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The Laws of War: Rules by Warriors for Warriors

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Introduction

Judge advocates who teach the Laws of Armed Conflict in the field often encounter skepticism by soldiers who often ask: "Aren't these a bunch of rules made up by lawyers who sit behind a desk, rather than by real soldiers who have felt the sting of battle?"

The history of judge advocates as both warriors and lawyers provides the answer to this question. As was often stated by Major General Nardotti, the former Judge Advocate General, "Judge advocates are merely soldiers who happen to be lawyers." General Nardotti truly embodied this notion and reminded judge advocates of their military traditions. In addition to confirming a "soldier-lawyer" ethic, history provides the proof of an inextricable link between the laws of war and warriors. A study of the individuals who developed and codified the modern laws of war answers the skeptics' question.¹

The European Tradition

Warriors who were bloodied, captured, or wounded on the battlefield and had their lives spared by other combatants were

themselves instrumental in the development of the laws of war. In antiquity, warriors who were captured on the battlefield became the property of the capturing soldier. He could slaughter them, enslave them, or hold them for ransom.² The practice of not killing one's captives, however, was rooted in fiscal reasons, not humanitarian reasons.³

One of the earliest "humanitarians" was Richard Coeur de Lion, of Robin Hood fame.⁴ After being spared for ransom by Leopold of Austria,⁵ Richard deviated from the practice of wholesale slaughter.⁶

The fact that his life had been spared, even for a ransom, must have had some impact upon King Richard. Four years later, he captured fifteen French knights. Instead of killing them, he ordered that all of the knights be blinded, except for one, who would retain sight in one eye and lead the others back to the French Army.⁷ While this may seem barbaric, it was standard practice to spare "neither age nor sex nor nun" in the wholesale slaughter that occurred after victory.⁸

Later in the middle ages, kings began issuing written rules by which their subjects must conduct themselves while waging war.⁹ In 1385, King Richard II issued articles of war that regu-

1. While the history of the law of war goes back millenniums, I have chosen to begin with a period with which most young soldiers have at least some familiarity. For a good discussion of the evolution of the treatment of prisoners of war in ancient Greece and Rome, see Reverend Robert F. Grady, *The Evolution of Ethical and Legal Concern for the Prisoner of War 1-30* (1970) (unpublished Ph.D. dissertation, Catholic Univ.) (copy maintained in the library of The Judge Advocate General's School, U.S. Army, in Charlottesville, Virginia, at the author's request).

Probably the first code to establish rules of warfare "was that of the Saracens and was based on the Koran." A.P.V. ROGERS, *LAW ON THE BATTLEFIELD 1* (1996), citing R.C. Algate, *Protection of Civilian Lives in Warfare: A Comparison Between Islamic Law and Modern International Law Concerning the Conduct of Hostilities*, MIL. L. AND L. OF WAR REV. 246 (1977). *But see* W.S. Armour, *Customs of Warfare in Ancient India*, 8 TRANSACTIONS OF THE GROTIUS SOCIETY 71 (1923).

2. *See generally* HERBERT C. FOOKS, *PRISONERS OF WAR 7-10* (1924); WILLIAM WINTHROP, *MILITARY LAW AND PRECEDENTS 788* (2nd rev. ed. 1920).

3. HOWARD S. LEVIE, 59 *INTERNATIONAL LAW STUDIES—PRISONERS OF WAR IN INTERNATIONAL ARMED CONFLICTS 2-5* (1978); George B. Davis, *The Prisoner of War*, 7 AM. J. INT'L. L. 521, 522-23 (1913).

4. *See generally* BRADFORD B. BROUGHTON, *THE LEGENDS OF KING RICHARD I COEUR DE LION* (1966) (describing the legends attributable to Richard I; for the Robin Hood association specifically, see pages 129-32).

5. Richard the Lion Heart's ship sank in the Adriatic Sea during his return from the Third Crusade in 1192. While crossing Europe in disguise, he was captured by Leopold, Duke of Austria. Leopold and Henry VI, the Holy Roman Emperor (and Leopold's ally), entered into a treaty with Richard on St. Valentine's Day, 1193. The terms of the agreement were that England would pay them £100,000 in exchange for their king. This amount then equaled England's revenues for five years. The sum was ultimately paid under the watchful eye of Richard's mother, Eleanor of Aquitaine. Richard was released on 4 February 1194 and returned to English soil on 13 March 1194. CHARLES MILLS, *THE HISTORY OF THE CRUSADES 168-69* (1844); JAMES A. BRUNDAGE, *RICHARD LION HEART 175-95* (1974); M. Foster Farley, *Prisoners for Profit: Medieval Intrigue Quite Often Focused upon Hopes of Rich Ransom*, MIL. HIST., Apr. 1989, at 12. *See also* MARION MEADE, *ELEANOR OF AQUITAINE: A BIOGRAPHY* (1977) (recounting the remarkable life of Richard I's mother). Leopold put the ransom money to good use; reportedly, the money was used to beautify Vienna and the two walls that surrounded the city. MILLS, *supra*, at 169.

6. *See* JOHN GILLINGHAM, *RICHARD COEUR DE LION: KINGSHIP, CHIVALRY AND WAR IN THE TWELFTH CENTURY 211-26* (1994) (containing a summary of King Richard's warfare strategy).

lated the methods and means of waging warfare. For example, articles XIII, XIX, and XXI provided specific rules which governed the capture, processing, and sharing of prisoners of war.¹⁰ In 1621, King Gustavus Adolphus of Sweden personally drafted a code which incorporated several limitations on warfare.¹¹ He prohibited the pillage or damage of any hospital, church, school, or mill, except upon command. His code also protected the clergy, the elderly, and all those who did not take arms against him.¹²

At the end of the middle ages, during a period that coincided with the commencement of the Thirty Years' War,¹³ scholars began to write about the laws and customs of warfare. Some of these early works impressed the warrior kings who led the nation-states that emerged from the middle ages. One promi-

nent scholar was Hugo Grotius. King Adolphus was so impressed by Grotius' seminal work on the laws of war and peace¹⁴ that he "is said to have slept with the work under his pillow during his campaigns in Germany."¹⁵ A copy of *De Jure Belli ac Pacis* was reportedly found in his tent after he was slain on the battlefield.¹⁶ To King Adolphus, "the learning of Grotius . . . stood out as a star of the first magnitude, and, sometime before his death, he had given orders that, should he die before he could carry out the plan himself, Grotius should be employed in the service of Sweden."¹⁷ King Adolphus was killed at the Battle of Lutzen,¹⁸ but his request was carried out. Grotius served the rest of his life as Sweden's ambassador to France.¹⁹

7. See PAT REID, PRISONER OF WAR 23 (1984). Major Reid states that the blinding of knights was in retaliation for earlier atrocities committed by the French and not for humanitarian reasons. *Id.* However, in the context of the Crusades, such conduct was an act of mercy. No example better explains this than the conduct of the Crusaders after they sacked Jerusalem in 1099:

No barbarian, no infidel, no Saracen, ever perpetrated such wanton and cold-blooded atrocities of cruelty as the wearers of the cross of Christ on the capture of that city. Murder was Mercy. Rape tenderness, simple plunder the mere assertion of the conqueror's right. Children were seized by their legs, some of them were plucked from their mother's breasts and dashed against the walls or whirled from the battlements. Others were obliged to leap from the walls; some tortured, roasted by slow fires. They ripped up prisoners to see if they had swallowed gold. Of 70,000 Saracens there were not left enough to bury the dead; poor Christians were hired to perform the office. Everyone surprised in the temple was slaughtered, till the reek from the dead bodies drove away the slayers. The Jews were buried alive in their synagogues.

Amos S. Hershey, *The History of International Relations During Antiquity and the Middle Ages*, 5 AM. J. INT'L. L. 901, 927-28 n. 81 (1911) (citing 4 MILAN, HISTORY OF LATIN CHRISTIANITY 37 (Am. ed. 1881)). During the Third Crusade, Richard himself perpetrated perfidity. While negotiating with the Saracens about the exchange of Muslim prisoners of war, the negotiations stalled over how the ransom would be paid. Reaching an impasse, Richard I ordered his men to surround the 3,000 prisoners, who were bound together by rope, and to use swords and lances to slaughter the lot. He "only spared prisoners of note and such as were strong enough to work." T.A. ARCHER, THE CRUSADE OF RICHARD I 1189-1192, 126-31 (1889).

8. Sir William Wallace allegedly made this battle cry during the fight for Scottish independence from 1297 until his execution in 1305. ANDREW FISCHER, WILLIAM WALLACE 40 (1986). See generally, PETER REESE, WALLACE: A BIOGRAPHY (1996); G.W.S. BARROW, ROBERT BRUCE (1965) (alleging that Sir William Wallace gave these orders during the Scottish War of Independence from England).

9. See M.H. KEEN, THE LAWS OF WAR IN THE LATE MIDDLE AGES (1965); I THOMAS A. WALKER, A HISTORY OF THE LAW OF NATIONS (1899) (discussing the laws of war from the earliest times to the Peace of Westphalia in 1648).

10. These articles established procedures for dividing a prisoner's value between the king, the constable, and the capturing soldier. Articles of War of Richard II-A.D. 1385, reprinted in WINTHROP, *supra* note 2, at 905-06.

11. Kenneth Ogren, *Humanitarian Law in the Articles of War Decree in 1621 by King Gustavus II Adolphus of Sweden*, INT'L REV. RED CROSS, July-Aug. 1996, at 438.

12. Code of Articles of King Gustavus Adolphus of Sweden, arts. 96, 97, reprinted in WINTHROP, *supra* note 2, at 913.

13. The Treaty of Westphalia in 1648 (really a series of treaties) was the first international agreement between warring nations which called for the prompt release of prisoners of war, without ransom. 60 INT'L L. STUDIES, DOCUMENTS ON PRISONERS OF WAR 5-6 (Howard S. Levie ed., 1979) (Art. LXIII of the treaty between Spain and the Netherlands and article CX of the treaty between Spain and the Holy Roman Empire) [hereinafter DOCUMENTS ON PRISONERS OF WAR]. The Treaty of Westphalia ended the Thirty Years War. See generally C.V. WEDGWOOD, THE THIRTY YEARS WAR (1944).

14. See HUGO GROTIUS, DE JURE BELLI AC PACIA (F.W. Kelsey trans., 1925) (1642). This is an English translation of Grotius' work.

15. Amos S. Hershey, *History of International Law Since the Peace of Westphalia*, 6 AM. J. INT'L. L. 30, 31 n.2 (1912). See also HAMILTON VREELAND, JR., HUGO GROTIUS: THE FATHER OF THE MODERN SCIENCE OF INTERNATIONAL LAW 189-90 (1917).

16. VREELAND, *supra* note 15, at 189.

17. Hamilton Vreeland, Jr., *Hugo Grotius, Diplomatist*, 11 AM. J. INT'L. L. 580, 582 (1917).

18. King Adolphus was shot once in the left arm and, while being escorted from the battlefield, was mortally wounded by a musket shot in the back. THE WORKS OF FREDERICK SCHILLER: HISTORY OF THE THIRTY YEARS' WAR 237-39 (Rev. A.J.W. Morrison trans., 1885).

19. Grotius served as Sweden's ambassador from 1635 until his death in August 1645. See generally *id.*

International law scholars universally recognize Hugo Grotius as the father of modern international law, particularly the concepts of the laws of war and peace.²⁰ Although a lawyer, Grotius experienced not only the ravages of war in his homeland, but also sufferings as a prisoner.²¹ Arrested in 1618 and held in close confinement at the Hague until his trial before a packed court in 1619, Grotius was sentenced to life imprisonment on 18 May 1619.²² After serving two years of confinement,²³ his wife helped him escape Loevestein prison on 21 March 1621. He escaped by hiding in a book chest²⁴ and thereafter fled to France, arriving in Paris on 13 April 1621.²⁵ In Paris, Grotius resumed work on his famous book *De Jure Belli ac Paci*.

De Jure Belli ac Paci, which was first published in 1625,²⁶ was profoundly significant in the development of the laws of war, especially in the context of the era in which it was written. It was the period of intrigue. Cardinal Richelieu controlled France, and Machiavelli was writing *The Prince*. “One has but to compare Machiavelli’s ‘Prince’ with Grotius’ ‘Rights of War

and Peace’ to realize the great step the Dutch jurist took in the very face of all Europe, the one book founded upon deceit and trickery, the other on justice and truth.”²⁷ European kings and warriors adopted the latter approach for warfare, largely due to the influence of Hugo Grotius.

The American Tradition

The American tradition of regulating warfare with law can be traced to the nation’s forefathers. Thomas Jefferson’s correspondence clearly demonstrates that he and General Washington embraced the laws and customs of warfare during the struggle for independence.²⁸ The 1785 Treaty of Amity and Commerce Between Prussia and the United States,²⁹ which was negotiated by Thomas Jefferson, John Adams, and Benjamin Franklin,³⁰ is a prime example of the early American attitude regarding the Law of War. Scholars consistently cite this treaty as being an early work in affording humanitarian treatment to prisoners of war.

20. See, e.g., MORRIS GREENSPAN, *THE MODERN LAW OF LAND WARFARE* 4 (1959).

21. Grotius was “a fully qualified legal practitioner” in Holland before his seventeenth birthday. W.S.M. Knight, *Grotius’s Earliest Years as Lawyer*, 8 *TRANSACTIONS OF THE GROTIUS SOCIETY* 1, 1-3 (1923) [hereinafter *Earliest Years*]. The war referred to was between Spain and the Netherlands. Grotius’ imprisonment was due to political intrigue during a power struggle between provinces within Holland while he was a pensionary. W.S.M. KNIGHT, *THE LIFE AND WORKS OF HUGO GROTIUS* 150-56 (1925) [hereinafter *LIFE AND WORKS OF HUGO GROTIUS*].

22. R.W. Lee, *The Family Life of Grotius*, 20 *TRANSACTIONS OF THE GROTIUS SOCIETY* 13 (1935). As for the proceedings themselves, “[t]here had been no indictment, no witnesses, no counsel, no argument. After the first examination, paper and ink were taken from him, and when he asked permission to write his defense, he was allowed five hours and one sheet of paper.” VREELAND, *supra* note 15, at 119 (footnote citing original source omitted); *Earliest Years*, *supra* note 21, at 12.

23. While serving his sentence, his wife and children were allowed to reside with him provided his wife did not leave more than twice a week. *LIFE AND WORKS OF HUGO GROTIUS*, *supra* note 21, at 162. For accommodations, the Grotius family was provided two rooms that contained a fireplace and five windows. VREELAND, *supra* note 15, at 124-25.

24. During his imprisonment, Grotius was permitted to receive books from friends. These books and his dirty linen were shuttled out of the prison in a large chest. His wife noticed that the guards, after a while, had stopped looking in the chest. Mrs. Grotius, with the aid of a valet and maid, placed her husband in the trunk. She then requested that two soldiers in the prison carry the chest down the stairs, through the thirteen doors that were normally bolted, out of the prison, and into an awaiting boat. To aid in her husband’s escape, Mrs. Grotius returned to the prison and pretended that she was caring for her husband who had fallen ill. Once the prison officials discovered her treachery, she was held in confinement until April. *LIFE AND WORKS OF HUGO GROTIUS*, *supra* note 21, at 162-63. VREELAND, *supra* note 15, at 130-49.

25. Lee, *supra* note 22, at 14; Jesse S. Reeves, *The First Edition of Grotius’ De Jure Belli ac Pacis*, 19 *AM. J. INT’L. L.* 12 (1925) (focusing on Grotius’ life from his arrival in Paris in 1621 until the first publication of his work in 1625).

26. WALKER, *supra* note 9, at 283-84. See also *supra* note 14.

27. VREELAND, *supra* note 15, at 177.

28. See Charles M. Wiltse, *Thomas Jefferson on the Law of Nations*, 29 *AM. J. INT’L. L.* 66, 75-81 (1935). However, probably none of our forefathers were better read on the law of war than Thomas Jefferson. See generally Burris M. Carnahan, *Reason, Retaliation, and Rhetoric: Jefferson and the Quest for Humanity in War*, 139 *MIL. L. REV.* 83 (1993). See also Catherine M. Prelinger, *Benjamin Franklin and the American Prisoners of War in England During the American Revolution*, *WM. & MARY Q.* 261-94 (Apr. 1975).

29. See, e.g., LEVIE, *supra* note 3, at 5. The correct name for this document is the Treaty of Amity and Commerce Between the King of Prussia and the United States of America, 8 *Stat.* 84, 8 *Bevans* 78. The provisions of Art. XXIV of the treaty controlled how prisoners could be quartered, fed, and confined; it also required a commissary for their use and permitted them to send correspondence and to receive items of comfort in the mail. *DOCUMENTS ON PRISONERS OF WAR*, *supra* note 13, at 8-9. The parties renewed this treaty in 1799, and it (not the Hague Regulations of 1907) was the law of war treaty in effect between the United States and Germany during World War I.

30. Davis, *supra* note 3, at 530. Besides negotiating treaties, John Adams had direct contact with the rules and customs imposed upon soldiers. He defended the British soldiers accused of, and later convicted for, firing upon Bostonians during the Boston Massacre. FREDERIC KIDDER, *HISTORY OF THE BOSTON MASSACRE, MARCH 5, 1770* (1870). See SHELDON COHEN, *YANKEE SAILORS IN BRITISH GAOLS: PRISONERS OF WAR AT FORTON AND MILL, 1777-1783*, 108-11, 115-18, 121-24, 148-51 (1995) (discussing Benjamin Franklin’s involvement in aiding escaping American prisoners of war). See also Prelinger, *supra* note 28.

Early American military leaders also recognized the importance of regulating war with law. These military officers were schooled in the laws and customs of warfare both on the battlefield and in the classroom. Several of these soldiers furthered their education and eventually became lawyers. Winfield Scott, who became general-in-chief of the Army, is an example of such a leader.

Winfield Scott came from a warrior heritage. His father fought in the American Revolution as a Captain, and his older brother served during the War of 1812.³¹ After serving as a lawyer's apprentice in Virginia,³² Winfield Scott enlisted in the cavalry in 1807. When Congress declared war in 1812, he was promoted to the rank of lieutenant colonel.³³ On 13 October 1812, during the Battle for Queenston Heights, a wounded Lieutenant Colonel Scott became a British prisoner of war.³⁴ He and several other regular Army officers were marched to

Canada with nine hundred other prisoners of war and were held at the Quebec Citadel until paroled on 20 November 1812 to embark for the Boston cartel ships.³⁵ In January 1813, he was exchanged at Washington,³⁶ and he returned to the northern frontier in time to plan and to lead the American amphibious attack against Fort Meade in May 1813. In late 1813, President Madison promoted the twenty-seven year old Scott to brigadier general.³⁷

By 1841, Scott had risen to the rank of Major General and had become the general-in-chief of the Army.³⁸ In 1847, Major General Scott led the American forces during the war with Mexico. His decisions during this war were instrumental in establishing United States practices in the law of war in at least two areas: handling private property during warfare and establishing courts, both civil and military, during an occupation.³⁹

31. 3 *DICTIONARY OF AMERICAN MILITARY BIOGRAPHY* 972 (Roger J. Spiller et al eds. 1984) [hereinafter *MILITARY BIOGRAPHY*].

32. 1 *WINFIELD SCOTT, MEMOIRS OF LIEUTENANT GENERAL SCOTT, LL.D.* 5 (1864). While Winfield Scott practiced law prior to entering the military, he did not receive a law degree until 1850. In that year, Columbia College conferred on him an honorary degree of LL.D. (Of note, Dr. Lieber was a professor at Columbia by this time.) In 1861, Harvard conferred upon him a like distinction. 2 *id.* at 628.

33. However, General Scott's career was not unblemished. In fact, in 1810, then Captain Scott was tried and convicted at a general court-martial for publicly announcing that his commander "was a traitor, a liar, and a scoundrel." R. ERNEST DUPUY and TREVOR N. DUPUY, *BRAVE MEN AND GREAT CAPTAINS* 75 (1959). The court sentenced him to "be suspended from all rank, pay, and emoluments for the space of twelve months." *Id.* The court recommended remission of nine months of their sentence, but the approving authority approved the twelve-month sentence. *Id.* The approving authority was the general against whom Captain Scott had made the accusations for which he was convicted. As a consequence of this conviction, he was dismissed from the service in 1810. 1 *SCOTT, supra* note 32, at 40. After the one-year period expired, he reentered the Army. *Id.* at 43. Immediately after his conviction, Captain Scott challenged his accuser, the unit surgeon, to a duel. The surgeon accepted the challenge. Scott fired first but missed. The surgeon returned fire but only grooved Scott's scalp. DUPUY AND DUPUY, *supra*, at 75.

34. 1 *SCOTT, supra* note 32, at 72-73. For a more detailed account of this battle, see Theodore J. Crackel, *The Battle of Queenston Heights, 13 October 1812, in AMERICA'S FIRST BATTLES 1776-1965*, 33-80 (Charles E. Heller & William A. Stofft eds., 1986).

35. "A *cartel ship* is a vessel commissioned for the exchange or ransom of prisoners of war, or to carry proposals from one belligerent to the other, under a flag of truce." JOSEPH R. BAKER and LOUIS W. MCKERNAN, *SELECTED TOPICS CONNECTED WITH THE LAWS OF WARFARE AS OF AUGUST 1, 1914*, 522 (1919).

At the Battle of Queenston Heights, two prominent figures in American military history were captured: First Lieutenant Stephen W. Kearny and Captain John Wool. Lieutenant Kearny was wounded during the battle, captured, and held by the British in Canada until he was paroled along with Winfield Scott in early 1813. Both officers rose to the rank of brigadier general and served under General Scott during the Mexican War. DWIGHT L. CLARK, *STEPHEN WATTS KEARNEY, SOLDIER OF THE WEST* 16-17 (1961).

36. 1 *SCOTT, supra* note 32, at 72-73.

37. DUPUY AND DUPUY, *supra* note 33, at 77. During the War of 1812, Scott was wounded in battle twice—once during the capture of Fort Meade on 27 May 1813 and again on 25 July 1814 during the Battle of Lundy's Lane. See 3 *MILITARY BIOGRAPHY, supra* note 31, at 972.

38. This position is now called the chief of staff of the Army.

39. Part of the credit for the evolution of U.S. practices during the occupation belongs to Brigadier General Kearny. In 1846, General Kearny was the commander tasked by General Scott to conquer New Mexico and California from Mexico. In June 1846, Secretary of War Marcy sent a letter to General Kearney, directing him to establish temporary civil governments in New Mexico and Upper California, should his expedition be successful. H.R. EXEC. DOC. NO. 13-60, at 153-55 (1st Sess. 1848) (letter from Secretary of War Marcy to Colonel Kearny, dated 3 June 1846) (the letter also promoted Colonel Kearny to brevet brigadier general). See also *id.* at 164-65 (letter from Major General Scott to General Kearny, dated 3 Nov. 1846). As general-in-chief of the Army, General Scott directed that the senior officer of the land forces was to be the military governor of California. This caused considerable consternation between General Kearny and Commodore Stockton, commander of the naval forces that were supporting the effort in California. See CLARK, *supra* note 35, at 256-87 (chapter entitled "Who Is Governor of California?"). General Kearny was successful in establishing a new civil government. The "territorial constitution" mirrored the U.S. Constitution, in large measure, and even included a bill of rights. H.R. EXEC. DOC. NO. 13-60, at 177-83 (Doc. No. 24, Organic Law for the Territory of New Mexico, Compiled Under the Directions of General Kearney, dated 22 Sept. 1846). General Kearny also promulgated civil and criminal laws and procedures. *Id.* at 184-229. These laws and procedures were reviewed and approved by the U.S. Supreme Court in *Leitensdorfer v. Webb*, 20 How. 176, 15 L. Ed. 891 (1858). See also *Cross v. Harrison*, 16 How. 164, 14 L. Ed. 889 (1853). After placing California in firm U.S. control, General Kearny returned and became involved in the heated court-martial against the explorer John Fremont. In April 1848, General Kearny joined General Scott's forces at Vera Cruz, where he served for a short time as the military governor of Mexico City and the commander of the 2nd Division.

Although General Scott served solely as the general-in-chief of the Army at the outset of the war, he assumed command of the second major land force in Mexico in late 1846.⁴⁰ During his campaign into Mexico, Scott received an order to provision his troops by pillaging the Mexican countryside. General Scott balked, and Washington rescinded the order. “He thereupon directed reasonable prices to be paid for such articles as were needed for subsistence of his army, and experienced so little difficulty in obtaining them as to make resort to requisition unnecessary.”⁴¹ The process of purchasing property in occupied areas, rather than pillaging, remains the hallmark of the treatment of property in the modern law of war.⁴²

The issue of martial law confronted Scott before he even arrived in Mexico. Correspondence from the initial commander of the Mexican campaign, Major General Zachary Taylor, prompted General Scott to craft his famous general orders on martial law.

Reliable information reached Washington, almost daily, that the wild volunteers as soon as beyond the Rio Grande, committed, with impunity, all sorts of atrocities on the persons and property of Mexicans, and that one of the former, from a concealed position, had even shot a Mexican as he marched out of Monterey, under the capitulation. There was no legal punishment for any of these offenses, for by the strange omission of Congress, American troops take with them beyond the limits of their own country, no law but the Constitution of the United States, and the rules and articles of war. These do not provide any court for the trial or punishment of murder, rape, theft, &c., &c.—no matter by whom, or on whom committed.

