 25 March 05	
4th 27D BNCOC	16 May – 3 June 05	
5th 27D BNCOC	1 – 19 August 05	
1st 27D ANCOC	25 October – 10 November 04	
2d 27D ANCOC	10 – 28 January 05	
3d 27D ANCOC	25 April – 13 May 05	
4th 27D ANCOC	18 July – 5 August 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		
3d Advanced Federal Labor Relations Course	20 – 22 October 04	5F-F21
4th Advanced Federal Labor Relations Course	19 – 21 October 05	5F-F21
58th Federal Labor Relations Course	18 – 22 October 04	5F-F22
59th Federal Labor Relations Course	17 – 21 October 05	5F-F22
55th Legal Assistance Course	1 – 5 November 04	5F-F23
56th Legal Assistance Course	16 – 20 May 05	5F-F23
57th Legal Assistance Course	31 October – 4 November 05	5F-F23
58th Legal Assistance Course	15 – 19 May 06	5F-F23
2004 USAREUR Legal Assistance CLE	18 – 22 October 04	5F-F23E
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
2004 Income Tax Course	13 – 17 December 04	5F-F28
2005 Maxwell AFB Income Tax Course	12 – 16 December 05	5F-F28
2004 USAREUR Income Tax CLE	6 – 10 December 04	5F-F28E
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

2004 USAREUR Claims Course	29 November – 3 December 04	5F-F26E
2005 USAREUR Claims Course	28 November – 2 December 05	5F-F26E
2005 PACOM Income Tax CLE	3 – 7 January 05	5F-F28P
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
2004 Government Contract & Fiscal Law Symposium	7 – 10 December 04	5F-F11
2005 Government Contract & Fiscal Law Symposium	6 – 9 December 05	5F-F11
70th Fiscal Law Course	25 – 29 October 04	5F-F12
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
11th Comptrollers Accreditation Course (Fort Bragg)	20 – 24 October 04	5F-F14
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 05	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
28th Criminal Law New Developments Course	15 – 19 November 04	5F-F35
29th Criminal Law New Developments Course	14 – 17 November 05	5F-F35
2005 USAREUR Criminal Law CLE	3 – 7 January 05	5F-F35E
2006 USAREUR Criminal Law CLE	9 – 13 January 06	5F-F35E
INTERNATIONAL AND OPERATIONAL LAW		
4d Domestic Operational Law Course	25 – 29 October 04	5F-F45
5th Domestic Operational Law Course	24 – 28 October 05	5F-F45
83d Law of War Course	31 January – 04 February 05	5F-F42
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	30 November – 3 December 04	5F-F47E
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 2004**, for those judge advocates who desire to attend Phase II (Resident Phase) at TJAGLCS in the year 2005 (“2005 JAOAC”). This requirement includes submission of all JA 151, Fundamentals of Military Writing, exercises.

This requirement is particularly critical for some officers. The 2005 JAOAC will be held in January 2005, 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 2004). If the student receives notice of the need to re-do any examination or exercise after 1 October 2004, 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 2004 will not be cleared to attend the 2005 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

<u>Jurisdiction</u>	<u>Reporting Month</u>
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*.

Current Materials of Interest

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

13 - 14 Nov 04	St. Paul, MN 214th LSO	Administrative and Civil Law, Contract Law	CPT Eric Teegarden (651) 239-3599 eric.teegarden@us.army.mil
20 - 21 Nov 04	New York City, NY 77th RRC	Administrative and Civil Law, and International and Operational Law	LTC Isolina Esposito (718) 352-5106
8 - 9 Jan 05	Charleston, SC 12th/174th LSO	Criminal Law, Administrative and Civil Law	COL Daniel Shearouse (803) 734-1080 Dshearouse@scjd.state.sc.us
8 - 9 Jan 05	Anaheim, CA 63d RRC	Criminal Law, Contract Law	SGM Rocha (714) 229-3700 MAJ Diana Mancia diana.mancia@us.army.mil
29 - 30 Jan 05	Seattle, WA 70th RRC	Criminal Law, International and Operational Law	MAJ Brad Bales (206) 296-9486 (253) 223-8193 (cell) brad.bales@metrokc.gov
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	Ft. Walton Beach, FL 81st RRC	Contract Law, Administrative and Civil Law	CPT Kenneth Biskner (205) 795-1511 kenneth.biskner@us.army.mil
14 - 15 May 05	Rosemont, IL 91st LSO	Administrative and Civil Law,	CPT Douglas Lee (630) 954-3123

International and douglas.lee@nationalcity.com
Operational Law

20 - 23 May 05

Kansas City, KS
89th RRC

Criminal Law, MAJ Anna Swallow
Administrative and (800) 892-7266, ext. 1228
Civil Law, Claims (316) 681-1759, ext. 1228
lynette.boyle@us.army.mil

4. 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.

5. 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*.

6. 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.

7. 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, United States Army, ATTN:CTR-MO, 600 Massie Road, Charlottesville, Virginia 22903-1781. Telephone DSN: 521-3278, commercial: (434) 971-3278, or e-mail at DottieEvans@hqda.army.mil.