



THE ARMY LAWYER

Headquarters, Department of the Army

Department of the Army Pamphlet 27-50-378

November 2004

In Memoriam: Chief Warrant Officer Five Sharon T. Swartworth

In Memoriam: Sergeant Major Cornell W. Gilmore

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The Army Lawyer (ISSN 0364-1287, USPS 490-330) is published monthly by The Judge Advocate General's Legal Center and School, Charlottesville, Virginia, for the official use of Army lawyers in the performance of their legal responsibilities. Individual paid subscriptions to *The Army Lawyer* are available for \$45.00 each (\$63.00 foreign) per year, periodical postage paid at Charlottesville, Virginia, and additional mailing offices (see subscription form on the inside back cover). POSTMASTER: Send any address changes to The Judge Advocate General's Legal Center and School, 600 Massie Road, ATTN: ALCS-ADA-P, Charlottesville, Virginia 22903-1781. The opinions expressed by the authors in the articles do not necessarily reflect the view of The Judge Advocate General or the Department of the Army. Masculine or feminine pronouns appearing in this pamphlet refer to both genders unless the context indicates another use.

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The Army Lawyer articles are indexed in the *Index to Legal Periodicals*, the *Current Law Index*, the *Legal Resources Index*, and the *Index to U.S. Government Periodicals*. *The Army Lawyer* is also available in the Judge Advocate General's Corps electronic reference library and can be accessed on the World Wide Web by registered users at <http://www.jagcnet.army.mil/ArmyLawyer>.

Address changes for official channels distribution: Provide changes to the Editor, *The Army Lawyer*, The Judge Advocate General's Legal Center

and School, 600 Massie Road, ATTN: ALCS-ADA-P, Charlottesville, Virginia 22903-1781, telephone 1-800-552-3978, ext. 396 or electronic mail to charles.strong@hqda.army.mil.

Issues may be cited as ARMY LAW., [date], at [page number].

IN MEMORIAM



Chief Warrant Officer Five Sharon T. Swartworth

8 November 1959 – 7 November 2003

A PERFECT PATRIOT AND A NOBLE FRIEND

*He stood, a soldier, to the last right end,
A perfect patriot and a noble friend,
-- Ben Jonson*

Few would have guessed in 1977, when she enlisted in the Army, that Sharon T. Swartworth would so dramatically change the Army and so profoundly improve the lives of her fellow Soldiers. But those fooled by her demure physical stature (five feet, two inches), her girlish grin, or her easy laugh would be surprised by the toughness and tenacity that sprung from Sharon's giant heart. From her heart flowed intense love and dedication to three things. First, she loved her family, especially her beloved son, Billy. Second, she loved her country with an intensity that inspired her to serve her Nation for 26 years. Finally, she loved those around her fully and genuinely—a degree of caring that marked her as a friend, in the truest and noblest sense of that word, to her fellow Soldiers. Rarely do we find people who love so fully, and so well, their fellow man. Too often, these patriots are sacrificed to the cause of freedom. Sharon is no longer among us physically, but her spirit and example live on and will inspire her family and friends to live as she did—as a perfect patriot and a noble friend.

A PERFECT PATRIOT

*Life springs from death and from the graves of patriot men and women spring living nations . . .
-- Patrick Henry Pearse*

Webster's Dictionary defines a patriot as "one who loves his or her country and supports its authority and interests." Many claim the title, but few live up to the lofty aspirations of these words. The life of a patriot is first one of professionalism—the Nation needs those who serve her to be competent and dedicated. Second, the life of a patriot is one of vision. The patriot must see the organization through which they serve the Nation not how it is, but rather how it could be.

Third, the life of a patriot is one of sacrifice and service—selflessly serving the Nation and fellow Soldiers. No one lived the life of a perfect patriot better than Sharon Swartworth.

From the day her father signed her enlistment papers in 1977 so she could enlist at the age of seventeen, Sharon's professionalism and dedication was apparent. She began her career as a signal Soldier, serving at Fort Bragg and in Korea. By 1981, Sharon recognized her love for the legal field and became a legal specialist. Her rise through the ranks was nothing short of meteoric. As a legal specialist and court reporter, she was promoted through the ranks to Sergeant First Class in a mere four years. She went from a student in the court reporting school in 1982, to an instructor by 1984. Her rise through the enlisted ranks culminated in her appointment as a legal administrator in 1985. Serving as a legal administrator, she rose through the warrant officer ranks to become the Warrant Officer of the Judge Advocate General's Corps in 1999. She ascended the ranks from Warrant Officer One to Chief Warrant Officer Five in only fourteen years—a monumental achievement. There can be no doubt that Sharon Swartworth dazzled everyone she worked with and was a consummate professional in every aspect of her duties.

Individual achievement, however, is only one measure of professionalism and dedication. What people recognized in Sharon was her ability to develop a vision for an organization and, more importantly, to implement that vision through persistence, toughness, and tenacity. Nowhere was Sharon's vision more evident than in her culminating assignment as Warrant Officer of the Judge Advocate General's Corps. Using her remarkable personality and people skills, Sharon linked the warrant officers of our Corps together with the warrant officers of many branches. She helped coordinate a proponent workshop so that the warrant officers across the Army could begin speaking with one voice. The first workshop resulted in a proposed charter for the Warrant Officer Leader Development Council, changing the executive members to the proponent warrant officers. Without Sharon's leadership, these changes have slowed, but her vision and drive were unmistakable and these changes are being carried out by others.

Within the Judge Advocate General's Corps, she was a strong proponent of the "Foundation of Four" and the Legal Administrator's role on that team. She helped establish warrant officers as leaders and managers, not just computer technicians. Without degrading technology services so critical to judge advocate operations, Sharon encouraged, cajoled, and trained warrant officers to assume their proper responsibilities administering Offices of the Staff Judge Advocate, while serving as a mentor to both Soldiers and new attorneys and as a bridge between the officers and the enlisted personnel. She accomplished this by establishing a proper training foundation in a greatly improved Warrant Officer Basic Course at the Judge Advocate General's School; promoting cohesiveness among legal administrators through conferences and special events; and creating pride in the unique and challenging role that warrant officers play in the Army generally, and in the Judge Advocate General's Corps in particular.

Sharon's professionalism touched many and all remembrances of her are glowing:

She was the consummate professional, competent and confident, always exceeding the standard.

Without question, she was one of the most dynamic and energetic people I know. . . I had great respect for her opinion and judgment, and I would often look to Sharon for advice and counsel.

She is remembered as the consummate professional, never wavering in her professionalism and mentoring of others.

Patriots are not just servants of the Nation, they are the lifeblood that keeps the Nation alive. Sharon Swartworth was such a dynamic person that she was not only the blood of the Nation, but the heart that pumped it throughout the Judge Advocate General's Corps. She was a perfect patriot to the end, shedding her own blood in the cause of freedom.

A NOBLE FRIEND

The vocation of every man and woman is to serve other people.

-- Tolstoy

Selfless service to others is the duty of a Soldier, the privilege of a friend. Sharon served others as a privilege, not as a duty. Whether motivating those in uniform, caring for a Soldier in need, or serving in her community, Sharon made friends and brightened lives wherever she went. Her many friends have provided sparkling remembrances of her. These remembrances include:

Sharon was one of the most thoughtful people I've ever known, quick to recognize those around her, always helping, listening, and making time for anyone who needed it. She had the unique gift of making those around her feel important and special, which was evident by the enormous turnout to her service and funeral. Her sense of humor knew no bounds, always a smile on her

face, always looking for the humor in any situation. If humor really is the best medicine, she should have been a doctor.

Her passing has left a huge void in many peoples lives, mine included. There simply aren't enough words to describe the impact of her loss.

Over the years she always greeted me with a hug and a huge smile that would brighten anyone's day.

She just made you feel special when you talked with her.

Sharon was a "people person," a caring and compassionate person. Her heart and home were always open to those around her. Two vignettes help illustrate her immense capacity to love and serve her fellow Soldiers and neighbors.

On one occasion, Sharon became aware of a young noncommissioned officer (NCO) in need. As the holiday season approached, it became apparent that this young NCO, with a spouse and two children, was struggling financially. The NCO was a proud and dedicated Soldier who eschewed all overtures for help. Sharon quietly collected money behind the scenes and then personally took the spouse shopping. Her efforts ensured that this family would have a blessed Thanksgiving and Christmas. Those around her knew that Sharon spent much more than she had collected from the office, but she refused to accept additional donations. Sharon never received any kind of recognition for this, nor would she have accepted recognition if it was offered. To her, she was doing nothing special. She was simply being Sharon—a caring leader who loved those around her.

After September 11th, Sharon's heart was breaking for the many friends in the Information Management Center (IMCEN) that she lost in that tragedy. She volunteered to assist the family of a young contractor in the IMCEN that worked in the area of the Pentagon that took the direct hit from the plane. Sharon met every need, sacrificing personal time to ensure the young man was properly honored and his family properly cared for. She even arranged for a Judge Advocate General's Corps General Officer to be present at the burial and present the United States flag to the family. Like all others she met in her life, this family saw the love and devotion that Sharon brought to her fellow man—a love and devotion that was as rare as it was special.

A FOUNDATION OF FAMILY

It is in the love of one's family only that heartfelt happiness is known.

-- Thomas Jefferson

At the foundation of Sharon's patriotism and propensity for friendship and caring for others was the love of her family. If, as Jefferson posits, happiness can only come from a family's love, Sharon received much love, because she constantly evinced happiness. That love began with her family growing up—from her father, Bernard Mayo, her brother, and her grandmother. But it continued with Bill and Billy, her husband and son. One of the saddest parts of Sharon's death is that it took her away from Billy, in whom she had immense pride and joy.

The story of Sharon and Bill's meeting at Fort McCoy, Wisconsin, fourteen years ago is vintage Sharon Swartworth. As the story goes, Sharon was a Training, Advising, and Counseling Officer at the Warrant Officer Candidate School. As luck would have it, she met a young Navy doctor—a Lieutenant—in the all ranks club. The Lieutenant had ordered a pizza. In strolled Sharon—a young blonde in a ski jacket—who also ordered pizza. When the Lieutenant's pizza came out first, Sharon offered the young lieutenant a piece of her pizza later, if he would share his pizza with her. Not about to be distracted by an attractive, blonde whom he suspected of being a dependent daughter, the young lieutenant declined the offer with a curt, "no, thanks!" This young lieutenant was William Swartworth. Fortunately for Bill, fate did not end their encounters there. The next day, Sharon was serving on the ski patrol and was assisting an injured skier, when fate brought them together again as the lieutenant offered his professional medical services. Sharon's response to the doctor who would not share his pizza? "No, thanks!" Sharon was somewhat chagrined to learn that the injured Marine was a member of Bill's unit. Undeterred, and with the patient safely off the slopes, Sharon smiled widely and suggested they grab a drink at a slope side concession. The rest, as they say, is history.

There is love within a family, love between a husband and wife, but no love is more special than that between a mother and a child. Sharon's pride and joy was always Billy. Like many couples, Sharon and Bill fought hard to bring Billy into the world, and Sharon always viewed her son as a miracle. She never tired of providing those around her with an update on Billy's exploits. From a school performance to winning a chess tournament, every detail was a source of pride and every expression of pride sprung from a mother's love. Our prayer is that Billy always feels that love stretching across time and space from a mother who was also a hero to her Nation.

FAREWELL DEAR FRIEND
*Now rest in peace, our patriot band;
Though far from nature's limits thrown,
We trust they find a happier land,
A brighter sunshine of their own
-- Philip Freneau*

The legacy of Sharon Swartworth is set in history and will endure. It is a legacy built on the foundation of family, forged in the tempest of patriotic military service to her Nation, and perfected in the bonds of friendship that we all shared with her. For those of us privileged to know Sharon, she will long remain the model we seek to emulate as a Soldier, friend, wife, and mother. She will forever be to us, a Perfect Patriot and a Noble Friend.*

Well Done, Sharon, Be Thou at Peace.

* The staff of *The Army Lawyer* thanks the many people who contributed to this memorial. Particular thanks go to Major General (retired) John Altenberg, Chief Warrant Officer Rick Johnson, and Chief Warrant Officer Marybeth Fangman for their invaluable help. Most importantly, we thank Bill and Billy Swartworth for allowing us to publish this memorial, and for sharing Sharon with us for so many years.

¹ All heading quotations in this memorial are taken from BARTLETT'S FAMILIAR QUOTATIONS (1919) or THE COLUMBIA WORLD OF QUOTATIONS (1996), available at www.bartleby.com (last visited Nov. 29, 2004).

IN MEMORIAM



Sergeant Major Cornell W. Gilmore

8 December 1957 – 7 November 2003

A MAN OF FAITH WALKING HUMBLY WITH HIS GOD

*He has told you, O man, what is good;
And what does the LORD require of you
But to do justice, to love kindness
And to walk humbly with your God?
-- Micah 6:8¹*

Cornell Gilmore joined the Army in 1981 after graduating from the University of Maryland in 1980—the Army has not been the same since. Wearing a huge smile that filled the room; expressing kind words that filled our hearts; doing what was right without fail; showing kindness to his Soldiers and his neighbors; demonstrating a loving dedication to his family; and living out a faith that indeed moved mountains—Sergeant Major (SGM) Gilmore was truly larger than life. He lived larger than an ordinary man because he allowed himself to be a vessel that reflected his great and glorious God. Above all else, Cornell Gilmore was a choice servant of God who, by walking humbly with his maker, showed all of us how to lead, how to care, and how to love. The SGM left a legacy as powerful as his handshake, as sure as his word, and as big as his servant's heart.

Sergeant Major Gilmore left such a legacy, perhaps, because he did not care about legacies. A fellow SGM recalled asking “Gil” what he thought his legacy would be. Sergeant Major Gilmore thought for a minute and said,

I don't care about legacies. We just do what we can. All that legacy stuff means nothing to me.

The SGM's focus was not on himself and what others thought of him, but rather on his Soldiers, his JAG Corps, his Army, and his Nation. It is in some ways fitting, even while it is tragic, that his final act as a Soldier and leader was to travel to a dangerous land simply to make other Soldiers' lives better.

Gil's biography demonstrates how quickly his skills as a leader and Soldier were recognized. After serving as a legal specialist at Fort Polk, Louisiana, he served as a legal noncommissioned officer (NCO) in Germany, then as the administrative NCO at the Disciplinary Barracks at Fort Leavenworth, Kansas. In every remaining assignment of his twenty-one year career, he served as a leader—a NCO in Charge—culminating as a Chief Paralegal NCO, first at the 25th Infantry Division, Schofield Barracks, Hawaii, and then at I Corps, Fort Lewis, Washington. It was from these senior positions that the JAG Corps recognized him as the kind of leader and Soldier that needed to have broader impact, and selected him as the Sergeant Major of the JAG Corps.

Inside this magnificent Soldier beat a heart filled with faith and love that overflowed to all who knew him. His highest priority on Earth was to his beloved Donna and their children, Dawnita and C.J. Donna was with him from the very beginning—first the fiancée of a young man who was joining the Army, and then a military spouse for twenty-one years. His strength and his foundation—she was his partner in a life of faith and family. A devout Christian, Gil walked humbly with God, loving his family, serving his Church, and caring for his neighbor. In doing so, he demonstrated faith that was real, living, and active—it was truly saving faith that prompted him to action and that has brought him now into the presence of his Savior. The SGM knew that all the honor belonged to one higher than himself.

BUT TO DO JUSTICE, . . .
Blessed are they who maintain justice, who constantly do what is right.
-- Psalm 106:3

Leaders are judged, in the Army, by what they do. If they do what is right and lead with honor and integrity, they succeed. If they do not, subordinates, peers, and superiors alike will see through the charade. One is just if they are “acting . . . in conformity with what is morally upright or good.” In reviewing the reflections of those who worked with, and for, SGM Gilmore, it is clear that he was a Soldier and leader who acted justly without exception—doing what was morally upright and good for his people and his Army. One senior NCO said it best:

I have spent 19 years in the Army, and all in the JAG Corps. Sergeant Major Gilmore is the ONLY NCO that I have ever wanted to be like. . . . he truly inspired me.

Subordinates loved SGM Gilmore because they knew he was their champion—holding them to high standards, motivating them to exceed those standards, and rewarding them when they inevitably did. A young Soldier from Alaska said,

I had the honor to meet SGM Gilmore once. It was then that I realized that I had made the correct choice to become a JAG Corps soldier.²

The wife of a Staff Sergeant who had worked for Gil when he was the NCOIC at Leighton Barracks at the 1st Infantry Division remembered that the Sergeant Major

was always extremely nice and had a wonderful sense of humor. I remember that everyone liked him very well and my husband loved working . . . for him.

Another Soldier summed up the feelings we all share when he said to the SGM,

[w]e will miss you, but remember, we will go forward and continue to do our best to make you proud.

The SGM continues to motivate us to do our best.

Peers revered SGM Gilmore because he made them better than they thought they could be. His spirit, motivation, and selfless approach to duty lifted all around him to new heights of success. A fellow SGM said this:

Sergeant Major, you will always be my hero. I miss you so much. Sometimes I still hear you saying, “Are we alive and well?” And because I had the opportunity to meet a man of Cornell Gilmore's caliber I can truly say that I am alive and all is well with my soul. . . I am a better husband, father, and soldier because of Cornell W. Gilmore.

To know how superiors viewed him, perhaps, it is enough to say that SGM Gilmore was selected as the SGM of the Corps. But equally important is to know how the junior officers—Soldiers superior in rank, but not in experience—viewed the SGM. A former officer posted a remembrance from when he was a young first lieutenant:

I remember reporting to the OSJA of 3d ID in Würzburg in January 1996 as a young, green, 1LT JAG Officer. You greeted me with your irrepressible smile, joy and a hearty “Outstanding!” . . . During the

months that I had the privilege of serving with you before you moved on to Hawaii, I witnessed your enthusiasm, your dedication, and your genuine care and affection for your fellow Soldiers. I recall with fondness winning the Division OSJA basketball tournament playing alongside you. You were and are an example to all of how to be a soldier and a patriot My wife . . . and I are better people because of you . . .