To suppress these disgraceful acts abroad, [General Scott] drew up an elaborate paper, in the form of an order—called his *martial law order*—to be issued and enforced in Mexico, until Congress could be stimulated to legislate on the subject.⁴³

Scott initially published his martial law order, in English and Spanish, after his amphibious landing at Tampico. He republished it as he occupied Vera Cruz, Puebla, and Mexico City.⁴⁴ According to his memoirs, General Scott published his general order, even without official approval, because he “could not have maintained the discipline and honor of the army, or have reached the capital of Mexico” without it.⁴⁵

[Under this general order], all offenders, Americans and Mexican, were alike punished—with death for murder or rape, and for other crimes proportionally. [The] order did not in the least interfere with the administration of justice between Mexican and Mexican, by the ordinary courts of the country. It only proved a special American tribunal for any case to which an American might be a party. And further . . . military commissions in applying penalties to convicted felons, were limited to “*known* punishments, in like cases, in some of the United States.”⁴⁶

In the words of General Scott and others, the equal treatment of the Mexican populace “worked like a charm.”⁴⁷

Major General Scott’s general order is the foundation for contemporary military commissions.⁴⁸ By issuing this order, General Scott codified the commander’s right to convene tribunals in occupied areas, a right previously based solely on custom.⁴⁹ These military tribunals tried and punished Mexicans

40. General Zachary Taylor was in command of the initial campaign. With his supply lines already overextended and the Polk administration desiring that Mexico City be captured, General Taylor was still three hundred miles of desert away from Mexico City. He realized that, even if he could complete the march across the desert, his men would not be fit to face the 20,000-man army confronting them. General Taylor recommended that a second force be gathered and sent to Vera Cruz. President Polk, aware of General Scott’s political ambitions, “reluctantly appointed Scott to command [the] forces in Mexico and authorized the proposed invasion by way of Vera Cruz.” DUPUY AND DUPUY, *supra* note 33, at 108.

41. See H.R. EXEC. DOC. NO. 13-60, at 937 (Major General Scott’s Proclamation at Vera Cruz, 11 April 1847); *id.* at 914 (General Order No. 87, Headquarters of the Army, Vera Cruz, dated 1 Apr. 1847). See also GEORGE B. DAVIS, THE ELEMENTS OF INTERNATIONAL LAW 309 (4th ed. 1915).

42. See, e.g., Annex to Hague Convention No. IV, 18 October 1907, Embodying the Regulations Respecting the Laws and Customs of War on Land, arts. 46, 51-53, 36 Stat. 2277 (reprinted in U.S. DEP’T OF ARMY, PAM. 27-1, TREATIES GOVERNING LAND WARFARE, at 16-17 (7 Dec. 1956)). See also Geneva Convention Relative to the Protection of Civilian Persons in Time of War, Aug. 12, 1949, art. 55, T.I.A.S. No. 3365, 75 U.N.T.S. 135 (reprinted in U.S. DEP’T OF ARMY, PAM. 27-1, TREATIES GOVERNING LAND WARFARE, at 152 (7 Dec. 1956)).

43. 2 SCOTT, *supra* note 32, at 392-93. In his memoirs, General Scott states that he presented a draft of his order to Secretary of War Marcy for approval, but Mr. Marcy returned it, saying the order was “too explosive for safe handling.” *Id.* at 393. The attorney general requested a copy of General Scott’s order and rendered an opinion that supported General Scott’s views. The attorney general’s opinion, however, was not issued until seven years after the hostilities in Mexico ended. 5 Op. Att’y Gen. 55 (1855) (stating that a United States court does not have jurisdiction over a murder committed in Perote, Mexico by an officer who was part of the occupying force under General Scott’s command).

See H.R. EXEC. DOC. NO. 13-60, at 336-38 (letter from Major General Taylor to the President, dated 1 Aug. 1846, complaining about undisciplined soldiers); *id.* at 369-71 (letter from Secretary of War Marcy to Major General Zachary Taylor, dated 25 Nov. 1846). See also 2 JUSTIN H. SMITH, THE WAR WITH MEXICO 210-20, 450-54 (1919) (recounting the discipline problems Generals Taylor and Kearney faced during their campaigns).

and American soldiers alike.⁵⁰ At least one soldier was executed for causing harm to Mexican citizens.⁵¹ With certain exceptions, this same order also authorized the continued function of local courts.⁵²

When General Scott retired in 1861,⁵³ he was succeeded by another soldier-lawyer, Henry W. Halleck, the adopted son of Baron Frederic von Steuben.⁵⁴ Like Scott, Mr. Halleck was schooled at home, in the classroom, and on the battlefield about

44. 2 SCOTT, *supra* note 32, at 392-93. Headquarters, U.S. Army Tampico, Mexico, Gen. Order No. 20 (19 Feb. 1847), as amended by Headquarters, U.S. Army, Tampico, Mexico, Gen. Order Nos. 190, 287 (reprinted in NATIONAL ARCHIVES RECORDS GROUP, MILITARY ORDERS—MEXICAN WAR, entry 134). See 2 SCOTT, *supra* note 32, at 540-46 (reprinting Headquarters, U.S. Army, National Palace of Mexico, Gen. Order No. 247 (17 Sept. 1847)). General Order 247 is essentially an improved version of the original order. See H.R. EXEC. DOC. No. 13-60, at 937 (Major General Scott's Proclamation at Vera Cruz, 11 April 1847). In addition, General Scott published regulations to supplement this order. These regulations protected hospitals, schools, mills, post offices, and churches. 2 SCOTT, *supra* note 32, at 547-49. See also H.R. EXEC. DOC. No. 13-60, at 914 (Headquarters, U.S. Army, Vera Cruz, Mexico, Gen. Order No. 87 (1 Apr. 1847)).

Probably his most successful regulation involved the strict protection of the church. Mexico has historically been a devout Catholic nation. General Scott realized the value of protecting the church and issued a separate proclamation at Jalapa on 11 May 1847. In his proclamation, General Scott exclaimed: "The Army of the United States respects, and will ever respect private property of every class, and the property of the Mexican Church. Woe to him who does not, where we are!" *Id.* at 968-74 (Proclamation by the general-in-chief of the armies of the United States of America, to the Mexican people, Headquarters of the Army, Jalapa, Mexico (11 May 1847)). See 2 SCOTT, *supra* note 32, at 549. The Mexican people were elated by this address and flooded the various military headquarters to obtain copies of the proclamation. The response was so overwhelming that General Worth wrote to General Scott, stating: "my doors are crowded for it—with the people (of all classes) it takes admirably and has produced more decided effects than all the blows from Palo Alto to Cerro Gordo. I have scattered them far and wide . . ." H.R. EXEC. DOC. No. 13-60, at 967 (extracts from an unofficial letter from Major General Worth to Major General Scott, dated at Puebla, 19 May 1847). See 2 SCOTT, *supra* note 32, at 549.

45. 2 SCOTT, *supra* note 32, at 395. Recognizing this void in criminal jurisdiction in foreign lands, Secretary of War Marcy recommended to Congress that it extend military jurisdiction in such instances. 2 SMITH, *supra* note 43, at 220. However, in a letter to General Scott, Secretary Marcy later wrote:

[I]t is not reasonable to expect that an additional article of war, giving authority to military tribunals to try and [to] punish certain offenses not expressly embraced in the existing articles, will be enacted. I have had a conversation on the subject with the chairman of the committee of the Senate, and understand from him that he had given it his attention, and did not consider legislation necessary, as the right to punish in such cases necessarily resulted from the condition of things when an army is prosecuting hostilities in an enemy's country.

H.R. EXEC. DOC. No. 13-60, at 873-74 (letter from Secretary of War Marcy to Major General Winfield Scott, dated Feb. 15, 1847).

46. 2 SCOTT, *supra* note 32, at 395.

47. *Id.* at 395-96.

The policy here adopted by the American general worked like a charm. It won over the Mexicans by appealing to their self-interest, intimidated the vicious of the several races, and, being enforced with impartial rigor, gave high moral department and discipline to the invading army [W]e have the evidence of the commander himself that valor and professional science could not alone have accomplished all this with double the number of troops, in double the time, and with double the loss of life, without the adoption and carrying into execution these and other similar measures at once deterrent of crime in all classes and conciliating the people conquered.

WILLIAM E. BIRKIMER, MILITARY GOVERNMENT AND MARTIAL LAW 139 (2nd rev. ed. 1904).

48. WINTHROP, *supra* note 2, at 832; A. Wigfall Green, *Military Commissions*, 42 AM. J. INT'L. L. 832, 833 (1948).

49. WINTHROP, *supra* note 2, at 832.

50. One soldier was tried and convicted of public drunkenness and assaulting a woman with kicks and blows. He was punished by being strapped over a wagon, given twelve lashes and then forced to labor at a fort, while strapped to a ball and chain, until the end of the war. 2 SMITH, *supra* note 43, at 221. In another case, a private who was convicted of breaking into a Mexican home and stealing ladies' clothing "was sentenced to receive fifty lashes on his bare back 'well laid on with a rawhide,' to be confined at hard labor during the rest of his term, to be then dishonorably discharged and drummed out," and his pay was confiscated, with \$250 going to the person robbed. *Id.* Mexicans as well as Americans were publicly flogged. *Id.* In extreme cases, hanging was the punishment. *Id.* at 459, n. 39. See *id.* at 220-32, 455-62 (detailing General Scott's enforcement of discipline within Mexico).

51. Headquarters, U.S. Army, Vera Cruz, Mexico, Gen. Order No. 101 (9 Apr. 1847); H.R. EXEC. DOC. No. 13-60, at 935-37 (Major General Scott's Proclamation at Vera Cruz, 11 April 1847) (referring to a soldier, named Isaac Kirk, who was hung for raping a Mexican female and for stealing ten dollars and a comb from his victim on 4 April 1847). The proclamation refers to several others who were punished by fine for other unspecified acts of indiscipline against Mexican nationals. See *id.*

52. Those exceptions being: "(1) in cases to which an officer, soldier, agent, servant, or follower of the American Army may be a party; and (2) in political cases—that is, prosecutions against other individuals on the allegations that they have given friendly information, aid, or assistance to the American forces." BIRKIMER, *supra* note 47, at 581, 583 (reprinting Gen. Order No. 287, para. 13). This reservation continued in American occupation practice during World War II. Allied Kommandatura, Law No. 7 (copy on file with author). For a discussion of the evolution of the law of occupation between the Mexican War and World War II, see DORIS A. GRABER, THE DEVELOPMENT OF THE LAW OF BELLIGERENT OCCUPATION 1863-1914: A HISTORICAL SURVEY (1949).

53. Ultimately, General Scott was promoted to the rank of Lieutenant General, the first American officer to hold that rank since General Washington. 3 MILITARY BIOGRAPHY, *supra* note 31, at 974.

the laws and customs of war.⁵⁵ He studied law as part of the required curriculum at West Point,⁵⁶ where he graduated third in his class in 1839.⁵⁷ In 1846, he published his first book, entitled *Elements of Military Art and Science; or, Course of Instruction in Strategy, Fortification, Tactics of Battles, & c.* The work was considered to make Halleck, along with Dennis Hart Mahan, “one of the two founders of American professional military scholarship and thought.”⁵⁸

Halleck’s battlefield experience began during the Mexican War. While General Scott was conducting operations in Mexico in 1846-1847, General Kearney conquered California from Mexican forces.⁵⁹ General Kearney established a military government in California and appointed Halleck, a newly arrived first lieutenant, as the secretary of state.⁶⁰ It was in this capacity that Lieutenant Halleck rekindled his interest in the law.

After the war ended, Halleck established the San Francisco law firm of Halleck, Peachy, and Billings in 1849. Wanting to devote more time to his law practice, he resigned his commission in 1854. In 1861, Mr. Halleck wrote his first law book, *International Law, or Rules Regulating the Intercourse of*

*States in Peace and War.*⁶¹ He returned to military life when the Civil War broke out, and President Lincoln appointed him to the rank of Major General in the regular Army. From 1861 to 1862, General Halleck served as the commander of the Union Army in Missouri and received a “baptism by fire” in the bloody internecine warfare between Kansas Jayhawkers and the Missouri Bushwackers.⁶² In July 1862, General Halleck became the general-in-chief of the U.S. Army and held that position until he was replaced by General Grant.

During his tenure as general-in-chief of the Army, Halleck realized that the unwritten laws and customs that existed at the time were insufficient to deal with the war that raged between the North and the South. Prior to the American Civil War, little public information was available about the laws and customs of war. Even less information was available to the practitioners of warfare. It was the unwritten practice that controlled the conduct of combatants. For example, when war broke out between the states, the United States Army regulations provided only two vague paragraphs on the obligations towards, and the rights of, prisoners of war.⁶³ This sparse guidance was insufficient to

54. Baron Von Steuben had personal experience on the laws and customs of warfare. He was instrumental in the training of the American Continental Army during the Revolutionary War. He had also been a prisoner of war after being captured by the Russians in 1761. *Id.* at 1050.

Another notable Prussian also experienced being a prisoner of war prior to writing his influential work. His name was Carl von Clausewitz. In 1806, Clausewitz led one-third of Prince August’s battalion against Napoleon during the battle of Auerstedt. After the battle, his unit served as the retreating Prussian rear guard until it ran out of ammunition and surrendered. After their surrender, Napoleon held Clausewitz and Prince August as prisoners of war for ten months and eventually permitted them to return to Prussia in the fall of 1807. Peter Paret, *Clausewitz, in MAKERS OF MODERN STRATEGY FROM MACHIAVELLI TO THE NUCLEAR AGE* 191 (Peter Paret ed., 1986). Clausewitz wrote his definitive work, *On War*, eighteen years later. *See generally* CARL VON CLAUSEWITZ, *ON WAR* (Michael Howard and Peter Paret eds., rev. ed. 1984).

55. Unless otherwise noted, the information on General Halleck comes from the second volume of the *DICTIONARY OF AMERICAN MILITARY BIOGRAPHY*, pages 421-25. *See supra* note 31.

56. Since 16 March 1802, the West Point curriculum has included the articles of war. 2 *MILITARY BIOGRAPHY, supra* note 31. *See* 2 *CENTENNIAL OF THE UNITED STATES MILITARY ACADEMY AT WEST POINT, 1802-1902* (Edward S. Holden ed., 1904) (including a bibliography of all books used as part of student studies at West Point during the 19th Century). However, there is some question as to whether the laws and customs of warfare were properly taught prior to 1817. During that year, West Point’s new superintendent, Sylvanus Thayer, made the study of law a distinct part of the curriculum. *See* JOHN W. MASLAND and LAURENCE I. RADWAY, *SOLDIERS AND SCHOLARS: MILITARY EDUCATION AND NATIONAL POLICY* 77 (1957).

57. Telephone interview with Alan Aimone, Assistant Librarian for Special Collections, United States Military Academy at West Point (June 25, 1997).

58. 2 *MILITARY BIOGRAPHY, supra* note 31, at 424. Dennis Hart Mahan was a professor of military and civil engineering at West Point from 1830 until his death in 1871. As the primary instructor on the science of war at West Point, he taught “nearly all the West Point graduates who commanded in the Civil War.” *Id.* at 714. His writings in engineering “became the foundation of engineering literature in the United States.” *Id.* at 715. His book, commonly called *Out-Post*, (along with Halleck’s tactics book) “was the foundation of American professional military literature.” *Id.*

During his career, Professor Mahan’s favorite pupil was Cadet Henry W. Halleck. Professor Mahan took Cadet Halleck under his academic wing and had him teaching classes while still a cadet. After Cadet Halleck’s graduation, Halleck was appointed as an assistant professor in the engineering department, where he served for one year. *Id.* at 421.

Professor Mahan is also the father of Captain Alfred Thayer Mahan. Captain Mahan, besides being the father of modern naval strategy, was a U.S. delegate to the Hague Peace Conference in 1901. *Id.* at 712.

59. CLARK, *supra* note 35.

60. WINTHROP, *supra* note 2, at 802.

61. The book was updated, renamed *THE ELEMENTS OF INTERNATIONAL LAW*, and published in 1866.

62. *See* 2 *MILITARY BIOGRAPHY, supra* note 31, at 422-23.

address the myriad of prisoner of war and law of war issues that arose during the Civil War.

The problem was underscored “by the fact that both the Union and Confederate armies were manned by untrained volunteers and conscripts and largely commanded by politically appointed officers whose military and legal training rarely, if at all, rose above the level of their corps.”⁶⁴ The general lack of military experience created a need for a practical guide to the customs and laws of warfare, to be distributed to the soldiers of both belligerents. Thus the Civil War laid the foundation for the first comprehensive codification of the laws of war,⁶⁵ and Halleck recommended the creation of such a codification. At the behest of Secretary of War Stanton, Dr. Francis Lieber compiled the customary laws of war into one succinct document.⁶⁶

It is generally believed that Dr. Lieber was solely responsible for his famous code, but this is not the case. In fact, the Secretary of War appointed a board to develop the code, and Dr.

Lieber happened to be part of the distinguished panel. The composition of the panel demonstrates the “warrior” influence of the code. In addition to Dr. Lieber, the board included four general officers: Major General Ethan Allen Hitchcock, Major General George Cadwalader, Major General George L. Hartsuff, and Brigadier General J.H. Martindale. Their mandate was to “propose amendments or changes in the rules and Articles of War, and a code of regulations for the government of armies in the field, as authorized by the laws and usages of war.”⁶⁷ Among Generals Cadwalader, Hartsuff, and Martindale, “[t]wo were lawyers, and one was a former instructor at West Point.”⁶⁸ As for General Hitchcock, he graduated from West Point in 1817, taught military tactics at West Point for three years, and fought in both the Seminole Wars of the 1830s and the Mexican War.⁶⁹ His peers called him “The Pen of the Army” because of his administrative and intellectual prowess.⁷⁰ When General Hitchcock came out of retirement in 1862, President Lincoln offered him command of the Army of the Potomac, but he declined the offer because of poor health.⁷¹ Instead,

63. Those provisions were:

745. [726]. Prisoners of war will be disarmed and sent to the rear, and reported as soon as practicable to the headquarters. The return of the prisoners from the headquarters to the Army to the War Department will specify the number, rank, and corps.

746. [727.] The private property of prisoners will be duly respected, and each shall be treated with the regard due to his rank. They are to obey the necessary order given them. They receive for subsistence one ration each, without regard to rank, and the wounded are to be treated with the same care as the wounded of the Army. Other allowances to them will depend on convention with the enemy. [Prisoner’s horses will be taken for the Army.]

[728. *Exchanges of prisoners and release of officers on parole depend on the orders of the general commanding in chief under the instructions of Government.*]

Compare House Report on the Treatment of Prisoners of War by the Rebel Authorities During the War of the Rebellion, H.R. REP. No. 40-45, at 24 (3d Sess. 1869) (original U.S. Army regulation) (copy on file with author) with 3 U.S. WAR DEP’T, *THE WAR OF THE REBELLION: A COMPILATION OF THE OFFICIAL RECORDS OF THE UNION AND THE CONFEDERATE ARMIES*, ser. 2, at 691 (Confederate Army Regulation of 1861) [hereinafter OFFICIAL RECORDS]. The Confederate States merely adopted the Union’s regulations with slight additions. Those modifications are reflected in the italicized and bracketed portions of the regulation above. The U.S. Army eventually expanded its regulatory guidance to twelve paragraphs by General Order Number 32, dated 2 April 1862. See 3 OFFICIAL RECORDS, *supra*, at 417-18. However, these regulations provided no further guidance on the discipline and security of prisoners of war. It was not until 7 July 1862 that the Office of the Commissary-General of Prisoners issued guidance on this matter. Its circular provided that each prison camp commander was accountable for the “discipline and good order of his command and for the security of the prisoners.” 4 *id.* at 152.

64. RICHARD SHELLY HARTIGAN, *LIEBER’S CODE AND THE LAW OF WAR* 7 (1983).

65. Frederic de Martens describes the historical significance of Dr. Lieber’s code as follows:

So it is to the United States of North America and to President Lincoln that belongs the honor of having taken the initiative in defining with precision the customs and laws of war. This first official attempt to codify the customs of war and to collect in a code the rules binding upon military forces has notably contributed to impress the character of humanity upon the conduct of the northern states in the course of that war.

Elihu Root, Address Before the American Society of International Law at the Seventh Annual Meeting, Washington, D.C. (Apr. 24, 1913), *reprinted in* 7 AM. J. INT’L L. 453, 457 (1913) (quoting Frederic de Martens, but citing no source for the quote). See also HARTIGAN, *supra* note 64, at 23 (citing F. DE MARTENS, *PRECIS DU DROIT DES GENS MODERNE DE L’EUROPE* (1879)).

66. Actually, Dr. Lieber was appointed in large measure because of the efforts of the Union chief of staff of the Army, General Halleck. General Halleck was an accomplished scholar of international law who had already published a book on the subject. See HENRY W. HALLECK, *INTERNATIONAL LAW* (1861); H.W. HALLECK, *ELEMENTS OF INTERNATIONAL LAW AND LAWS OF WAR* (1866).

Dr. Lieber described the difficulty of collecting and codifying the customary laws of war. In the letter he sent to General Halleck when transmitting the completed codification, he stated: “I have earnestly endeavored to treat these grave topics conscientiously and comprehensively . . . nothing of the kind exists in any language. I had no guide, no groundwork, no textbook . . . use, history, reason, and conscientiousness, a sincere love of truth, justice, and civilization have been my guides . . .” Root, *supra* note 65, at 459.

67. HARTIGAN, *supra* note 64, at 85 (reprinting Headquarters, War Dep’t, Adjutant Gen. Office, Spec. Orders No. 399 (17 Dec. 1862)). See also Root, *supra* note 65, at 454.

he accepted a position as an advisor to President Lincoln and Secretary of War Stanton. While serving in this capacity, he was not only appointed to the Lieber Board, but also served as commissioner for the exchange of prisoners of war.⁷²

President Lincoln adopted the panel's codification of the laws of war and, on 24 April 1863, issued the *Instruction for the Government of Armies of the United States in the Field, War Department General Order 100*.⁷³ Commonly referred to as the Lieber Code,⁷⁴ this order was so complete that the Confederacy adopted it as its own, substituting the words "Confederate States" where the words "United States" appeared in the document.⁷⁵ The fact that almost one-third of the articles address prisoner of war issues is no coincidence and is explained by Dr. Lieber's personal experience and investment in the war.

Professor Lieber was no stranger to warfare. In 1815, at the age of 15, Lieber enlisted in the Prussian army in response to Napoleon's escape from the Island of Elbe. He experienced first-hand the sufferings of an infantryman. He vividly recounted the suffering he endured while marching hungry, in a downpour, and arriving the afternoon of 18 June 1815 at a place called Waterloo.⁷⁶ Only days earlier, Lieber's company fought

in the Battle of Ligny, where only thirty out of 150 men in Lieber's unit survived and continued on to Waterloo.⁷⁷ In this battle, young Lieber observed the horror of war: "12,000 Prussians and 8500 French were killed or wounded" in the battle.⁷⁸

At Waterloo, Lieber witnessed another 47,000 bodies lying on the battlefield with their horses and equipment.⁷⁹ While his regiment pursued the remnants of Napoleon's army to Namur, he was seriously wounded in the neck. He was wounded a second time and "had the strange and vital discipline of lying long on the battlefield in expectation of death."⁸⁰ It was not until that evening that fellow soldiers carried him to a nearby field hospital.⁸¹ By the time he was twenty-six years old, he had fought in two wars—one in Continental Europe, the other in Greece (the Greek War of Independence).⁸² Lieber's experience as a soldier inspired one author to note that "[i]f, as seems not unreasonable, he who is to write of war must first experience it, this much of Lieber's qualifications as a codifier of the Law of War had been established."⁸³

Dr. Lieber's interest in the conduct of the Civil War stemmed from the fact that he had three sons engaged in the fight: two for the North and one for the South. His oldest son, Oscar, was

68. HARTIGAN, *supra* note 64, at 14. Brigadier General Cadwalader served as a brigade commander under Major General Scott during the War with Mexico in 1846-1847 and led his brigade in several engagements. H.R. EXEC. DOC. NO. 13-60, at 924-25 (1st Sess. 1848) (Attached Statement No. 1, dated Mar. 3, 1847, in letter from Secretary of War Marcy to Major General Scott, dated Apr. 30, 1847); N.C. BROOKS, A COMPLETE HISTORY OF THE MEXICAN WAR 447-52 (1851). *See generally*, 2 SMITH, *supra* note 43.

69. 2 MILITARY BIOGRAPHY, *supra* note 31, at 475-76. Hitchcock, who was then a lieutenant colonel, served as part of General Scott's cabinet during the march from Vera Cruz to Mexico City. 2 SCOTT, *supra* note 32, at 422.

70. 2 MILITARY BIOGRAPHY, *supra* note 31, at 475.

71. *Id.* at 476. President Lincoln wanted General Hitchcock to replace General McClellan as the commander of the Army of the Potomac. After General Hitchcock declined, President Lincoln eventually relieved McClellan and appointed General Burnside to the position. *Id.*

72. *Id.* at 476-77.

73. *See* THE HENRY DURANT INSTITUTE, THE LAWS OF ARMED CONFLICTS: A COLLECTION OF CONVENTIONS, RESOLUTIONS, AND OTHER DOCUMENTS 3 (Dietrich Schindler & Jimi Toman eds., 1988) (reprinting General Order 100).

74. Of note, 48 of the 157 articles deal with obligations towards, and rights of, prisoners of war. *See id.* at 10-14, 18-19 (reprinting arts. 48-80 and 119-133 of the Lieber Code).