Another officer, now a Major, says that she would not be in the Army today if it were not for SGM Gilmore. Lest you worry what those of higher rank thought, The Judge Advocate General, Major General Thomas J. Romig, had this to say:

[SGM Gilmore] was one of the most dynamic leaders I ever met. He had this charisma with soldiers—and really with everybody—that just warmed your heart. He could go into a room of soldiers and just light the place up.³

From every perspective—subordinates, peers, and superiors—SGM Gilmore was a Soldier and leader with few equals. He acted justly—doing what was right at all times—and demanded the same from all around him. His trademark as a leader, though, was caring for people—caring that reflected his faith that motivated him to action on behalf of his neighbor.

. . . TO LOVE KINDNESS . . .

[A]s those who have been chosen of God, holy and beloved, put on a heart of compassion, kindness, humility, gentleness and patience . . .

-- Colossians 3:12

Sergeant Major Gilmore always reached out to those around him—impacting the lives of all who knew him—Soldiers who worked for him, his neighbors in the community, and his beloved family. Regardless of creed, color, or rank, SGM Gilmore could be counted on to reach out and lift people up. His trademark phrases stick in everyone’s mind—“Greetings, everyone! How are you?” and “Go forth, and have a nice day!” Sergeant Major said these things because he meant them—he wanted to know how those around him were doing and he reached out to help those who were in need. The SGM always cared for his Soldiers and always made time for them. One day, as one of the many young Soldiers who visited him had left his office, a senior NCO suggested to him that maybe it would be better to have certain times of the day when Soldiers could come see him. That way, he wouldn’t get interrupted so much and could take care of all of the administrative aspects of his job. Sergeant Major Gilmore responded immediately,

I can’t turn away a soldier that wants to see me. That soldier may have just worked up the courage to bring me his problem; if I turn him away, he may never come back.

His work could wait, the Soldier could not. Having compassion for others was a way of life for Cornell Gilmore—as natural as breathing—it was simply a part of who he was. The Soldiers knew that their SGM cared for them. Some leaders demand obedience and use punitive measures to gain it. True leaders earn obedience because of the respect and love that their Soldiers have for them. The SGM was this latter kind of leader—Soldiers followed because they loved him and they loved him because they knew that the SGM loved them first. A young NCO said this:

Thanks for coming out to Baghdad to see us one last time. Your visits to these horrible places showed your desire to make sure that we, your 27Ds, were doing ok and that we had a big brother to call if we needed anything. . . . We miss you SGM . . .

One of the SGM’s great gifts was music. Multi-talented, he mastered the piano, the drums, the bass guitar, and he could *really* sing! The SGM used this gift as a mechanism of kindness, serving in his Church to praise God and lift up others. One couple from Hawaii recalled,

[w]e truly enjoyed the times we were able to be in fellowship with the Gilmore family and to see God use Brother Gilmore in the gift of directing the Schofield Chapel Gospel choir, playing the organ/piano and inspiring others to follow Christ. You touched the lives of so many in the gospel as well as your leadership in the military, always making yourself available to your soldiers.

A young man who was a member of a choir led by the SGM added this,

Brother Gilmore, was one of the few who was not swayed by my immature attitude toward life. Instead he gave words of kindness and encouragement. He smiled and simply informed me to let God use me. He always encouraged me to sing even when I “didn’t want to.” I remember his smile when I was sitting in the corner frowning; immediately I would perfect my disposition and “do better” because his greatness was contagious. He sang with ease, he taught music with ease and loved others with ease.

A young man who was in another of the SGM's choirs said:

You taught me not just music, but life lessons through your example and your words. You were and still are my mentor and my second father. . . . You really did have me covered.

Another trademark Gilmore phrase—I've got you covered—and another time where the phrase reflected the integrity of the SGM's life. He didn't just say that he would do something for his fellow man, he actually did it. There is no better witness or testimony to his unintended, but enormous legacy.

An instrument of kindness, the Gilmores' marriage served as a model and an inspiration for those around them. Married twenty-one years during the trials, tribulations, and joys of military family life while raising two exceptional children, the Gilmores' relationship set the standard of a loving marriage. The Gilmores' Christian faith enabled them to reflect Christ in this most sacred of institutions. Fridays were always "date night"—the SGM dressing up and showing how much he still cared for the love of his life. The SGM had given Donna a plaque just one week before he left for Iraq. It reads,

Happiness is being married to your best friend.

The Gilmores always opened their home, their love for each other overflowing to those around them. Thanksgiving tradition found Gil inviting as many people as he could find to their table and Donna cooking for days to feed them. A young man who had attended church with the Gilmores said,

[Sergeant Major Gilmore] and his wonderful wife Donna were like two angels. I would watch them praise and say to myself, "I can't wait to be like that."

Kindness to Soldiers, kindness to his neighbors, kindness to and through his family—SGM Gilmore was an example to the world of living out God's admonition to love kindness. We all are better for having witnessed so fine a testimony.

. . . AND WALK HUMBLY WITH YOUR GOD.

Do nothing from selfishness or empty conceit, but with humility of mind regard one another as more important than yourselves . . .

-- Philippians 2:3

One of the SGM's most enduring qualities was a humility and selflessness that was apparent to all around him. He never tried to make himself look good—he always tried to help others look good. His legendary sense of humor translated into an ability to laugh at himself—to not take things too seriously. A JAGC Major recalled attending a funeral with the SGM. Dressed in the Class A uniform at a small country church, the Soldiers were extremely hot. The Major accepted a fan when offered, but the SGM declined. While standing in the shade outside the church after the service, SGM Gilmore walked up to the officer, saluted, smiled a big wonderful smile, and said, "Ma'am you were so smart for taking that fan. I thought I was going to pass out, but I had to be tough and say 'Oh I don't need a fan. I am fine.'—What an idiot!" The officer recalls how this small incident made a huge impact on her, saying

[m]y tremendous respect for SGM Gilmore instantly increased. To admit that he was wrong on this little issue and to laugh about it . . . just showed his security in everything he does, his inner strength, and a wonderful ability so few so us have to laugh at ourselves.

Small things have a big impact when they reflect a humble walk with God.

There is no better measure of a man's walk with God than the example he has set for his family. Sergeant Major Gilmore's two children, Dawnita and C.J., have been models of faith and strength. The children led the choir at their father's memorial service at Shiloh Christian Church—a service with literally thousands in attendance. They demonstrated strength from faith that was passed down by a loving father. C.J.'s college choral group performed on his parent's wedding anniversary, December 4th, less than a month after the SGM passed away. C.J. called his mom up on stage to present her with flowers—kindness to others learned from a father who demonstrated kindness in how he lived. Both children wanted to stay with their mother longer after their father's death, but Donna insisted that they return to school and their studies. Donna remembers,

I could've gotten real selfish and said, "Look, I need my kids at home." But, I couldn't do that. Their father would not have been pleased with that.⁴

Selflessness learned from the example of a husband walking humbly with his God.

WELL DONE, GOOD AND FAITHFUL SERVANT

Well done, good and faithful servant! You have been faithful with a few things; I will put you in charge of many things.
-- *Matthew 25:23*

The Gilmore family reflects the powerful impact of a husband, father, and Soldier living out his role well and faithfully. Donna Gilmore, fighting through the pain and loss, draws strength knowing that the SGM is at “his permanent duty station” with his Savior. C.J. continues to develop his gift of music—a gift that he received from his father. With her dad gone, sacrificed like many others in the history of our Nation on the altar of freedom, Dawnita might be excused some bitterness. But she was quoted not long ago saying:

Dad was not a bitter person—the person I remember was the epitome of happiness. So, why would I have a horrible life after this? Because you know, all there is left to do is stay focused on God’s work . . . and number two, do everything Dad taught me.⁵

Extremely mature wisdom to make her father proud, and words that we would all do well to live by. May we all live as the SGM did—doing justice, loving kindness, and walking humbly with our God.*

Well Done, Gil, Be Thou at Peace.

* The staff of *The Army Lawyer* thanks the many people who contributed to this memorial. Particular appreciation goes to SGM Michael Glaze, SGM Michael Broady, and MSG Frank Rehtorovic for their invaluable assistance. Mostly, we thank the Gilmore Family—Donna, Dawnita, and C.J.—for allowing us to publish this memorial and for sharing a truly remarkable man with all of us.

¹ All scripture quotations throughout this memorial are taken from the New American Standard Bible,[®] Copyright © 1960, 1962, 1963, 1968, 1971, 1972, 1973, 1975, 1977, 1995 by The Lockman Foundation (www.Lockman.org). Used by permission.

² Many of the comments and reflections contained in this memorial were drawn from those posted at <http://www.fallenheroesmemorial.com/oif/profiles/gilmoreicornellw.html> (last visited Nov. 30, 2004).

³ Dan Fesperman, “A soldier’s soldier” is remembered. *Iraq: Sgt. Maj. Cornell W. Gilmore, a Baltimore native, was killed when a Black Hawk helicopter crashed last week*, BALT. SUN, Nov. 11, 2003, at 1A.

⁴ Sue Anne Pressley, *For Virginia Family, Perpetual Days of Anguish*, WASH. POST, Sept. 7, 2004, at A1.

⁵ *Id.*

Security Reviews of Media Reports on Military Operations: A Response to Professor Lee¹

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Introduction

Professor William E. Lee argued in a recent article in this journal that military security reviews of media reports as practiced during the Persian Gulf War and Operation Enduring Freedom were inconsistent with First Amendment freedoms.² In his article, Professor Lee conceded “the notion that the First Amendment right of access developed by the Supreme Court in the context of judicial proceedings does not transfer to wartime military operations.”³ However, he drew the questionable conclusion that “[p]reventing access to places or government information is less harmful to free expression than government action that prevents or punishes publication of information the press has acquired.”⁴ In making his argument, Professor Lee questioned the assertion of mine in a 1995 article that security reviews were an acceptable means for the military to control the release of sensitive information for national security purposes.⁵

Professor Lee was correct in his assertion that the military may limit media access to the battlefield. Although litigation on behalf of media organizations has not resulted in a definitive decision regarding media access to the battlefield,⁶ there is a line of cases that establishes that the government may limit access to activities when there is a compelling interest to do so.⁷ The cases addressing the government’s control of information under certain compelling circumstances lead to the unavoidable conclusion that the military’s press restrictions, such as security reviews, are constitutionally permissible. Further, conditioning media access to military operations on military security reviews is a longstanding tradition in combat journalism and an important tool for the military to use to ensure that the security of operations not be compromised. Certainly the military should apply this tool judiciously so as not to unduly interfere with fair reporting of the news. However, to simply limit reporters’ access to information or establish ground rules for reporting information about operations, as Professor Lee suggests,⁸ and then to trust the media to follow those ground rules is, from both a public policy and an operational security standpoint, worse than the security reviews. Instead, the military must follow a consistent policy regarding handling of media during military operations, including security reviews as necessary, but allowing as much media access as possible under operational circumstances. Certainly there is a tension at times between the media’s desire to report the news and the military’s need to control sensitive information; nevertheless, in instances when that tension exists, the discretion of the commander in the field to determine how and when to control information must prevail.

Case Law on Media Access

“Due to the reluctance of the press to sue the government during wartime,” Professor Lee wrote, “judicial involvement in the relationship between the press and the military is highly unlikely.”⁹ However, the media have not shown such a reluctance to sue the military over access.¹⁰ Rather, the abbreviated nature of recent international conflicts and the mootness doctrine have combined to limit judicial intervention in the media-military relationship. During the invasion of Grenada in

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² William E. Lee, “Security Review” and the First Amendment, 25 HARV. J. L. & PUB. POL’Y 743 (2002).

³ *Id.* at 744.

⁴ *Id.* at 745.

⁵ *Id.* at 755 (quoting Captain William A. Wilcox, Jr., *Media Coverage of Military Operations: OPLAW Meets the First Amendment*, ARMY LAW., May 1995, at 42).

⁶ See, e.g., *Nation Mag. v. United States Dep’t of Defense*, 762 F. Supp. 1558 (S.D. N.Y. 1991).

⁷ See *Globe Newspaper v. Superior Court*, 457 U.S. 596, 607 (1982).

⁸ Lee, *supra* note 2, at 763.

⁹ *Id.* at 745.

¹⁰ See, e.g., *Flynt v. Weinberger*, 588 F. Supp. 57 (D.D.C. 1984); *Nation Mag.*, 762 F. Supp. at 1560.

1983, for instance, the media were outraged after being kept off the island for two days following the initial invasion.¹¹ *Hustler* magazine publisher Larry Flynt took the military to court seeking a declaratory judgment and injunctive relief, but the case was dismissed as moot.¹² The district court further determined that the case did not meet the requirements of the “capable of repetition, yet evading review” exception to the mootness doctrine, because there was no “reasonable expectation” that the controversy would recur.¹³ The court elaborated further that even if the case was a live controversy it would not issue an injunction, because it would “limit the range of options available to the commanders in the field in the future, possibly jeopardizing the success of military operations and the lives of military personnel and thereby gravely damaging the national interest.”¹⁴

Because of press restrictions during the Persian Gulf War, members of the media brought an action against the military seeking declaratory judgment and injunctive relief.¹⁵ *Nation Magazine* and others contended that pool reporting regulations violated the First Amendment by inhibiting news gathering. In *Nation Magazine*, the district court determined that the plaintiffs met the “capable of repetition, yet evading review” test, and refused to dismiss the case as moot.¹⁶ However, the conclusion of the war rendered moot any claims for injunctive relief.¹⁷ The court also refused to grant a declaratory judgment, stating: “[s]ince the principles at stake are important and require a delicate balancing, prudence dictates that we leave the definition of the exact parameters of press access to military operations abroad for a later date when a full record is available, in the unfortunate event that there is another military operation.”¹⁸ Security review procedures were not challenged in the suit.

While cases specifically addressing media access to the battlefield have not been conclusive, commentators have argued that the media have a constitutional right of access to the battlefield.¹⁹ In support of this view they look to *Branzburg v. Hayes*,²⁰ in which the United States Supreme Court noted that “protection for seeking out the news” was critical to First Amendment freedom of the press.²¹ Nevertheless, the Court held that a reporter could be compelled to reveal a confidential source to a grand jury, because the government has a compelling interest in investigating crimes.²²

Whatever encouragement *Branzburg* may have provided to proponents of a right of access, however, was dampened in a series of cases involving media access to prisons and jails. In *Pell v. Procunier*²³ and *Saxbe v. Washington Post*,²⁴ the Court held that the Constitution does not require the government to grant press access to information not available to the public generally. In both cases, government regulations limiting reporters’ access to prisoners were upheld. In *Houchins v. KQED*,²⁵ the Court further determined that the First Amendment does not mandate a right of access to government information or sources of information and that there is no constitutional right of access to county jails.²⁶

¹¹ See Matthew J. Jacobs, Note, *Assessing the Constitutionality of Press Restrictions in the Persian Gulf War*, 44 STAN. L. REV. 675 (1992).

¹² *Flynt*, 588 F. Supp. at 59.

¹³ *Id.*

¹⁴ *Id.* at 60.

¹⁵ *Nation Mag.*, 762 F. Supp. at 1562.

¹⁶ *Id.* at 1569.

¹⁷ *Id.* at 1569-70.

¹⁸ *Id.* at 1572.

¹⁹ See, e.g., Kevin P. Kenealey, Comment, *The Persian Gulf War and the Press: Is There a Constitutional Right of Access to Military Operations?*, 87 NW. U. L. REV. 287 (1992).

²⁰ 408 U.S. 665 (1972).

²¹ *Id.* at 681.

²² *Id.* at 700.

²³ 417 U.S. 817 (1974).

²⁴ 417 U.S. 843 (1974).

²⁵ 438 U.S. 1 (1978).

²⁶ *Id.* at 15-16.

A series of cases that considered press access to courtrooms followed the prison cases. Beginning with *Richmond Newspapers v. Virginia*,²⁷ the Court recognized a media right of access to criminal trials.²⁸ That right was no greater, however, than the general public's right to attend criminal trials.²⁹ Further, the *Richmond Newspapers* Court recognized the need for open trials as a means of assuring that the government is conducting fair trials.³⁰ Therefore, closing trials to the media not only involves the right of a free press, but the Sixth Amendment right of the accused to a public trial.³¹

Two years later, *Globe Newspaper Co. v. Superior Court*³² solidified the Court's view that the First Amendment guaranteed a right of access to criminal trials because criminal trials historically had been public.³³ The Court has subsequently upheld the right of access of the media to criminal trials in other cases.³⁴ Critics of military press restrictions cite this line of cases in arguing that a right of access to the battlefield exists.³⁵

However, *Globe Newspaper* established a three-part test to determine whether the media is entitled to access to a government activity. First, for a right of access to exist, the activity must have been open historically.³⁶ Second, media access must play a significant role in the function of the government activity.³⁷ Finally, media access can be limited despite meeting the first two prongs of the test if a compelling government interest exists to limit access and these limits are narrowly tailored to meet that compelling interest.³⁸

While *Globe Newspaper* found that access to criminal trials met all those tests, the Court would likely find that access to military operations does not. First, and most importantly, warfare does not involve a historical pattern of openness.³⁹ While reporters have at times enjoyed a great deal of freedom in covering warfare—such as during the Vietnam War⁴⁰ - the military has frequently imposed strict limitations to press access to the battlefield, including security reviews of media reports, when the need arose.⁴¹ Since the Civil War, the first major American conflict covered by large numbers of war correspondents, field commanders have employed means of regulating the press, including censorship and sometimes expulsion from the forward line of troops.⁴² The military historically has determined when there is a need to limit access and what means must be used.⁴³ Past practices have included total denials of access, credentials for reporters, censorship and, more recently, pool reporting.⁴⁴ In addition, the power of military commanders to exclude members of the public when they believe the exclusion is necessary for mission efficiency has long been recognized—even in peacetime.⁴⁵

Second, while some news coverage of warfare is warranted to make the public aware of a conflict, the media's role in warfare is not as significant as it is in the justice system. A lack of battlefield coverage does not implicate other

²⁷ 448 U.S. 555 (1980).

²⁸ *Id.* at 580.

²⁹ *Id.* at 572-73.