75. William E. Boyle, Jr., *Under the Black Flag: Execution and Retaliation in Mosby's Confederacy*, 144 MIL. L. REV. 148, 156 (1994), *quoting* 1 OFFICIAL RECORDS OF THE UNION AND CONFEDERATE ARMIES IV 131 (1900).

76. Ernest Nye, *Francis Lieber—His Life and His Work*, 5 AM. J. INT'L. L. 84, 92 (1911) (extract from the book written in French, as translated by Charles G. Fenwick).

77. *Id.*

78. *Id.*

79. *Id.*

80. *Id.* at 93; Root, *supra* note 65, at 459.

81. Nye, *supra* note 76, at 93.

82. *Id.* at 98.

83. James G. Garner, *General Order 100 Revisited*, 27 MIL. L. REV. 1, 3 (1965), *quoting* Richard Baxter, *The First Modern Codification of the Law of Land Warfare*, INT'L REV. RED CROSS 3 (Supp. 1953).

Conclusion

mortally wounded while fighting for the Confederacy at Williamsburg. One of his other sons, Hamilton, lost an arm at the Battle of Fort Donelson.⁸⁴ The third son, G. Norman, was a civilian lawyer until 1861, when he joined the Union Army. As an infantry officer, he fought in several major engagements prior to 1863, including the Battle of Gaines Mill and the Second Battle of Bull Run. G. Norman Lieber eventually rose to become The Judge Advocate General of the U.S. Army.⁸⁵

Between the American Civil War and World War I, warriors made great strides in building on Lieber's work to codify the customs of warfare. These steps were largely due to Dr. Lieber's code. After reviewing his work, other nations adopted his code as their own. For example, in 1870, the German government adopted the code for use in its war with France.⁸⁶ This codification movement culminated when, in 1874, Czar Nicholas of Russia convened a conference in Brussels for the Continental Nations to gather for the purpose of codifying the laws and customs of war. Russia's delegate and president of the convention, Baron Jomini, "declared that the project of an international convention then presented had its origin in the rules of President Lincoln [the Lieber Code]."⁸⁷ So complete was Lieber's Code that it was the official guidance on the laws of war in all American conflicts until 1914.⁸⁸

This short exposé of the evolution of the laws of war is intended to assist the soldier-lawyer in answering the warrior's question presented in the introduction. History demonstrates that the laws of war were developed by warriors for warriors. The law of war has always been, and should continue to be, within the province of, and from the perspective of, the warrior. The laws of war are just that, rules of conduct by warriors for warriors.⁸⁹

Wars happen. It is not *necessary* that war will continue to be viewed as an instrument of national policy, but it is likely to be the case for a very long time. Those who believe in the progress and perfectability of human nature may continue to hope that at some future point reason will prevail and all international disputes will be resolved by nonviolent means, perhaps ultimately through the agency of an international structure beyond the level of the nation-state. Unless and until that occurs, our best thinkers must continue to pursue the moral issues related to war. Those who romanticize war do not do mankind a service; those who ignore it abdicate responsibility for the future of mankind, a responsibility we all share even if we do not choose to do so.⁹⁰

84. Telford Taylor, *Foreword to I THE LAW OF WAR: A DOCUMENTARY HISTORY XV* (Leon Friedman ed., 1972).

85. *THE ARMY LAWYER: A HISTORY OF THE JUDGE ADVOCATE GENERAL'S CORPS, 1775-1975*, 85-86 (U.S. Gov't Printing Office 1975).

86. Root, *supra* note 65, at 456. Lieber's instructions were so complete that "it is said on good authority that, with one exception (that of concealing in an occupied district arms or provisions for the enemy), no case presented itself during the Franco-German War of 1870 which had not been provided for in the American Instructions." *Id.* at 457 (quoting SHELDON AMOS, *POLITICAL AND LEGAL REMEDIES FOR WAR*). The Franco-German War of 1870-1871 was a catalyst in bringing together the continent's national Red Cross and was instrumental in bringing the European nations to the Brussels Conference of 1874. *See generally*, VICTOR SEGESVARY, *THE BIRTH OF RED CROSS SOLIDARITY: THE FRANCO-PRUSSIAN WAR OF 1870-1871* (The Henry Durant Institute, 1971).

87. Root, *supra* note 65, at 457.

88. DONALD A. WELLS, *THE LAWS OF LAND WARFARE: A GUIDE TO THE U.S. ARMY MANUALS 4* (1992).

89. Currently, a movement exists, led by the International Committee of the Red Cross, which advocates the softer term "International Humanitarian Law." I oppose the use of this term by warriors. Citizens who aid the victims of war deserve much admiration, but their perspective is that of the victim, not the soldier fighting the battle. The use of even the term "International Humanitarian Law" creates a danger, by confusing the end desired by the warrior with that desired by the humanitarian. True warriors are chivalrous, but their role is not humanitarian. If those who do not practice the profession of arms pontificate about what the laws of war should be (as opposed to what is practicable in warfare), they will lose credibility with those who must implement the laws of war, and, in the end, it is the victims of war who will pay for the confusion of the two concepts.

90. Malham M. Wakin, *Introduction to War and Morality, in WAR, MORALITY, AND THE MILITARY PROFESSION* 224 (Malham M. Wakin ed., 2nd rev. ed. 1986).

USSSO for Italy—Working on the Set of LA DOLCE VITA

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Introduction

Since 1993, the United States Army has provided one field-grade judge advocate to the United States Sending State Office for Italy (USSSO), U.S. Embassy, Rome.² This article provides an overview of the USSSO's structure and missions and its unique role in the resolution of legal, operational, and quality of life issues facing U.S. forces in Italy.

Organization

The Secretary of the Navy established the USSSO as a shore activity³ in 1956,⁴ after Italy enacted the North Atlantic Treaty Organization (NATO) Status of Forces Agreement (SOFA) into law.⁵ Navy judge advocates staffed the USSSO until 1988, when the Air Force also began to assign field-grade judge advocates to the office. In 1993, the Army transferred a field-grade billet from Germany to Italy for duty at the USSSO, thereby completing the transition to a tri-service legal office.

The Navy and Air Force judge advocates who are currently assigned to the USSSO are designated international law specialists, and they hold LL.M. degrees in international law. The office is also staffed with an Italian attorney-advisor, an Italian paralegal/translator, an Italian secretary/translator, and a Navy legal noncommissioned officer.

The USSSO functions under the U.S. European Command (EUCOM). The officer-in-charge (OIC) is assigned to the EUCOM⁶ and is rated by the Chief of Staff, EUCOM. While not assigned to the EUCOM Legal Advisor's Office, the USSSO OIC is the EUCOM's legal representative in Italy.

The commander-in-chief, U.S. Naval Forces Europe,⁷ has assigned many responsibilities to the USSSO; therefore, the USSSO also functions under the U.S. Naval Forces Europe. However, the USSSO is separate from both the Office of the Fleet Judge Advocate and the Office of General Counsel.⁸

The government of Italy has accredited the USSSO with diplomatic status⁹ (separate from the political section at the

1. The author would like to thank Captain Ronald I. Clove, Judge Advocate General's Corps, U.S. Navy; Major Timothy A. Guiden, Judge Advocate General's Corps, U.S. Air Force; Dottoressa Emanuela Lori, U.S. Sending State Office Italian Attorney Advisor; and Mark G. Oswald, Chief, Civil Law, U.S. Army Southern European Task Force.

2. Since 1994, the USSSO has been located in the embassy's main chancellery building on Via Vittorio Veneto, the street on which some of Fellini's LA DOLCE VITA was filmed.

3. See 32 C.F.R. § 700.104(d) (1996) (describing the relationship of shore activities to the Navy's Shore Establishment). The Operating Forces of the Navy, the Navy Department, and the Shore Establishment are the three principal parts of the Department of the Navy. *Id.* § 700.104(a).

4. U.S. DEP'T OF NAVY, SECRETARY OF THE NAVY NOTICE 5450 (8 May 1956).

5. Agreement Between the Parties to the North Atlantic Treaty Regarding the Status of Their Forces, June 19, 1951, 4 U.S.T. 1972, 199 U.N.T.S. 67 [hereinafter NATO SOFA]. The NATO SOFA was ratified into Italian law by Law No. 1335 of Nov. 30, 1955, 1955 *Gazz. Uff.* No. 7, Jan. 10, 1956. The NATO SOFA should not be confused with the North Atlantic Treaty, which created the North Atlantic Treaty Organization. See North Atlantic Treaty, Apr. 4, 1949, 63 Stat. 2241, 34 U.N.T.S. 243 [hereinafter NATO Treaty]. Article III of the North Atlantic Treaty provides that further agreements may be entered into between the parties to "achieve the objectives" of the treaty. *Id.*

6. The USSSO is not a true joint office because only the officer-in-charge is assigned to the EUCOM. The Army judge advocate is assigned to Headquarters, U.S. Army Southern European Task Force, Vicenza. The Air Force judge advocate is assigned to Headquarters, 16th Air Force, Aviano Air Base, Aviano.

7. See 32 C.F.R. § 700.311 (summarizing the authority and responsibilities of the Commander-in-Chief, U.S. Naval Forces Europe).

8. The Office of General Counsel, Commander-in-Chief, U.S. Naval Forces Europe is part of the Office of General Counsel, Department of the Navy. See *id.* § 700.203(g) (describing the authority and responsibilities of the General Counsel of the Navy). The general counsel of the Navy is the principal legal advisor to the secretary of the Navy. *Id.* In contrast to the Army and the Air Force (where general counsel offices are relatively small and located only in the Pentagon), the Navy general counsel has attorneys assigned worldwide. This is largely due to the Navy general counsel being the sole provider of legal advice to the Navy in the areas of contract, commercial, environmental, patent, and real estate law. Consequently, senior Navy commanders frequently receive legal advice from both a military judge advocate and a civilian attorney from the Office of the General Counsel. See generally Kurt A. Johnson, *Military Department General Counsel as "Chief Legal Officers": Impact on Delivery of Impartial Legal Advice at Headquarters and in the Field*, 139 MIL L. REV. 1, 16-21, 52-54, 70-73 (1993) (outlining the division of responsibilities between the Navy's Office of General Counsel and the Navy Judge Advocate General's Corps).

9. MINISTRY OF FOREIGN AFFAIRS, AMBASCIATE ESTERE, MISSIONI SPECIALI E ORGANIZZAZIONI INTERNAZIONALI IN ITALIA [FOREIGN AMBASSADORS, SPECIAL MISSIONS, AND INTERNATIONAL ORGANIZATIONS IN ITALY] 236 (1992). See generally Vienna Convention on Diplomatic Relations, 18 Apr. 1961, 22 U.S.T. 3227, 500 U.N.T.S. 95 (defining "diplomatic agents" and the privileges and immunities accorded to them and their immediate family members).

U.S. Embassy) as the office responsible for matters arising under the NATO SOFA. As part of the diplomatic mission, the ambassador influences the scope and nature of the USSSO's activities.¹⁰

Missions

One of the USSSO's continuing primary missions is to administer and to supervise U.S. responsibilities under the NATO SOFA regarding foreign criminal jurisdiction¹¹ and claims¹² matters. The USSSO's diplomatic status gives it the authority¹³ and the responsibility to deal directly with the various ministries of the Italian government on behalf of U.S.

forces regarding passports and visas,¹⁴ taxation,¹⁵ customs,¹⁶ and host nation labor issues¹⁷ arising under the NATO SOFA. Because of the USSSO's diplomatic status, it also performs the following missions: U.S. country representative, Italy (foreign criminal jurisdiction); single-service claims responsibility for Italy; U.S. country representative (foreign tax relief);¹⁸ liaison officer for local labor and wage rate matters;¹⁹ civil law legal advisor to the ambassador and diplomatic mission;²⁰ legal advisor to the Office of Defense Cooperation-Rome;²¹ the EUCOM legal representative for Italy; and civil litigation liaison officer to the U.S. Department of Justice.²²

Its missions require the USSSO's attorneys to deal frequently with the Italian Ministry of Defense, the Ministry of

10. See 22 U.S.C. § 3927 (1994). See also National Security Decision Directive 38, *Staffing at Diplomatic Missions and Their Constituent Posts* (June 2, 1982) (on file with author).

11. See NATO SOFA, *supra* note 5, art. VII. The USSSO's officer-in-charge, through delegation from the EUCOM, is the single point of contact with the Italian national authorities for foreign criminal jurisdiction matters. See U.S. DEP'T OF DEFENSE, DIR. 5521.1, STATUS OF FORCES POLICIES AND INFORMATION (3 Nov. 1955). Current guidance on Article VII foreign criminal jurisdiction matters arising in Italy is set out in several references. See, e.g., U.S. DEP'T OF DEFENSE, DIR. 5525.1, STATUS OF FORCES POLICIES AND INFORMATION (7 Aug. 1979) (C1, 9 Apr. 1985); U.S. DEP'T OF ARMY, REG. 27-50, STATUS OF FORCES POLICIES, PROCEDURES, AND INFORMATION (15 Dec. 1989) [hereinafter AR 27-50]; U.S. DEP'T OF AIR FORCE, REG. 110-12, STATUS OF FORCES POLICIES, PROCEDURES, AND INFORMATION (15 Dec. 1989); U.S. DEP'T OF NAVY, INSTR. 5820.4G, STATUS OF FORCES POLICIES, PROCEDURES, AND INFORMATION (15 Dec. 1989); U.S. DEP'T OF NAVY, EUROPEAN COMMAND DIR. 45-3, FOREIGN CRIMINAL JURISDICTION OVER U.S. PERSONNEL (2 Feb. 1994).

12. See NATO SOFA, *supra* note 5, art. VIII. In July 1956, the Commander, Naval Forces Eastern Atlantic and Mediterranean Command, designated the USSSO's officer-in-charge as the officer responsible for the administration of claims arising in Italy under the NATO SOFA, Article VIII. See also U.S. SENDING STATE OFFICE FOR ITALY, INSTR. 5800.1I, PROCEDURES FOR PROCESSING CLAIMS WITHIN THE SINGLE-SERVICE RESPONSIBILITY OF THE U.S. NAVY (27 Oct. 1997) (containing guidance for processing NATO SOFA claims in Italy). In Italy, all NATO SOFA claims are filed with the Italian Ministry of Defense in Rome. *Id.* at para. 7. Neither the USSSO nor any U.S. military claims office in Italy can approve or disapprove "official duty" claims cognizable under the NATO SOFA, Article VIII, paragraph 5. The responsibility for receipt, investigation, and disposition of such claims rests with Italy, as the receiving state. The USSSO coordinates with base legal offices for the collection and transmittal of formal investigation reports to the Italian Ministry of Defense. Under the NATO SOFA, Article VIII, paragraphs 5(e) and 5(i), the U.S. Navy, through the USSSO, reimburses the Ministry of Defense for 75 percent of the amount paid in settlement of such claims. See 10 U.S.C. § 2734a (1994) (granting authority for the Department of Defense to pay a pro-rata share of official duty claims made pursuant to international agreements). In contrast, the USSSO adjudicates *ex-gratia* claims arising out of acts or omissions not done in the performance of official duty and cognizable under the NATO SOFA, Article VIII, paragraph 6. Such claims are first filed with the Ministry of Defense and are then transferred to the USSSO for adjudication by the U.S. Navy Foreign Claims Commission, with settlements paid from Navy funds.

The Navy also has single-service claims authority for claims arising in Italy that are cognizable under the Military Claims Act, 10 U.S.C. § 2733; the Foreign Claims Act, 10 U.S.C. § 2734; the Medical Care Recovery Act, 42 U.S.C. §§ 2651-53; and the Nonscope Claims Act, 10 U.S.C. § 2737. U.S. DEP'T OF DEFENSE, DIR. 5515.8, SINGLE SERVICE ASSIGNMENTS FOR PROCESSING OF CLAIMS, paras. D(2)(a), A(2) (9 June 1990). The Judge Advocate General of the Navy has delegated various levels of settlement and denial authority for such claims to the USSSO. See, e.g., U.S. DEP'T OF NAVY, JAG INSTR. 5800.7C, MANUAL OF THE JUDGE ADVOCATE GENERAL, para. 0818 (9 Oct. 1990) (NATO SOFA *ex-gratia* claims adjudicated by U.S. Navy Foreign Claims Commissions); U.S. DEP'T OF NAVY, JAG INSTR. 5890.1, ADMINISTRATIVE PROCESSING AND CONSIDERATION OF CLAIMS ON BEHALF OF AND AGAINST THE UNITED STATES, encl. 2, para. 9 (17 Jan. 1991). Additionally, the USSSO collects from third-party payers for health care services incurred in Italy on behalf of persons entitled to medical care in Department of Defense medical facilities. See *generally* 10 U.S.C. § 1095 (1994); 42 U.S.C. §§ 2651-53 (1994); U.S. DEP'T OF DEFENSE, INSTR. 6010.15, THIRD-PARTY COLLECTION PROGRAM (10 Mar. 1993).

13. See *generally* 18 U.S.C. § 953 (1994) (limiting who may communicate with a foreign government on behalf of the United States).

14. See NATO SOFA, *supra* note 5, art. III.

15. See *id.* arts. IX, X.

16. See *id.* arts. IX, XI.

17. See *id.* art. IX, para. 4.

18. See U.S. DEP'T OF DEFENSE, DIR. 5100.64, DOD FOREIGN TAX RELIEF PROGRAM (12 June 1979) (codified at 32 C.F.R. pt. 211 (1996)). See also U.S. EUROPEAN COMMAND, DIR. 45-8, FOREIGN TAX RELIEF PROGRAM (2 Feb. 1994) (implementing the Department of Defense Foreign Tax Relief Program in the EUCOM area of operations and making the commander-in-chief, U.S. Naval Forces Europe, responsible for administration of the program in Italy).

19. See U.S. EUROPEAN COMMAND, DIR. 30-6, LOCAL NATIONAL PERSONNEL (21 May 1984) (designating the commander-in-chief, U.S. Naval Forces Europe, as the coordinating officer for all local wage rate and local national personnel matters involving U.S. forces in Italy). The officer-in-charge, USSSO, is the designated liaison officer on host nation labor law matters with both U.S. embassy officials and officials of the Italian government.

Grace and Justice, the Ministry of Foreign Affairs, the Ministry of Interior, the Ministry of Labor, and the Ministry of Finance. While the USSSO accomplishes most coordination by telephone or in writing, USSSO attorneys regularly hold meetings with senior ministry officials who are directly responsible for issues affecting U.S. forces. Attorneys also coordinate informally at diplomatic functions sponsored by both governments.

The Increasing Importance of American-Italian Military Relations

Italy is a vital ally of the United States, as Secretary of State Albright emphasized in February 1997 when she made Italy the first stop on her first official overseas trip as the Secretary of State. Italy is a significant economic power²³ and is also an important military ally of the United States. Italy continues to make critical contributions to NATO and to international peacekeeping and peacemaking operations.²⁴

The Italian Military

During 1996, Italy had approximately 322,000 active-duty military personnel. Of the total active duty personnel, 185,000 were draftees.²⁵ The primary mission of the Italian military is to provide for the territorial defense of Italy and its NATO allies.

Over the years, Italy has also taken an increasingly active role in peacekeeping and peacemaking operations, with a strong record of success.²⁶ As of December 1996, Italy supplied approximately 2500 service members to ongoing peacekeeping and peacemaking missions, including: NATO peacemaking operations in the former Yugoslavia; several United Nations peacekeeping missions (primarily in the Middle East and Southwest Asia); and the multinational force and observers peacekeeping mission in the Sinai.²⁷

In April 1997, despite strong internal political opposition,²⁸ Italy led a multinational European peacekeeping force into Albania for *Operazione Alba* (Operation Sunrise).²⁹ Acting without direct United States participation, but with the benefit of a United Nations Security Council mandate to protect humanitarian relief efforts, Italy initially committed 2500 military personnel to the operation. Italy then obtained force

20. The officer-in-charge, USSSO, is a member of the ambassador's "country team." As a result, the ambassador and his principal staff frequently request opinions from the USSSO on United States and Italian civil law matters, international law issues, and ethics. The USSSO also participates in Department of State contingency and disaster relief planning and exercises. The country team is the principal advisory body to the chief of a diplomatic mission. See Robert O. Neumann, *The Organization of a Diplomatic Mission*, reprinted in THE JUDGE ADVOCATE GENERAL'S SCHOOL, U.S. AIR FORCE, INTERNATIONAL LAW COURSE DESKBOOK II-41 through II-58 (June 1996); INTERNATIONAL AND OPERATIONAL LAW DEP'T, THE JUDGE ADVOCATE GENERAL'S SCHOOL, U.S. ARMY, JA 422, OPERATIONAL LAW HANDBOOK app. E (1996) [hereinafter JA 422] (summarizing the composition of a typical United States diplomatic mission and discussing the country team concept). See also Marc L. Warren, *Operational Law—A Concept Matures*, 152 MIL. L. REV. 33, 45-46 n.51 (1996) (discussing the country team in the context of contingency operations).

21. The chief of the Office of Defense Cooperation-Rome (ODC-Rome) serves as the U.S. defense representative to Italy on behalf of the Secretary of Defense and the commander-in-chief, EUCOM. See U.S. DEP'T OF DEFENSE, DIR. 5105.47, U.S. DEFENSE REPRESENTATIVE (USDR) IN FOREIGN COUNTRIES (20 Sept. 1991) (C1, 20 Jan. 1992) (establishing principal responsibilities of USDRs); U.S. EUROPEAN COMMAND, DIR. 56-9, PROCEDURES FOR THE U.S. DEFENSE REPRESENTATIVE (25 June 1996) (listing EUCOM USDRs and identifying their principal responsibilities). The ODC-Rome has primary responsibility for host nation logistical support, infrastructure, security assistance, and the Defense Cooperative Armaments program. The ODC-Rome is a EUCOM asset, and its chief reports to the EUCOM J-4. Unlike other diplomatic missions where judge advocates are assigned or attached to the local security assistance organization or defense attaché's office, the USSSO's attorneys are neither assigned nor attached to ODC-Rome or to the Office of the Defense Attaché.

22. Personnel from the USSSO usually coordinate with the Chief, Department of Justice Civil Division European Office. That office, which was previously located at the American Consulate in Munich, is now located at the American Embassy in London. The USSSO also coordinates with the Director, Department of Justice Civil Division Office of Foreign Litigation, located in Washington, DC. As the only legal office in Italy with tri-service and country-wide responsibilities, the USSSO monitors all civil litigation in the Italian courts that involves host nation labor, tax, customs, assertions of U.S. sovereign immunity, and environmental enforcement actions.

23. Italy has the world's fifth largest economy and is a member of the G-7 economic group. U.S. DEP'T OF STATE, 1995 BACKGROUND NOTES-ITALY 3 (1995).

24. In May 1996, the center-left *Ulivo* (Olive Tree) coalition government, led by Prime Minister Romano Prodi, took power. Although the coalition's largest component is the New Democratic Party of the Left, an offshoot of the former Communist Party of Italy, the Prodi government has continued Italy's long-standing commitment to NATO and to bilateral military cooperation with the United States.

25. Daniele Martini, *Difesa* [Defense], PANORAMA, 20 Mar. 1997, at 77.

26. A more tempered view was recently set out in THE ECONOMIST:

As peacekeepers, Italians have been rather successful. Their soldiers have often been charming. Their politicians' gift for compromise and wheeler-dealing has sometimes worked. Italians did well in Somalia—until things went badly. They have helped calm things in Bosnia. They may, with luck, help in Albania too. Negotiations with Albania's home-grown *mafiosi*, as well as local warlords, are already hectic.

A Naughty New Bit of Nationalism, ECONOMIST, Apr. 19, 1997, at 50.

27. Message, 031704Z Dec 96, American Embassy, Rome, subject: Update on Italian Participation in Out-of-Country Military Operations (3 Dec. 1996).

commitments from France, Spain, Greece, Denmark, Romania, Turkey, and Austria to create a total combined force of approximately 6000 military personnel.³⁰ *Operazione Alba* was a success. The Italian-led force provided security for humanitarian assistance operations; helped to restore public order throughout the country; and provided security for national elections, which took place in June 1997.

America's Military Presence in Italy

One of Italy's most significant contributions to NATO is its continued agreement to allow U.S. military forces to be stationed in Italy.³¹ In 1996, Italy hosted approximately 14,000 permanently assigned U.S. military personnel at eighteen installations and five NATO headquarters. An average of an additional 15,000 U.S. military personnel were deployed with the U.S. Sixth Fleet, headquartered in Gaeta. Most U.S. forces in Italy are currently located at Aviano Air Base, Aviano;³² Caserma Ederle, Vicenza; Camp Darby and Leghorn Army Depot, Livorno; Naval Support Activity, Gaeta; Naval Support Activity, Naples; Naval Support Activity, LaMaddalena (Sardinia); and Naval Air Station, Sigonella (Sicily). Although some U.S. units in Italy have been deactivated or restructured, the total number of permanently assigned U.S. military personnel has remained relatively constant since the mid-1980s.

Italy is an ideal staging ground for operations throughout the EUCOM's southern area of operations. During Operations Desert Shield and Desert Storm, personnel from United States and NATO facilities in Italy provided significant logistical support. More recently, Aviano Air Base; Naval Air Station,

Sigonella; and U.S. Navy facilities in Naples have played extensive roles in supporting United Nations and NATO operations in the former Yugoslavia. Currently, numerous U.S. military personnel are temporarily assigned to Italy in support of operations in the former Yugoslavia.