³⁰ *Id.* at 571-72.

³¹ *Id.*

³² 457 U.S. 596 (1982).

³³ *Id.* at 605.

³⁴ *See, e.g.,* Press Enter. Co. v. Superior Court, 464 U.S. 501 (1984).

³⁵ *See* Kenealey, *supra* note 19, at 287; Roger W. Pincus, Comment, *Press Access to Military Operations: Grenada and the Need for a New Analytical Framework*, 135 U. PA. L. REV. 813 (1987).

³⁶ *Globe Newspaper*, 457 U.S. at 605.

³⁷ *Id.* at 606.

³⁸ *Id.* at 607.

³⁹ *See* Paul G. Cassell, *Restrictions on Press Coverage of Military Operations: The Right of Access, Grenada and "Off-the-Record Wars,"* 73 GEO. L.J. 931 (1985) (providing a detailed discussion of controls the military has historically placed on the media).

⁴⁰ *See* Jacobs, *supra* note 11, at 683-84.

⁴¹ *See generally* Cassell, *supra* note 39, at 933-41.

⁴² *See id.* at 935.

⁴³ *See id.* at 933-41.

⁴⁴ *See id.*; *see also* Kenealey, *supra* note 19, at 287.

⁴⁵ *See* Greer v. Spock, 424 U.S. 828 (1976).

constitutional protections, such as an accused's right to Due Process, as does a lack of coverage of criminal trials. Arguably, some level of press coverage is necessary to keep the nation informed. Access to the battlefield would not be necessary, however, to meet that need.

Finally, there is a compelling government interest in controlling access to military operations. The most important reasons to control media access are for operations security and to maintain the advantage of surprise. However, in making its case for press controls, the military might also point to logistical problems in dealing with numerous reporters without some controls in place to determine their identities, or even to possible negative effects on troop morale.

Some commentators have argued that the military's system of prepublication reviews employed during the Persian Gulf War and during Operation Enduring Freedom violated the constitutional prohibition against prior restraints of news.⁴⁶ The system, as employed during these armed conflicts, however, was constitutionally sound.

The prior restraints doctrine arose from the seminal case of *Near v. Minnesota*.⁴⁷ The *Near* Court struck down a Minnesota statute that provided for the abatement, as a nuisance, of a "malicious, scandalous and defamatory newspaper, magazine or other periodical."⁴⁸ Minnesota could hardly have had a set of facts that better matched the conduct addressed by that statute. State officials had shut down a newspaper known as *The Saturday Press*, an unquestionably reckless newspaper that attacked local politicians and "Jew gangsters."⁴⁹ The fact that freedom of the press "may be abused by miscreant purveyors of scandal, however, does not make any less necessary the immunity of the press from previous restraint in dealing with official misconduct," the Court held. "Subsequent punishment for such abuses as may exist is the appropriate remedy, consistent with constitutional privilege."⁵⁰ However, Chief Justice Hughes observed that the right to publish was not unlimited. "No one would question," he wrote, "but that a government might prevent ... publication of sailing dates of transports or the number or location of troops."⁵¹

Prepublication security reviews of media reports, however, do not constitute the kind of prior restraints prohibited by *Near*. During the Gulf War, the news organizations agreed to security reviews as a condition on participating in a pool system of reporting. As I asserted in my 1995 article, the military may lawfully request the news media to agree to a system of prepublication review as a condition on access to the battlefield. The military has no legal authority to prevent an article from being published. Indeed, in an age of global electronic communications, such an effort would be impossible. Rather, in the event a reporter released compromising information, the military would have no remedy until after the fact.

The Role of Security Reviews in Protecting the Military Mission

Professor Lee took issue with my 1995 assertion that if "a news organization flouted the agreement and published without a security review, that would be in effect a breach of contract, and the military's recourse would be to deny future access."⁵² The statement was made in the context of illustrating why security reviews do not constitute a prior restraint under *Near*.⁵³ My point was that the security review arrangement was analogous to an agreement that a reporter occasionally will make under which he or she agrees that, in exchange for certain information or an interview with a source, the reporter will allow the source to read the story before it is published.⁵⁴ Prior restraint is not implicated, because the reporter has agreed to the condition to get some information to which that reporter would not otherwise have access. Further, even if security

⁴⁶ See, e.g., Jacobs, *supra* note 11, at 675.

⁴⁷ 283 U.S. 697 (1931).

⁴⁸ *Id.* at 701-02.

⁴⁹ FRED W. FRIENDLY, MINNESOTA RAG: THE DRAMATIC STORY OF THE LANDMARK SUPREME COURT CASE THAT GAVE NEW MEANING TO FREEDOM OF THE PRESS 45-49 (1981).

⁵⁰ *Near*, 283 U.S. at 720.

⁵¹ *Id.* at 716. The Court further examined the doctrine in the "Pentagon Papers" case, *New York Times v. United States*, 403 U.S. 713 (1971) (per curiam). The Nixon administration had sought to enjoin publication of materials pertaining to the United States' involvement in the Vietnam War. See *id.* at 714. The Court reiterated its belief that the government "carries a heavy burden of showing justification for the imposition of such a restraint." *Id.*

⁵² Lee, *supra* note 2, at 758.

⁵³ Wilcox, *supra* note 5, at 51.

⁵⁴ Consider, for instance, if an opportunity to an exclusive interview with a recluse writer such as J.D. Salinger or Thomas Pynchon, or billionaire Howard Hughes before his death, were conditioned on the subject's prior review of a reporter's article. Although a reporter would not normally agree to such a condition, the situation could make it almost irresistible.

reviews were considered prior restraints, the prior restraint doctrine still provides an exception for publication of “national security” information that would cause “irreparable damage to our Nation or its people.”⁵⁵ Any court considering the issue would likely uphold a reasonable security review system, regardless of whether the news media had consented to the reviews. As I asserted in my 1995 article, however, a court might view a security review system more critically if it unnecessarily delayed routine stories.

Arguing against the military’s security review system, however, Professor Lee suggested that the government’s withholding information or access to certain areas “is less harmful to free expression than government action that prevents or punishes publication of information the press has acquired.”⁵⁶ He noted that during the Persian Gulf War security reviews were at times “used to suppress embarrassing information . . . such as a report about Navy pilots viewing pornographic films before leaving on missions” rather than to police purely operational security information.⁵⁷ Military spokesmen have conceded that some military commanders were overzealous in slowing publication of stories at times or suggesting changes that did not involve security concerns; however, those were exceptions that did not reflect official policy.⁵⁸ Part of the thrust of my 1995 article was cautionary toward the military to use prudence in exercising its control over information.⁵⁹ “Operational security,” I noted in 1995, “normally should be the only reason for blocking media access to an operation or to information.”⁶⁰ I noted further that, in a more prolonged conflict, “[c]ontinued strict press restrictions might have marred the public’s perception of war efforts and could have led to Congress imposing less flexible media relations rules.”⁶¹ I noted that even during the short duration of the Persian Gulf War, several members of Congress initiated inquiries into the press pool and security review procedures followed by the military.⁶²

Arguing against security reviews, Professor Lee proposed instead a system under which reporters would be given ground rules prior to allowing press access to military operations, including “types of information that, if published, would harm operational security.”⁶³ Then, he argued, “the press should be left alone.”⁶⁴ This argument, while understandably attractive to journalists, ignores the complexities of operational security. As then-Defense Secretary Richard Cheney noted during the early hours of the Persian Gulf ground campaign, “[e]ven the most innocent-sounding information could be used directly against the men and women whose lives are on the line carrying out these operations.”⁶⁵ During a sensitive phase of an operation, a commander cannot allow information to flow uncontrolled to the public. Security reviews, while they should be used sparingly, are one of the tools that a field commander must have to ensure that the security of his or her operations is not compromised. Otherwise, if a military press liaison were to make a simple mistake and let reporters see or hear some information that could compromise the military mission or unnecessarily risk lives, there would be no final safety net – no way to catch and correct that error—before the information was disseminated.

Further, while on-the-spot reporting may be somewhat compromised by security reviews, Professor Lee ignored the media’s role as the initial chroniclers of history. Reporters are witnesses to the military’s conduct or war. Even if restricted in the daily reports they file, they arguably still positively affect the way our forces conduct themselves in that, if only after the fact, they can expose strategic or logistical mistakes, poor troop morale or leadership, or even war crimes. Concern about how a military campaign will appear in history may ensure that the United States military conducts itself in a manner its nation would endorse.

⁵⁵ *New York Times*, 403 U.S. at 730 (Stewart, J., concurring).

⁵⁶ Lee, *supra* note 2, at 745.

⁵⁷ *Id.* at 758-59.

⁵⁸ See Jacobs, *supra* note 11, at 688.

⁵⁹ Others within the military were also counseling prudence. See, e.g., Richard F. Machamer, *Avoiding a Military-Media War in the Next Armed Conflict*, MIL. REV., Apr. 1993, at 43.

⁶⁰ Wilcox, *supra* note 5, at 42.

⁶¹ *Id.*

⁶² *Id.* at n.7 (citing Debra Gersch, *Senate to Begin Hearings on Media Access to War News*, EDITOR & PUBLISHER, Feb. 16, 1991, at 9).

⁶³ Lee, *supra* note 2, at 763.

⁶⁴ *Id.*

⁶⁵ Richard L. Berke, *News From the Gulf Is Good and Cheney’s Press Curbs Are Loosened*, N.Y. TIMES, Feb. 25, 1991, at A17.

A Prudent Approach to Military/Media Relations

During the Persian Gulf War, perhaps in part as a result of the military's strict media controls, some reporters chose to avoid military press restrictions by striking out on their own.⁶⁶ Then on 21 January 1991, the empty vehicle of CBS newsman Bob Simon, producer Peter Bliff, cameraman Roberto Alvarez, and soundman Juan Caldera was found near the Saudi-Kuwaiti border, with footprints in the sand toward the border of Kuwait.⁶⁷ The Iraqis captured and imprisoned Simon and his party for more than six weeks. Simon later said the Iraqis fed him only one meal a day of bread and thin soup, had beaten him, and had accused him of being a spy. "I think I'll cover wars again," he told a press conference, "but it'll never be the same ... a certain child sense of invulnerability, it's gone and I'll never get it back."⁶⁸ Other journalists as well opted to avoid military press restrictions, and at one point as many as twenty-eight were thought to be missing.⁶⁹

Certainly, no one among the military or the media wishes to see the horrors of Mr. Simon's experience repeated. Although a combat zone is an inherently dangerous place, reporters who adhere to the ground rules can expect a modicum of protection that those who strike out on their own cannot. Arguably, the military has a duty to protect members of the press operating within their areas of operation.⁷⁰ If media representatives do not operate within established procedures, however, their protection becomes problematic. Further, the presence of noncredentialed civilians roaming freely within a combat zone poses a security problem for field commanders, who may find it difficult to determine whether they are legitimate reporters or spies.⁷¹

As Professor Lee noted, journalists have voiced serious concerns over the military's means of regulating the media during military operations.⁷² "Media relations during the Persian Gulf War," I noted in my 1995 article, "perhaps were not the resounding success that the military public affairs sector has proclaimed."⁷³ Although the news coverage at the time was largely supportive of Gulf War efforts, a longer conflict with more casualties might have been more problematic for public relations officers. Media representatives were sharply critical about restrictions imposed by the military during the Gulf War.⁷⁴ "[V]ery little, if any, individual initiative and original reporting" would result from such restrictions, argued the trade journal *Editor & Publisher*. "The American people will be the losers."⁷⁵

The military today and members of the news media suffer a strained relationship. The roots of the rift between the military and the news media are difficult to ascertain. Some of the military's perception of the news media grew out of the Vietnam War, in which the press encountered few restrictions. Some commentators have blamed the loss of the war on unflattering coverage by the news media⁷⁶ or have argued that negative press contributed to the public's diminishing perception of the war. "When AP correspondent Peter Arnett compared the use of tear gas by South Vietnamese forces to the employment of mustard gas in World War I, for example, or when *New York Times* reporter Harrison Salisbury relayed enemy propaganda on the cruelty of American bombing in North Vietnam," wrote William M. Hammond, "they may or may not have given assistance to the enemy, but they assuredly reinforced the arguments of those members of the official community who sought to restrict press reporting of the war."⁷⁷ Some reporters were even perceived as being aligned with

⁶⁶ Richard Zoglin, *Jumping Out of the Pool*, TIME, Feb. 18, 1991, at 39.

⁶⁷ Debra Gersch, *Press Pools on the Verge of Collapse?*, EDITOR & PUBLISHER, Feb. 2, 1991, at 7.

⁶⁸ Debra Gersch, *Missing in Iraq*, EDITOR & PUBLISHER, Mar. 9, 1991, at 7.

⁶⁹ *Id.*

⁷⁰ See, e.g., Melissa Wells-Petry, *Reporters as the Guardians of Freedom*, MIL. REV., Feb. 1993, at 26.

⁷¹ Jacobs, *supra* note 11, at 51.

⁷² Lee, *supra* note 2, at 746.

⁷³ Jacobs, *supra* note 11, at 42.

⁷⁴ Machamer, *supra* note 59, at 51.

⁷⁵ Editorial, *Pentagon Rules*, EDITOR & PUBLISHER, Jan. 12, 1991, at 9.

⁷⁶ See WILLIAM J. SMALL, TO KILL A MESSENGER (1970) (providing discussions on whether the news media "lost" the Vietnam War), *contra* GLENN MACDONALD, REPORT OR DISTORT (1973); WILLIAM C. WESTMORELAND, A SOLDIER REPORTS 420 (1976).

⁷⁷ WILLIAM M. HAMMOND, THE MILITARY AND THE MEDIA 1968-1973: THE U.S. ARMY IN VIETNAM 6 (1996).

the antiwar movement.⁷⁸ In response, the media pointed to a growing mistrust of the military because of what they perceived as exaggerations of success during the early years of the war.⁷⁹

Further contributing to military officials' frustration with the news media during wartime is widespread inexperience among war correspondents. As I discussed in my 1995 article, reporters who cover Congress, executive agencies, and the judiciary do so on a long term basis, and consequently develop an understanding for the institutions they cover.⁸⁰ However, because the United States is not always at war, there is no corps of permanent war correspondents. When the nation goes to war, reporters are taken off other beats, and many have little or no experience covering military matters. "Most of the almost 1,500-member U.S. press corps I saw during Desert Storm couldn't tell a tank from a turtle," wrote columnist David Hackworth.⁸¹ As a result, busy officers assigned to brief reporters on the war had to spend additional time answering rudimentary questions to ensure that information was understood.

Conversely, media representatives, to some extent, may share the public's perception about the military arises from a belief that, particularly the officer corps, has a vested interest in promoting war. Because American officers' status and pay are based on rank, and wartime is perceived as the best time to advance in rank, there is a longstanding belief that some officers may desire war to improve their own fortunes.⁸² In addition to this common misperception, the military has at times appeared overzealous in its efforts to promote its own war efforts, which zeal has further engendered media distrust.⁸³

Nevertheless, the media and the military have a symbiotic relationship. The press depends on military access to report the news. Because of this, representatives of the news media will continue to push for as much access to military events as possible. Military leaders, on the other hand, must realize that the media will be a substantial part of every war effort. As I asserted in 1995, public support for military operations is critical to sustain an extended war effort. Thus, "the existing chill in media relations must be thawed to ensure that the military will be able to tell its story."⁸⁴

Because of the need to maintain a healthy relationship between the news media and the military, I cautioned in 1995 that the military should not be inflexible regarding media access. Though I concluded that security reviews, along with other constraints on media access, were constitutionally permissible, I also urged that "the military generally should limit media access only when there is a compelling interest in so doing."⁸⁵ This, I urged, should usually be limited to situations involving operations security. Finally, I urged that the military adhere to the general framework established by the "Sidle Panel" recommendations, which were prompted by media dissatisfaction by the Grenada invasion and included input from representatives from journalism schools, the media, and the military.⁸⁶ The Panel's recommendations can be summarized as follows:

1. Plan media relations efforts concurrently with operational planning.
2. If pools are necessary, include the maximum number of reporters, and maintain pools for the minimum duration.
3. Generally, call for voluntary compliance of the media with press restrictions.
4. Plan for sufficient equipment and qualified personnel to meet media relations needs.
5. Make communications facilities available to the media as soon as practicable.
6. Make theatre transportation available to the media.

⁷⁸ *Id.* at 357.

⁷⁹ WILLIAM M. HAMMOND, *THE MILITARY AND THE MEDIA 1962-1968: THE U.S. ARMY IN VIETNAM* 320 (1988).

⁸⁰ Jacobs, *supra* note 11, at 44.

⁸¹ David H. Hackworth, *Learning How to Cover a War*, *NEWSWEEK*, Dec. 21, 1992, at 32.

⁸² *Cf.* ALEXIS DE TOCQUEVILLE, *DEMOCRACY IN AMERICA* 274-80 (R. Heffner ed., 1956).

⁸³ *See* Hammond, *supra* note 79.

⁸⁴ Jacobs, *supra* note 11, at 42.

⁸⁵ *Id.* at 51.

⁸⁶ Cassell, *supra* note 39, at 946.

7. Promote media-military understanding through meetings and educational programs.⁸⁷

While the Sidle Panel provided the most coherent rules to date for addressing media-military relations, I also urged in my 1995 article that military lawyers advise commanders to refrain from placing unnecessary restrictions on the press.⁸⁸

Conclusion

Professor Lee was correct in his assertion that “American journalists naturally are averse to government review of news stories.”⁸⁹ It is doubtless true as well that, at times during the press coverage of the Gulf War, overzealous military officers unnecessarily delayed the release of some stories, exceeded operational security concerns during security reviews, and “veered into image control.”⁹⁰ Nevertheless, the security review is a legal and necessary tool that ensures that the military can focus on the primary purpose of a military engagement – to fight an enemy. The press perceives its role as producing as much relevant news about a conflict as possible; however, the military has an intense security concern that must take precedence on the battlefield. Nevertheless, the military must exercise its security powers wisely. Press reporting can have a major impact on the United States’ war efforts. While military leaders must be vigilant in ensuring that security information stay secure; they must be equally vigilant to ensure that the media is able to tell its story. As I noted in 1995, the military’s treatment of the media can become a part of the story, and unnecessary press restrictions can make a difficult situation appear even worse than it is.⁹¹

⁸⁷ *Id.*

⁸⁸ Jacobs, *supra* note 11, at 52.