Significant Legal Issues

A large portion of the USSSO's work involves foreign criminal jurisdiction³³ and claims³⁴ issues, but the its legal practice is beginning to focus more on international law, administrative law, foreign civil litigation, and the monitoring of new developments in Italian jurisprudence. The USSSO is also involved in formulating, monitoring, and interpreting policies which are applicable to U.S. forces in Italy. Its involvement in policy is particularly important because the USSSO helps to ensure the consistent application of policies for all branches of the U.S. military throughout Italy.

Because the USSSO has diverse legal and diplomatic responsibilities, its personnel work on a wide variety of issues. The legal issues discussed in this article provide a sample of the USSSO's practice.

Shell Agreement/Base Technical Arrangements

Except for facilities the United States leases from private entities,³⁵ all U.S. military operations in Italy are located on Italian or NATO military installations. Most of the almost 250 bilateral military agreements and technical arrangements

28. *Italy's Buffeted Survivor*, ECONOMIST, Apr. 19, 1997, at 49-50 (summarizing objections to *Operazione Alba* that were made by a major political party and several cabinet ministers).

29. The Albanian government effectively collapsed in March 1997 after several large fraudulent "pyramid" investment schemes failed. Violence and civil disorder spread throughout the country, causing over 13,000 Albanians to flee to Italy. Robert Graham, *Italy Paves the Way to Lead Albania Mission*, FIN. TIMES, Apr. 3, 1997.

30. *Id.*

31. The continued U.S. presence in Italy occasionally results in calls by some Italian journalists and government officials for review and possible renegotiation of Italy-U.S. bilateral defense agreements and closer supervision of U.S. activities in Italy. For example, the author of a recent article in a leading Italian weekly magazine referred to unilateral reductions by other NATO countries which were imposed on United States military operations, and the author called for a comprehensive examination of U.S.-Italy bilateral defense agreements. Maurizio Molinari, *Italia e USA, Fine Della Diplomazia Segreta [Italy and USA, End of Secret Diplomacy]*, PANORAMA, Nov. 28, 1996, at 32.

32. Italy's commitment to United States operations in support of NATO was highlighted in 1988 when the 401st Tactical Fighter Wing, an Air Force F-16 fighter unit, was required to leave Torrejon, Spain, pursuant to a bilateral defense agreement between Spain and the United States. Italy first agreed to temporarily base the 401st at a civilian airport in Crotona, Calabria, pending completion of a new NATO airbase at Crotona. In 1992, after cancellation of the Crotona project, Italy agreed to a NATO request for the 401st to remain in Italy. A 1993 agreement between the United States and Italy allowed the 401st (now the 31st Fighter Wing) to be based at Aviano Air Base. Had Italy not allowed the 401st to remain in Italy, the unit would have been returned to the United States, and there would probably now be no United States F-16 units permanently stationed in Europe.

33. In fiscal year 1996, there were 158 new concurrent jurisdiction cases opened. Of those cases, 28 were disposed of through assertion of U.S. primary jurisdiction, and 89 were disposed of through a waiver by the Ministry of Grace and Justice of Italy's right of primary jurisdiction.

34. In 1996, the USSSO took final action on 82 claims under the Military Claims Act, with total payments of \$78,627. The USSSO also recovered \$194,505 in affirmative medical care and property damage claims. Additionally, the Italian Ministry of Defense paid 158 claims in 1995 under Article VII, paragraph 5 of the NATO SOFA ("official duty" claims), totaling approximately \$886,000. In 1996, the USSSO took final action on 16 *ex gratia* claims under Article VII, paragraph 6 of the NATO SOFA, with total payments of \$32,481.

between the United States and Italy since 1946 have dealt with U.S. operations on Italian military bases.³⁶

In 1991, the Italian Defense General Staff (IDGS) requested negotiations with the United States concerning the establishment of a model technical arrangement regarding the United States use of Italian military installations and the return of U.S. infrastructure on those installations to Italy. The IDGS wanted to standardize and to update the existing base technical arrangements.³⁷ The Department of Defense designated the EUCOM as the executive agent for the negotiations,³⁸ and the EUCOM was represented in part by USSSO attorneys.

In June 1991, the IDGS presented its first draft of a proposed memorandum of understanding. The United States presented its counterproposal in December 1991. The negotiations culminated in 1995 when the parties entered into the Shell Agreement,³⁹ a comprehensive basing agreement consisting of a memorandum of understanding and two model annexes.

Annex A of the Shell Agreement, the “Model Technical Arrangement on Implementing Procedures Between the United States Department of Defense and the Italian Ministry of Defense Concerning Use of Installations and/or Infrastructure,” is the model for all future base technical arrangements regarding the operation and presence of U.S. forces on Italian installations.⁴⁰ The topics in Annex A include: command relationships,⁴¹ police powers on the installation and base security responsibilities,⁴² coordination for training and operational activities,⁴³ customs and taxation,⁴⁴ financial matters,⁴⁵ and procedures for mutual cooperation among local commanders.⁴⁶ Annex A is significant because it is a recognition by the Italian government that U.S. forces may operate facilities which are “necessary to support the force, civilian component, and dependents,” to include APOs/FPOs, exchanges, commissaries, military banking facilities, DODDS schools, child care centers, and medical and dental care facilities.⁴⁷ Annex A is also a recognition that U.S. “civilian personnel” will be treated substantially the same as members of the “civilian component.”⁴⁸

35. For example, the future Naval Support Site (NSS) at Gricignano di Aversa is being privately constructed under a build-to-lease contract as part of the Naples improvement initiative. The Navy will lease the NSS for 30 years, with an option for renewal. Upon completion, the NSS will contain two schools, a commissary, a Navy base exchange, a Navy hospital, officer and enlisted family housing, and numerous community support facilities. The Navy will vacate current leased facilities at Agnano in Naples, and operations will move to the NSS and to U.S. facilities located on the Italian military portion of Naples’ Capodichino Airport.

36. Although there are numerous Italy-United States bilateral defense-related agreements, there is no comprehensive supplemental agreement to the NATO SOFA similar to that which currently exists between several NATO countries and Germany. *See* Agreement to Supplement the Agreement Between the Parties to the North Atlantic Treaty Regarding the Status of Their Forces with Respect to Foreign Forces Stationed in the Federal Republic of Germany, Aug. 3, 1959, 1 U.S.T. 531, 481 U.N.T.S. 262 [hereinafter Supplemental Agreement]. In 1993, the parties amended the agreement between Germany and its sending states. Wes Erikson, *Highlights of the Amendments to the Supplementary Agreement*, ARMY LAW., 3, 14 (Dec. 1993).

The lack of a comprehensive supplemental agreement with Italy has the greatest impact on foreign criminal jurisdiction matters. In Germany, Article 19 of the supplemental agreement provides that all sending state requests for Germany to waive its primary right of jurisdiction in concurrent jurisdiction cases are automatically granted, subject to Germany’s right of recall. Supplemental Agreement, Art. 19. In Italy, each waiver request is decided by the Ministry of Grace and Justice on a case-by-case basis after local prosecutors and the Ministry of Foreign Affairs make their recommendations. After a waiver request is submitted to the local prosecutor, it usually takes six to twelve months for final action by the Ministry of Grace and Justice.

37. An additional motivating factor may have been a desire by the Italian government to monitor and to control more closely U.S. military activities in Italy. For example, in 1985, without prior coordination with the Italian government, several F-14 fighters from the aircraft carrier USS Saratoga intercepted an Egypt Air flight over the Mediterranean Sea and forced the jetliner to land at Naval Air Station-Sigonella. On the plane were the four Palestinian coconspirators who had hijacked the Italian cruise ship *Achille Lauro* and murdered an American citizen, Leon Klinghoffer. After landing, the Palestinians were taken into U.S. custody for transfer to the United States. The Italian government denied permission for the transfer and requested transfer of the Palestinians to Italian custody. All four were later convicted in Italian courts for murder.

38. *See generally* 1 U.S.C. § 112b (1994); 22 C.F.R. pt. 181 (1996) (containing the Department of State regulation on the coordination, review, reporting, and publication of international agreements); U.S. DEP’T OF DEFENSE, DIR. 5530.3, INTERNATIONAL AGREEMENTS (11 June 1987); U.S. DEP’T OF ARMY, REG. 550-51, AUTHORITY AND RESPONSIBILITY FOR NEGOTIATING, CONCLUDING, FORWARDING, AND DISPOSITION OF INTERNATIONAL AGREEMENTS (1 May 1995); U.S. EUROPEAN COMMAND, DIR. 5-13, INTERNATIONAL AGREEMENTS—AUTHORITIES AND RESPONSIBILITIES (27 Jan. 1994). *See also* JA 422, *supra* note 20, ch. 3 (providing a summary of the international agreement formulation and approval process).

39. Memorandum of Understanding Between the Ministry of Defense of the Republic of Italy and the Department of Defense of the United States of America Concerning Use of Installations/Infrastructure by U.S. Forces in Italy, Feb. 2, 1995, U.S.-Italy, 1995 WL 149275 (Treaty).

40. *See id.* annex B (concerning the return of infrastructure and the computation of residual value should U.S. forces vacate an installation).

41. *Id.* annex A, sec. VI.

42. *Id.* annex A sec. XV.

43. *Id.* annex A, sec. XVII.

44. *Id.* annex A, sec. XIII.

45. *Id.* annex A, secs. XII and XIV.

Since 1995, with USSSO attorneys participating in all bilateral negotiating sessions, the IDGS and the United States have entered into negotiations for base technical arrangements for each Italian installation used by U.S. forces. To date, the United States has presented five draft technical arrangements to the IDGS. Negotiators are currently working toward the completion of a consolidated technical arrangement covering all U.S. military facilities in Sicily (to include Naval Air Station, Sigonella), and they expect that all other base technical arrangements will be concluded soon thereafter.⁴⁹ For the Army, the United States will enter into separate technical arrangements for Caserma Ederle (and its surrounding installations in Vicenza) and Camp Darby (and its surrounding installations near Livorno).

*Italian Labor Law*⁵⁰

United States forces in Italy obtain all local national labor through direct hire.⁵¹ Article IX, paragraph 4 of the NATO SOFA requires the United States to follow host nation labor law for its local national employees.⁵² In Italy, the NATO SOFA, along with the 1957 Joint Policy Statement,⁵³ effectively waives the sovereign immunity of the United States as to suits brought by local national employees in Italian courts for alleged violations of Italian labor laws.⁵⁴

Presently, the Italian courts have more than 130 active labor cases that have been brought by current or former employees of the U.S. forces in Italy. The present exposure for the United States is approximately \$100,000,000.⁵⁵ While most of these cases arose from classification or disciplinary actions, some involve challenges to contracts between the United States and third party contractors for the performance of certain base

46. The Shell Agreement calls for the establishment of a standing joint military commission (JMC) to resolve issues in the interpretation and implementation of the Shell Agreement and individual base technical arrangements which cannot be resolved at the local level. *Id.* art. II. The JMC has not been implemented. There is also a provision which allows the Italian base commander and the senior U.S. commander at an Italian installation to establish a local standing joint committee to facilitate the resolution of problems and disputes arising at the local level after entry into an installation technical arrangement. *Id.* annex A, sec. XIX. No joint committees yet exist. Nonetheless, Italian and U.S. commanders have traditionally had excellent working relationships, and most operational problems have been resolved at the local level.

47. *Id.* annex A, sec. XIV.

48. The term "civilian personnel" includes the "civilian component" of a force and others, such as:

Employees of other United States departments;

Essential employees of the USO, schools, post exchanges, commissaries, credit unions, and Red Cross; and

Technical representatives of firms having special relations with the United States Armed Forces, when such persons come into Italy for other than temporary visits.

Id. annex A, sec. IV. Civilian personnel are treated as members of the civilian component to the extent permitted by the legislation of both parties, thereby providing authorization for logistical support to be provided to U.S. civilian personnel who are not members of the civilian component. Unlike the North Atlantic Treaty and the NATO SOFA, the Shell Agreement has not been ratified into positive law by the Italian Parliament.

49. *See, e.g.*, JOHN WOODLIFE, *THE PEACETIME USE OF FOREIGN MILITARY INSTALLATIONS UNDER MODERN INTERNATIONAL LAW* (1992); Richard J. Erickson, *Status of Forces Agreements: A Sharing of Sovereign Prerogative*, 37 A.F.L. REV. 137 (1994); Rafael A. Porrata-Doria, Jr., *The Philippine Bases and Status of Forces Agreement: Lessons for the Future*, 137 MIL. L. REV. 67 (1992); Mark D. Welton, *The NATO Stationing Agreements in the Federal Republic of Germany: Old Law and New Politics*, 122 MIL. L. REV. 77 (1988). These works provide further insights into the negotiation, operation, and termination of base stationing agreements and SOFAs. *See also* JA 422, *supra* note 20, ch. 3 (discussing basing agreements and SOFAs in contingency operations).

50. As used herein, the phrase "Italian labor law" encompasses a wide range of subjects, including, but not limited to, local national employee hiring and separation actions, classification and disciplinary actions, determination of employee pay and benefits, protection of employees from occupational and environmental hazards, recognition of employee labor unions, and collective bargaining with recognized unions. A comprehensive examination of current Italian labor law issues facing U.S. forces is beyond the scope of this article.

51. *See generally* U.S. DEP'T OF DEFENSE, INSTR. 1400.10, EMPLOYMENT OF FOREIGN NATIONALS IN FOREIGN AREAS, para. 2 (5 Dec. 1980) (C1, 22 Dec. 1980) (comparing direct and indirect hiring systems) [hereinafter DOD INSTR. 1400.10].

52. *But see id.*, para. 1(a) (requiring U.S. forces to follow local labor laws, practices, and customs in the employment of foreign nationals in foreign countries, so long as the laws, practices, and customs are not in conflict with U.S. law and are compatible with the "basic management needs" of the U.S. forces).

53. The parties to the JPS were the EUCOM and the Italian Ministry of Labor.

54. Service of process on the United States in foreign civil actions must be completed in accordance with the Convention on the Service Abroad of Judicial and Extrajudicial Documents in Civil and Commercial Matters, Nov. 15, 1965, 20 U.S.T. 361, 658 U.N.T.S. 163. Article 2 of this convention designates the Department of Justice as the central authority for service of process on the United States in all civil actions in foreign courts in which the United States is the named party defendant.

55. Plaintiffs are not required to state a sum certain claimed when initiating civil actions in Italian courts. Consequently, it is possible to give only an estimate of United States exposure in pending Italian civil litigation arising out of the activities of U.S. forces. To help the Department of Justice and base attorneys to monitor pending civil litigation involving U.S. forces, the USSSO developed a computerized case tracking system which summarizes the status of all civil litigation in Italy. The first summary was distributed in the fall of 1996.

operation functions.⁵⁶ As with other types of civil litigation against the United States in Italy, Italian labor cases carry the additional risk that institutional property of the U.S. forces may be attached.⁵⁷

The USSSO, in conjunction with base labor counselors and the Department of Justice Office of Foreign Litigation, monitors ongoing labor litigation and new developments in Italian labor law. The USSSO also provides legal advice and guidance to base legal offices to help reduce future litigation risks. Two current critical preventive labor law issues are eligibility for civilian component status and compliance with Italian occupational safety laws.

Ordinarily Resident/Dual Nationals

One area with which USSSO attorneys and base labor counselors have dealt extensively over the last several years is dual U.S.-Italian nationals⁵⁸ and persons who are ordinarily resident in Italy.⁵⁹ Some dual nationals and persons who were ordinarily resident at the time of hiring now work in the U.S. civilian component, in violation of the NATO SOFA.⁶⁰ Because Italian labor courts take jurisdiction in suits brought by Italian nationals and residents, some dual nationals and ordinarily resident personnel who were inadvertently hired into the civilian component have successfully challenged adverse classification and disciplinary actions in Italian labor courts.⁶¹

The USSSO, the Department of Justice, base legal offices, and the Civilian Personnel Coordinating Committee⁶² are working together to formulate policies regarding dual nationals and ordinarily resident personnel who were inadvertently hired

56. See Law No. 1369 of Oct. 23, 1960, 1960 Gazz. Uff. No. 288, art. I, para. 1, Nov. 25, 1960 [hereinafter Law 1369/60] (prohibiting an entity from contracting or subcontracting out "the mere performance of work through the employment of personnel hired and paid for by the contractor"). One of the potential consequences of violating Law 1369/60 is that the contractor's employees will be deemed to be employees of the contracting entity, and the contracting entity would face potential exposure for back pay and allowances that the contractor's employees would have received for their work if they had been hired as employees of the contracting entity. The Italian Supreme Court has held that U.S. forces are subject to Law 1369/60. *Castagna v. United States*, Cass., 1979, n. 3829, Giur. It.

57. Italian law had protected all property owned by sovereign nations from Italian judicial seizures, unless such seizures were explicitly approved in advance by the Minister of Justice (now titled the Minister of Grace and Justice). Royal Decree 1621 of Aug. 30, 1925, 1925 Gazz. Uff. No. 223, Sept. 25, 1925. The Italian Constitutional Court, however has held these provisions unconstitutional. *Corte cost.*, July 15, 1992, n.329. Soon after this opinion was issued, there were numerous judicial seizures of United States tangible and intangible military property, including naval vessels, office equipment, and bank accounts. The frequency of seizures has decreased in recent years, in part due to U.S. forces moving most appropriated and nonappropriated fund bank accounts to Germany.

58. Italian citizenship law underwent a major change in 1992, causing some members of the civilian component to become Italian citizens even though they had taken no active steps to acquire Italian citizenship. Under the earlier citizenship law, Law No. 555 of June 13, 1912, persons could not hold dual citizenship and lost Italian citizenship upon obtaining citizenship in another country. The change in the law, however, specifically allows dual citizenship. Law No. 91 of Feb. 5, 1992, 1992 Gazz. Uff. No. 38, Feb. 15, 1992. People who previously renounced their Italian citizenship or who had taken citizenship in another country reacquired Italian citizenship by operation of law after residing in Italy for one year. *Id.*

59. The NATO SOFA and the bilateral agreements between the United States and Italy do not define "ordinarily resident." Regulatory guidance establishes the following criteria for determining whether a person is ordinarily resident: (1) registration as a permanent resident in the town of residence; (2) application for and/or issuance of an Italian work permit (a document all Italian nationals are required to have to work in Italy), or Italian *soggiorno* work permit (a permit allowing foreign nationals to work in Italy) for other than employment with U.S. forces; (3) payment of Italian income taxes; or (4) continuous physical residence in Italy, without affiliation with U.S. forces, for at least 180 days prior to employment in the civilian component. See U.S. ARMY EUROPE, REG. 550-32, REGULATION ON PERSONAL PROPERTY, RATIONED GOODS, MOTOR VEHICLES, CIVILIAN COMPONENT STATUS, AND ACCESS TO FACILITIES BY ITALIAN LABOR INSPECTORS, para. 20 (20 Sept. 1995); COMMANDER IN CHIEF, U.S. NAVY FORCES EUROPE, INSTR. 5840.2C, REGULATION ON PERSONAL PROPERTY, RATIONED GOODS, MOTOR VEHICLES, CIVILIAN COMPONENT STATUS, AND ACCESS TO FACILITIES BY ITALIAN LABOR INSPECTORS, para. 20 (20 Sept. 1995); U.S. AIR FORCE EUROPE, INSTR. 36-101, REGULATION ON PERSONAL PROPERTY, RATIONED GOODS, MOTOR VEHICLES, CIVILIAN COMPONENT STATUS, AND ACCESS TO FACILITIES BY ITALIAN LABOR INSPECTORS, para. 20 (20 Sept. 1995).

60. See NATO SOFA, *supra* note 5, art. I, para. 1(b) (defining "civilian component" to exclude persons who are nationals of, or are ordinarily resident in, the receiving state); *id.* art. IX, para. 4 (prohibiting persons hired as local national civilian labor from being treated as members of the force or civilian component). Since 1995, the USSSO has reviewed all applications for issuance or renewal of official and no-fee passports for all people who seek employment with, or who are already working in, the U.S. civilian component or as U.S. civilian personnel. These reviews help to ensure that dual nationals and persons who are ordinarily resident do not receive civilian component or civilian personnel status. If the USSSO refuses to certify an individual's status, the Department of State will not issue or renew an official or no-fee passport for that person to work with U.S. forces. The USSSO conducts similar reviews for individuals who are employed by entities other than the U.S. government (e.g., technical representatives, employees of USO and the Red Cross, etc.) who wish to be classified as civilian personnel in order to obtain logistical support from U.S. forces. Non-U.S. government employees who are dual nationals or ordinarily resident persons cannot have the required "NATO SOFA" endorsement placed on their tourist passports.

61. Several factors encourage eligible civilian component personnel to seek redress in Italian labor courts instead of through available U.S. judicial or administrative remedies. First, Italian labor courts will apply Italian labor law—a complex amalgam of constitutional provisions, statutes, legislative decrees, and court decisions, all of which are based on the philosophy that the state exists in part to protect and to promote the rights of Italian workers. See, e.g., *Cost.*, art. I, para. 1 (Italian Constitution) ("Italy is a democratic Republic founded on labor."); *id.* art. 35, para. 1 ("The Republic safeguards labor in all its forms and methods of execution."). Second, favorable judgments usually result in the award of back pay, interest (currently 10%), money reevaluation (compensation to the plaintiff for loss of value of credit and losses arising from the defendant's actions), and attorney's fees and court costs. See C.P.C., arts. 92, 150, 429, 1284 (1990) (Italian Code of Civil Procedure). Third, the chances for an employer to prevail in full are small if the action is not dismissed initially on jurisdictional grounds, particularly where the employer failed to comply with notification requirements before imposing adverse disciplinary action. However, one important benefit provided to U.S. forces under Italian labor jurisprudence is that the United States, as a non-entrepreneurial employer, is not required to reinstate employees who are found to have been wrongfully terminated from employment.

into the civilian component.⁶³ To help those dual nationals who wish to renounce their Italian citizenship, thereby enabling them to remain a part of the civilian component, the USSSO convinced the Ministry of Interior to issue a circular letter which allows civilian component dual nationals to renounce their Italian citizenship in Italy instead of having to travel back to the United States as would otherwise be required under Italian law.⁶⁴ An additional benefit of the Ministry of Interior circular letter is a specific recognition of the USSSO's position that members of the U.S. military, members of the civilian component, and dependents (as defined under the NATO SOFA) do not reacquire Italian citizenship by operation of law solely as a result of their physical presence in Italy.

Law 626/94

In 1994, Italy enacted Legislative Decree 626/94.⁶⁵ Commonly referred to as Law 626/94, the decree implements into positive Italian law several European Union occupational health and safety directives which were issued in 1989 and 1990.⁶⁶ Under Law 626/94, employers are required to designate occupational health and safety representatives; to maintain work place accident records; and to comply with technical requirements and standards for protection from carcinogenic, chemical, and biologic compounds. Employers are subject to unannounced occupational health and safety inspections by inspectors from the Ministries of Public Health, Labor, and Industry. Employers who fail to comply with Law 626/94 are subject to fines and imprisonment.

Law 626/94 became effective on 1 January 1997, with no exemptions benefiting the Italian or American militaries. Although Italian installations used by U.S. forces were subject to labor and environmental inspections in the past, Law 626/94 greatly expands the scope and number of potential inspections, and it adds significant new substantive and procedural requirements. Engineering, safety, and personnel specialists are assessing current conditions and will advise commanders on initial corrective actions needed to bring U.S. forces into substantive compliance with Law 626/94. At the same time, the USSSO and the Office of the General Counsel for the Commander-in-Chief, U.S. Naval Forces Europe, are seeking a bilateral agreement which would provide some relief from the requirements of Law 626/94. A similar agreement is already in place in the United Kingdom.⁶⁷ The USSSO is also participating in an effort to develop uniform guidance to facilitate United States compliance with the substantive provisions of Law 626/94.⁶⁸

Customs/Taxation

Traditionally, Italy has exempted U.S. forces from the value-added tax on the cost of goods and services purchased for institutional purposes. The rate of the tax is usually nineteen percent. Additionally, Italy has given U.S. forces complete relief from the usual ten percent duty on personal property entering the country and has allowed rationed tax-free sales of Italian gasoline and motor oil products to U.S. forces

62. See DOD INSTR. 1400.10, *supra* note 51, para. 3 (authorizing the establishment of civilian personnel coordinating committees in countries where U.S. forces employ local national employees).

63. In 1996, representatives of the office of the staff judge advocate, the G-1, and the civilian personnel service center conducted a review for all members of the civilian component. The review was conducted in two phases. First, employees completed questionnaires concerning citizenship and residence status, time and circumstances of employment in the civilian component, property owned in country, taxes paid, and registration on local voting and residence lists. Second, the representatives interviewed each employee. During the interview, the representatives also reviewed each employee's official or no-fee passport and Italian *soggiorno* permits and checked for discrepancies against answers provided in the questionnaires and information contained in personnel files. For employees who were dual nationals of the United States and Italy but were not ordinarily resident at the time of hiring, the representatives provided detailed guidance on the procedures to renounce Italian citizenship. The representatives also provided guidance for employees who needed to obtain official or no-fee passports and Italian *soggiorno* work permits.

64. Circular Letter, Ministry of Interior General Directorate for Administration and Personnel Matters, Citizenship, Special, and Patrimonial Matters Department, Citizenship Division, Protocol Number K/19, Feb. 20, 1997.

65. Legislative Decree 626 of Sept. 19, 1994, 1994 Gazz. Uff. No. 265, Nov. 12, 1994.

66. The European Economic Community is now referred to as the European Union.

67. See An Agreement Between the Health and Safety Executive, the Ministry of Defence and the United States Visiting Forces (USVF) in the United Kingdom, July 1989 (copy on file with the author). The agreement sets out a reasonable balance between the sovereignty and operational interests of the United States and the visiting forces and the sovereignty and health and safety interests of the United Kingdom. The agreement includes prohibitions against unannounced administrative inspections and limitations on host nation enforcement procedures.

68. Under the NATO SOFA, the United States, as the sending state, is required to "respect the law of the receiving state . . . and to take necessary measures to that end." NATO SOFA, *supra* note 5, art. II. Based on customary international law and principles of sovereign immunity, the USSSO has generally interpreted Article II as requiring the United States to comply only with Italian *substantive* law unless a bilateral or multilateral agreement explicitly mandates compliance with Italian *procedural* requirements as well. The USSSO has generally advised that U.S. forces need not submit environmental and labor reports to Italian national and local government agencies using the forms or formats designated by those agencies. For United States installations and infrastructure located on Italian military bases, any such procedural requirements are normally the responsibility of the Italian base commander. For leased facilities, the procedural requirements are normally the responsibility of the landlord.

personnel.⁶⁹ Nonetheless, there are still many problems in the areas of customs and taxation. The problems are mostly due to the continued efforts by regional and local customs and tax officials to go after the perceived “deep pockets” of the United States and its employees.

Customs

Under the NATO SOFA, the United States is entitled to import duty-free into Italy supplies, equipment, and other goods for the exclusive use of the U.S. forces.⁷⁰ A subsequent agreement allows the United States to import goods for resale to authorized members of the U.S. forces, the civilian component, and their dependents.

Despite these agreements, customs disputes arise periodically. The disputes usually arise from a failure to generate and to maintain the necessary records which establish the duty-free nature of the imports and the ultimate disposition of the items.⁷¹ Problems arise most frequently when goods are imported from Germany and Austria, when rationed products are moved between Naples and U.S. bases in Sicily and Sardinia, and when goods are shipped through commercial entities. In most cases, the USSSO coordinates directly with the Ministry of Finance, and these routine customs disputes are quickly resolved. Quick resolution, however, depends upon the provision of documentary evidence which establishes that the goods were imported and distributed for the exclusive use of U.S. forces or for direct resale to individuals who are entitled to logistical support privileges.

In 1995, a new type of customs dispute arose when a customs inspector filed criminal complaints with local law enforcement officials against twelve (later seventeen) civilian component employees at Camp Darby. The complaints alleged

that the employees unlawfully received duty-free/tax-free logistical support. The customs inspector also assessed customs duties and taxes allegedly owed by the employees. The customs inspector based his action on information which suggested that the employees were either dual nationals of the United States and Italy or ordinarily resident in Italy at the time of hiring.

The federal government has funded representation of the employees⁷² in all of the criminal cases and the six civil actions to date which seek the enforcement of administrative customs assessments.⁷³ Criminal charges have been dismissed in approximately one-third of the cases, and attorneys are continuing their efforts to have all of the remaining cases dismissed. The final resolution of all of the administrative customs assessments and the civil enforcement actions is still pending.

Trittico

One long-standing customs controversy was resolved in October 1996 when *trittico* was eliminated. *Trittico* was ostensibly a customs bond,⁷⁴ and U.S. personnel were required to pay annual *trittico* payments to register their privately-owned vehicles with “Allied Forces Italy” (AFI) plates. In 1996, the annual fee per vehicle was Lire 80,000 (approximately \$55.00), with total annual payments in 1995 exceeding \$1,000,000. *Trittico* fees were collected and held by the Automobile Club of Italy (ACI), which had the responsibility to pay customs duties on vehicles which were not exported out of Italy or not otherwise properly accounted for after the departure of the registered owner.⁷⁵

69. Italy has traditionally maintained tight control over gasoline rations, as evidenced in 1996 when the Ministry of Finance rejected a renewed USSSO initiative to allow Italian gasoline ration coupons to be sold in Germany. This position is different from that of the German government, which allows U.S. forces gasoline ration coupons for use in Germany to be sold in any NATO country.

70. NATO SOFA, *supra* note 5, art. XI, para. 4.

71. In Italy, documentation of duty-free status is usually evidenced through AE Forms 302 and 302-1, “Declaration for Goods or Property of or Destined to be the Property of the American Forces.”

72. See 10 U.S.C. § 1037 (1994) (allowing the Department of Defense and the military departments to employ counsel to represent persons subject to the Uniform Code of Military Justice and other persons who are “employed by or accompanying the armed forces . . . outside the United States . . .” before foreign judicial and administrative tribunals). See also AR 27-50, *supra* note 11, paras. 2-3 and 2-4 (setting out the criteria for criminal representation provided to U.S. civilian employees and dependents, at the expense of the Department of Defense, in foreign criminal proceedings). Cf., 28 C.F.R. § 50.15 (1996) (providing the Department of Justice guidelines for representation of U.S. government employees in civil and criminal proceedings).

73. One of the pending civil enforcement actions is against a former member of the civilian component who recently retired in Italy. The action seeks over \$17,000 in foregone customs duties, value added taxes, interest, and non-payment penalties.

74. Members of the force and the civilian component may temporarily import into the receiving state, duty-free, their privately-owned motor vehicles for their personal use while stationed in the receiving state. NATO SOFA, *supra* note 5, art. XI, para. 6. In 1956, the United States and Italy exchanged diplomatic notes which require separate *trittico* for each privately-owned motor vehicle which is temporarily imported duty-free under the NATO SOFA. The intent of the *trittico* is the documentation of the duty-free status of the motor vehicle. The diplomatic notes also provided that *tritticos* would be issued by the Automobile Club of Italy. No other NATO country has ever required a similar system to guarantee payment of foregone customs duties.

75. Payment was required if a POV was stolen, abandoned, or otherwise could not be accounted for at the time the owner left Italy.

In an effort to change *trittico*, the USSSO compiled statistical evidence and presented it to the Ministry of Finance. The statistics established that, on average, only a handful of AFI-plated vehicles were sold to unauthorized buyers, abandoned, or otherwise unaccounted for. The ACI was, therefore, making a substantial annual profit on its *trittico* operations.

In October 1996, after several years of effort by the USSSO, the Ministry of Finance issued a circular letter which eliminated the requirement for U.S. personnel to pay *trittico* fees. *Trittico* has been replaced with a much smaller, one-time charge (currently \$20.00) which must be paid at the time of initial registration. The funds are held by a U.S. nonappropriated fund activity to pay any future customs assessments which may be levied.

Taxation

In 1991, the government of Italy unilaterally abrogated the Dunn-Vanoni Agreement of 5 March 1952,⁷⁶ which granted the United States a complete exemption from numerous specified taxes on goods and services purchased by U.S. forces “for the common defense.” Since the Italian government did not abrogate the agreement under the terms of the agreement itself, the United States has never recognized the unilateral abrogation. Fortunately, most of Dunn-Vanoni’s tax exemptions and preferences have been revived through legislation, regulations, and governmental decrees which were

enacted after the abrogation.⁷⁷ Some local tax officials, however, still attempt to tax goods and services purchased by U.S. forces for official use. Through discussions with the relevant Italian ministries, the USSSO is able to resolve most of these disputes as they arise.⁷⁸

In 1996, there was another troubling development in the tax arena when the Italian social security administration, *Istituto Nazionale della Previdenza Sociale* (INPS), sued the United States in Italian labor court for approximately \$25,000,000. The bases of the suit were the Navy’s alleged failure to pay the full amount of employer social security contributions owed over a number of years and its alleged failure to comply with INPS regulatory reporting requirements which implement tax relief legislation for businesses in southern Italy.⁷⁹

After coordination among the Department of State, the Department of Justice, the Navy, the USSSO, and the embassy’s counselor for labor affairs, the U.S. embassy filed a diplomatic note which invoked the sovereign immunity of the United States⁸⁰ and suggested that the dispute be resolved under Article XVI of the NATO SOFA.⁸¹ The Ministry of Foreign Affairs responded with a diplomatic note which disagreed with the United States position that the dispute was of the type subject to resolution under Article XVI of the NATO SOFA.⁸² Litigation has been stayed at the request of both parties. In the interim, the USSSO is working with the Department of State, the Department of Justice, the Navy, and the embassy’s counselor for labor affairs on a diplomatic solution. The U.S. embassy filed a second diplomatic note which further explained

76. The Dunn-Vanoni Agreement consisted of an exchange of letters between then United States Ambassador Dunn and then Italian Minister of Finance Vanoni. The agreement was never ratified into positive Italian law. In late 1996, the Ministry of Foreign Affairs served notice upon the United States that the government of Italy would unilaterally rescind Dunn-Vanoni within six months. *Nota Verbale* [Diplomatic Note] No. 142, Ministry of Foreign Affairs, Rome, Dec. 24, 1996 (copy on file with author). Repeated attempts by the United States to convince Italy not to carry out its threat failed, and a rescission notice was published in the *Gazzetta Ufficiale* (the Italian equivalent of the Federal Register) in 1991.

77. See, e.g., Law 427 of Oct. 29, 1993, 1993 Gazz. Uff. No. 265, Oct. 29, 1993 (providing relief from several types of taxes to NATO commands and the armed forces of any state which is a contracting party to the North Atlantic Treaty).

78. During the past several years, the USSSO has obtained exemptions for U.S. personnel from the annual television and radio subscription tax and the tax on kerosene and bottled liquefied natural gas. Through the USSSO’s efforts, cellular and mobile telephones used for the official business of U.S. forces are not subject to the cellular telephone subscription tax. With guidance from the USSSO, individual military commands have implemented other important tax relief initiatives. One of these initiatives is a tax-exemption certificate program which allows privately-owned AFI-plated vehicles to be repaired without value-added tax on labor and repair parts. Another initiative is a program for the sale of tax-free heating oil through U.S. nonappropriated fund activities to U.S. service members and civilian personnel who live on the Italian economy.

79. Southern Italy is commonly referred to as the *Mezzogiorno*. Unemployment in the *Mezzogiorno* is substantially higher than in northern Italy.

80. In general, the United States advocates a restrictive theory of sovereign immunity and will assert the defense in foreign courts only to the extent that foreign nations are permitted to assert the defense in United States courts. Erikson, *supra* note 49, at 149, n.36. The Foreign Sovereign Immunities Act of 1976 limits the sovereign immunity defense in United States courts to noncommercial activities of foreign governments and their instrumentalities. 28 U.S.C §§ 1330, 1332, 1391, 1441, 1602-11 (1994). The question of what constitutes a “commercial activity,” thereby precluding assertion of the sovereign immunity defense, has been a subject of continued discussion in the federal courts. See, e.g., Janini v. Kuwait University, 43 F.3d 1534 (D.C. Cir. 1995) (holding that the unilateral termination of an employment contract by Kuwait University due to Iraqi invasion was a commercial activity, despite a formal governmental decree of abrogation); Cicippino v. Islamic Republic of Iran, 30 F.3d 164 (D.C. Cir.) (the Foreign Sovereign Immunities Act does not allow application of the sovereign immunity defense to governmental activities which would also be engaged in by commercial enterprises), *cert. denied*, 513 U.S. 1078 (1994).

81. Diplomatic Note No. 754, Embassy of the United States of America, Rome, Sept. 11, 1996. In the note, the United States took the position that it had only waived its sovereign immunity for labor actions filed by individual employees of the U.S. forces.

82. *Nota Verbale* [Diplomatic Note] No. 588, Ministry of Foreign Affairs, Rome, Oct. 8 1996.

the positions asserted in its first diplomatic note.⁸³ The coordinating offices are also working on jurisdictional and merits defenses, in case the matter can be resolved only in court.

Reform of the Italian Military Justice System

Although the Italian military departments have commissioned attorneys in their ranks, there is no legal corps or regiment in the Italian force structure. Offenses by Italian military personnel are triable by civilian prosecutors who are assigned to the *Procura Generale Militare Della Repubblica* [Office of the General Military Prosecutor of the Republic] (OGMPR).⁸⁴ The offenses are tried in military courts located throughout Italy, but offenses that are committed outside of Italy are tried only in Rome.⁸⁵

As Italy's out-of-country peacekeeping and peacemaking missions began to increase, officials within the Ministry of Defense and the OGMPR sought the USSSO's assistance to better understand the United States military justice system and the role of judge advocates in the U.S. military. The officials were especially interested in two areas: (1) the procedures by which courts-martial are convened and tried outside of the continental United States and (2) the provision of operational law advice to deployed units. The USSSO has provided detailed summaries, both verbally and in writing, of the U.S. military justice system and the role of judge advocates in

deployments. It is expected that the USSSO will continue to provide assistance in this area.

USSSO Support to Base Legal Offices

The USSSO is the only central point of contact for all U.S. forces attorneys in Italy. As the principal legal policy office in Italy, the USSSO is a central clearing house for the exchange of information among all base legal offices in Italy and other legal offices that handle issues which arise in Italy.

In 1995, the USSSO issued a three-volume USSSO Deskbook. The deskbook serves as the initial reference for most Italy-specific legal issues. The deskbook contains copies of the NATO SOFA, the Shell Agreement, the USSSO's foreign criminal jurisdiction⁸⁶ and claims⁸⁷ instructions, the USSSO Country Tax Law Study for Italy, the USSSO Civil Litigation Manual for Italy, and an English translation of the Italian Code of Criminal Procedure. Other sections provide guidance on diverse topics, such as civilian component status, logistical support privileges,⁸⁸ visas⁸⁹ and *soggiorno* permits,⁹⁰ disaster relief, and administration of tax-relief initiatives. The deskbook was distributed to all base legal offices in Italy and to other Department of Defense and Department of Justice offices that handle legal issues which arise in Italy. The USSSO distributes updates annually and when otherwise warranted.

The USSSO regularly issues legal opinions and policy memoranda to the principal legal offices in Italy. It also

83. Diplomatic Note No. 153, Embassy of the United States of America, Rome, Mar. 4, 1997.

84. Attorneys from the OGMPR are the legal advisors to Italian military commanders on military justice matters. Royal Decree No. 1022, Sept. 9, 1941, 1941 *Gazz. Uff.* No. 223, Sept. 27, 1941.

85. See Giuseppe Scandurra, *CONSTITUZIONE DELLA REPUBBLICA ITALIA E CODICE MILITARE PENALE DI PACE E DI GUERRA* [CONSTITUTION OF THE REPUBLIC OF ITALY AND PEACE-TIME AND WARTIME MILITARY CRIMINAL CODE] (1996).

86. See *supra* note 11 and accompanying text.

87. See *supra* note 12 and accompanying text.

88. Over the years, there has been a slow expansion of logistical support privileges through bilateral agreements, exchanges of diplomatic notes, and letters issued by past U.S. ambassadors.

89. Under Italian law, all dependents of military and civilian component personnel stationed in Italy are required to possess a current passport with proper visa at the time of entry, unless they are nationals of a European Union country. In practice, dependents who are U.S. citizens and who arrive with current U.S. passports, military family travel orders, and current military identification cards are usually permitted to enter the county, even without a proper visa. In contrast, dependents who are travelling with non-U.S. passports and without visas are usually issued a temporary visa, allowing time to obtain a *soggiorno* residency permit from the *questura* [police station] nearest the military installation where their sponsors are assigned. However, over the last several years, a small but increasing number of dependents (including dependents who were travelling on passports issued by Panama, the Dominican Republic, South Korea, Kuwait, and the Philippines) who arrived without proper visas were detained and/or threatened with immediate expulsion. In such cases, the USSSO intervenes directly with the Ministry of Foreign Affairs and the Ministry of Interior to allow these dependents to enter Italy and to obtain the needed *soggiorno* residency permits. Resolution of these situations usually takes place through telephone coordination, but some situations have required the filing of diplomatic notes. The USSSO has provided guidance to each service's personnel command concerning the problem. See Message, 251108Z Nov 97, American Embassy, Rome, subject: Dependent Visas (25 Nov. 1997).

While not obviating Italian visa requirements, passport endorsements which describe family members as "dependents" under the NATO SOFA have undoubtedly assisted family members without visas to enter Italy. See NATO SOFA, *supra* note 5, art. III, para. 3 (requiring members of the civilian component and dependents to be so described in their passports). Although such endorsements are supposed to be placed in U.S. passports as part of the process of preparing family members for overseas movement, neither the Department of State nor the Department of Defense can enter such endorsements into foreign passports.

publishes a quarterly newsletter which highlights important legal, diplomatic, and personnel developments. Additionally, the USSSO participates in semi-annual installation commanders conferences, which are sponsored by the U.S. Embassy's Counselor for Political/Military Affairs, and provides input for Italy Stationing and Sovereignty Working Group meetings.

Every May, the USSSO hosts the USSSO Conference, an annual legal conference in Rome for attorneys from various federal agencies and military commands.⁹¹ Designed to be a "working conference," the USSSO Conference serves as a forum for the discussion and resolution of legal issues affecting all U.S. forces in Italy. When new issues cannot be resolved at the conference, officials task specific offices to provide research, to coordinate proposed policies, and to disseminate information. The USSSO conferences also provide instruction and updates on Italy-specific legal issues, provide political/

military briefings by senior embassy personnel, and serve as a forum for attorneys from all of the services to meet and to better understand the functions of their respective offices and commands.⁹²

Conclusion

Although the United States has significantly reduced the number of personnel who are permanently stationed in Germany, the same is not true in Italy. As Italy's political, military, and legal environments change, the USSSO will continue its unique role in shaping legal policy for U.S. forces in Italy, while also representing U.S. forces before the government of Italy.

90. While Article III, paragraphs 1 and 2, of the NATO SOFA obviate the need for U.S. service members to comply with Italian visa and *soggiorno* permit requirements, the same is not true for members of the U.S. civilian component and the dependents of U.S. service members and civilian component employees. *Soggiorno* permits allow non-Italian citizens to maintain residence in, or work in, Italy. Civilians who do not have current *soggiornos* may be detained and are subject to deportation. In late 1996, the Ministry of Interior agreed to a USSSO suggestion that family cohesion *soggiorno* residency permits be issued for three years, the usual period a family member accompanies a service member on a command-sponsored tour.

91. Attendees regularly include attorneys from the EUCOM, Allied Forces Southern Europe, U.S. Army Europe, U.S. Naval Forces Europe, U.S. Air Force Europe, the Department of Justice, base legal offices, and several "stovepipe" organizations with offices in Italy. Senior civilian personnel officers who are responsible for the formulation of U.S. forces host-nation labor policy also attend.

92. The USSSO Conference is complemented by the annual Mediterranean Legal Conference (which is held each November) and the semiannual Senior Staff Judge Advocates Conference.

TJAGSA Practice Notes

Faculty, The Judge Advocate General's School

The following notes advise attorneys of current developments in the law and in policies. Judge advocates may adopt them for use as locally published preventive law articles to alert soldiers and their families about legal problems and changes in the law. The faculty of The Judge Advocate General's School, U.S. Army, welcomes articles and notes for inclusion in this portion of *The Army Lawyer*; send submissions to The Judge Advocate General's School, ATTN: JAGS-DDL, Charlottesville, Virginia 22903-1781.

Family Law Note

The Child Support Recovery Act: Criminalization of Interstate Nonsupport

A man who refused to pay child support to his ex-wife was sentenced to sixty days in jail. The man was required to pay only twenty-five dollars a week to help care for his seven-year-old daughter, but he spent his money buying a classic Corvette and three boats.¹ In Massachusetts, a court upheld the conviction of Dr. Frank Bongiorno for not paying \$220,000 in child support. As a result of the conviction, Bongiorno spent a year's worth of nights and weekends in federal prison, and the court ordered him to pay the child support he owed.² These are just two examples of how prosecutors have successfully used a federal criminal law against parents who failed to pay child sup-

port. The Child Support Recovery Act³ (CSRA) is one of the ways Congress is attacking the poverty of single-parent families and the related welfare costs.

Traditionally, state law governs family law issues. At least forty-two states have criminal penalties for willful failure to pay child support.⁴ Enforcement of these state statutes across state lines, however, is often frustrating, slow, and tedious. In 1992, Congress commissioned a study which concluded that at least five billion dollars a year in child support payments goes uncollected.⁵ As a result of such studies and the need to reform the welfare system, Congress enacted the Child Support Recovery Act in 1992.

The CSRA makes it a federal crime to willfully fail to pay a past due support obligation owed to a child residing in another state.⁶ The trigger for the statute is either a failure to pay a known court order of support for over one year or arrears in excess of \$5000.⁷ A first offense is subject to a fine and up to six months in prison.⁸ Repeat offenders face a fine and up to two years in prison.⁹ The statute also requires restitution of past due support amounts.¹⁰ The CSRA does not require proof that a parent moved to another state with the intent to avoid payment of his support obligation.¹¹ The statute merely requires that a nonpaying parent live in a state different from the state where the child lives and that the parent willfully failed to pay a past due support obligation.¹²

1. Charles W. Hall, *Judge Sentences Deadbeat Dad to Rare Jail Time*, WASH. POST, Feb. 7, 1996, at B1.
2. Patricia Neelson, *Court Says U.S. Can't Seize Wages for Child Support*, BOSTON GLOBE, Feb. 8, 1997, at B2.
3. 18 U.S.C.A. § 228 (West 1997).
4. *United States v. Black*, No. 96-3890, 1997 WL 549577, at *3 (7th Cir. Sept. 3, 1997).
5. H.R. Rep. No. 102-771, at 5 (1992). The House Judiciary Committee based this finding on a study of child support owed and collected in 1989. Specifically, it found that in 1989 only \$11.2 billion of the \$16.3 billion in support owed was collected. *Id.* Government assistance was required to fill the gap created by this shortfall. The same study concluded that interstate collection cases were particularly difficult. Over one-third of all uncollected support payments involved noncustodial parents living out of state. *Id.*
6. 18 U.S.C.A. § 228(d)(2). This section defines "State" to include the District of Columbia and any other possession or territory of the United States. There is no provision for the CSRA to apply to a parent or child residing in a foreign country.
7. 18 U.S.C.A. § 228(a).
8. *Id.* § 228 (b)(1). As a Class B misdemeanor, a first offense does not fall under the federal sentencing guidelines.
9. *Id.* § 228(b)(2). Repeat offenses subject the defendant to the federal sentencing guidelines. There is no listed offense for CSRA violations; therefore, courts look to the most analogous offense, which is theft.
10. *Id.* § 228(c).
11. *United States v. Black*, No. 96-3890, 1997 WL 549577, at *12 (7th Cir. Sept. 3, 1997).
12. *Id.*

Congress passed the CSRA pursuant to its power to regulate interstate commerce. Constitutional challenges to the CSRA ensued in almost every federal circuit. Nine federal circuit courts have found the CSRA constitutional.¹³ Defendants alleged that the CSRA exceeds Congress' enumerated powers and violates the Tenth Amendment. All of the defendants relied on the United States Supreme Court case *United States v. Lopez*¹⁴ for support of their commerce clause challenges. In *Lopez*, the Supreme Court found the Gun-Free School Zones Act unconstitutional¹⁵ and set out three legitimate areas Congress can regulate under its commerce power: (1) the use of the channels of interstate commerce; (2) any instrumentality of interstate commerce, or persons or things in interstate commerce; and (3) activities substantially affecting interstate commerce.¹⁶

The circuit courts found that the CSRA arguably falls within all three *Lopez* categories, although they rely most often on the second category. Child support payments are debts owed, just like any other debt. When the parties to that debt live in different states, the debt becomes an instrumentality of interstate commerce.¹⁷ Congress can regulate an instrumentality of interstate commerce as long as its regulatory action is reasonable and rationally related to a legitimate governmental interest.¹⁸ All the circuits agree that there is a legitimate governmental interest in collecting delinquent child support, particularly child support collections which are hampered by interstate complications. Likewise, all the circuit courts found that the CSRA was

reasonably adapted to its constitutional end. The Tenth Amendment argument fails once the court determines that Congress acted within its enumerated powers.¹⁹

One of the perceived advantages to CSRA actions by U.S. Attorneys was the subsequent civil action for collection of the restitution under the Federal Debt Collection Procedures Act (FDCPA).²⁰ The First Circuit recently found this practice unlawful in *United States v. Bongiorno*.²¹ The court upheld Dr. Bongiorno's conviction under the CSRA for failure to pay over \$200,000 in child support. The practice of the United States attaching wages under the FDCPA, however, failed the scrutiny of the court.²²

The *Bongiorno* court held that child support arrears are not debts owed to the United States, which is a requirement under the FDCPA.²³ Courts use a two-question test to determine whether a debt falls under the FDCPA: (1) to whom is the debt owed? and (2) to whose benefit do the proceeds of the debt inure when paid?²⁴ Child support orders fail both prongs of the test. Child support payments are purely private debts owed between the individual parties, and the benefit of the payment inures most directly to the obligee and the child, not the United States.²⁵ Without the use of the FDCPA, however, former spouses must use state law methods of civil enforcement.

That is not to say that the United States cannot exert some control over collection of the restitution. Under the CSRA, res-

13. See *United States v. Bongiorno*, 106 F.3d 1027 (1st Cir. 1997); *United States v. Sage*, 92 F.3d 101 (2d Cir. 1996), *cert. denied*, 117 S. Ct. 784 (1997); *United States v. Parker*, 108 F.3d 28 (3d Cir. 1997); *United States v. Johnson*, 114 F.3d 476 (4th Cir. 1997); *United States v. Bailey*, 115 F.3d 1222 (5th Cir. 1997); *Black*, 1997 WL 549577; *United States v. Crawford*, 115 F.3d 1397 (8th Cir. 1997); *United States v. Mussari*, 95 F.3d 787 (9th Cir. 1996); *United States v. Hampshire*, 95 F.3d 999 (10th Cir. 1996), *cert. denied*, 117 S. Ct. 753 (1997). *Black*, the most recent circuit court case in this area, gives a detailed discussion of the commerce power issue and the Tenth Amendment issue. It is representative of the rulings by all of the circuits in this area. See *Black*, 1997 WL 549577 at *4.