⁸⁹ Lee, *supra* note 2, at 759.

⁹⁰ *Id.*

⁹¹ Jacobs, *supra* note 11, at 53.

TJAGS Practice Notes

Labor Law Note

De Minimis Conditions of Employment: Must Management Always Bargain?

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*“De minimis non curat lex: the law does not concern itself with trifles.”*¹

Introduction

The Federal Service Labor-Management Relations Statute (FSLMRS)² requires agencies to negotiate with the exclusive representative regarding any change to a condition of employment.³ Conditions of employment that are subject to negotiation include:

[P]ersonnel policies, practices, and matters, whether established by rule, regulation, or otherwise, affecting working conditions, except that such term does not include policies, practices, and matters—(A) relating to political activities . . . (B) relating to the classification of any positions; or (C) to the extent such matters are specifically provided for by Federal statute.⁴

Nothing in the plain language of the statute suggests that a de minimis change is excluded from the obligation to bargain.⁵

Until recently, it was commonly accepted that a management change to a substantively negotiable condition of employment triggered the agency obligation to negotiate, “no matter how trivial the change.”⁶ The Federal Labor Relations Authority (FLRA) held that “where an agency institutes a change in a condition of employment and the change is itself negotiable, the extent of the impact of the change on unit employees is not relevant to whether an agency is obligated to bargain.”⁷ There was no requirement for a threshold analysis of the extent of the change before an obligation to bargain arose—a de minimis test.⁸ Simply put, if a condition of employment was changed, an obligation to bargain arose, no matter

¹ BLACK'S LAW DICTIONARY 433 (7th ed. 1999).

² 5 U.S.C. § 7101-7135 (LEXIS 2004).

³ *Id.* § 7102 (providing that employees have the right to engage in collective bargaining with respect to conditions of employment).

⁴ *Id.* § 7103(a)(14). Matters specifically excluded from the bargaining obligation by federal statute include the management rights identified in 5 U.S.C. § 7106.

⁵ *See id.*

⁶ Soc. Sec. Admin. Office of Hearings and Appeals, Charleston, S.C. and Ass'n of Admin. Law Judges Int'l Fed'n of Prof'l and Technical Engr's, 59 F.L.R.A. 646, 650 (2004) [hereinafter SSAOHA]. *See also* Air Force Logistics Command, Warner Robins Air Logistics Ctr., Robins Air Force Base, Ga. And Am. Fed'n of Gov't Employees, 53 F.L.R.A. 1664, 1669 (1998) (stating that the de minimis standard has never been applied to “a change in conditions of employment that is substantively bargainable” under the FSLMRS).

⁷ 92 Bomb Wing, Fairchild Air Force Base, Spokane, Wash. and Nat'l Fed'n of Fed. Employees Local 11, 50 F.L.R.A. 701, 704 (1995). *See also* Dep't of Veterans Affairs Veterans Admin. Med. Ctr., Veterans Canteen Serv., Lexington, Ky. And Nat'l Ass'n of Gov't Employees, 44 F.L.R.A. 179 (1990) (finding that the degree to which the agency's actions changed the vending room did not determine whether or not there had been a change). The FLRA general counsel issued specific guidance stating that “where an agency institutes a change in conditions of employment and the change is itself substantively negotiable, the agency *must* negotiate over the decision to make the change, rather than just procedures and appropriate arrangements.” Memorandum, Joseph Swerdzewski, FLRA General Counsel, to Regional Directors, subject: Executive Summary: Guidance in Determining Whether Union Bargaining Proposals Are Within the Scope of Bargaining Under the Federal Service Labor-Management Relations Statute, *available at* http://www.flra.gov/gc/b_scope_x.html (last visited Oct. 19, 2004).

⁸ Air Force Logistics Command Warner Robins Air Logistics Center, Robins Air Force Base, Ga., 53 F.L.R.A. at 1669 (“The duty to bargain over negotiable conditions of employment is not eliminated by the degree to which unit employees are affected by a change in such conditions”).

how trivial the change.⁹ The only time a de minimis test was applied was in the limited situation in which the substance of the change itself involved a reserved management right.¹⁰

In *Social Security Administration Office of Hearings and Appeals, Charleston, South Carolina & Association of Administrative Law Judges International Federation of Professional and Technical Engineers, AFL-CIO (SSAOHA)*, the FLRA decided that the degree of a change to a condition of employment is relevant to whether or not the change requires negotiation pursuant to the FSLMRS.¹¹ This decision to apply a de minimis standard to the substantive negotiability¹² of a change to a condition of employment represents a stark departure from the previously understood obligation to bargain any change to a condition of employment regardless of its significance or impact.

Facts

In *SSAOHA*, the Office of Administrative Appeals of the Social Security Administration (SSA) reduced the number of reserved parking spaces for union members in the Association of Administrative Law Judges from twelve to six.¹³ Although the original six reserved spaces were not the result of formal bargaining, all parties agreed that the change in the number of reserved parking spaces represented a change in a condition of employment.¹⁴ The SSA argued that the change in the number of reserved parking spaces was de minimis, because there were ample unreserved parking spaces available for all employees.¹⁵

The FLRA decided that the de minimis standard, previously applied only to reserved management rights,¹⁶ should also apply to substantively negotiable changes to conditions of employment.¹⁷ The FLRA held that “no interests are served by requiring ‘bargaining over every single management action, no matter how slight the impact of that action.’”¹⁸ Accordingly, the FLRA declared that the de minimis standard would apply to all “future cases to determine whether an agency has a duty to bargain in situations in which it changes unit employees’ conditions of employment.”¹⁹ The FLRA further stated that the method for determining whether a substantively negotiable change is de minimis is the same method applied to impact and implementation negotiations following the exercise of a management right.²⁰ The majority asserted that applying this already developed standard would not only promote consistency, but would provide “ample guidance to the parties to determine when a bargaining obligation is incurred.”²¹

⁹ *Id.* Where management is “required by law to bargain over the substance of a change in conditions of employment, they must do so without regard to the impact of the change.” *SSAOHA*, 59 F.L.R.A. at 656 (Pope, dissenting).

¹⁰ *See id.* at 649-50; *infra* notes 44-54 and accompanying text.

¹¹ *SSAOHA*, 59 F.L.R.A. at 654.

¹² Throughout this note, the author uses the phrase “substantive negotiability” or “substance case” to refer to a matter in which the change at issue did affect a condition of employment, but for which the impact of the change has not yet been determined through application of the de minimis test. *SSAOHA*, 59 F.L.R.A. at 656 (Pope, dissenting). Under previous FLRA precedent, all “substance cases”—all “substantively negotiable” matters—triggered the duty to bargain. *Id.* Under *SSAOHA*, the duty to bargain over the change is triggered only if the substantively negotiable condition of employment changed is more than de minimis. *Id.* at 653-54.

¹³ *Id.* at 646.

¹⁴ *Id.* at 649.

¹⁵ *Id.* at 654.

¹⁶ *See infra* notes 44-54 and accompanying text.

¹⁷ *SSAOHA*, 59 F.L.R.A. at 653-54.

¹⁸ *Id.* at 653 (citing Dep’t of Health and Human Servs. SSA and Am. Fed’n of Gov’t Employees, Local 1760, 24 F.L.R.A. 403, 406 (1986) [hereinafter Dep’t of Health and Human Servs. SSA]) (revising the criteria for assessing whether the impact of a change in an employee’s conditions of employment, under a reserved management right, was de minimis).

¹⁹ *Id.* at 654.

²⁰ *Id.* at 653; *see also infra* notes 44-54 and accompanying text.

²¹ *SSAOHA*, 59 F.L.R.A. at 654.

Discussion

Justification for the Decision

The FLRA based its decision in *SSAOHA* on a somewhat unexpected analysis of cases involving the Executive Order that managed federal labor relations before the FSLMRS.²² The FLRA held that labor-relations cases decided under Executive Order 11,491 by the Assistant Secretary of Labor for Labor-Management Relations (Assistant Secretary of Labor)²³ were binding on cases arising under the FSLMRS unless specifically reversed. This includes the Assistant Secretary of Labor decision to apply a de minimis test to substantively negotiable changes to conditions of employment.²⁴ The dissent described this rationale as “simply wrong”²⁵ and as “scrap[ping] a bright-line rule that is firmly rooted in the Statute and well known to the parties.”²⁶

Prior to enactment of the FSLMRS, labor-management relations within the federal sector were governed by Executive Order 11,491.²⁷ Like the FSLMRS, the plain language of Executive Order 11,491 did not set a threshold level of impact that a changed condition of employment must reach before triggering an agency’s obligation to bargain.²⁸ When reviewing this language, the Assistant Secretary of Labor exercised his authority to interpret the executive order²⁹ and determined that bargaining was not required over every change to a condition of employment. Rather, bargaining was required over only “those matters which *materially affect*, and have a *substantial impact* on, personnel policies, practices, and general working conditions.”³⁰

After assuming responsibility for interpreting the executive order,³¹ the FLRA reaffirmed the Assistant Secretary of Labor’s application of a de minimis test to substantive changes in conditions of employment.³² When interpreting the corresponding provision of the FSLMRS, however, the FLRA stated that “the extent of impact of any unilateral change in conditions of employment” is not relevant to the substantive negotiability of the change.³³ The FLRA did not offer any explanation for why they interpreted the FSLMRS language different than the similar language in the executive order.

²² *Id.* at 650-53.

²³ See *infra* notes 27-30 and accompanying text.

²⁴ *SSAOHA*, 59 F.L.R.A. at 651; see also *infra* notes 27-30 and accompanying text.

²⁵ *SSAOHA*, 59 F.L.R.A. at 657.

²⁶ *Id.* at 656 (Pope, dissenting). Pope further stated that the newly changed rule will impede efficient and effective government decision making because it will create “an entirely new generation of bargaining disputes” and increase litigation “over whether parties should be required to bargain over relatively insignificant matters.” *Id.* at 658 (Pope, dissenting).

²⁷ Exec. Order No. 11,491, 34 Fed. Reg. 17605 (Oct. 29, 1969). The first executive order to manage Labor-Management Relations government-wide, was signed in 1962. See Exec. Order No. 10,988, 34 Fed. Reg. 17605 (Jan. 17, 1962).

²⁸ Compare Exec. Order No. 11,491, § 11(a) (providing that the negotiation obligation covers “personnel policies and practices and matters affecting working conditions”) with 5 U.S.C. § 7103(a)(14) (2000); see also Fed. Aviation Admin. and Nat’l Air Traffic Controller’s Ass’n, 55 F.L.R.A. 254, 259 (1999) (noting that the duty to bargain under the executive order and under the FSLMRS is “virtually identical”).

²⁹ Exec. Order No. 11,491, §§ 6 and 19 (stating that the Assistant Secretary of Labor for Labor-Management Relations shall resolve complaints regarding a refusal to consult, confer or negotiate with respect to personnel policies and practices and matters affecting working conditions).

³⁰ Dep’t of Defense, Air Nat’l Guard, Tex. Air Nat’l Guard Camp Mabry, Austin, Tex., 6 A/SLMR 591, A/SLMR No. 738 (1976) (emphasis added) [hereinafter DOD Tex. Air Nat’l Guard].

³¹ The FLRA was created by the Civil Service Reform Act of 1978. Pub. L. No. 95-454, 92 Stat. 1111 (1978) (codified as amended at 5 U.S.C. § 7101-7135. (2000)). The responsibility to interpret Executive Order 11491 was transferred to the FLRA pursuant to section 304 of Reorganization Plan No. 2 of 1978. 43 Fed. Reg. 36,040 (Aug. 15, 1978). See also 44 Fed. Reg. 44,741 (July 30, 1979).

³² Soc. Sec. Admin., Bureau of Hearings and Appeals and Am. Fed’n of Gov’t Employees, 2 F.L.R.A. 238, 239 (1979) (stating that the condition of employment changed “did not have any substantial impact on personnel policies, practices or general working conditions”).

³³ United States Army Reserve Components Pers. & Admin. Ctr., St. Louis, Mo. and Am. Fed’n of Gov’t Employees, Local 900, 19 F.L.R.A. 290 (1985). This decision was actually consistent with dicta in *Social Security Administration Bureau of Hearings and Appeals and American Federation of Government Employees* in which the FLRA stated that:

In conformity with section 902(B) of the Civil Service Reform Act of 1978 (92 Stat. 1224), the present case is decided *solely* on the basis of E.O. 11491, as amended, and as if the new Federal Service Labor-Management Relations Statute (92 Stat. 1191) had not been enacted. *The decision and order does not prejudge in any manner either the meaning or application of related provisions in the new statute or the result which would have been reached by the Authority if the case had arisen under the statute rather than the Executive Order.*

2 F.L.R.A. 238 n.2 (emphasis added).

Nevertheless, every subsequent case considered by the FLRA reaffirmed the inapplicability of the de minimis test to substantively negotiable changes under the FSLMRS.

In *SSAOHA*, the FLRA stated that the decision by the Assistant Secretary of Labor establishing a “material affect and a substantial impact”³⁴ test for evaluating changes to substantively negotiable conditions of employment remained in effect when the FSLMRS was enacted.³⁵ Essentially, the FLRA was relying on the last clause of the FSLMRS which stated that:

Policies, regulations, and procedures established under and decisions issued under Executive Order[] 11491 . . . shall remain in full force and effect until revised or revoked by the President, or unless superseded by specific provisions of this chapter or by regulations or decisions issued pursuant to this chapter.³⁶

Additionally, the majority in *SSAOHA* relied on a literal interpretation of a 1985 District of Columbia Circuit Court case which stated that “the FLRA *must* acknowledge [Assistant Secretary of Labor] precedent and provide a reason for departure, just as it must when it reappraises its own precedent.”³⁷ Since none of the FLRA decisions abandoning the de minimis test under the FSLMRS provided a specific reason for departing from the Assistant Secretary of Labor’s interpretation of the executive order, the majority in *SSAOHA* disregarded all of the FLRA precedent.³⁸

The dissent in *SSAOHA* objected to the majority reliance on the executive order to support their decision. The dissent pointed out that “the legislative history of the statute makes clear that Congress intended the Authority to abandon the ‘haste to restrict the scope of bargaining’ present under the executive order.”³⁹ In further differentiating the executive order from the FSLMRS, the dissent noted that while the executive order did not set forth a specific requirement to engage in collective bargaining, the language of the FSLMRS specifically required “collective bargaining with respect to conditions of employment . . . [e]xcept as otherwise provided.”⁴⁰ According to the dissent, “except as otherwise provided” means that all changes to substantively negotiable conditions of employment required bargaining unless the statute specifically excluded them as a management right or a permissive management right.⁴¹ Furthermore, the dissent noted that “[t]he limited scope of Federal sector bargaining caused by external laws, rules, and regulations also demands that the Authority not impose further limitations unless they are based on clear statutory authority and are buttressed by sound policy considerations.”⁴²

³⁴ The “material affect and substantial impact” test described in *DOD, Tex. Air Nat’l Guard*, evolved in subsequent management rights cases to be called the “substantial impact” standard, the “impact” standard, and finally, the de minimis standard. See *SSAOHA*, 59 F.L.R.A. 646, 652 n.9 (2004) (citations omitted).

³⁵ *Id.* at 651 and n.8.

³⁶ 5 U.S.C. § 7135(b) (2000).

³⁷ *SSAOHA*, 59 F.L.R.A. at 653 (citing *Nat’l Treasury Employees Union v. FLRA*, 774 F.2d 1181, 1192 (D.C. Cir. 1985)) (emphasis added).

³⁸ *Id.* The majority also asserted that applying a de minimis standard to collective bargaining under the FSLMRS would make the federal system more like labor-management relations in the private sector as governed by the National Labor Relations Act. *Id.* at 651. The majority never explains why the federal system of labor management should mirror the private sector, but asserts consistency between the two systems as good for its own sake. Regarding this issue, the dissent noted the following:

[T]he degree of relevance of private sector case law to public sector labor relations will vary greatly depending upon the particular statutory provisions and legal concepts at issue . . . [and that] . . . the bargaining status of any given subject is determined [in the public and private sectors] by different statutory provisions and by different policy considerations.

Id. at 657 (Pope, dissenting) (quoting *Library of Congress v. FLRA*, 699 F.2d 1280, 1287 (D.C. Cir. 1983)).

³⁹ *Id.* (Pope, dissenting) (citing 124 CONG. REC. H9638 (daily ed. Sept. 13, 1978) (statement of Rep. Clay)); see also *New York Council, Ass’n of Civilian Technicians v. FLRA*, 757 F.2d 502, 508 (2d Cir. 1985) (providing that in enacting the Statute, Congress intended to expand the scope of bargaining from that under the executive order).

⁴⁰ *SSAOHA*, 59 F.L.R.A. at 656 (Pope, dissenting) (citing 5 U.S.C. § 7102 (2000)) (emphasis added).

⁴¹ *Id.* (Pope, dissenting). Although not addressed by the dissent, there are several other potential problems with the FLRA’s justification in *SSAOHA*. First, the FLRA is not bound by the decisions of any single judicial Circuit. *Headquarters, Nat’l Aeronautics & Space Admin. and Nat’l Aeronautics & Space Admin., Office of the Inspector Gen.*, 50 F.L.R.A. 601, 612-14 (1995), *enforced*, 120 F.3d 1208 (11th Cir. 1997), *aff’d*, 527 U.S. 229 (1999) (stating that the FLRA declined to follow the D.C. Circuit Court’s interpretations of the FSLMRS as it pertains to representatives of the agency). Second, even assuming *National Treasury Employees Union v. FLRA* imposed the requirement that the FLRA specifically identify and justify overturning precedent decided by the Assistant Secretary of Labor, there is nothing which suggests the remedy for failing to do so is to render meaningless the twenty-five years of overruling opinions. Third, and perhaps most important, the FLRA abandoned the “material affect and significant impact” test before the decision in *National Treasury Employees Union v. FLRA*, and therefore was not obligated to specifically “acknowledge the precedent . . . and provide a reason for departure” before adopting a new rule for determining substantive negotiability. *SSAOHA*, 59 F.L.R.A. at 652 (quoting *Nat’l Treasury Employees Union v. FLRA*, 774 F.2d at 1192). Compare *United States Army Reserve Components Pers. & Admin. Ctr., St. Louis, Mo. and Am. Fed’n of Gov’t Employees*, 19 F.L.R.A. 290 (July 25, 1985) with *NTEU v. FLRA*, 774 F.2d 1181 (Oct. 11, 1985).