14. 514 U.S. 549 (1995).

15. *Id.* at 567-68. The Gun-Free School Zone Act (GFSZA), 18 U.S.C.A. § 922, made it a federal offense for anyone knowingly to possess a firearm in a place that the person believed, or had reason to believe, was a school zone. The Court found that the GFSZA exceeded Congress' commerce power. *Id.* at 561. The Court found that the GFSZA had nothing to do with commerce or an economic enterprise. It also found that the GFSZA did not regulate an activity arising out of, or substantially affecting, interstate commerce. Finally, the Court found that the GFSZA contained no express jurisdictional element which limited its reach to interstate activity. *Id.*

16. *Id.* at 558.

17. *Black*, 1997 WL 549577, at *6.

18. *Id.* at *4.

19. *Id.* at *8.

20. 28 U.S.C.A. §§ 3001-3308 (West 1997). The FDCPA was enacted as part of the Crime Control Act of 1990, Pub. L. No. 101-647, 104 Stat. 4933 (1990).

21. 106 F.3d 1027 (1st Cir. 1997).

22. *Id.* at 1039.

23. *Id.* at 1039-40. The First Circuit is the only circuit to address this particular issue.

24. *Id.* at 1037.

25. The Department of Justice argued that the United States assumes the role of the obligee when collecting child support because of the financial burden placed on government assistance programs when support is not paid. The court did not agree that this was enough of a direct link to the debt or its proceeds, particularly since neither Mrs. Bongiorno nor her children received any government assistance.

titution is a part of the sentence.²⁶ Payment of restitution will be a condition of probation²⁷ or supervised release.²⁸ The government has several options for dealing with probation violations.²⁹

Legal assistance attorneys should be aware of the CSRA and refer suitable cases to the U.S. Attorney's Office for the appropriate district.³⁰ Installations with an active Magistrate Court Prosecution program may have the ability to prosecute appropriate cases against soldiers or civilians using this law. Military attorneys, however, need to coordinate with the local U.S. Attorney's Office because Attorney General Reno issued guidance on processing CSRA cases.³¹

Legal assistance attorneys, while they should be aware of the CSRA and its uses, must be cautious not to threaten criminal prosecution as a means of gaining an advantage in a civil matter. Legal assistance attorneys should limit themselves to neutral statements of fact concerning possible criminal sanctions for failure to pay support, whether those sanctions fall under the Uniform Code of Military Justice³² or the CSRA.³³ Major Fenton.

Consumer Law Note

Consumer Leasing Regulation May Be More Useful in Protecting Consumers

In late 1996, the Federal Reserve Board (FRB) published a new Regulation M (consumer leasing).³⁴ The new regulation is based upon growth in consumer leasing and changes to the Consumer Leasing Act (CLA).³⁵ Compliance with the new regulation was initially voluntary and was set to become mandatory on 1 October 1997.³⁶ This date was later extended to 1 January 1998.³⁷ All leases and lease advertising occurring after this date must comply with the new regulation. In addition, there is a new official staff commentary to the regulation.³⁸ Several aspects of the regulation and commentary may assist consumers and their attorneys in combating leasing abuses and violations. This note highlights a few of the more significant changes.³⁹

Defining "Consumer Lease"

The regulation is limited to "consumer lease[s]."⁴⁰ A "consumer lease" is "a contract in the form of a bailment or lease for

26. 18 U.S.C.A. § 3556 (West 1997).

27. *Id.* § 3583.

28. *Id.* § 3563.

29. *See id.* § 3663.

30. The CSRA does not establish any venue restrictions. The Department of Justice will file cases in either the federal district in which the delinquent parent resides or the federal district in which the child resides.

31. Memorandum from Janet Reno, Attorney General, to All United States Attorneys (Feb. 25, 1997) (copy on file with author). The memorandum directs local U.S. Attorneys to coordinate with local child support enforcement agencies to establish guidelines for the referral of CSRA cases. Although the memorandum authorizes referral from private attorneys and citizens, it encourages U.S. Attorneys to require referral through the child support enforcement agency as an initial screening mechanism.

32. Nonpayment of court ordered child support violates *Army Regulation 608-99, Family Support, Custody and Paternity*, a punitive regulation. Violations of the regulation are punishable under Article 92 of the Uniform Code of Military Justice.

33. Neither the ABA Model Rules nor *Army Regulation 27-26* explicitly prohibit threatening criminal charges to gain an advantage in a civil matter. U.S. DEP'T OF ARMY, REG. 27-26, RULES OF PROFESSIONAL CONDUCT FOR LAWYERS (1 May 1992). Such action may, however, violate narrower provisions of those rules and should be avoided.

34. 61 Fed. Reg. 52,246-81 (1996); 62 Fed. Reg. 15,364 (1997). The final regulation is published at 12 C.F.R. pt. 213.

35. *See* Consumer Cred. Guide (CCH) ¶ 3700. The Consumer Leasing Act is codified as amended at 15 U.S.C.A §§ 1667-1667e.

36. 61 Fed. Reg. at 52,252.

37. "The Federal Reserve Board has delayed until January 1 the effective date of changes to its automobile leasing disclosure rules . . . [L]ess than half of the 22,500 new-car dealerships that arrange for automobile leases have the software necessary to produce the new consumer disclosure forms required under the rule, the Fed said." Bill McConnell and Olaf de Senerpont Domis, *Capital Briefs: Fed Postpones Car Lease Disclosure Changes*, AM. BANKER, Sept. 29, 1997, at 2.

38. 62 Fed. Reg. at 16,054.

39. *See* NATIONAL CONSUMER LAW CENTER, TRUTH IN LENDING § 9.3a (3d ed. 1995, 1996 Supp.) [hereinafter TRUTH IN LENDING] (summarizing all of the changes).

40. *See* 12 C.F.R. §§ 213.1, 213.2 (1997).

the use of personal property by a natural person primarily for personal, family, or household purposes, for a period exceeding four months *and for a total contractual obligation not exceeding \$25,000 . . .*⁴¹ While this definition includes several limits, the one that causes the most consternation is the \$25,000 cap. Many mobile home leases and leases for expensive cars often exceed this limit.⁴² Since the term “total contractual obligation” is not defined in the regulation,⁴³ the \$25,000 cap has been the source of much litigation. The lessor usually wants more items included in the “total contractual obligation” in order to get over the \$25,000 cap and avoid the requirements of the regulation. To stay under the cap, the lessee wants to include fewer items.

The new official staff commentary to the definition of “consumer lease” attempts to clarify. The FRB explains:

The total contractual obligation is not necessarily the same as the total of payments . . . [It] includes nonrefundable amounts a lessee is contractually obligated to pay to the lessor, but excludes items such as: i. Residual value amounts or purchase-option prices; ii. Amounts collected by the lessor but paid to a third party, such as taxes, license and registration fees.⁴⁴

This explanation should help many transactions fit under the \$25,000 cap.

Motor Vehicle Leases

Another significant change (and perhaps the most significant substantive change) is a new subparagraph to 12 C.F.R. § 213.4 which applies only to motor vehicle leases.⁴⁵ Under this

section, the lessor must show a number of items used to calculate the monthly payment amount,⁴⁶ and the disclosures must be made in a box that is segregated from the rest of the lease.⁴⁷

The first disclosure is the key to this provision. The lessor must disclose “gross capitalized cost,” which is defined as “the amount agreed upon by the lessor and the lessee as the value of the leased property and any items that are capitalized or amortized during the lease term, including but not limited to taxes, insurance, service agreements, and any outstanding prior credit or lease balance.”⁴⁸ In other words, the gross capitalized cost is the value of the vehicle plus anything paid for during the lease term. This is significant because the regulation requires the lessor to provide the consumer with a complete itemization of the gross capitalized cost *upon request*.⁴⁹ If the consumer makes such a request, the lessor must provide the itemization prior to the signing of the lease.

Consumers should *always* request the itemization for two reasons. First, it will reveal to the consumer the “hidden” costs in the lease, such as dealer profit, service contracts, kickbacks, and acquisition costs.⁵⁰ Second, it will provide valuable information to a legal assistance attorney should a dispute arise concerning the lease.

Another significant disclosure is the “residual value.” This is defined as “the value of the leased property at the end of the lease term, as estimated or assigned at consummation by the lessor, used in calculating the base periodic payment.”⁵¹ Note that the value is estimated or assigned by the lessor; it is not regulated by the FRB. The official staff commentary, however, does require that:

[T]he estimate of the residual value must be reasonable and based on the best information reasonably available to the lessor. A lessor

41. *Id.* § 213.2(e)(1) (emphasis added).

42. *See* TRUTH IN LENDING, *supra* note 39, § 9.2.2.

43. *See* 12 C.F.R. § 213.2.

44. *Id.* pt. 213, supp. I (official staff commentary).

45. *Id.* § 213.4(f).

46. *Id.* There are 11 required disclosures: (1) gross capitalized cost; (2) capitalized cost reduction; (3) adjusted capitalized cost; (4) residual value; (5) depreciation and any amortized amounts; (6) rent charge; (7) total of base periodic payments; (8) lease term; (9) base periodic payment; (10) itemization of other charges; and (11) total periodic payment. *Id.*

47. *Id.*

48. *Id.* § 213.2(f).

49. *Id.*

50. *See Finding Leasing Violations Under New Reg. M*, 16 NCLC REPORTS, CONSUMER CREDIT & USURY EDITION (Nat'l Consumer L. Ctr.), July/Aug. 1997, at 25; *FRB Issues New Rules for Consumer Leasing*, 15 NCLC REPORTS, CONSUMER CREDIT & USURY EDITION (Nat'l Consumer L. Ctr.), July/Aug. 1996, at 2.

51. 12 C.F.R. § 213.2(n).

should generally use an accepted trade publication listing estimated current or future market prices for the leased property unless other information or a reasonable belief based on its experience provides the better information.⁵²

The residual value is used in several critical calculations, including the base periodic payment. It is also excluded from the total contractual obligation when determining whether the CLA applies to the transaction. Thus, the lessor has a number of reasons to assign a low residual value at the beginning of the lease.⁵³ Consumers should check this value and compare it to trade publications prior to signing the lease to ensure that the value is reasonable.

The final disclosure worthy of note is the “total of payments.” This disclosure is new to leasing and should not be confused with the “total of base periodic payments,” which must also be disclosed.⁵⁴ The “total of payments” is “the sum of the amount due at lease signing (less any refundable amounts) [and] the total amount of periodic payments (less any portion of the periodic payment paid at lease signing) . . .” plus any “other charges payable to the lessor . . . that are not included in the periodic payments.”⁵⁵ This disclosure will, therefore, inform consumers of the total amount of money they are actually spending. Hopefully, it will enable them to make an informed decision about entering into the transaction.

Conclusion

As part of the Truth in Lending Act, the CLA is aimed at providing information to consumers so that they can make informed decisions. The recent changes in Regulation M and the official staff commentary go a long way in requiring lessors to provide the information that consumers need to make good choices regarding leases—particularly for automobiles. Legal assistance attorneys should distribute this information in their preventive law programs and use it effectively in their practice. Automobile leases are becoming increasingly popular,⁵⁶ and

this trend will most likely result in an increase in the leasing cases seen by legal assistance attorneys. As a result, the CLA will join a number of other federal protections as an integral part of legal assistance practice. Major Lescault.

Legal Assistance Reserve Note

Interpreting USERRA “Mixed Motive” Discrimination Cases

As one of the first cases reported under the Uniformed Services Employment and Reemployment Rights Act (USERRA),⁵⁷ *Robinson v. Morris Moore Chevrolet-Buick, Inc.*⁵⁸ is instructive as to how this new law works. In *Robinson*, the Court of Appeals for the Fifth Circuit illustrates the major differences between the USERRA and its predecessor, the Veterans Reemployment Rights Act.⁵⁹

Clinton Robinson was a used car salesman for the defendant. In February 1996, Robinson notified his supervisor that he had to attend a mandatory military physical examination with his Army Reserve unit on 23 February 1996 and would be absent from work that day. The car dealership was planning an important sales event that day, and the supervisor asked Robinson if his attendance at the physical examination was mandatory. Robinson said that he was not sure, and the supervisor contacted the Reserve unit and confirmed that Robinson’s attendance was required and that he had no discretion to choose a different time to take his physical examination. Even though the supervisor released Robinson to attend his military physical examination on 23 February, the defendant fired Robinson on 29 February 1996.⁶⁰ Claiming that he had been fired for fulfilling his Army Reserve obligations, Robinson filed suit under the USERRA.⁶¹

In its motion for summary judgment, the defendant claimed that it had sufficient justification to fire Robinson for nondiscriminatory reasons, including tardiness, poor sales performance, and unexcused work absences.⁶² The employer submitted sworn affidavits from a supervisor who alleged poor

52. *Id.* pt. 213, supp. I (official staff commentary).

53. TRUTH IN LENDING, *supra* note 39, § 9.3a.6.15.6.

54. *Id.* at § 9.3a.6.15a.

55. 12 C.F.R. § 213.4(e).

56. The media reports that three million automobiles were leased in 1996, which accounted for approximately one-third of all new automobiles. See, e.g., Gene Tharpe, *Opinions Vary Widely About Leasing an Auto: Experts Debate the Advantages, Pitfalls*, ATLANTA J.-CONST., Feb. 17, 1997, at E-2.

57. Uniformed Services Employment and Reemployment Rights Act, Pub. L. No. 103-353, 108 Stat. 3150 (1994), *codified at* 38 U.S.C. §§ 4301-33 (1994).

58. *Robinson v. Morris Moore Chevrolet-Buick, Inc.*, 974 F. Supp. 571 (E.D. Tex. 1997).

59. Pub. L. No. 93-508, § 404(a), 88 Stat. 1596 (1974), *previously codified at* 38 U.S.C. §§ 2021-27 (1988).

60. *Robinson*, 974 F. Supp. at 572.

work performance and repeated tardiness and unexcused absences. Robinson's previous employer indicated that Robinson had quit his job because of unexcused absences and unhappiness with selling cars. Robinson responded that his supervisor, Mr. Croker, was extremely angry with his work absence to attend his military physical examination. Robinson pointed out that he was selling well and had never been disciplined or counseled prior to requesting time off to attend his military physical examination. He added that his work performance had not been criticized by the car dealership until after his absence for his physical examination.⁶³

Noting that neither the Fifth Circuit nor the United States Supreme Court had heard a USERRA "mixed motive"⁶⁴ discrimination claim, the court looked to USERRA discrimination cases in other circuits. The court adopted the Second Circuit's "motivating factor" test and "but-for" employment discrimination analysis.⁶⁵ Under the motivating factor test, the plaintiff must show, by a preponderance of the evidence, that his military position or obligation was a motivating factor in the employer's decision to fire him. If an employee's military position was a motivating factor for the adverse action, the employer's action is improper.⁶⁶ The Fifth Circuit explained that the employer must do more than show that it was motivated in part by a legitimate reason to discharge or to discipline; it

must that show its legitimate reasons would, standing alone, be sufficient to justify its adverse employment decision.⁶⁷

The court reviewed the evidence presented on the summary judgment motion and found that Robinson laid out a sufficient chronology of facts, including the extremely close proximity of his Army Reserve obligation to the date of his firing and the dealership's complaints about his poor attendance (which may have also been related to Reserve duty absences). Viewing the evidence in the light most favorable to Robinson (the non-moving party), the court found that the defendant had made no complaints about Robinson's work performance prior to his absence to attend his physical examination.

In its motion for summary judgment, the defendant relied on a Seventh Circuit case which predated the USERRA. That case, *Pignato v. American Trans Air, Inc.*,⁶⁸ held that the mere existence of mixed motives is not enough to establish employer liability.⁶⁹ The Fifth Circuit, however, found *Pignato* unpersuasive for several reasons: (1) it was not a summary judgment decision;⁷⁰ (2) it relied on pre-USERRA cases, which held that plaintiffs must prove military status discrimination was the sole reason for adverse employer action;⁷¹ and (3) the facts in *Pignato* were not similar to those in *Robinson*.⁷² Unlike the plaintiff in *Pignato*, Robinson did not attempt to create job conflicts,

61. Robinson filed suit under Section 4311 of the USERRA, alleging discrimination because of military duty. Section 4311 states:

- (a) A person who is a member of . . . a uniformed service shall not be denied initial employment, reemployment, retention in employment, promotion, or any benefit of employment by an employer on the basis of that membership
- (b) An employer may not discriminate in employment against or take any adverse employment action against any person because such person . . . has exercised a right provided for in this chapter
- (c) An employer shall be considered to have engaged in actions prohibited—
 - (1) under subsection (a) [of the USERRA], if the person's . . . service . . . in the uniformed services is a motivating factor in the employer's action, unless the employer can prove that the action would have been taken in the absence of [such service]

38 U.S.C.A. § 4311 (West 1997).

62. *Robinson*, 974 F. Supp. at 573.

63. *Id.*

64. *Id.* at 575. "Mixed motive" refers to employment discrimination cases where the employer alleges a valid reason to discharge or discipline an employee, and the employee raises an impermissible basis for the employer to discharge or to discipline the employee.

65. *Id.* at 575-76, n.1. See *Gummo v. Village of Depew*, 75 F.3d 98, 106 (2d Cir. 1996), *cert. denied*, 116 S. Ct. 1678 (1996). The *Gummo* court confirmed that USERRA plaintiffs no longer have to prove that military status discrimination was the sole cause for their discharge, as was required under prior caselaw. Some good examples of the pre-USERRA "sole cause" requirement can be found in: *Monroe v. Standard Oil Co.*, 452 U.S. 549 (1981); *Sawyer v. Swift & Co.*, 836 F.2d 1257 (10th Cir. 1988); and *Clayton v. Blachowske Truck Lines, Inc.*, 640 F. Supp. 172, 174 (D. Minn. 1986), *aff'd*, 815 F.2d 1203 (8th Cir. 1987). The *Clayton* court held that to avoid summary judgment, the plaintiff must provide "evidence which raises an inference that his reserve status was the sole motivation behind his termination." *Clayton*, 640 F. Supp. at 174.

66. *Robinson*, 974 F. Supp. at 576.

67. *Id.*

68. 14 F.3d 342 (7th Cir. 1994) (holding that in order to establish employer liability in mixed motive cases, the impermissible motive must be the controlling reason for the adverse action).

69. *Robinson*, 974 F. Supp. at 577.

70. *Id.* at 577-78.

71. *Id.*; See *supra* note 65 and accompanying text.

lie to his supervisors to get off work, or deliberately violate company policies.⁷³

Robinson's employer failed to provide convincing evidence that Robinson's work performance would have justified firing him, without considering his absence for his military physical on 23 February 1996. The court further found that the employer failed to prove a nondiscriminatory motivation for the firing, which left a material issue of fact unresolved.⁷⁴ Thus, summary judgment was not appropriate.

In *Robinson*, the Fifth Circuit illustrates two of the biggest changes the USERRA made in military discrimination cases. First, plaintiffs now have a reduced burden of proof under the motivating factor test. Second, the USERRA makes it tougher for employers to obtain summary judgment in mixed motive cases. Lieutenant Colonel Conrad.

Administrative Law Note

Mental Health Evaluations

Specialist (SPC) Strained is taking up more and more of his commander's time. He started out well with his unit, but he soon developed a reputation as a malcontent. Not satisfied with mere griping, he seems to find out about—and use—every complaint mechanism known to soldiers, including the installation's dial-the-CG line, Inspector General complaints, Equal Opportunity complaints, and Article 138 complaints. Most of the complaints are unfounded, and the commander feels they are getting more and more bizarre. The commander is considering having SPC Strained evaluated by a psychiatrist or other mental health professional to see if there is a medical or psychological reason for SPC Strained's perception that everyone is out to get him. The company commander calls you, as a legal advisor, to discuss options for dealing with this soldier. Your

instinct is to get as much information as possible, so you start to say, "Sure, go ahead and send Strained right in for a psych eval, and then let's talk."

Stop. That's bad advice. The company commander should not proceed with a mental health evaluation for SPC Strained just yet.

Background

The National Defense Authorization Acts for Fiscal Years 1991⁷⁵ and 1993⁷⁶ mandated procedures for commanders to use in referring members of the armed forces for mental health evaluations. The Department of Defense (DOD) issued implementing guidance⁷⁷ which attempts to balance protections for service members with a commander's responsibility to be alert to those who pose a danger to themselves or to others. Depending on the circumstances, failing to comply with this guidance may be punishable as a violation of Article 92, Uniform Code of Military Justice.⁷⁸

The Army plans to issue implementing guidance in the next revision or change to *Army Regulation 600-20, Army Command Policy*, but has not done so to date.⁷⁹ The Army has issued interim guidance by electronic message.⁸⁰

Routine Referrals

Before a commander may refer a soldier for a routine (non-emergency) mental health evaluation, the commander must consult with a military mental health care provider.⁸¹ The commander must discuss with the mental health care provider the soldier's "actions and behaviors that the commander believes warrant the evaluation."⁸² The provider may recommend routine or emergency evaluation.⁸³ If no mental health care pro-

72. *Robinson*, 974 F. Supp. at 577-78.

73. *Id.*

74. *Id.* at 578.

75. Pub. L. No. 101-510, § 554, 104 Stat. 1485, 1567-69 (1990).

76. Pub. L. No. 102-484, § 546, 106 Stat. 2315, 2416-19 (1992) (pertinent portions codified at 10 U.S.C. § 1074).

77. U.S. DEP'T OF DEFENSE, DIR. 6490.1, MENTAL HEALTH EVALUATIONS OF MEMBERS OF THE ARMED FORCES (14 Sept. 1993). This directive has been superseded. See U.S. DEP'T OF DEFENSE, DIR. 6490.1, MENTAL HEALTH EVALUATIONS OF MEMBERS OF THE ARMED FORCES (1 Oct. 1997) [hereinafter DOD DIR. 6490.1]; U.S. DEP'T OF DEFENSE, INSTR. 6490.4, REQUIREMENTS FOR MENTAL HEALTH EVALUATIONS OF MEMBERS OF THE ARMED FORCES (28 Aug. 1997) [hereinafter DOD INSTR. 6490.4].

78. DOD DIR. 6490.1, *supra* note 77, at para. D.3.d.

79. See, e.g., Message, 080700Z Mar 96, Headquarters, Dep't of Army, DAPE-HR-L, subject: Mental Health Evaluations (Clarification) (ALARACT 21/96), para. 8 (8 Mar. 1996) [hereinafter ALARACT 21/96].

80. *Id.* See also Message, 141300Z Nov 95, Headquarters, Dep't of Army, DAPE-HR-L, subject: Mental Health Evaluations (ALARACT 087/95) (14 Nov. 1995) (superseded by ALARACT 21/96).

81. *Id.* at para. D.2.b; DOD INSTR. 6490.4, *supra* note 77, at para. F.1.a(2).

vider is available, the commander must consult with a physician or “the senior privileged non-physician [health care] provider present.”⁸⁴ The command must follow up this consultation with a written request for evaluation which recaps the basis for the request.⁸⁵

In addition to consulting with a mental health care professional, the commander must give the soldier written notice of the referral at least two duty days before the evaluation.⁸⁶ The notice must include a “brief factual description of the behaviors and/or verbal communications that led to the commanding officer’s decision to refer the [soldier] for mental health evaluation,” the name of the provider consulted, notification of the soldier’s rights,⁸⁷ the details of the scheduled evaluation, and “[t]he titles and telephone numbers of other authorities, including attorneys, Inspectors General, and chaplains, who can assist the service member who wishes to question the necessity of the referral.”⁸⁸ The commander must sign the notice and give copies to the soldier and the health care provider who will be conducting the evaluation.⁸⁹ If the soldier requests advice from an attorney, a judge advocate or DOD-employed attorney must be appointed.⁹⁰ If an attorney is “not reasonably available” for face-to-face consultation, legal consultation by telephone will suffice.⁹¹

When the soldier reports for the mental health evaluation, the health care provider must review the referral documents. If the health care provider believes the commander made the referral in violation of *DOD Directive 6490.1* or *DOD Directive 7050.6*⁹² (as an improper retribution for a whistleblower complaint), the provider must inform the referring commander’s next higher commander.⁹³

Note that under current Department of the Army (DA) policy, these procedures apply only to referrals for mental health evaluations made at the commander’s own initiative. They *do not* apply to:

Patient self-referrals;

Referrals that are a function of routine diagnostic procedures and made by health care providers not assigned to the service member’s command;

Referrals to family advocacy programs;

Referrals to drug and alcohol rehabilitation programs;

Referrals to mental health professionals for routine evaluations as required by other DA regulations [ARs] (e.g., *AR 635-200* and *AR 135-178*, enlisted administrative separations);

Referrals related to responsibility and competence inquiries conducted pursuant to . . . Rule for Courts-Martial 706 (i.e., sanity board evaluations);

Referral for mental health evaluation required (pursuant to *AR 380-67*) for certain duties (e.g., security clearance evaluations, personnel reliability programs, etc.).⁹⁴

82. DOD INSTR. 6490.4, *supra* note 77, at para. F.1.a(2).

83. *Id.*

84. *Id.*

85. *Id.*

86. *Id.* para. F.1.a(4).