⁴² *SSAOHA*, 59 F.L.R.A. at 656 (quoting *Dep’t of Health and Human Servs. SSA*, 24 F.L.R.A. 403, 406-07 (1986)).

The nuances of the justification for the decision in *SSAOHA* are important, because the FLRA's general counsel filed a petition for review in the Circuit Court for the District of Columbia.⁴³ Labor counselors need to be aware of the impact of that potential decision on the assertion of a de minimis defense.

Application of the De Minimis Standard to Management Right Changes

As discussed previously, *SSAOHA* held that the de minimis test to be applied to substantively negotiable changes would be the same as the de minimis test that is applied to changes pursuant to management rights.⁴⁴ Accordingly, in order to understand the applicability of the de minimis test to substantively negotiable changes, it is necessary to first understand the de minimis test as it has been applied to changes made pursuant to management rights.

When an agency initiates a change to a condition of employment under a reserved management right,⁴⁵ the decision is not negotiable.⁴⁶ Still, the agency is required to negotiate over the impact and implementation of the decision.⁴⁷ The requirement for impact and implementation negotiation, however, is limited to those situations in which the change has more than a de minimis effect on the unit employees' conditions of employment.⁴⁸ The FLRA established this minimum threshold for impact and implementation negotiations because the interests of the FSLMRS were not served by "bargaining over every single management action, no matter how slight the impact of that action."⁴⁹

The FLRA first articulated a clear standard for determining whether a change under a management right was more than de minimis in *Department of Health and Human Services, SSA, Region V, Chicago, Ill. and American Federation of Government Employees, Local 3239*.⁵⁰ In that case, the FLRA adopted a list of five criteria for assessing whether a change was de minimis:

(1) [t]he nature of the change as it affects or foreseeably affects unit employees as individuals or as a whole (e.g. the extent of the change in work duties, location, office space, hours, employment, loss of benefits and/or wages, etc); (2) [t]he temporary, recurring or permanent nature of the change (i.e., the duration and the frequency with which it affects unit employees); (3) [t]he number of unit employees affected or foreseeably affected by the change; (4) [t]he size of the bargaining unit; (5) [t]he extent to which the parties may have established through negotiation or past practice, procedures and appropriate arrangements concerning analogous changes in the past.⁵¹

Just over one year later, the FLRA "reassessed and modified" this standard.⁵² In *Department of Health and Human Services, SSA and American Federation of Government Employees, Local 1760*, the FLRA held that application of the de minimis standard to changes under a management right would be determined by carefully examining the "pertinent facts and circumstances" of the change, with "principle emphasis on such general areas of consideration as the nature and extent of the

⁴³ *SSAOHA, petition for review filed*, No. 04-1129 (D.C. Cir. Apr. 12, 2004). Oral Argument is currently scheduled for 9 December 2004.

⁴⁴ *SSAOHA*, 59 F.L.R.A. at 653-54.

⁴⁵ Decisions made pursuant to the following management rights do not require negotiation with the union: mission, budget, organization, number of employees, internal security practices, hiring, assigning work, directing, layoffs, removal, reduction in grade or pay, disciplinary action, and determinations with respect to contracting out. 5 U.S.C. § 7106 (2000).

⁴⁶ For example, where a commander reasonably believes that security concerns require the placement of jersey-barriers around the command headquarters in such a fashion that it will block numerous parking spaces, there is no obligation to negotiate whether or not such jersey-barriers can be placed, although there is an obligation to negotiate the impact and implementation of the decision.

⁴⁷ Impact and implementation negotiations are also referred to as appropriate arrangements by the FLRA. See Memorandum, Executive Summary, *supra* note 7.

⁴⁸ The FLRA specifically stated that "no duty to bargain arises from the exercise of a management right that results in an impact or a reasonably foreseeable impact on bargaining unit employees which is no more than de minimis." Dep't of Health and Human Srvs., Soc. Sec. Admin., Chicago Region and Am. Fed'n of Gov't Employees, 15 F.L.R.A. 922, 924 (1984); see also Office of Program Operations, Field Operations, Soc. Sec. Admin., San Francisco Region and Council of Dist. Office Locals, Am. Fed'n of Gov't Employees, San Francisco Region, 5 F.L.R.A. 333, 336-37 (1981); Dep't of Transp., Fed. Aviation Admin. and Prof'l Airways Sys. Specialists, 19 F.L.R.A. 472, 476 (1985).

⁴⁹ Dep't of Health and Human Srvs. SSA, 24 F.L.R.A. 403, 406 (1986).

⁵⁰ 19 F.L.R.A. 827 (1985).

⁵¹ *Id.* at 834-35 (McGinnis, concurring) (stating that the FLRA members had mutually agreed to use these five criteria in all future cases when applying the de minimis test).

⁵² See *Dep't of Health and Human Srvs. SSA*, 24 F.L.R.A. at 407 (offering no explanation for why the standard needed to be "reassessed and modified").

effect or reasonably foreseeable effect of the change on . . . bargaining unit employees.”⁵³ In distinguishing the five criteria, the FLRA stated that the number of employees affected by the change and the parties’ bargaining history would not be controlling factors in applying the de minimis test, and that the size of the bargaining unit would not be a factor at all.⁵⁴ The de minimis standard articulated in *Department of Health and Human Services, SSA and American Federation of Government Employees, Local 1760* is vaguer than the five criteria articulated in *Department of Health and Human Services., SSA, Region V, Chicago, Ill. and American Federation of Government Employees, Local 3239*, but it has served as the defining standard for analyzing the degree of changes pursuant to reserved management rights.

Application of the De Minimis Standard to Substantively Negotiable Changes

The application of the de minimis standard to management rights cases since 1985 has not always resulted in predictable outcomes,⁵⁵ and it is therefore unlikely that this standard will provide “ample guidance”⁵⁶ in cases involving substantively negotiable matters. The defined standard in management rights cases is so vague and circumstance dependent as to provide little actual guidance. Based on the FLRA’s decision in *SSAOHA*, however, successful application of the de minimis test appears to require convincing the FLRA that the “major characteristics” of the condition of employment changed have not really changed.⁵⁷

In applying the de minimis test to the substantively negotiable change in *SSAOHA*, the FLRA compared the relevant major characteristics of parking before and after the change. Specifically, the FLRA stated that:

Before the change in the number of reserved parking spaces, the record established that the unit employees had access to parking in the facility at their place of employment; they did not have to pay for that parking; they had “in and out” privileges; and they had no difficulty in finding spaces in which to park; either at the beginning of the workday or during the workday itself.

After the change in the number of reserved parking spaces, the record establishes that the unit employees have had access to parking at their place of employment; they have not had to pay for that parking; they have had “in and out” privileges; and they have had no difficulty in finding spaces in which to park, either at the beginning of the workday or during the workday itself.⁵⁸

Although the FLRA does not use the phrase “major characteristics” in its application of the de minimis standard to the facts in *SSAOHA*, identifying these characteristics is obviously crucial. Determining which characteristics of the condition of employment have or have not changed, and determining why those characteristics that have not changed are the most important characteristics, is the implicit foundation of a successful application of the de minimis standard. Labor counselors making a de minimis argument are well advised to frame the application of the standard to the facts in their case exactly as the FLRA did in *SSAOHA*—as a “before and after” comparison of the major characteristics of the condition of employment

⁵³ *Id.* at 407-8; see also *United States Dep’t of the Treasury, IRS and Nat’l Treasury Employees Union*, 56 F.L.R.A. 906, 913 (2000) (stating that in applying the de minimis doctrine, the FLRA looks to the nature and extent of the effect or the reasonably foreseeable effect, of the change on bargaining unit employees’ conditions of employment).

⁵⁴ *Dep’t of Health and Human Servs. SSA*, 24 F.L.R.A. at 407-08.

⁵⁵ The FLRA has found a management right change to be greater than de minimis where it affected the following: the amount of employee travel, *FAA, Washington, D.C. and Prof’l Airways Sys. Specialists*, 19 F.L.R.A. 436 (1985); an employee’s ability to earn overtime, *United States Customs Serv., S.E. Region, El Paso, Tex. and Nat’l Treasury Employees Union*, 44 F.L.R.A. 1128 (1992); the equipment used by an employee, *United States Dep’t of the Treasury, IRS and Nat’l Treasury Employees Union*, 56 F.L.R.A. 906 (2000); loss of access to a window, *United States Dep’t of HHS, SSA, Balt., Md. and SSA, Fitchburg, Mass.*, 36 F.L.R.A. 655 (1990); and smaller offices, *EPA and Am. Fed’n of Gov’t Employees*, 25 F.L.R.A. 787 (1987). The FLRA has found a management right change to be less than de minimis where it affected the following: the employee’s duties and promotion potential, *Dep’t of Health and Human Servs. SSA*, 24 F.L.R.A. 403; change in duties that have ambiguous effects on overtime, *United States Dep’t of Homeland Sec., Border & Transp. Sec. Directorate, Bureau of Customs & Border Prot., Washington, D.C. and Nat’l Treasury Employees Union*, 59 F.L.R.A. 728 (2004); access to the photocopier, *United States Dep’t of the Air Force Combat Command, Seymour Johnson Air Force Base, Goldsboro, N.C.*, FLRA ALJ Dec. Rep. No. 181 (Jan. 20, 2004); temporarily moving an employee from one building to another. *Gen. Servs. Admin., Region 9, San Francisco, Cal.*, 52 F.L.R.A. 1107, 1111 (1997).

⁵⁶ *SSAOHA*, 59 F.L.R.A. 646, 654 (2004); see also *supra* note 21 and accompanying text.

⁵⁷ *SSAOHA*, 59 F.L.R.A. at 647 (finding that in describing the positions of the parties to the case, the FLRA stated that the agency was arguing that “the major characteristics of employee parking . . . remained unchanged (easy access, available at no cost to ALJs, indoors, secure, sheltered, direct office access)”).

⁵⁸ *Id.* at 654.

that was changed.⁵⁹ If the labor counselor can identify how the major characteristics of the changed condition of employment did not change, it is likely they will have a winning de minimis argument.

Labor counselors, however, should rely on the de minimis argument only after measured deliberation. The decision in *SSAOHA* is likely to have a tremendous impact on labor management relationships because parties will inevitably disagree over whether or not the impact of a particular negotiable change is sufficiently large enough to trigger negotiations.⁶⁰ This in turn will “create an entirely new generation of bargaining disputes.”⁶¹

One possible approach to handling de minimis changes is to engage in a collaborative discussion with unions prior to implementing the changes.⁶² As with negotiations associated with management permissive rights, initiating collaborative discussions would not preclude management from implementing the original change if the discussions are not fruitful.⁶³ Where the discussions are successful, however, and the union agrees to the proposed change, a potential cause of controversy is avoided.

The National Security Personnel System

The National Defense Authorization Act for Fiscal Year 2004 directed the Secretary of Defense to create a new human resources management system for Department of Defense (DOD) civilians, known as the National Security Personnel System (NSPS).⁶⁴ The NSPS is intended to modify the current labor-management relations system to better accommodate the DOD national security mission. On 6 February 2004, the DOD published an *Outline of Proposed NSPS Labor Relations System Concepts (NSPS Concepts)*.⁶⁵ The *NSPS Concepts* included a proposal that bargaining would only be required when a change to a condition of employment has a “significant impact on the bargaining unit.”⁶⁶ Following the decision in *SSAOHA*, the DOD published *Background Material With Respect to Potential Options for the National Security Personnel System (Potential Options)* for Department of Defense unions.⁶⁷ The *Potential Options* kept the “significant impact” language and specifically distinguished this phrase as establishing a higher standard for determining a negotiable obligation than the de minimis standard articulated by the FLRA in *SSAOHA*.⁶⁸

Even if the *Potential Options* are implemented, DOD attorneys are well advised to defend their cases by arguing both the significant impact language of the NSPS and the de minimis standard of the FLRA. The United DOD Workers Coalition, a

⁵⁹ See generally *id.* at 646. Identifying the “major characteristics” of a changed condition of employment is analogous to identifying the “essential functions” of a position pursuant to a claim of disability discrimination under the Rehabilitation Act. 29 U.S.C. § 794 (2000).

⁶⁰ *SSAOHA*, 59 F.L.R.A. at 656 (Pope, dissenting). Labor counselors should be aware that application of the de minimis test to substantively negotiable changes will presumably maintain the burden of proof on the moving party, usually the union. Pension Benefit Guar. Corp. and Nat’l Ass’n of Gov’t Employees, Local R3-77, 59 F.L.R.A. 48 (2003) (stating that the union must identify the adverse affects associated with a decision exercised under a management right); see also Am. Fed’n of Gov’t Employees, Local 940 and U.S. Dep’t of Veterans Affairs, Philadelphia, Pa, 52 F.L.R.A. 1429 (1997).

⁶¹ *SSAOHA*, 59 F.L.R.A. at 656, 658 (Pope, dissenting). Member Pope noted that the majority decision in *SSAOHA* was likely to cause the exact problem the decision was designed to avoid—“an increase in litigation over whether parties should be required to bargain over relatively insignificant matters.” *Id.* Various unions representing federal employees have specifically identified this case as one which is “in contempt of collective bargaining rules.” See Elizabeth Newell, *Rallying Over Rulings*, GOV’T EXECUTIVE MAG., July 16, 2004, available at <http://www.govexec.com/dailyfed/0704/071604lb.htm>. While the types of de minimis changes where bargaining disputes are possible is limited only by the imagination of the parties, there are some areas that appear ripe for disagreement, such as: temporary changes that affect a condition of employment (*i.e.* temporary office displacement, temporary changes to parking caused by construction); and changes to the conditions of employment of only one bargaining unit member.

⁶² The majority opinion in *SSAOHA* anticipates such a course of action in any mature bargaining relationship: “even if an agency does not have a duty to bargain over a change, there may well be situations where an agency may decide, for any of a variety of reasons, to work collaboratively with the exclusive representatives of the unit employees regarding the change.” *SSAOHA*, 59 F.L.R.A. at 654 n.12.

⁶³ Nat’l Ass’n of Gov’t Employees, Local R4-75 and U.S. Dep’t of the Interior, Nat’l Park Serv., Blue Ridge Parkway Agency, 24 F.L.R.A. 56 (1986) (management may terminate negotiations on a permissive subject any time short of agreement).

⁶⁴ Pub. L. No. 108-136, § 1101 (2003) (codified at 5 U.S.C. § 9902 (LEXIS 2004)). In creating this new civilian personnel system, the law permits the DOD to waive certain laws and regulations that currently apply to civilian employees. The purpose of the NSPS is to allow flexibility in managing civilian employees while insuring compliance with the principles of the merit system and collective bargaining while also giving the DOD flexibility to accomplish its mission of national security. See National Security Personnel System, *Frequently Asked Questions*, at <http://www.cpms.osd.mil/nsps/faq.html> (last visited Oct. 26, 2004).

⁶⁵ DEPARTMENT OF DEFENSE, OUTLINE OF PROPOSED NSPS LABOR RELATIONS SYSTEM CONCEPTS (2004), available at http://www.govexec.com/pdfs/NSP_Sunionmemo.pdf.

⁶⁶ *Id.* at 5.

⁶⁷ DEPARTMENT OF DEFENSE, BACKGROUND MATERIAL WITH RESPECT TO POTENTIAL OPTIONS FOR THE NATIONAL SECURITY PERSONNEL SYSTEM (2004), available at http://www.cpms.osd.mil/nsps/pdf/UDWC_13Sep2004.pdf.

⁶⁸ See generally *id.*

coalition of unions representing federal employees working for the DOD, suggested that this change, among others, exceeds the legal authority granted to the DOD under the NSPS implementing statute.⁶⁹ Accordingly, it is likely that the United DOD Workers Coalition will challenge the statutory authority of any change in this area. Department of Defense attorneys who include a de minimis argument with their significant impact argument, will be better protected if the NSPS provision on which the significant impact change is based, is later overturned.⁷⁰ In any event, DOD attorneys should stay abreast of the possibility of further change in this area.

Conclusion

The emergence of a de minimis standard as an element of substantive negotiability determinations is a radical change in the federal labor-management relations landscape. Properly argued, this new standard has the potential to be a powerful tool for implementing minor managerial decisions in the federal workplace. In theory, Army managers will no longer have to negotiate over small or trivial changes to conditions of employment. It will allow managers to implement such changes without the sometimes contentious and time-consuming process of bargaining.⁷¹ In practice however, because it is likely that unions will contest every management claim that a particular change is de minimis, labor counselors should carefully select those cases where they make a de minimis argument and exercise caution before implementing decisions in reliance on this theory.

⁶⁹ See United DOD Workers Coalition, *Response and Questions to the Department of Defense Regarding the Potential Options for the National Security Personnel System* (2004) (on file with author).

⁷⁰ This, of course, also assumes that the FLRA decision in *SSAOHA* is not overturned by the D.C. Circuit Court. See *SSAOHA*, petition for review filed, No. 04-1129 (D.C. Cir. Apr. 12, 2004).

⁷¹ Since *SSAOHA*, the new de minimis standard has been applied to dismiss at least two cases in the Army. See Letter from Robert P. Hunter, Regional Director for the FLRA, Washington DC Region, to Jeffrey Slater, President, American Federation of Government Employees (March 24, 2004) (on file with author) (outlining the investigation of the following cases: *United States Army Med. Research & Material Command and Am. Fed'n of Gov't Employees, Local 2484*, Case No. WA-CA-03-0351 and *United States Army Med. Research Acquisition Activity & Am. Fed'n of Gov't Employees, Local 2484*, Case No. WA-CA-03-0564, which concluded that ceasing to provide bottled water where drinking water remains available is a de minimis change to a condition of employment and bargaining is not required).

Survivor Benefits Note

Deadline Approaching for Reinstatement of DIC for Remarried Surviving Spouses

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The deadline is 15 December 2004 for certain remarried surviving spouses to apply for restoration of Dependency Indemnity Compensation (DIC) benefits. Veterans' surviving spouses who reached age fifty-seven and remarried *before* 16 December 2003 must apply by 15 December 2004, or they will lose their eligibility for reinstatement of DIC benefits.

Dependency Indemnity Compensation is a monthly payment made to an eligible surviving spouse of the following: (1) a military service member who died while on active duty; (2) a veteran whose death resulted from a service-related injury or disease; or, in certain circumstances, (3) a veteran whose death resulted from a non service-related injury or disease and who was receiving, or was entitled to receive, Veterans Administration compensation for service-connected disability that was rated as totally disabling.¹ Dependency Indemnity Compensation is paid for the life of the surviving spouse, unless he or she remarries.² The current monthly payment for surviving spouses, without dependents or other conditions that qualify for increased payment, is \$967.³

Before 16 December 2003, all surviving spouses who remarried were barred from receiving DIC unless the remarriage was terminated by death or divorce.⁴ The Veterans Benefits Act of 2003, signed into law on 16 December 2003,⁵ created a provision to allow surviving spouses who remarry after age fifty-seven to continue to be eligible for DIC payments.⁶ Although retroactive benefits are prohibited,⁷ for a one-year period, any surviving spouse who remarried after age fifty-seven and before the date of the Act may apply for restoration of DIC payments.

¹ 38 U.S.C. § 1310 (2000).

² *Id.* § 1311.

³ The monthly rate specified in 10 U.S.C. § 1311 is \$948; however, this amount is increased based on inflation. *Id.*

⁴ *Id.* § 103(d)(2)(B).

⁵ Pub. L. No. 108-183, 117 Stat. 2653 (2003).

⁶ *Id.* § 101(c) (codified at 38 U.S.C. § 103(d)(2)(B) (LEXIS 2004)).

⁷ *Id.* § 101(e) (providing "No benefit may be paid to any person by reason of the amendments made by subsections (a) and (b) [amending 38 U.S.C. §§ 103(d)(2)(B) and 1311] for any period before the effective date specified in subsection (c)).

Book Reviews

BROTHERS IN ARMS: THE EPIC STORY OF THE 761ST TANK BATTALION, WWII'S FORGOTTEN HEROES¹

REVIEWED BY MAJOR ITALIA A. CARSON²

It is hard to imagine the U.S. Army today without African-Americans in its ranks. To do so, you would have to eliminate approximately 118,650 Soldiers (24%) from the active Army and about 103,442 Soldiers (18.4%) from the Army Reserve and Army National Guard.³ The total loss would be around 222,092 Soldiers (21%), including officers and enlisted, from a total force of approximately 1,056,042 Soldiers.⁴ Equally hard to fathom today is that sixty years ago, a racially segregated⁵ Army was the norm. Then, it was 1944. The second global war involving the world's superpowers was in its fifth year. As the war raged in two theaters—Europe and the Pacific—the U.S. found itself needing more troops to fill the widening void caused by mounting casualties on both fronts.⁶ Moreover, German advances in tactics and weaponry meant replacements had to be highly disciplined and expertly trained, not just space fillers.⁷ This dilemma became the catalyst for the unplanned and unintentional introduction of African-American combat troops into the war, temporarily, and their integration into the Army, permanently.⁸

I. Introduction

Brothers in Arms, by Kareem Abdul-Jabbar and Anthony Walton,⁹ is the biographical history of the “761st Tank Battalion (Colored),”¹⁰ the first all African-American tank battalion committed to battle along side white Soldiers during some of the bloodiest fighting in the European Theater in the latter part of World War II (WWII).¹¹ The Army created the 761st on 1 April 1942, with no real intention of committing it to fighting on the war front.¹² Three days after the D-Day Invasion on 6 June 1944, however, the Army alerted the 761st for possible deployment overseas.¹³ By October 1944, Lieutenant General George S. Patton could wait no longer; his Third Army needed tanks and trained crews for replacement

¹ KAREEM ABDUL-JABBAR & ANTHONY WALTON, *BROTHERS IN ARMS: THE EPIC STORY OF THE 761ST TANK BATTALION, WWII'S FORGOTTEN HEROES* (2004).

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

³ Dr. Betty D. Maxfield, *Blacks in the U.S. Army: Then and Now* (Apr. 2004), Deputy Chief of Staff, Army G-1, at <http://www.armygl.army.mil/hr/demographics/BlacksThenNow83-03.ppt> (last visited Sept. 19, 2004) (presenting the 2003 black demographics of the U.S. Army as prepared by the Chief, Office of Army Demographics). In addition, African-American enlisted Soldiers made up 16% of the active duty combat arms in 2003. *Id.*

⁴ *Id.*; telephone interview with Dr. Betty D. Maxfield, Chief, Office of Army Demographics (Oct. 27, 2004).

⁵ The Army was not only predominately Caucasian, but also exclusively male. The first experiment involving women in a collective military status came with Congress's establishment of the all-female Army Nurse Corps (ANC) in 1901. MATTIE E. TREADWELL, *UNITED STATES ARMY IN WORLD WAR II: THE WOMEN'S ARMY CORPS 5-7* (Kent Roberts Greenfield ed., Office of the Chief of Military History, United States Army 1953). Although it was a military entity, the ANC operated without military rank, officer status, comparable salaries, or veteran's benefits and, as such, was separate from the Army. *Id.* at 6. Nevertheless, the ANC provided the template for the later establishment of the Women's Army Auxiliary Corps (WAAC), a service support organization of women in “noncombatant service” positions and “not a part of the Army.” *Id.* at 19 (emphasis added). The WAAC was the precursor to the Women's Army Corps (WAC), established in 1944 during the height of fighting in Europe. *See id.* at 6. The WAC gave women “full Army status and rank” and was a part of the Army. *Id.* at 6, 220. Thus, the 1940s was a decade of monumental change for the Army with integration by race as well as gender.

⁶ *See* ABDUL-JABBAR & WALTON, *supra* note 1, at 45, 53.

⁷ *See generally id.* at 38-39.

⁸ *See id.* at 17.

⁹ Abdul-Jabbar conducted twelve years of research, fact gathering, and interviewing in preparation for *Brothers in Arms*, which is the fifth book written by the basketball great. *Id.* at xiv-xv, book jacket. On this project, however, Abdul-Jabbar was joined by published author and English teacher Anthony Walton. *See id.* at book jacket. This review acknowledges the joint efforts of both authors in creating *Brothers in Arms*.

¹⁰ *Id.* at 6.

¹¹ *Id.* at 17.

¹² *Id.* at 17, 20. Rather, the unit was created to “placate black voters and the Negro press.” *Id.* at 20.

¹³ *Id.* at 53.

on the battlefield.¹⁴ Thus began 183 days of combat for the 761st, with the tank unit supporting almost a dozen different infantry and armor combat units and tracking over 2000 miles in six European countries.¹⁵

The authors tell the collective story of the unique unit by following the lives of three of its surviving members: Leonard “Smitty” Smith, William McBurney, and Preston McNeil.¹⁶ While the authors’ purpose is to inform the public about the heroic exploits of the 761st “Black Panthers,” a central theme permeates throughout the 271 pages: the men of the 761st were not novelty Soldiers, who happened to perform well in battle despite voiced doubt. They were the ultimate contradiction to years of status quo, and therefore, the Army could not ignore them, and the Nation could not forget them.¹⁷

The biographical history is a bifurcated story that covers the unit’s pre-deployment training in the United States and its actual fighting in France, Germany, Luxembourg, Holland, Austria, and Belgium.¹⁸ The book closes with a short, somewhat abrupt, synopsis of a few of the more notable members after their return from liberated Europe to segregated America. On the whole, *Brothers in Arms* is entertaining while serving its dual purpose of informing the public about and gaining widespread recognition for the unit. It elicits admiration for the Soldiers and invokes disgust for the blatant racism that followed these men from the United States to Europe and back to the United States again. At the conclusion, the reader will feel that both stories needed to be told.

The casual and informal writing alerts the reader early on that the focus is not solely on military maneuvers and battle formations. Instead, the story maintains a number of focal points, sometimes simultaneously. First, it is the biography of an old family friend, Smitty, whom Abdul-Jabbar has known most of his life and whom the author later discovered (with unabashed admiration) is a war hero as well as an unlikely player in the African-American journey for equal rights. Second, it is a straightforward military account of the creation of a unique military combat unit, its unplanned commitment in the war, and its unexpected military success, which later contributed to the full-force integration in the Army of African-American Soldiers.¹⁹ Third, it is a historical vignette (and reminder) of our nation’s former political and social state of open and active segregation and degradation of African-American citizens of the United States. Finally, it is a story of righting wrongs, from the eventual recognition by white veterans and the overdue rewards from the Army, to the open gratitude and quiet apology of a nation.

Despite its main purpose and target audience, however, a few flaws are worth noting. For instance, the authors rely more on secondary sources than primary ones to support fact. Instead of citing original sources such as survivor interviews, General Patton’s diaries, or the Robinson court-martial transcript,²⁰ the authors cite to sources that reference these primary materials.²¹ Furthermore, a scan of the ten-page “Endnotes” section reveals that the authors rely most often on two sources: *Come Out Fighting: The Epic Tale of the 761st Tank Battalion 1942-45*²² and *The 761st “Black Panther” Tank Battalion in World War II*.²³ A war correspondent wrote the former in 1945, and it is somewhat difficult to find. The son of a surviving tanker of the 761st wrote the latter. While no controversy may surround the accomplishments of the 761st, reference to some of the neutral sources listed in the book’s bibliography, and not directly associated with the 761st, would have served as a more objective source of the facts.

Another weakness is the omission of a few relevant photographs and sources. The book’s photographs consist of Abdul-Jabbar’s father in uniform, Smith (then and now), and the 761st, individually and as a whole. Noticeably absent are any photographs of the other two main characters, McBurney and McNeil; the unit’s beloved battalion commander, Lieutenant

¹⁴ *Id.* at 70, 77. General Patton specifically requested the 761st for the front, and despite the unit’s successes in Europe, he noted in his diary that he continued to “have no faith in the inherent fighting ability of the race.” *Id.* at 87.

¹⁵ *Id.* at 247.

¹⁶ *See id.* at xv.

¹⁷ *See id.* at 252-53.

¹⁸ *See id.* at 6.

¹⁹ On 26 July 1948, President Harry Truman ended segregation in the armed services with respect “to race, color, religion or national origin.” Exec. Order No. 9981, 3 C.F.R. 722 (1943-1948), available at <http://www.trumanlibrary.org/hstpaper/fahy.htm>.

²⁰ *See infra* Part II and notes 45, 46, 48.

²¹ *See* ABDUL-JABBAR & WALTON, *supra* note 1, at 274-75.

²² TREZZVANT W. ANDERSON, *COME OUT FIGHTING: THE EPIC TALE OF THE 761ST TANK BATTALION 1942-45* (The Advocate Press 1979) (1945). “Come Out Fighting” was the motto of the 761st. ABDUL-JABBAR & WALTON, *supra* note 1, at 47.

²³ JOE W. WILSON JR., *THE 761ST “BLACK PANTHER” TANK BATTALION IN WORLD WAR II* (McFarland & Co. 1999).

Colonel (LTC) Paul L. Bates;²⁴ or the sole recipient of the Medal of Honor from the 761st, Sergeant Ruben Rivers. Finally, when citing to “Internet Sites of Interest” in the bibliography, the authors omit an obvious choice: the homepage of the 761st!²⁵

II. Training at Home: An Unwelcome Presence

Their training at home began with the journey to military posts in the South. It is 1942, and Smith, McBurney, and McNeil travel separately from their homes to their eventual destinations at Camp Claiborne, Louisiana, and Fort Knox, Kentucky, for initial training.²⁶ Despite the open racial animosity of the period, all three men were deeply patriotic and volunteered to fight for their country following the Japanese attack at Pearl Harbor.²⁷ Smith and McBurney were born in Harlem and grew up in New York City.²⁸ Both men had dreams of becoming military pilots.²⁹ After all, each boy had studied aviation mechanics at vocational high school and had scored well on the military entrance examination.³⁰ But, the Army Air Corps did not accept blacks regardless of their demonstrated aptitude and potential.³¹ Instead, seventeen-year-old Smith and eighteen-year-old McBurney were “steered” by recruiters into joining “armored.”³² Nineteen-year-old McNeil, a soft-spoken Southerner, had no illusions about the limitations imposed upon him and his family by segregation.³³ Having grown up in North Carolina, racial separation was a way of life.³⁴ A stint in President Roosevelt’s Civilian Conservation Corps eventually brought McNeil to New York City, where in 1942, he enlisted in the Army.³⁵

In the first half of the book, the authors describe in detail the battalion’s composition (three companies of M4 General Sherman tanks, one company of M5 General Stuart tanks, one headquarters company, and one service company), the M4 and M5 tanks’ technical specifications and combat limitations, the tank crew training and equipment maintenance drills, the barracks’ segregation, the white officer and noncommissioned officer (NCO) trainers’ contempt of the battalion, and the locals’ open hostility towards the enlistees.³⁶ Leadership lessons emerge from the authors’ description of the white officers and NCOs who openly voiced doubt about the abilities of the men and frequently complained about having to serve in the assignment.³⁷ Soon, black commissioned officer replacements arrived fresh from training at Fort Knox.³⁸ The Caucasian battalion commander, however, chose to remain with the 761st.³⁹

Lieutenant Colonel Paul L. Bates was a striking example of leadership and moral courage. Bates was a fair, honest, and decent man, who treated his men with “simple, direct humanity, and they responded in kind.”⁴⁰ He led from the front by

²⁴ The authors, however, dedicate the book to “Colonel Paul Levern Bates”, the unit’s Caucasian battalion commander, as well as the members of the 761st. ABDUL-JABBAR & WALTON, *supra* note 1, at dedication page. Apparently, Lieutenant Colonel Bates was eventually promoted to the rank of colonel. *See infra* note 42 and accompanying text.

²⁵ The website for the 761st Tank Battalion’s homepage is <http://www.761st.com> (last visited Sept. 17, 2004).

²⁶ ABDUL-JABBAR & WALTON, *supra* note 1, at 6, 12-15.

²⁷ *Id.* at 6, 10.

²⁸ *Id.* at 6-7, 10.

²⁹ *Id.* at 8-9, 11.

³⁰ *Id.* at 9, 12.

³¹ *Id.* at 9, 11-12.

³² *Id.* at 9, 12.

³³ *See id.* at 13.

³⁴ *Id.*

³⁵ *Id.*

³⁶ *Id.* at 16-61.

³⁷ *Id.* at 28-29, 44, 49.

³⁸ *Id.* at 28.

³⁹ *Id.* at 29.

⁴⁰ *Id.*

training with the 761st, living on post close to his unit, protecting them from mistreatment from the military and local civilians, and accompanying them into battle.⁴¹ His commitment to stay with the 761st cost him a promotion to colonel.⁴²

Brothers in Arms also reminds us that African-Americans took great risks to enlist and serve in the Army during this period. In general, they faced open hostility, vocal racial slurs and epithets, physical assault, and sometimes even death from local townsfolk, civilian law enforcement, and military police (MP).⁴³ Such maltreatment followed the enlisted Soldiers of the 761st when they relocated to Camp Hood, Texas, for training. It also extended to the officer ranks. One of the highlights in this section of the book is the brief appearance of baseball legend Jackie Robinson.⁴⁴ While many may be familiar with Second Lieutenant John Roosevelt “Jackie” Robinson’s tarnished active duty military experience during the war, probably few remember that this occurred while he was a member of the 761st.

Robinson’s troubles began when a white bus driver saw the officer sitting next to and talking with a woman who appeared to be Caucasian.⁴⁵ The bus driver ordered Robinson to move to another seat, and he refused.⁴⁶ The MPs arrested Robinson and took him to the police station where an NCO and two captains repeatedly questioned him and addressed him by racial epithets.⁴⁷ In the end, the MP commander preferred charges.⁴⁸ When LTC Bates refused to refer charges to a court-martial against the wishes of “the top brass at Camp Hood,” they swiftly transferred Robinson to another unit and a more accommodating commander.⁴⁹ The court-martial acquitted Robinson on all charges, but by then, the 761st had left for Europe.⁵⁰ Second Lieutenant Robinson will never rejoin them.⁵¹ Robinson went on to earn his fame on the baseball field, while the 761st made its legend on the battlefield.

As stated earlier, a weakness here is the authors’ reliance on secondary sources instead of the actual court-martial transcript. The drama is not lost, however, and the Robinson episode provides another example of the abuse and injustice experienced by African-American Soldiers during this period. It also provides another study of leadership: Lieutenant Colonel Bates’s actions demonstrated the honor, integrity, and moral courage of a leader who chose the hard, right choice when faced with what surely was intense pressure from his peers and superiors to make the easy, wrong choice.⁵²

Standing alone, the first half of the book is a little tedious with the authors’ detailed description of pre-deployment life for the 761st. It is not until the second part of the book that the purpose of such detail becomes apparent: the repeated training drills in adverse terrain and weather sharpened their skills, and the unrelenting racial hostility toughened their resolve.⁵³ Undoubtedly, they were ready for combat.

⁴¹ *Id.* at 29, 32, 46.

⁴² *Id.* at 29.

⁴³ *Id.* at 26-31.

⁴⁴ *Id.* at 50.

⁴⁵ *Id.* at 54-55. The woman, the “wife of a fellow lieutenant with the 761st,” was actually an “extremely light-skinned” African-American. *Id.* at 54-55.

⁴⁶ *Id.* at 55.