87. The 1993 Defense Authorization Act granted service members who are referred for mental health evaluation the following rights: the advice of an attorney; the right to complain to an Inspector General, if the service member believes the referral was made in retaliation for a protected whistleblower communication; the right to a second opinion by a mental health professional of the service member’s own choosing (including a non-DOD mental health professional, at the member’s expense); and the right to communicate without restriction with an Inspector General, attorney, member of Congress, and others about the mental health evaluation. National Defense Authorization Act for Fiscal Year 1993, Pub. L. No. 102-484, § 546, 106 Stat. 2315, 2416-19 (1992) (codified at 10 U.S.C. § 1074). If a commander cannot comply with the procedural requirements due to military necessity, the service member has the right to know why. *Id.* See also DOD INSTR. 6490.4, *supra* note 77, encl 4.

88. DOD INSTR. 6490.4, *supra* note 77, para. F.1.a(4)(a).

89. *Id.* paras. F.1.a(4)(a)(6), F.1.a(4)c.

90. *Id.* para. F.1.b.

91. *Id.*

92. U.S. DEP’T OF DEFENSE, DIR. 7050.6, MILITARY WHISTLEBLOWER PROTECTION (12 Aug. 1995).

93. DOD INSTR. 6490.4, *supra* note 77, para. F.1.c.

Emergency Referrals

A commander should refer a soldier for emergency mental health evaluation if the soldier, by word or action, shows that he or she is likely to cause serious injury to himself, herself, or others.⁹⁵ The commander must still consult with a mental health care provider either before transporting the soldier to the health care facility, if possible, or shortly thereafter, if circumstances do not permit prior consultation.⁹⁶ The decision to admit the soldier to a psychiatric or medical facility for evaluation is a clinical decision; only a credentialed health care provider can make that decision.⁹⁷ The commander must provide the soldier with the written notice described in the routine referral section above as early as possible.⁹⁸ A military medical treatment facility cannot hold a soldier for involuntary psychiatric hospitalization without a valid clinical diagnosis by a field-grade mental

health care provider appointed by the medical treatment facility commander.⁹⁹

Practice Implications

This area of law imposes responsibilities on commanders and military mental health care professionals, and potential patients have certain rights. Judge advocates who support commanders or health care providers should ensure that they and those whom they advise understand these responsibilities. Judge advocates should also be prepared to explain the policy to individual soldiers who may consult them to explain or to challenge a referral for mental health evaluation. Major Garcia.

94. ALARACT 21/96, *supra* note 79, para. 6. *See also* DOD DIR. 6490.1, *supra* note 77, para. D.3.e.

95. DOD DIR. 6490.1, *supra* note 77, para. D.2.c(1); DOD INSTR. 6490.4, *supra* note 77, para. F.1.a(5)(a).

96. DOD DIR. 6490.1, *supra* note 77, para. D.2.c(2); DOD INSTR. 6490.4, *supra* note 77, para. F.1.a(5)(b and e).

97. DOD DIR. 6490.1, *supra* note 77, para. D.2.e; *see also id.* para. D.5.b.

98. DOD INSTR. 6490.4, *supra* note 77, para. F.1.a(5)(d).

99. *Id.* para. F.2.c(1).

The Art of Trial Advocacy

Faculty, The Judge Advocate General's School, United States Army

Military Judge Questions: An Indication of Your Next Move

Some counsel think that military judges are on a mission to destroy counsel's will to survive. This is a temporary matter of perspective. Fortunately, with experience, counsel usually understand that a military judge only wants to preside over a trial in which both attorneys employ good advocacy skills.

One great thing that military judges do is ask questions that provide counsel with a roadmap for excellent advocacy. There are many situations in which the military judge will signal counsel, through questions, whether to take or to forego a particular action. A few examples will illustrate this point.

Challenge for Cause. Imagine that you and opposing counsel have completed voir dire. When the military judge asked opposing counsel whether he wanted to exercise challenges for cause against the panel, counsel responded affirmatively, made the challenge, and provided the military judge with good reasons (based on the voir dire) to support the challenge. The military judge turned to you and spryly asked, "Counsel, do you have *any* argument in opposition?" The signal from this question is to forego argument and join (or at least not oppose) opposing counsel's challenge for cause. If the military judge really wanted to hear your position on the challenge, or did not think that there was a good basis to support the challenge, the question would have been, "Counsel, what is your position on this matter?" The latter question indicates that the military judge is willing to consider what you have to say because he or she is not sure about your opponent's reasons for the challenge. The former question does not give the same indication. In a challenge for cause situation, the military judge is more likely to send this signal to trial counsel.

"The Government Rests." You (defense counsel), the accused, and the trial counsel are involved in a hard fought larceny contest. Trial counsel called five witnesses on the merits, and you conducted vigorous cross-examination. Trial counsel presented documentary evidence that you vigorously questioned, but the military judge admitted it anyway. Finally, after six hours, the trial counsel stood up and bellowed, "The government rests." The military judge turned to you and asked, "Is the defense ready to proceed, and do you have any motions?" Your signal from the military judge is to exercise a motion for a finding of not guilty. It is obvious to the military judge that the government missed an element of the larceny offense. It may not be apparent to you, but it should be apparent from the military

judge's question that something is wrong. At the very least, you should take a recess to consider the military judge's question.

Government Sentencing Hearing. During the preliminary phase of the sentencing hearing, the military judge asked you how many witnesses you intended to call. You indicated six. The judge let out a brief sigh and told you to begin presenting your testimonial evidence. After the fourth witness, the military judge looked in your direction and asked, "Counsel, is that the last one of your witnesses?" This question is a signal that it may not be necessary to call further witnesses. Considering that counsel have a duty to present all of the evidence which is relevant to proper sentencing, how does the keen advocate react to this question? At the very least, you should request a recess to consider whether the testimonial evidence is cumulative. For defense counsel, the question to the trial counsel is a signal that the military judge is ready to entertain a cumulateness objection.

Similarly, when the evidence portion of the same sentencing hearing terminates, the military judge looks to trial counsel and asks, "Counsel, do you care to make a sentencing argument?" The cue from this question is that both counsel should forego making lengthy sentencing arguments. It is highly unlikely that the military judge will send this cue in a members trial. Although the military judge has not determined an appropriate sentence in such a situation, the military judge's question indicates that counsel have clearly laid out all of the aggravating, extenuating, and mitigating circumstances. A lengthy sentencing argument from either counsel may be excessive.

Conclusion

Trial and defense counsel have the ultimate responsibility to provide effective representation for their clients. No one, other than the client or supervisory judge advocate, should determine trial strategy. Counsel, however, must be attuned to questions from the military judge. In many instances, as indicated above, these questions provide a roadmap to excellent advocacy. They are a means for the military judge to communicate strategy to counsel. Counsel who stay attuned to the military judge's questions may find it easier to prosecute or to defend a case successfully.

CLAMO Report

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

CLAMO Databases in Lotus Notes

The October CLAMO Report provided a preview of one of the Center's newest initiatives: the development of the Operation Joint Endeavor (OJE) After Action Review (JE AAR) database, which is now available on the JAGC.Net Lotus Notes information system. This note provides information concerning the other databases that are available.

The Databases Generally

As stated in the October CLAMO Report, the JE AAR database contains over 600 documents relating to OJE. These source documents allow judge advocates to access information papers, examples of actions that recur during most deployments, and how-to manuals. The Center has also created five other databases which contain a total of more than one thousand documents. These documents are organized into the following databases: CLAMO General; CLAMO JRTC; CLAMO Country Materials; CLAMO JAWE/RDL; and CLAMO UN Resolutions (95-97). The CLAMO General database is the most comprehensive and is linked to the other five. All CLAMO publications are available in this database. You can access the databases as indicated in the October CLAMO Report.

The documents in the databases are organized under the topic headings below. By clicking on one of the keywords, you will see a list of the documents that have been categorized using that keyword or phrase. These documents may be cross-referenced using other keywords as well. In addition to being accessible through keywords, the entire repository is full-text indexed and may be searched for specific words or phrases. Simply insert a specific word or phrase (in the space just under the toolbar), select SEARCH, and follow the prompts. Except for the UN Resolution Database, an index to each database is contained in the following pages.

Conclusion

Together with the LAAWS Project Office, the Center has made these databases available in order to provide deployed judge advocates with maximum access to legal resources. As in the case of all of its activities, the Center has developed this database in order to enhance the practice of operational law, both within the Army and throughout the Department of Defense. Though all of the documents on these databases are extremely valuable resources, judge advocates are reminded that these databases contain only the material that the Center has created or received from the field on a particular subject. Other relevant information may be available through other sources. Major Miller and Major Kantwill.

CLAMO General Database

| | | |
|--------------------------|---------------------------|-----------------------------|
| Administrative Law | General Orders | Navy |
| Aid to Law Enforcement | Grenada | Noncombatant Evac. Ops |
| Air Force | Haiti | OJE AAR |
| Army Weapons Systems | Human Experimentation | Participation/Organizations |
| Battle Cmd Training Prog | Human Rights | Partnership for Peace |
| Bosnia | Information-Collection | Physical Surveillance |
| Brochure | Information-Dissemination | Practical Guides to CTCs |
| Chemical Weapons | Information-Retention | Procurement Law |
| Civil Affairs | Intelligence Law | Provide Comfort |
| Center for Law & Mil Ops | International Law | Refugees |
| Code of Conduct | Investigations | Reserve Component |
| Contracts | JA Warfighting Experiment | Reserve Units |
| Cortina- JRTC | Joint Endeavor | Rules of Engagement |
| Country Materials | JRTC Guide | Searches |
| DOD Directives | Just Cause | SJA Course |
| Desert Shield | Law of Armed Conflict | Soldiers' Guides |
| Desert Storm | Legal Assistance | Somalia |
| Electronic Surveillance | Lessons Learned | Training |
| Enemy Prisoners of War | Mail | Treaties |
| Environmental Law | Media Relations | United Nations |
| Fiscal Law | Military Justice | USAREUR CLE |
| GAO Reports | Monitoring | War Crimes |

CLAMO JRTC Database

| | | |
|------------------|---|------------------------|
| Acadia | Environmental Law | Noncombatant Evac. Ops |
| Asylum | General Orders | Refugees |
| Chemical Weapons | Human Rights | Security Assistance |
| Code of Conduct | International Law | Training |
| Cortina- JRTC | Latin American Alliance for Mutual Security | Treaties |

DOD Directives

Law of Armed Conflict

Discipline

Military Justice

CLAMO Country Studies

| | | | |
|---------------------|--------------------|-------------|-------------------|
| Afghanistan | Dominican Republic | Lithuania | Singapore |
| Albania | Ecuador | Luxembourg | Slovakia |
| Algeria | Egypt | Macau | Slovenia |
| Andorra | El Salvador | Macedonia | Solomon Islands |
| Angola | Equat. New Guinea | Madagascar | Somalia |
| Antigua & Barbura | Eritrea | Malawi | South Africa |
| Argentina | Estonia | Malaysia | South Korea |
| Armenia | Ethiopia | Maldures | Spain |
| Australia | Falkland Islands | Mali | Sri Lanka |
| Austria | Fiji | Malta | St. Kitts & Nevis |
| Azerbaijan | Finland | Mauritania | St. Lucia |
| Bahamas | France | Mauritius | St. Vinant |
| Bahrain | Gabon | Mexico | Sudan |
| Bangladesh | Gambia | Moldova | Surinam |
| Barbados | Georgia | Monaco | Swaziland |
| Belarus | Germany | Mongolia | Sweden |
| Belgium | Ghana | Montserrat | Switzerland |
| Belize | Greece | Morocco | Syria |
| Benin | Grenada | Mozambique | Taiwan |
| Bhutan | Guatemala | Namibia | Tajikistan |
| Bolivia | Guinea | Nauru | Tanzania |
| Bosnia & Herzegov | Guinea-Bissau | Nepal | Thailand |
| Botswana | Guyana | Netherlands | Tibet |
| Brazil | Haiti | New Zealand | Togo |
| British Virgin Isl. | Honduras | Nicaragua | Tonga |
| Brunei | Hong Kong | Niger | Trinidad & Tobago |
| Bulgaria | Hungary | Nigeria | Tunisia |
| Burking Faso | Iceland | Nieu | Turkey |

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|---------------------|--------------|--------------------|----------------|
| Burma | India | North Korea | Turkmenistan |
| Burundi | Indonesia | Norway | Tuvalu |
| Cambodia | Iran | Oman | Uganda |
| Cameroon | Iraq | Pakistan | Ukraine |
| Canada | Ireland | Panama | U.A. Emirates |
| Cape Verde | Israel | Papua New Guinea | United Kingdom |
| Central African Rep | Italy | Paraguay | Uruguay |
| Chad | Ivory Coast | Peru | Uzbekistan |
| Chile | Jamaica | Philippines | Vanuatu |
| China | Japan | Poland | Venezuela |
| Colombia | Jordan | Portugal | Vietnam |
| Comoros | Kazakhstan | Qatar | Western Sahara |
| Congo | Kenya | Romania | Western Somoa |
| Cook Islands | Kiribati | Russian Federation | Yemen |
| Costa Rica | Kuwait | Rwanda | Zaire |
| Croatia | Kyrgystan | San Marino | Zambia |
| Cuba | Laos | Sao Tome | Zimbabwe |
| Cyprus | Latvia | South Africa | |
| Czech Republic | Lebanon | Senegal | |
| Denmark | Lesotho | Serbia Montenegro | |
| Djibouti | Liberia | Seychelles | |
| Dominica | Lichtenstein | Sierra Leone | |

CLAMO JAWE/RDL

JAWE Decision Memorandum

Comments to Initial Staff Action

Initial Staff Action

Proposed JAWE Memorandum

Milestones-Listing

Agenda-Fort Bragg Meeting

Viewgraphs-Briefings

JAWE Final Report

USALSA Report

United States Army Legal Services Agency

Environmental Law Division Notes

Recent Environmental Law Developments

The Environmental Law Division (ELD), United States Army Legal Services Agency, produces the *Environmental Law Division Bulletin*, which is designed to inform Army environmental law practitioners about current developments in environmental law. The ELD distributes its bulletin electronically in the environmental files area of the Legal Automated Army-Wide Systems Bulletin Board Service. The latest issue, volume 5, number 1, is reproduced in part below.

President Clinton Signs Executive Order for Federal Support of Community Efforts along American Heritage Rivers

On 11 September 1997, President Clinton issued Executive Order 13,061, Federal Support of Community Efforts Along American Heritage Rivers.¹ Practitioners should be aware that this Executive Order may have implications for installations under the National Environmental Policy Act (NEPA).

Executive Order 13,061 is an initiative to support community-led efforts relating to rivers that spur economic revitalization, to protect natural resources and the environment, and to preserve historical and cultural heritage. Beginning in early 1998, communities can nominate, and the President will designate, several rivers as American Heritage rivers.² The designation as an American Heritage river will commit the federal government to focus the delivery of the resources needed to support and to restore these rivers and their adjacent communities.³

Federal agencies will be required to commit to a policy that will ensure that their actions have a positive effect on the natural, historic, economic, and cultural resources of the designated rivers and communities. Agencies will be required to consult

with the communities, to consider their objectives, and to ensure that agency actions are compatible with the overall character of the community. Installations should use the NEPA process to examine the impact their actions will have on these designated rivers and communities. Major Polchek.

Resource Conservation and Recovery Act Rulemaking Update

Hazardous Waste Identification Rule For Contaminated Media

On 29 April 1996, the Environmental Protection Agency (EPA) issued a notice of proposed rulemaking for the Hazardous Waste Identification Rule for Contaminated Media (HWIR-media).⁴ As a part of the effort to reinvent government, the rule was intended to streamline federal rules under the Resource Conservation and Recovery Act⁵ (RCRA) for the cleanup of contaminated media and other remediation wastes. The proposed rule was the subject of an EPA and state workgroup that had been attempting to reach a consensus on RCRA cleanup reform since 1993. The rule proposed a risk-based "bright line" scheme that would require federal regulation of wastes with toxicity levels falling above the "bright line" and delegate to states cleanup control for wastes with toxicity levels below the "bright line."⁶ Due to opposition to this scheme from both environmentalists and industry, the EPA is considering other options to avoid the contentious issues surrounding the "bright line" proposal. The EPA recently decided to abandon the 1996 proposal and finalize only parts of the original proposal.⁷

The EPA plans to focus on a few more narrowly tailored regulatory changes to hazardous waste cleanup rather than pursue the comprehensive approach of the original HWIR-media proposal. It is likely that the EPA has scrapped the bright line scheme of distinguishing higher and lower risk contamination. In addition, the EPA will not withdraw the corrective action management regulations, as earlier proposed, but will allow them to complement the revised rule.⁸ Possible targets of a

1. See 62 Fed. Reg. 48,445 (1997). Executive Order 13,061 and further information can be found at <http://www.epa.gov/rivers>.

2. *Id.*

3. *Id.*

4. 61 Fed. Reg. 18,780 (1996).

5. 42 U.S.C.A. §§ 6901-91 (West 1997).

6. 61 Fed. Reg. at 18,794.

7. Information Paper from Carolyn Hoskinson, EPA Office of Solid Waste, subject: Hazardous Waste Identification Rule For Contaminated Media (Sept. 1997) [hereinafter Information Paper] (copy on file with author).

more focused regulation include: alternative land disposal restriction treatment standards for hazardous contaminated soil; streamlined permitting for cleanup sites; options for remediation piles; and a RCRA exclusion for dredged materials managed under the Clean Water Act⁹ or the Marine Protection Research and Sanctuaries Act.¹⁰ The EPA expects to finalize the rule in June 1998.¹¹

Hazardous Waste Recycling Rule

The EPA Office of Solid Waste has decided not to pursue a comprehensive rulemaking to reform the federal hazardous waste recycling scheme.¹² Since 1993, the agency has been studying ways to create a simpler, clearer regulatory system for hazardous waste recycling. In late 1996, the EPA began meeting with stakeholders to discuss a draft proposal for rewriting the RCRA definition of solid waste to clarify what materials would be subject to regulation and what materials would be exempt under recycling rules.

The draft proposal offered two options for regulating and/or exempting the recycling of secondary materials. Under the "transfer-based" option, material is excluded from regulation if it is recycled "on-site" and meets certain requirements.¹³ The "in-commerce" option excludes material based on *how* it is recycled, not *where* it is recycled.¹⁴ The proposals, however, received widespread opposition from the states, industry, and environmental groups. As with the HWIR-media rule, the EPA has now decided to pursue some narrower regulatory initiatives rather than a wide-ranging reform.¹⁵ The original proposal was expected in early 1998; however, there may be some delay to address the concerns raised and to craft the narrow refinement to the regulation.

Corrective Action Rulemaking

The EPA proposed a regulatory framework for implementing corrective action in July 1990¹⁶ and issued a revised advanced notice of proposed rulemaking in May 1996.¹⁷ Since the 1996 proposal, the EPA has been evaluating comments from the public and has been working on a set of principles for reforming corrective action through possible legislative effort. The EPA now plans to release a notice of data availability that will incorporate changes that were suggested through the comment process.¹⁸ It may be that the corrective action rule will not be issued as proposed but will take the form of guidance or a restatement of policy. The focus of the reform appears to be on streamlining cleanups without emphasizing the process. The rule would set technical and procedural requirements to expedite cleanups without forcing authorized states to undergo an additional review.

Hazardous Waste Management System: RCRA Post-Closure Requirements

The EPA is forecasting the proposal of a rule in the winter or spring of 1998 to address RCRA post-closure requirements.¹⁹ The rulemaking will be an amendment of the regulations in two specific areas. First, the rule will address the necessity of a post-closure permit. Second, it will address the issue of state authority for compelling corrective action at interim status facilities.

Current regulations require a permit for facilities that need post-closure care.²⁰ In some cases, a permit is not appropriate because the post-closure care is being met through other mechanisms, such as CERCLA²¹ actions or consent agreements. The

8. *Id.*

9. 33 U.S.C.A. §§ 1251-1387 (West 1997).

10. *Id.* §§ 1401-45.

11. Information Paper, *supra* note 7.

12. *RCRA Regulations*, ENT'VL. POL'Y ALERT - TRACKING SERV., NOV. 5, 1997, at 11 [hereinafter *RCRA Regulations*].

13. Hazardous Waste Recycling Rule Draft Proposal (distributed by the EPA at a public meeting held on 19 November 1996) (copy on file with author).

14. *Id.*

15. *RCRA Regulations*, *supra* note 12.

16. 55 Fed. Reg. 30,798 (1990).

17. 61 Fed. Reg. 8658 (1996).

18. Interview with Hugh Davis, EPA Office of Solid Waste, in Wash., D.C. (Oct. 15, 1997).

19. Semiannual Regulatory Agenda, 62 Fed. Reg. 22,296, 22,357 (1997).

20. 40 C.F.R. § 270.1 (1995).

proposed change would remove the requirement to have a permit in all cases.²² States and the EPA regions would have the flexibility to use other methods of assuring post-closure care.

The second area for amendment is that of state authority for compelling corrective action at interim status facilities. Some states have adopted corrective action authority for sites with interim status; however, it is not a requirement. Under the proposed change, states would be required to adopt as part of their RCRA program the authority to compel corrective action at facilities with interim status permits.²³ The EPA believes this amendment would provide a more consistent implementation of corrective action by the states.²⁴ Major Anderson-Lloyd.

Third Circuit Narrows Plaintiffs' Standing

The debate over standing for citizen groups to enforce environmental laws has been ignited again by a controversial decision by the United States Court of Appeals for the Third Circuit. In *Public Interest Research Group of New Jersey v. Magnesium Elektron, Inc.*,²⁵ the court denied the legal standing of environmentalists to bring a citizen suit under the Clean Water Act²⁶ (CWA). The court found that the plaintiffs were unable to demonstrate a direct link between Magnesium Elektron's (MEI's) pollution and harm to the water body in question.

The court set aside the trial court's judgment of more than two million dollars for one hundred fifty CWA permit violations. The testimony at trial of an expert witness who was called by MEI was crucial to the appellate court's decision. The expert testified that MEI's permit violations had no impact on the water body, and the plaintiffs did not contradict the expert's testimony.

For an organization to have standing, a plaintiff-member must show: (1) an injury in fact (an invasion of a legally pro-

TECTED interest which is concrete and particularized and actual or imminent); (2) a causal link between the defendant's conduct and the injury; and (3) the likelihood that judicial relief will redress the plaintiff's injury.²⁷ The court of appeals found that the plaintiffs could not satisfy the injury-in-fact prong of this test, unless there was a direct harm to the body of water.

Theoretically, the implications of this case and its impact on satisfying the injury-in-fact prong of the doctrine of standing can extend beyond the CWA to other media, such as the Clean Air Act²⁸ (CAA). Future potential plaintiffs may find it more difficult to prove a direct harm under the CAA. Major Egan.

Nuclear Regulatory Commission Cites Firms for Violations Involving Transfer of Exit Signs

The Nuclear Regulatory Commission (NRC) issued a press release in which it announced that it has cited a New York company for a violation of agency requirements for the transfer and disposal of "EXIT" signs which contain radioactive material.²⁹ The NRC did not, however, impose a fine upon the company.

The signs in question are illuminated without electricity and contain Tritium, a substance which is regulated under 10 C.F.R. § 31.5. The requirements of this section are not particularly onerous, but owners of these signs need to be aware of the requirements. Primarily, the holders of these devices must ensure that the original warning labels remain affixed.³⁰ These devices can only be transferred if they remain in the same particular location,³¹ and the transferor should provide to the new holder copies of the regulatory provisions and any safety documents provided on the label. Additionally, the transferor must notify the NRC within thirty days of the transfer.³²

Installations that have these signs in their inventories must be aware of, and comply with, the NRC requirements. Compli-

21. Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C.A. §§ 9601-75 (West 1997).

22. 62 Fed. Reg. at 22,357.

23. *Id.*

24. *Id.*

25. 96-5049, 1997 U.S. App. LEXIS 20846 (10th Cir. Aug. 5, 1997).

26. Federal Water Pollution Control Act, 33 U.S.C.A. §§ 1251-1387 (West 1997).

27. *Lujan v. Defenders of Wildlife*, 504 U.S. 555 (1992).

28. 42 U.S.C.A. §§ 7401-7671q (West 1997).

29. Notice of Violation, *In re Apex Corp. Research Ctr.*, No. 03-05250 (NRC Sept. 10, 1997).

30. 10 C.F.R. § 31.5(b)(1) (1997).

31. *Id.*

32. *Id.* § 31.5(c)(9)(i).

ance will potentially be an issue when property is marked for disposal or demolition. Major Egan.

The NEPA/NHPA Interface

The United States District Court for the Southern District of New York recently addressed the interface between the National Environmental Policy Act³³ (NEPA) and the National Historic Preservation Act³⁴ (NHPA). In *Knowles v. U.S. Coast Guard*,³⁵ the plaintiffs alleged that the Coast Guard should have prepared an environmental impact statement (EIS) rather than an environmental assessment (EA) when closing the Coast Guard Support Center on Governor's Island, New York. The plaintiffs argued that the Coast Guard was required to prepare an EIS rather than an EA because one of the alternatives considered in the Coast Guard's EA would have had a significant adverse impact on historic buildings on Governor's Island. The court found, however, that the production of an EIS was not warranted because the Coast Guard did not choose the alternative complained of and because the Coast Guard's EA and finding of no significant impact (FONSI) were conditioned upon the implementation of mitigation measures.³⁶ The mitigation measures included the completion of the standard maintenance measures which formed the basis for the conclusion that the closure of the facility would have no significant adverse impact on the island's historic buildings.