⁴⁷ *Id.* at 56-57. Second Lieutenant Robinson was referred to as that “nigger lieutenant,” a “nigger,” and an “uppity nigger.” *Id.* at 56-57. The disrespectful treatment of Robinson by military law enforcement and fellow officers, however, would serve to contribute to Robinson’s complete acquittal by the court-martial. In a crucial moment at trial, Robinson’s civilian defense attorney impeached a key government witness, who testified that he had never called Robinson “a nigger” during the MP station ordeal but moments later testified that Robinson’s exact words in custody were, “If you ever call me a nigger again, I’ll break you in two.” *Id.* at 59.

⁴⁸ *See id.* at 57.

⁴⁹ *Id.* Today, it is possible that these facts might elicit a defense claim of unlawful command influence by “the top brass.” *See* UCMJ art. 37(a) (2002) (“No commanding officer . . . may attempt to . . . by any unauthorized means, influence . . . the action of any convening authority, or reviewing authority with respect to his judicial acts.”); MANUAL FOR COURTS-MARTIAL, UNITED STATES, R.C.M. 104(a) (2002) [hereinafter MCM]. *See also* MCM, *infra*, R.C.M. 306(a):

Each commander has discretion to dispose of offenses by members of that command. Ordinarily the immediate commander of a person accused or suspected of committing an offense triable by court-martial initially determines how to dispose of that offense A superior commander may not limit the discretion of a subordinate commander to act on cases over which authority has not been withheld.

⁵⁰ *Id.* at 59.

⁵¹ *Id.*

⁵² *See also id.* at 58 (describing how Bates “put his career on the line to defend Jackie Robinson” by providing supporting witnesses for Robinson’s defense).

⁵³ *See id.* at 120.

III. Fighting Abroad: Reluctant Alliances

The second part of *Brothers in Arms* picks up speed as the 761st sailed to Europe and hit French soil at the allied port at Omaha Beach on 10 October 1944.⁵⁴ From this point on, the unit spent six months fighting the forgotten Saar Campaign (a portion of the Lorraine Campaign), pushing past the Siegfried and Maginot Lines and the Rhine River into Germany, and fighting the Ardennes Offensive, which was the extended Battle of the Bulge.⁵⁵ Excessive rain and mud and heavily emplaced German defenses turned the Lorraine Campaign into a protracted and costly campaign.⁵⁶ After a brief bivouac at La Pieux, France, the Black Panthers were attached operationally to the first of many all-white infantry and armor units.⁵⁷ With each successive attachment, however, the 761st had to prove itself all over again in the eyes of the white Soldiers.⁵⁸ The tankers also began to refer to their unit as one of the “bastard battalions,”⁵⁹ because the tank battalions were “designed to be assigned to an Army corps” or its “component divisions . . . most [in need of] their specialized services at a given moment.”⁶⁰ As such, they did not feel a permanent attachment to any higher headquarters.

The authors complain later that the numerous attachments to various infantry and armor units contributed to the accomplishments of the 761st going unrecognized for years.⁶¹ Therefore, the authors applaud “the combined arms infantry division of the present day,” which replaced the former arrangement and allows for more distinction among component units.⁶² The authors’ position is outdated, however, because it ignores the Army’s new combat structure, which goes back to the building block system of the past. The current “modularity” doctrine advocates the restructuring of the Army to a modular system, which will allow a force to be tailor-made from modular combat units to meet the specific and temporal needs of the combatant commander.⁶³ A quick update of their research into Army doctrine before the 2004 publication of *Brothers in Arms* would have prevented this misunderstanding of the Army’s new combat structure.

Where *Brothers in Arms* primarily falls short as a military book is its failure to include a single map, chart, or diagram to depict graphically the unit’s six months of fighting and maneuvering.⁶⁴ As a result, the reader must rely solely on text to visualize the high operational tempo of the 761st as it blazed its trail across central Europe. Moreover, such graphics could have been adapted easily from the sources the authors referenced in the bibliography.⁶⁵ In addition, the authors omit any line or block chart to illustrate the 761st Battalion’s numerous attachments to various infantry and armor units during their six-month deployment. These supporting graphics would have added some welcomed clarity to this complicated section of the book.

⁵⁴ See *id.* at 79-80.

⁵⁵ *Id.* at 85, 115, 129, 154, 159, 160-61, 163-68, 172-73, 189-90.

⁵⁶ *Id.* at 85, 92-93, 115, 120, 173; CHRISTOPHER R. GABEL, *THE 4 TH ARMORED DIVISION IN THE ENCIRCLEMENT OF NANCY I*, 23 (Fort Leavenworth, Kansas: Combat Studies Institute 1986).

⁵⁷ ABDUL-JABBAR & WALTON, *supra* note 1, at 81, 206. Some of the units included: 101st, 104th, and 328th Infantry Regiments of the 26th “Yankee” Infantry Division; 4th Armored Division; 17th Airborne Division; 345th and 347th Infantry Regiments of the 87th “Golden Acorn” Infantry Division; 95th Infantry Division of XVI Corps; 79th Infantry Division of the Ninth Army; 103d “Cactus” Infantry of the Seventh Army; and 71st Division of XII Corps, Third Army. *Id.* at 89-91, 96, 114, 131, 156-57, 170-73, 203, 208, 210, 213-14, 228.

⁵⁸ *Id.* at 91, 122, 157, 172.

⁵⁹ *Id.* at 81, 229.

⁶⁰ *Id.* at 81.

⁶¹ See *id.* at 259.

⁶² See *id.*

⁶³ See, e.g., U.S. DEP’T OF ARMY, *THE WAY AHEAD 9-12*, available at <http://www.army.mil/thewayahead/quality5.html> (last visited Sept. 19, 2004).

⁶⁴ See, e.g., Customer Reviews, *Not quite there on either goal!*, at <http://www.enotalone.com/books/0385503385.html> (last visited Sept. 20, 2004) (criticizing the book for its lack of “a single map or diagram”).

⁶⁵ See ABDUL-JABBAR & WALTON, *supra* note 1, at 283-87. One reference in particular, *The Lorraine Campaign: An Overview, September – December* by Christopher R. Gabel, contains numerous maps of the Lorraine Campaign, which, with little change, could have been adapted for use in *Brothers in Arms*. See CHRISTOPHER R. GABEL, *THE LORRAINE CAMPAIGN: AN OVERVIEW, SEPTEMBER – DECEMBER 1944* 2, 4-6, 21, 29, 34 (Fort Leavenworth, Kansas: Combat Studies Institute 1985).

IV. Coming Home: A Hero's Welcome Years Later

At the close of 1945, the men of the 761st individually returned home.⁶⁶ There were no ticker-tape parades or national celebrations for these Soldiers.⁶⁷ Despite their heroic actions in Europe, their return only put them “at the beginning of a struggle [for racial tolerance and acceptance rather] than at the end.”⁶⁸ At this point, the authors briefly describe the homecoming of Smith, McBurney, McNeil, and a few of the memorable Soldiers of the 761st. The majority of the closing chapter, however, is devoted to describing an ungrateful nation that continued to perpetuate racism and segregation against the 1.2 million returning African-American WWII veterans.⁶⁹ The authors also detail the 761st Soldiers's long struggle, beginning in 1945 and ending in 1997, to gain recognition from the Army for the unit's and several individual members's numerous acts of bravery and exceptional service during the war. While the chapter provides closure, this portion of the book is somewhat disjointed because the authors describe the lives of some of the 761st veterans in short, abrupt paragraphs that lack smooth transitions between each other and to new topics. The result is that the reader is left with various unrelated snap shots rather than the big picture of the post-war 761st.

V. Conclusion

Sun Tzu said, “Conflict is essential to the development and growth of man and society. It leads either to the construction or destruction of an entire group or state.”⁷⁰ If this is the case, the struggles of the 761st, abroad and at home, led to the construction of a stronger Army and a greater nation.

Americans have an inherent, if not fervent, sense of fairness. The reader will not be disappointed to learn that after a fifty-year fight, our brothers in arms finally received their fair recognition and just reward. For the unit, it was a presidential citation,⁷¹ for a fallen comrade, it was the Medal of Honor.⁷² *Brothers in Arms* is a personal biography as well as a public tribute, and while not your typical military history, it is a story worth reading.

⁶⁶ ABDUL-JABBAR & WALTON, *supra* note 1, at 249-50.

⁶⁷ *Id.* at 251.

⁶⁸ *Id.* at 250.

⁶⁹ *Id.* at 253.

⁷⁰ SUN TZU, *THE ART OF WAR 3* (Stephen E. Kaufman trans., Tuttle Pub. 2001).

⁷¹ The original request for a Presidential Unit Citation (PUC) was submitted in June 1945. ABDUL-JABBAR & WALTON, *supra* note 1, at 259. It was preliminarily denied without much explanation two months later and, completely denied upon subsequent review by President Eisenhower's office. *Id.* at 260. Congressional intervention almost thirty years later caused an inquiry into the denial that revealed that “racial discrimination and inadvertent neglect” on the part of the Army were possible factors in rejection of the PUC. *Id.* at 261. Finally, in 1978, President Jimmy Carter awarded the 761st its PUC for “Extraordinary Heroism.” *Id.* at 262. The total award count for the 761st is as follows: 296 Purple Hearts (8 with clusters), 70 Bronze Stars (3 with clusters), and 11 Silver Stars. *Id.* at 260. Other distinctions include eight battlefield commissions and four campaign streamers. *Id.*; U.S. Dep't of Army, Center of Military History, *Fact Sheet on 761st Tank Battalion* (1946), available at <http://www.army.mil/cmh-pg/topics/afam/761TkBn-2.htm>.

⁷² On 13 January 1997, President Bill Clinton awarded the Medal of Honor, posthumously, to Sergeant Ruben Rivers. ABDUL-JABBAR & WALTON, *supra* note 1, at 262-63.

FOUNDING MOTHERS: THE WOMEN WHO RAISED OUR NATION¹

REVIEWED BY CAPTAIN HEATHER J. FAGAN²

*Women ventured into all kinds of spheres. They went with [S]oldiers to camp. They served as spies. They organized boycotts of British goods. They raised money for the troops. They petitioned the government. As the Daughters of Liberty, they formed a formidable force. They defended their homesteads alone as their husbands hid out, marked men with a price on their heads. The generals on both sides of the Revolutionary War marveled at the strength of the women.*³

I. Introduction

“Drawing upon personal correspondence, private journals, and even favorite recipes,”⁴ the author, Cokie Roberts, reveals the many “founding mothers” who helped shape the American Revolution.⁵ In approximately 278 pages, Cokie Roberts attempts to resuscitate over thirty-eight women.⁶ Although she does not succeed in her ambitious attempt to bring so many to life, the more-developed main characters include the following founding mothers: Abigail Adams, Martha Washington, Deborah Reed Franklin, Mercy Otis Warren, and Eliza Pinkney.⁷ Rather than devoting a chapter to each main character, the author discusses them intermittently in rough chronological order from 1775-1789.⁸ This technique effectively illustrates their interaction with one another as the Revolution progressed. It also emphasizes that this was an elite circle of women—“[t]here are many other women of the time whose lives were much harder than the ones described here, but the Founding Fathers weren’t listening to them.”⁹

Cokie Roberts is particularly suited to write on this topic since she is also part of an elite circle of women. Besides the obvious—she is a well-known news commentator and author¹⁰—her ancestors “have been active in Louisiana politics in every generation since [1790].”¹¹ Consequently, she is barely a decade short of being a direct descendent of the founding mothers of the American Revolution. The greatest influences for this book, however, were her parents who served in Congress. According to Cokie Roberts,

My mother and father were both in politics My mother . . . is actually quite interesting, because when my father was in Congress she was his campaign manager, and when he went into the leadership, she ran his district office, and then she took a seat in Congress and was on the very powerful Appropriations Committee. She could make the case that there were times when the behind-the-scenes power was greater than the on-the-scene power.¹²

These life experiences combined with her extensive research¹³ make Cokie Roberts a very reputable source to resurrect the founding mothers.

¹ COKIE ROBERTS, *FOUNDING MOTHERS: THE WOMEN WHO RAISED OUR NATION* (2004).

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

³ ROBERTS, *supra* note 1, at xix.

⁴ *Id.* at book jacket.

⁵ *See id.*

⁶ *See id.* at 1-278.

⁷ *See generally id.* at xvi-xx.

⁸ *Id.* at table of contents.

⁹ *Id.* at acknowledgements.

¹⁰ *Id.* at book jacket (explaining Cokie Roberts is a commentator for ABC News, a senior news analyst for National Public Radio, and a two-time best-selling author of *From this Day Forward* and *We are Our Mothers’ Daughters*).

¹¹ *Id.* at xv.

¹² Cokie Roberts, Address at the Los Angeles World Affairs Council, *Founding Mothers: The Women Who Raised Our Nation*, NPR (Apr. 21, 2004), available at <http://www.lawac.org/speech/roberts,%20cokie%202004.htm> [hereinafter Roberts Address].

II. Analysis

Readers who are expecting a general history of early-American women will be disappointed. In a narrative format, *Founding Mothers* retells the American Revolution amidst a collection of stories about the “women who influenced the Founding Fathers.”¹⁴ Although many national publishers¹⁵ praised this book, its writing ranges from informal to colloquial. A layperson aptly summed up the book when she stated, “[I] could have done without the personal commentary Cokie threaded through the book . . . I wanted to scream.”¹⁶ Another layperson astutely observed, “Cokie Roberts has provided a service to remedial readers everywhere.”¹⁷ The book also strays from its thesis about the founding mothers’ influence and randomly discusses historical minutiae related to the founding fathers.¹⁸ This background is often superfluous. Despite these weaknesses, *Founding Mothers* is still worth reading because it offers a well-researched glimpse at the women that history had previously overlooked.¹⁹

At times, the book addresses such a large cast of characters that it resembles a montage of countless letters.²⁰ There are, however, some inspirational *and* well-developed characters as previously outlined. Out of that category, Abigail Adams is the most developed character.

Perhaps Cokie Roberts more fully developed Abigail because Roberts had written about Abigail’s letters in an earlier book, *From this Day Forward*.²¹ Abigail’s story intermittently unfolds in more than seventy-five pages in the *Founding Mothers*.²² After several references early in the book, Cokie Roberts illustrates Abigail’s feisty character with the following anecdote: “When [Abigail’s] husband was a delegate to the Continental Congress, she wrote to him[,] . . . ‘Why should we not assume your titles when we give you up our names’”²³

Through Abigail, Cokie Roberts conveys two important points. First, she shows the sacrifices women made for the Revolution. As a result of John Adam’s role in the Revolution, Abigail “was alone for years and years at a time She had to do everything. She had to run the farm, . . . keep his legal business alive, . . . raise the children and . . . the British were coming.”²⁴ When Abigail wrote for advice to deal with the threat of British Soldiers, John responded, “[F]ly to the woods

¹⁴ See ROBERTS, *supra* note 1, at book jacket, xii-iv. One cannot fault Cokie Roberts’ scholarly research on the founding mothers. Unearthing vast historical sources including correspondence, military records, recipes, pamphlets, and songs, Cokie Roberts has arguably compiled the most comprehensive research on this topic. See *id.*

¹⁵ Barnes & Noble.com, *Founding Mothers: The Women Who Raised Our Nation, From the Critics*, at <http://search.barnesandnoble.com/booksearch> (last visited Sept. 3, 2004) (quoting Publisher’s Weekly Review (no further reference provided)).

¹⁶ See Joyce Appleby, *Let Us Know Praise Famous Women*, CHI. SUN TIMES, May 9, 2004, at 14 (“Roberts artfully stitches together [the founding mothers’] separate and overlapping experiences These domestic details quicken our sympathy for [this] group of women”); Patricia Brady, *Patriot Dames: In “Founding Mothers,” Cokie Roberts Celebrates Women Who Were There When America Began*, TIMES-PICAYUNE, May 2, 2004, at 6 (“Cokie Roberts has given America a wonderful Mother’s Day gift in ‘Founding Mothers.’”); Maria Fish, “*Founding Mothers*” *Get Their Place In the Birth of American History*, USA Today, May 6, 2004, at D4 (“*Founding Mothers* is a welcome addition to American Revolution Biography.”); Amanda Fortini, *Books In Brief: Nonfiction, Founding Mothers: The Women Who Raised Our Nation*, N.Y. TIMES, May 9, 2004, at 20 (“While her commentary—mainly glib quips or superfluous recapitulations—provides little insight, she creates a strong, though perhaps overstated, case that without the patriotism of women on the home front, the Colonies would have lost the Revolutionary War entertaining mini-biographies and engaging vignettes.”).

¹⁷ Powells.com, *Founding Mothers: The Women Who Raised Our Nation, Synopses & Reviews*, at <http://www.powells.com/cgi-bin/biblio?inkey=62-0060527889-0> (last visited Sept. 3, 2004) (quoting a customer’s review (no further reference provided)).

¹⁸ Amazon.com, *Books: Founding Mothers: The Women Who Raised Our Nation, Reviewer: Jimmy Frank West*, at <http://www.amazon.com/exec/obidos/tg/detail/0060090251/103-5078557-8905459?v=glance> (last visited Sept. 3, 2004) (noting the book is “[f]or In Style Readers who’ve yet to graduate to People Magazine”); see also Gaile Robinson, *And Now A Word About Our “Founding Mother”*; Cokie Writes of Women Who Often Were Greater Patriots, CHARLOTTE OBSERVER, June 21, 2004, at 9A (“Roberts introduces us to many fascinating women here. Unfortunately, she interjects herself in their stories, adding unnecessary comments. It’s the only jarring note in her narrative, and a seasoned journalist should know better.”).

¹⁹ See ROBERTS, *supra* note 1, at 54.

²⁰ The majority of the reviews appear to conclude this book tackles a little-known subject. See, e.g., Appleby, *supra* note 15 (“With *Founding Mothers*, Roberts fills a gap in our coverage of the era without straying far from the familiar story of colonial resistance, the struggle for independence and the writing of the U.S. Constitution.”).

²¹ See generally ROBERTS, *supra* note 1, at 279-82 (listing a rather long “cast of characters”).

²² COKIE ROBERTS & STEVE ROBERTS, *FROM THIS DAY FORWARD* (2001); see also Roberts Address, *supra* note 12, at 2.

²³ See ROBERTS, *supra* note 1, at xvi, 14, 44-45, 50-52, 56, 58, 59-77, 88, 97-103, 149-57, 173-76, 179-85, 204-05, 219, 224-25, 231-34, 239-43, 251-54, 257-58, 260, 262-63, 273-77.

²⁴ *Id.* at 61.

²⁵ See Roberts Address, *supra* note 12, at 2.

with our children. Thank-you very much. She must have wanted to throttle him.”²⁵ It is this type of running commentary throughout the book that one national publisher praised as “delightfully intimate and confiding.”²⁶ Yet, it becomes distracting when it randomly surfaces without contributing to the thesis.

Second, Cokie Roberts cleverly outlines the women’s behind-the-scenes power. In Abigail’s case, she used her wit to influence her husband as well as others, such as Thomas Jefferson.²⁷ In letters to John, Abigail wrote the following:

If we separate from Britain, what code of laws will be established. How shall we be governed so as to retain our liberties? . . . When I consider these things and the prejudices of people in favor of ancient customs and regulations, I feel anxious for the fate of our monarchy or democracy or whatever is to take place.²⁸

Cokie Roberts sprinkles the remainder of the book with these letters. Alone, these letters make the book worth reading. Cokie takes it one-step further by tying in Abigail’s letters and her relationships to other founding mothers such as Martha Jefferson²⁹ and Mercy Otis Warren.³⁰ It is fascinating to read that early America—at least the upper crust—was a very small world.

With such a small circle comprising the upper crust, one may not expect there to be significant differences among the founding mothers. Mercy Otis Warren is one founding mother that stands out. Unlike the others, she is notable for her own accomplishments rather than those of a spouse or a son. An author, Mercy Otis Warren published propaganda in the form of poems and plays.³¹ Even though the major newspapers published them, she did not use her own name until later in life.³² She particularly influenced John and Samuel Adams, Massachusetts founders.³³ She was “as influential a propagandist for the cause as Tom Paine—and [Cokie Roberts like most] had never heard of her” until she conducted research for this book.³⁴ The following excerpt from a letter Mercy wrote to Abigail (she wrote a similar one to John Adams) about the impending revolution reflects Mercy’s influence: “We cannot long continue in this state of suspense. It is and ever has been my poor opinion that justice and liberty will finally gain a complete victory over tyranny.”³⁵

It is also represents a main flaw in the book—Cokie Roberts offers little to no analysis of her characters. In another passage, Mercy writes, “Yet notwithstanding the complicated difficulties that rise before us, there is no receding; and I should blush if in any instance the weak passions of my sex should damp the fortitude, the patriotism and the manly resolution of yours.”³⁶ Cokie Roberts’s initial analysis of that excerpt is “Whew!”³⁷ While such commentary ranges from disappointing to annoying, readers should be grateful to know such inspirational women even if it is due mainly to their own words and not those of the author.

²⁵ ROBERTS, *supra* note 1, at xvi.

²⁶ HistoryWizBooks, *Founding Mothers: The Women Who Raised Our Nation, Editorial Reviews*, available at <http://books.history.wiz.org/moreinfo/foundingmothers.htm> (last visited Sept. 3, 2004) (quoting Publishers Weekly Review (no further reference provided)).

²⁷ ROBERTS, *supra* note 1, at 181 (noting “Abigail Adams and Thomas Jefferson struck up a lively correspondence, full of news and opinions”).

²⁸ *Id.* at 71.

²⁹ *Id.* at 232-34 (“[Martha] received me with great ease and politeness. She is plain in her dress, but that plainness is the best of every article . . . Her manners are modest and unassuming, dignified and feminine, not the tincture of hauteur about her.”).

³⁰ *Id.* at 45, 50-52, 56, 58-59, 61, 64, 66, 70, 71, 73, 97, 99, 102-03, 154-55, 251, 253-54. Abigail and Mercy were friends even though they experienced periods of political rifts. *Id.* at 45, 253. “[T]hey had met through their husbands—and the letters between the two women over the years reveal a great deal about political attitudes on the distaff side.” *Id.* at 45.

³¹ *Id.* at 45-47.

³² *Id.* at 47, 253 (noting Mercy did not publish under her own name until 1790).

³³ *Id.* at 50; *see* Roberts Address, *supra* note 12, at 3.

³⁴ *See* Roberts Address, *supra* note 12, at 3.

³⁵ ROBERTS, *supra* note 1, at 52.

³⁶ *Id.* at 55.

³⁷ *Id.*

Martha Washington is another inspirational founding mother. Unlike Mercy and Abigail, Cokie Roberts does not have as much personal correspondence to reprint and weave throughout the book.³⁸ Therefore, Martha's character development appears more organized than the other founding mothers. Cokie Roberts gives biographical information about Martha but really develops her starting age at forty-three—her age when the war began.³⁹ It is inspiring to learn she spent eight winters at camp with George Washington and the Soldiers.⁴⁰ She not only brought supplies for the Soldiers but also initiated a diplomacy campaign and met with leaders along the way.⁴¹ “George felt so strongly [he needed her] that he begged her every year to come even though she thought she was derelict to her duties in Virginia where many members of her family needed her, she always decided the greater duty was to join the General.”⁴²

While most⁴³ of the characters in the book had a strong sense of duty, Deborah Franklin epitomizes that attribute.⁴⁴ “Benjamin Franklin essentially abandoned his wife for sixteen of the last seventeen years of their marriage, returning only when it became clear that he had to take over the business because . . . ‘my wife in whose hands I had left the care of my affairs died.’”⁴⁵ It was somewhat disheartening to learn how poorly Benjamin Franklin had treated his dutiful spouse. Until her death, Deborah prosperously ran Benjamin's print shop and newspaper.⁴⁶ Cokie Roberts' response was “[a]ll heart that Ben.”⁴⁷ While it was enthralling to learn about such a stalwart woman, again the author's triteness undermined the thesis.

The mother of two founders, Thomas Pinkney and Charles Cotesworth Pinkney, Eliza also introduced the indigo crop to the United States.⁴⁸ By the time of the Revolution, indigo was a million dollar export.⁴⁹ When she died, “George Washington insisted on serving as a pallbearer at her funeral because of the service she had rendered the nation.”⁵⁰

While her story is inspirational, it was difficult to follow in the book, which the author bases on a rough timeline of the Revolution. Cokie Roberts introduces Eliza in the first chapter in-depth.⁵¹ Then Roberts intermittently inserts Eliza later in the book, but readers do not learn of her fate—death—until the last chapter.⁵² This problem is also systemic to other characters in the book. It would not be so disruptive if the book strictly adhered to a timeline. For instance, the last chapter is about the post-revolutionary period yet it jumps from 1796 to 1776 and then forward to 1790.⁵³

III. Lessons Learned for the Judge Advocate

Despite its flaws, this book is worth reading because the founding mothers are gender-neutral role models for male and female judge advocates. The founding mothers' tenacity and courageousness are exemplary. There is an important reminder specifically for female judge advocates—they should not take leadership opportunities for granted. Like other leadership books before it, *Founding Mothers* does not provide a template for balancing family and the duty to lead.⁵⁴ It merely emphasizes that women can have impact behind-the-scenes or in front of them. Perhaps the best lesson for females already in

³⁸ See generally *id.* at 85-95.

³⁹ *Id.* at 85.

⁴⁰ *Id.* at 87; see also Roberts Address, *supra* note 12, at 2.

⁴¹ ROBERTS, *supra* note 1, at 87.

⁴² Roberts Address, *supra* note 12, at 3.

⁴³ Margaret Arnold, wife of Benedict Arnold, is the exception to that principle. See ROBERTS, *supra* note 1, at 131.

⁴⁴ See *id.* at 24-36.

⁴⁵ *Id.* at xvii.

⁴⁶ *Id.* at 26.

⁴⁷ *Id.*

⁴⁸ *Id.* at 6-7.

⁴⁹ *Id.* at 6.

⁵⁰ Roberts Address, *supra* note 12, at 5.

⁵¹ See ROBERTS, *supra* note 1, at 1.

⁵² See *id.* at 110, 112-14, 197-98, 265-66.

⁵³ *Id.* at 254-55.

⁵⁴ See Major Karen L. Douglas, *Leadership the Eleanor Roosevelt Way: Timeless Strategies from the First Lady of Courage*, 178 MIL. L. REV. 163, 170 (2003).

professional leadership roles is that those females in stay-at-home positions of leadership can also significantly impact society. Whether at a “coffee,” a dinner-party, or in a professional setting, people always have opportunities for leadership.

IV. Global Lessons Learned

Although one of the book’s weaknesses is that it takes so much time retelling the American Revolution, that same weakness yields a global lesson learned. By retelling this part of history, Cokie Roberts reminds readers of the fervent patriotism of this country’s founders. Families, like John and Abigail Adams, were apart years at a time. There were many years when the Soldiers did not have pay, food, shelter, or sufficient clothing; and still others suffered from boycotts because they had to make the goods they did not import from England. There were countless stories of incredible hardship in which the easier path would have been to forgo independence from England especially since it was not a forgone conclusion. It was largely due to the talents, persistence, and cohesion of the leading families that America eventually overcame the British. These families voluntarily chose to make these sacrifices and to take enormous risks. The idea that they knowingly put their own prosperity and safety at risk to achieve a goal for not just themselves but for future Americans is important.⁵⁵

Now contrast that with our recent invasion of Iraq—the break from the dictatorship did not surge from within the country.⁵⁶ Based on the media coverage, it does not appear the Iraqis “in charge” after the imposed revolution have as much of themselves invested in the process.⁵⁷ Additionally, women in Arab cultures are not supposed to be influential in their husband’s affairs.⁵⁸ It is reasonable to conclude the American founding mothers were able to add something to the revolutionary effort that Iraqi women may not be able to contribute. For these reasons, is it logical to believe Democracy will thrive once our occupation of that country ceases? Have we so soon forgotten how democracy precariously existed in post-Revolutionary America but for the will and sacrifice of its citizens?

V. Conclusion

Perhaps this book is the victim of false expectations. National publishers gave such laudatory reviews that readers may have higher expectations than the book warrants. Contrary to these reviews, the book has too many characters for its page length, lacks plot development, substitutes analysis with stream-of-consciousness commentary, and contains colloquialisms. It also deviates from its thesis and often focuses as much on the founding fathers as the founding mothers. Its conclusion ends with the same sort of running commentary that pervades the book and detracts from its thesis—“A salute from the Father of the Country to its Founding Mothers.”⁵⁹ In the style of the author, “Thank-you very much.” In the end, the book is *still* worth reading because it is a compilation of highly researched letters of the founding mothers—an area that previously received little attention and whose letters are inspiring in their own right.

⁵⁵ See *id.* at 64-65, 68; see Roberts Address, *supra* note 12, at 2.

⁵⁶ See, e.g., Thomas E. Ricks, *Ex-General Gives His Take on Iraq War*, WASH. POST, Aug. 1, 2004, at A10.

⁵⁷ See generally John F. Kerry, *A Realistic Path in Iraq*, WASH. POST, July 4, 2004, at B7; Thomas E. Ricks, *Rumsfeld’s War Plan Shares the Blame*, WASH. POST, Aug. 25, 2004, at A1; Marvin Zonis, *Facing Up to Defeat in Iraq: A Game Plan That Makes the Best of a Tinderbox*, CHI. TRIB., June 27, 2004, at C9.

⁵⁸ See generally IRAQ: A COUNTRY STUDY 113 (Helen Chaplin Metz ed., 1990).

⁵⁹ ROBERTS, *supra* note 1, at 278.

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
10th Speech Recognition Training	17 – 28 October 05	512-71DC4
16th Court Reporter Course	24 January – 25 March 05	512-27DC5
17th Court Reporter Course	25 April – 24 June 05	512-27DC5
18th Court Reporter Course	1 August – 5 October 05	512-27DC5
19th Court Reporter Course	31 January – 24 March 06	512-27DC5
20th Court Reporter Course	24 April – 23 June 06	512-27DC5
21st Court Reporter Course	31 July – 6 October 06	512-27DC5
6th Court Reporting Symposium	31 October – 4 November 05	512-27DC6
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
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
3d Paralegal SGM Training Symposium	6 – 10 December 2005	512-27D-50
16th Law for Paralegal NCOs Course	28 March – 1 April 05	512-27D/20/30
17th Law for Paralegal NCOs Course	27 – 31 March 06	512-27D/20/30

16th Senior Paralegal NCO Management Course	13 – 17 June 05	512-27D/40/50
9th Chief Paralegal NCO Course	13 – 17 June 05	512-27D- CLNCO
1st 27D BNCOC	21 October – 18 November 04	
2d 27D BNCOC	27 January – 24 February 05	
3d 27D BNCOC	18 March – 14 April 05	
4th 27D BNCOC	20 May – 17 June 05	
5th 27D BNCOC	23 July – 19 August 05	
6th 27D BNCOC	10 September – 9 October 05	
1st 27D ANCOG	10 November – 7 December 04	
2d 27D ANCOG	18 March – 10 April 05	
3d 27D ANCOG	24 July – 16 August 05	
4th 27D ANCOG	17 September – 9 October 05	
12th JA Warrant Officer Basic Course	31 May – 24 June 05	7A-270A0
13th JA Warrant Officer Basic Course	30 May – 23 June 06	7A-270A0
JA Professional Recruiting Seminar	12 – 15 July 05	JARC-181
JA Professional Recruiting Seminar	11 – 14 July 06	JARC-181
6th JA Warrant Officer Advanced Course	11 July – 5 August 05	7A-270A2
ADMINISTRATIVE AND CIVIL LAW		
4th Advanced Federal Labor Relations Course	19 – 21 October 05	5F-F21
59th Federal Labor Relations Course	17 – 21 October 05	5F-F22
56th Legal Assistance Course	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
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
71st Fiscal Law Course	25 – 29 April 05	5F-F12
72d Fiscal Law Course	2 – 6 May 05	5F-F12
73d Fiscal Law Course	24 – 28 October 05	5F-F12
74th Fiscal Law Course	24 – 28 April 06	5F-F12
75th Fiscal Law Course	1 – 5 May 06	5F-F12
1st Operational Contracting Course	28 February – 4 March 05	5F-F13
2d Operational Contracting Course	27 February – 3 March 06	5F-F13
12th Comptrollers Accreditation Course (Hawaii)	26 – 30 January 04	5F-F14
13th Comptrollers Accreditation Course (Fort Monmouth)	14 – 17 June 04	5F-F14
7th Procurement Fraud Course	31 May – 2 June 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		
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	29 November – 2 December 05	5F-F47E

3. Civilian-Sponsored CLE Courses

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

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

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

This requirement is particularly critical for some officers. The 2006 JAOAC will be held in January 2006, and is a prerequisite for most judge advocate captains to be promoted to major.

A judge advocate who is required to retake any subcourse examinations or “re-do” any writing exercises must submit the examination or writing exercise to the Non-Resident Instruction Branch, TJAGLCS, for grading by the same deadline (1 November 2005). If the student receives notice of the need to re-do any examination or exercise after 1 October 2005, the notice will contain a suspense date for completion of the work.

Judge advocates who fail to complete Phase I correspondence courses and writing exercises by 1 November 2005 will not be cleared to attend the 2006 JAOAC. If you have not received written notification of completion of Phase I of JAOAC, you are not eligible to attend the resident phase.

If you have any further questions, contact Lieutenant Colonel JT. Parker, telephone (434) 971-3357, or e-mail JT.Parker@hqda.army.mil.

5. Mandatory Continuing Legal Education Jurisdiction and Reporting Dates

<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)

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 daryl.jent@us.army.mil
23 - 24 Apr 05	Indianapolis, IN INARNG	Contract Law, Administrative and Civil Law	COL George Thompson (317) 247-3491 george.thompson@in.ngb.army.mil
14 - 15 May 05	Nashville, TN 81st RRC	Contract Law, Administrative and Civil Law	CPT Kenneth Biskner (205) 795-1511 kenneth.biskner@us.army.mil
14 - 15 May 05	Rosemont, IL 91st LSO	Administrative and Civil Law, International and Operational Law	CPT Douglas Lee (630) 954-3123 douglas.lee@nationalcity.com
20 - 23 May 05	Kansas City, KS 89th RRC	Criminal Law, Administrative and Civil Law, Claims	MAJ Anna Swallow (800) 892-7266, ext. 1228 (316) 681-1759, ext. 1228 lynette.boyle@us.army.mil

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

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

b. Access to the JAGCNet:

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

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

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

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

(d) FLEP students;

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

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

LAAWSXXI@jagc-smtp.army.mil

c. How to log on to JAGCNet:

(1) Using a Web browser (Internet Explorer 4.0 or higher recommended) go to the following site: <http://jagcnet.army.mil>.

(2) Follow the link that reads “Enter JAGCNet.”

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

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

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

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

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

3. TJAGSA Publications Available Through the LAAWS XXI JAGCNet

For detailed information of TJAGSA Publications Available Through the LAAWS XXI JAGCNet, see the September 2004 issue of *The Army Lawyer*.

4. TJAGLCS Legal Technology Management Office (LTMO)

The TJAGLCS, U.S. Army, Charlottesville, Virginia continues to improve capabilities for faculty and staff. We have installed new computers throughout TJAGLCS, all of which are compatible with Microsoft Windows 2000 Professional and Microsoft Office 2000 Professional.

The TJAGLCS faculty and staff are available through the Internet. Addresses for TJAGLCS personnel are available by e-mail at jagsch@hqda.army.mil or by accessing the JAGC directory via JAGCNET. If you have any problems, please contact LTMO at (434) 971-3314. Phone numbers and e-mail addresses for TJAGLCS personnel are available on TJAGLCS Web page at <http://www.jagcnet.army.mil/tjagsa>. Click on "directory" for the listings.

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

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

5. The Army Law Library Service

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

Point of contact is Mrs. Dottie Evans, The Judge Advocate General's School, 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 Dottie.Evans@hqda.army.mil.

By Order of the Secretary of the Army:

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

Official:



SANDRA R. RILEY
Administrative Assistant to the
Secretary of the Army
06059

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The Judge Advocate General's School
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PERIODICALS