The court also addressed the timing between the NEPA process and the NHPA consultation process. The plaintiffs claimed that the Coast Guard violated both the NHPA and the NEPA when the Coast Guard issued the FONSI prior to completing consultation with the State Historic Preservation Officer (SHPO) and the Advisory Council for Historic Preservation (ACHP), in accordance with the NHPA and its implementing regulations.³⁷ The court found that the Coast Guard was not required to complete the consultation process before issuing the FONSI.³⁸ The court's finding, however, relies upon the fact that the Coast Guard discussed the publication of the FONSI with the ACHP prior to publication. The court also noted that the Coast Guard ultimately entered into a programmatic agreement

with the SHPO and the ACHP.³⁹ In the programmatic agreement, both the SHPO and the ACHP concurred that the action would not have a significant adverse impact on historic properties.

Installation environmental law practitioners should note that a FONSI should not normally be published prior to consultation with the SHPO and, if appropriate, the ACHP. Prior to issuing a FONSI, installation attorneys should work toward concurrence from the SHPO and the ACHP that an agency action will not have a significant adverse impact on historic properties. Major Ayres.

Litigation Division Notes

Recent Military Personnel Decisions

Holley v. United States⁴⁰

The United States Court of Appeals for the Federal Circuit recently reversed a decision by the United States Court of Federal Claims which held that a probationary Regular Army officer⁴¹ who was eliminated for cause was entitled to a formal hearing before he received a general discharge under honorable conditions which contained "stigmatizing" language.

Background

First Lieutenant (1LT) John D. Holley graduated from the United States Military Academy in 1986 and served in Germany in 1987 and 1988. During that time, he made statements which indicated that he had used, or intended to use, illegal drugs. His commander gave him an administrative reprimand and referred to those statements in 1LT Holley's officer efficiency report. Although 1LT Holley showed marked improvement in his performance and conduct following the reprimand, the Department of the Army initiated an administrative elimination proceeding.⁴²

33. National Environmental Policy Act, 42 U.S.C.A. §§ 4321-70d (West 1997).

34. National Historic Preservation Act, 42 U.S.C.A. § 470.

35. No. 96 Civ. 1018, 1997 U.S. Dist. LEXIS 3820 (S.D.N.Y. Mar. 31, 1997).

36. *Id.* at 3826.

37. Protection of Historic Properties, 36 C.F.R. pt. 800 (1997).

38. *Knowles*, 1997 U.S. Dist. LEXIS 3820 at 3832.

39. *Id.* at 3833.

40. 32 Fed. Cl. 265 (1994), *rev'd*, 124 F.3d 1462 (Fed. Cir. 1997).

41. See 10 U.S.C. § 630 (1994) (providing that the secretary of a military department may, subject to regulations prescribed by the Secretary of Defense, discharge Regular Army officers with less than five years of active commissioned service).

A memorandum which notified 1LT Holley of the pending proceeding advised him that if an honorable or general discharge was recommended his case would not be referred to a board of officers prior to approval by the Secretary of the Army. His chain of command recommended that he be retained on active duty, but the Secretary of the Army approved 1LT Holley's separation. On 2 June 1989, the Army separated 1LT Holley "under honorable conditions." His Department of Defense Form 214 listed "Misconduct Moral or Professional Dereliction or in Interest of National Security" as the reason for the discharge.

The Court of Federal Claims

After his discharge, 1LT Holley filed suit in the Court of Federal Claims. He asserted that the Army's failure to afford him a hearing prior to issuing a general discharge violated his statutory rights under 10 U.S.C. §§ 1181-85 and violated his "fundamental right to due process of law."⁴³ The Army argued that 1LT Holley's separation was not accomplished under 10 U.S.C. §§ 1181-85, but under 10 U.S.C. § 630, which specifically relates to the separation of Regular Army officers who have less than five years of service. The court, however, noted that neither the memorandum which initiated 1LT Holley's elimination proceeding nor the relevant Army regulation provisions cited any specific statutory authority.⁴⁴ The court also noted that 10 U.S.C. §§ 1181-85, which deal generally with the separation of officers and provide for a right to a hearing before a board officers, do not expressly exclude probationary officers.⁴⁵ The court held that both the characterization of service (under honorable conditions) and the narrative comment concerning the reason for discharge were sufficiently stigmatizing that the Army should have afforded Holley a hearing.⁴⁶ The

court order the Army to restore Holley to duty with back pay and allowances.⁴⁷ Additionally, the court specifically rejected the Army's argument that the court lacked subject matter jurisdiction for the case.⁴⁸

The Court of Appeals

The U.S. Court of Appeals for the Federal Circuit initially concluded that the Court of Federal Claims had jurisdiction under the Tucker Act to consider Holley's claim of statutory and regulatory violations, as well as his constitutional due process issue.⁴⁹ Turning to the substance of the lower court's decision, however, the court found that the Army was correct in its interpretation that neither the statute concerning probationary officers nor the implementing regulation required a board of inquiry prior to separation, unless an other than honorable discharge was contemplated.⁵⁰ Perhaps more significantly, the court held that constitutional due process did not require a full adversarial hearing in this case.⁵¹ The court ruled that the statutory and regulatory rights to be notified of the reasons for proposed elimination and the opportunity to submit written matters were adequate to protect probationary officers from being unfairly stigmatized in the course of separation from the Army.⁵² Lieutenant Colonel Elling.

*Blaney v. West*⁵³

In February 1997, an Army officer filed a complaint on behalf of his infant daughter. The suit sought to enforce the infant's claimed constitutional right to access to her mother in order to breast feed. On 9 May 1997, the United States District Court for the District of Columbia dismissed the complaint for

42. See U.S. DEP'T OF ARMY, REG. 635-100, PERSONNEL SEPARATIONS: OFFICER PERSONNEL, ch. 5 (1 May 1989), *superseded by* U.S. DEP'T OF ARMY, REG. 600-8-24, OFFICER TRANSFERS AND DISCHARGES (21 July 1995).

43. *Holley*, 32 Fed. Cl. at 271-74.

44. *Id.*

45. *Id.*

46. *Id.* at 274-75.

47. *Id.*

48. *Id.* at 275-76, n. 12. The court specifically rejected the Army's argument that the Tucker Act, 28 U.S.C. § 1491, (the alleged jurisdictional predicate in the case) did not afford jurisdiction in a claim for failure to provide a due-process "name clearing" hearing in the absence of a claim for money damages. The court concluded that Holley's complaint essentially raised a claim for wrongful discharge based on the Army's procedural failure to afford a hearing, for which jurisdiction was proper.

49. *Holley v. United States*, 124 F.3d 1462, 1466 (Fed. Cir. 1997).

50. *Id.* at 1469.

51. *Id.*

52. *Id.* at 1469-70.

53. No. 97-341 (D.D.C., May 9, 1997).

failure to state a claim under the Fifth and Thirteenth Amendments.

The suit sought declaratory and injunctive relief to require the Army to grant a one-year-old child unrestricted access to her mother, an active duty Army helicopter pilot.⁵⁴ The plaintiff alleged that breast feeding is incompatible with her mother's military duties⁵⁵ and that the mother's military duties violated the child's constitutional right to be breast fed. The district court disagreed, finding no precedent from the United States Supreme Court or the United States Court of Appeals for the Circuit of the District of Columbia which recognizes a constitutional right either to be breast fed or to breast feed.⁵⁶ The court also dismissed the plaintiff's claim that the Army's conduct in refusing to grant unrestricted access to her mother violated the mother's Thirteenth Amendment right against involuntary servitude.⁵⁷ Though the court did not publish its decision, the case affirms the inherent authority of commanders to impose reasonable, duty-related restrictions on soldiers, even if the soldiers are parents. Lieutenant Colonel Elling and Major Parker.

Baldwin v. Perry⁵⁸

In the first known challenge to legislation which authorizes benefits and privileges for family members who are victims of abuse by soldiers who lose their right to retired pay, the United States District Court for the Western District of Texas found that the Uniformed Services Former Spouses Protection Act⁵⁹ (USFSPA) does not waive sovereign immunity. The court determined that the USFSPA expressly precludes liability on the part of the government and its officials in cases where direct

payments to a former spouse comply with the statute and its implementing regulations.

In 1992, the plaintiff's former spouse lost his retirement privileges due to his court-martial conviction for sexually abusing his children.⁶⁰ The plaintiff originally filed for USFSPA benefits in August 1994, and she began receiving payments and privileges in November 1994.⁶¹ The plaintiff subsequently filed a complaint in which she claimed, inter alia, that she should have started receiving benefits and payments at an earlier date and that the dependant identification (ID) card she received should have listed her sponsor's status as "master sergeant, retired."⁶²

The plaintiff started receiving payments from the Defense Finance and Accounting Service (DFAS) in the amount of one half of a retired master sergeant's pay in accordance with 10 U.S.C. § 1408(h). The Army had not, however, developed the policies and computer software necessary to issue appropriate ID cards to § 1408(h) beneficiaries. Section 1408(h) states that a former spouse such as the plaintiff is entitled to receive all privileges and benefits "in the same manner as if the member or former member . . . was entitled to retired pay."⁶³ At the time the suit was filed, ID card regulations and policies only allowed an ID Card to reflect a sponsor's current rank and status (in this case, the grade of private, not master sergeant). In light of the statutory requirements, Litigation Division counsel initiated a change in ID card policy to accommodate former spouses such as the plaintiff. The Litigation Division also advised the plaintiff that she could receive the appropriate ID card if she applied for it at the nearest military personnel office.

The court granted the Army's motion to dismiss for lack of subject matter jurisdiction.⁶⁴ The undisputed facts showed that

54. The mother, 1LT Emma Cuevas, is a graduate of the United States Military Academy.

55. *Blaney*, No. 97-341, slip op. at 3-4.

56. *Id.* at 5-7. The court also noted that those jurisdictions which have recognized a constitutionally protected interest in breast feeding have held that such a right is protected only from excessive state interference. *Id.* at 6, n.4. See *Southerland v. Thigpen*, 784 F.2d 713, 716 (5th Cir. 1986); *Berrios-Berrios v. Thornburg*, 716 F. Supp. 987, 990 (E.D. Ky. 1989). Though the court ruled that the plaintiff failed to state a claim, it noted that certain factors undercut the complaint. These factors included: (1) 1LT Cuevas voluntarily assumed her active duty obligations in exchange for her education at the United States Military Academy and her flight training and (2) her command made considerable accommodations, including an abbreviated work schedule and extended lunch hour so that she could have sufficient time to nurse her daughter. *Blaney*, No. 97-341, slip op. at 6, n. 4.

57. *Blaney*, No. 97-341, slip op. at 7.

58. Order, Civ. No. W-96-CA-317 (W.D. Tex. Oct. 14, 1997).

59. 10 U.S.C.A. § 1408 (West 1997).

60. The spouse's sentence included reduction to the lowest enlisted grade, a bad conduct discharge, and four years confinement. *Baldwin*, Civ. No. W-96-CA-317, at 1.

61. The USFSPA requires that payments must start within ninety days of receipt of a proper application. 10 U.S.C.A. § 1408(d)(1). The plaintiff contended, contrary to the plain language of the statute, that payments should have started on either the date on which her former spouse's court-martial sentence became final or the date on which her divorce became final, whichever was later.

62. Due to her husband's conviction, reduction in rank, and discharge, her ID card listed her sponsor's rank/grade as private/E-1.

63. 10 U.S.C.A. § 1408(h).

the Army had fully complied with the USFSPA's requirements, apart from failing to issue the appropriate ID card to the plaintiff.⁶⁵ The court also denied the plaintiff's cross-motion for summary judgment concerning the appropriate sponsor's rank

on her ID card;⁶⁶ the issue was moot, given the Army's willingness to issue her the correct ID card. Major Parker.

64. *Baldwin*, Civ. No. W-96-CA-317, at 5.

65. The court noted that, although the plaintiff's ID card indicated the incorrect sponsor's rank, she otherwise received all of the benefits to which she was entitled. *Id.*

66. *Id.* at 11.

Claims Report

United States Army Claims Service

Personnel Claims Notes

DOHA Decisions on the Internet

Decisions of the Defense Office of Hearings and Appeals (DOHA) are now available on the world wide web. The web site is: www.defenselink.mil/dodgc/doha. Once in the web site, the user should select "Claims Program," then select "Transportation and Contractual Decisions."

The DOHA is the agency that decides carrier appeals of off-set actions. It took over this function from the General Accounting Office on 30 June 1996.¹ The DOHA web site can be used to access all DOHA decisions relating to transportation claims that have been decided since July 1996. These decisions provide valuable insights into the requirements for adjudicating transportation claims and pursuing recovery action against carriers. Ms. Schultz.

Claims Implications of the New POV Storage Entitlement

On 1 April 1997, the Joint Federal Travel Regulation was amended, and service members are now entitled to store privately owned vehicles (POVs) in certain situations. Under the amendment, a service member is entitled to store one POV at government expense if he is: (1) deployed on a contingency mission which exceeds thirty days or (2) making a permanent change of station (PCS) to a foreign duty station to which a POV may not be transported.²

For storage due to contingency operations (short-term storage), the preferred place of storage is a secure fenced area located on the installation. When a secure location is not available, the local transportation office may contract with a commercial facility for POV storage. For storage due to a PCS move (long-term storage), the local transportation office may contract for storage at a commercial facility, or the service member may personally arrange for storage and be reimbursed for the expense.

Soldiers who are entitled to POV storage should maintain full comprehensive insurance coverage on the vehicle.³ This advice is important because, as discussed below, not all claims for loss and damage are payable. In addition, the total maximum amount allowable for loss or damage to vehicles during such storage is generally \$20,000.⁴ However, failure to maintain comprehensive insurance coverage is not, in itself, a reason to deny a personnel claim for loss of, or damage to, a vehicle.

Service members whose vehicles are stored in a secured area on the installation may file claims for loss or damage with a local claims office.⁵ These claims should be handled like any claim for loss of, or damage to, a POV stored in an area over which the command has assumed responsibility. Loss due to normal storage, such as dead batteries and flat tires, generally will not be compensable.⁶ Field claims offices should coordinate with the local transportation office to ensure that the facility will provide adequate protection for the POVs.

Service members whose vehicles are stored at a commercial storage facility contracted for by the government may also file

1. See *GAO is now DOHA*, ARMY LAW., Apr. 1997, at 164.

2. JOINT FED. TRAVEL REGS., ch. 5, pt. I (25 Mar. 1997). Paragraph 5805 of this part provides:

A member is entitled to store one POV, at a storage facility designated by the Service concerned, if:

1. the member is ordered to make a PCS to a foreign OCONUS PDS, and
 - a. the laws, regulations, or other restrictions imposed by a foreign country or the United States preclude shipment or entry of a motor vehicle at Government expense into that foreign country, or
 - b. the vehicle would require extensive modification (other than normal maintenance servicing) as a condition to entry into the foreign country, or
2. the member is sent TDY on a contingency operation, for more than 30 days.

3. Message, 142000Z Apr 97, Commander, Military Traffic Management Command, subject: POV Storage—Program Instructions, Effective 1 Apr 97 (14 Apr. 1997) [hereinafter MTMC Message].

4. See ALLOWANCE LIST DEPRECIATION GUIDE, item 7 (15 Apr. 1995) (copy on file with the author); U.S. DEP'T OF ARMY, REG. 27-20, LEGAL SERVICES, CLAIMS, para. 11-12a (1 Aug. 1995) [hereinafter AR 27-20]. The Allowance List Depreciation Guide lists \$3000 per claim as the total maximum amount allowable for automobiles, but it increases this amount to \$20,000 for automobiles in transport. The U.S. Army Claims Service has determined that vehicles which are damaged during storage pursuant to this program are transport-related and are, therefore, subject to the \$20,000 maximum amount allowable. However, other maximum amounts allowable apply to various parts of an automobile that is lost or damaged during transport. For example, the maximum amount allowable for automobile radios, tape players, telephones, alarms, and accessories is \$750 per claim. See ALLOWANCE LIST DEPRECIATION GUIDE, *supra*, item 11. The Chief, Personnel Claims and Recovery Division, may waive the maximum amount allowable for good cause. AR 27-20, *supra*, para. 11-14b.

5. AR 27-20, *supra* note 4, para. 11-5e(4).

claims for loss or damage with a local claims office.⁷ These claims should be handled like any POV transportation or storage claim. Such claims should be paid only if the service member promptly reports the loss or damage. Generally, this means that the service member must report obvious external damage at the time he picks up the vehicle and must report other damage within a short time (normally a few days) after arriving at his or her new installation.⁸ In addition, loss due to normal storage generally will not be compensable.⁹ Field claims offices should coordinate with the local transportation office that arranges for such storage to ensure that a Department of Defense Form 788, Private Vehicle Shipping Document, or equivalent form is used to document pre-existing damage and storage-related damage.

Service members who arrange for storage at a commercial storage facility on their own must settle claims for loss and damage directly with the storage facility. Local claims offices are generally not authorized to pay such claims.¹⁰ Requests for exceptions to this policy should be sent to the Chief, Personnel Claims and Recovery Branch, U.S. Army Claims Service, with a personnel claims memorandum of opinion which explains the reasons for the request.¹¹ Exceptions usually will not be granted unless there are unusual circumstances which indicate that the government caused the loss or damage or that the claimant was clearly misinformed concerning his or her ability to obtain government reimbursement for the loss or damage.

The U.S. Transportation Command is currently working on a government contract to cover the new POV storage entitlement. The contract is not scheduled to be completed until 1998. The point of contact for the claims aspects of this new program is Lieutenant Colonel Masterton at the U.S. Army Claims Service, telephone (301) 677-7009, extension 304. Lieutenant Colonel Masterton.

An Inventory Containing Fifty-Seven Garage Items

When assisting a claimant with a claim for household goods which were lost or damaged, personnel at the claims office must examine all of the claimant's documents, including the

inventory. If the inventory reflects, for example, an unusual number of cartons containing "garage items," personnel at the claims office should ask the claimant to prepare a statement which explains why there were so many garage items included on the inventory.

The U.S. Army Claims Service (USARCS) recently prepared an appeal for the Defense Office of Hearings and Appeals (DOHA) which involved an inventory which reflected fifty-seven cartons labeled "garage items." The claims attorney who assisted the claimant was alert and noticed that there were fifty-seven garage items noted on the inventory, without any description of what was in each carton. Fortunately, the claims attorney was able to locate the claimant's wife, and she provided a logical explanation. She had a child with Attention Deficit Hyper Disorder. The family was scheduled to move to Germany, but the Army informed her that there were no facilities in Germany to treat her child's condition. After the movers had already packed fifty-seven cartons, she was ordered to remain at home with her child. While her husband was in Germany, she moved into her father's home and stored the packed cartons in her father's garage. After eight months, the claimant was transferred to Fort Bliss, Texas. When the packers arrived at the home where the claimant's wife had been staying, they merely labeled each carton found in the garage as "garage items" on the inventory.

In this case, the packers were at fault for failing to inspect and merely labeling the boxes found in the garage as "garage items" on the inventory. According to the Department of Defense Personal Property Traffic Management Regulation:

The carrier has the responsibility to inspect all prepacked goods to ascertain the contents, condition of the contents, and that only articles not otherwise prohibited by the carrier's tariff/tender are contained in the shipment. Furthermore, when it is determined by the carrier that goods require repacking, such packing will be performed by the carrier."¹²

6. Deterioration of an item that is caused by long-time storage, rather than mishandling or improper conditions of storage, is not compensable. See U.S. DEP'T OF ARMY, PAM. 27-162, LEGAL SERVICES, CLAIMS, para. 2-38c (15 Dec. 1989) [hereinafter DA PAM 27-262].

7. AR 27-20, *supra* note 4, para. 11-5b.

8. DA PAM 27-262, *supra* note 6, para. 2-41b(3).

9. See *supra* note 6.

10. See MTMC Message, *supra* note 3 (providing that "the government will not pay claims for damages incurred as a result of storage services procured by the member"). *Department of the Army Pamphlet 27-262* does not clearly indicate whether such claims are payable. Storage is considered to be "government sponsored" and, therefore, may result in a payable personnel claim if the government later reimburses the claimant for the storage. DA PAM 27-262, *supra* note 6, para. 2-26a(2). On the other hand, negligent or wrongful acts of the claimant's agent is a bar to payment. *Id.* para. 2-49b. Arguably, when a service member arranges for vehicle storage on his own, the storage facility may be considered to be the service member's agent for storage purposes, and any damage the agent causes to the vehicle will not result in a compensable personnel claim. The policy of the U.S. Army Claims Service is that such personnel claims for loss of, or damage to, vehicles which occurs during storage procured by a claimant are generally not payable unless the government causes the loss or damage.

11. See DA PAM 27-262, *supra* note 6, para. 2-55l.

There was a second problem involved in this claim. The claimants had packed a Sega Genesis CDX game, two Sega Genesis cartridges, and a toaster in a carton, and the carton was missing at the time of delivery. The carrier denied liability for these items and contended that it would normally label electronic items. As discussed above, the carrier failed to inspect each carton and to describe adequately the contents on the inventory. Thus, the carrier's contention failed in this case.

This case illustrates two important points. First, when electronic items such as a Sega Genesis CDX system, cartridges,

and a toaster are missing, the DOHA requires a written statement from the claimants which affirms that they owned these items¹³ and tendered them to the carrier. Second, if the inventory includes a number of unexplained or unusual items, personnel at the claims office must question the claimant in order to obtain a logical explanation for the items being on the inventory. The USARCS needs this type of information to convince the DOHA that these items were actually tendered and that the carrier failed to deliver them. Ms. Schultz.

12. U.S. DEP'T OF DEFENSE, DIR 4500.34-R, PERSONAL PROPERTY TRAFFIC MANAGEMENT REGULATION, app. A, para. 44a (Oct. 1991).

13. Claimants should include as much evidence as possible.

Enlisted Training News

*Chief, Enlisted Training Management and Sergeant Major,
The Judge Advocate General's School, U.S. Army*

New Dates for NCO Courses

The 2d Chief Legal NCO Course¹ is scheduled for 8-12 June 1998 at The Judge Advocate General's School, U.S. Army (TJAGSA) in Charlottesville, Virginia. During the course, instructors will prepare new chief legal noncommissioned officers (NCOs) for the basic duties and responsibilities of their positions. The purpose of the course is to develop basic law office management skills. The Office of the Judge Advocate General will select NCOs to attend the course, which may only be attended one time.

The 9th Senior Legal NCO Management Course² is scheduled for 15-19 June 1998 at TJAGSA. The course will focus on NCO management issues and is open to all NCOs in the ranks E-7 and above (both active duty and reserve) who are assigned, or are pending assignment, as the NCO-in-charge of a legal office at the brigade level or higher.

The dates for these courses were changed for funding purposes to accommodate all personnel and were also adjusted to coincide with the Staff Judge Advocate and Warrant Officer Courses at TJAGSA. The dates are official and took effect in September 1997.

The 9th Law for Legal NCO Course³ is scheduled for 27 April-1 May 1998 at TJAGSA. The course is designed for 71Ds (both active duty and reserve) in the grades E5 and E6. This is the first functional course in the new 71D Training Plan. The prerequisite for the course is the Law for Legal Specialists Correspondence Course or the Post-AIT Nonresident Course.⁴

Anyone who has questions about the new courses should contact Sergeant Major Mullins at (804) 972-6446.

Training for Reserve Component Soldiers in MOS 71D Has Changed

The courses that Reserve Component (RC) soldiers in Military Occupational Specialty (MOS) 71D⁵ are required to attend changed as a result of the December 1996 Task Training Site and Review Board. The new courses (Post-AIT nonresident course, Pre-BNCOC nonresident course, and Pre-ANCOC nonresident course), which became effective on 1 October 1997, are required in addition to the previously required courses. Soldiers can register for the courses by sending a completed Department of the Army Form 145⁶ to: Commandant, The Judge Advocate General's School, U.S. Army, ATTN: Correspondence Course Office (JAGS-ODC), 600 Massie Road, Charlottesville, Virginia 22903.

Training for RC soldiers in MOS 71D now consists of four courses.

Advanced Individual Training

Completion of 71D Advanced Individual Training (AIT) is mandatory for the awarding of MOS 71D.⁷ It is eight weeks of legal training at Fort Jackson, South Carolina. There is also a Post-AIT Nonresident Course. Soldiers who reclassify into MOS 71D must attend the two-phase RC version of the AIT program and the new Post-AIT Course, which combine to make up the same hours and the same course-critical subjects as the active duty course (in accordance with the Total Army Training System (TATS) guidelines). Therefore, AIT for RC soldiers who reclassify into MOS 71D now consists of:

(1) Phase I: nonresident course, consisting of seven sub-courses of initial technical legal subjects;

1. Course No. 512-71D.

2. Course No. 512-71D/40/50.

3. Course No. 512-71D/20/30.

4. On 1 October 1997, the Post-AIT nonresident course replaced the Law for Legal Specialists correspondence course.

5. Legal Specialist.

6. U.S. Dep't of Army, DA Form 145, Army Correspondence Course Enrollment Application (Jan. 1992). Soldiers should refer to *Department of the Army Pamphlet 351-20, Army Correspondence Course Program Catalog*, for assistance in completing DA Form 145.

7. See U.S. DEP'T OF ARMY, REG. 611-201, ENLISTED CAREER MANAGEMENT FIELDS AND MILITARY OCCUPATIONAL SPECIALTY (1 July 1994) [hereinafter AR 611-201]; U.S. DEP'T OF ARMY, REG. 140-158, ENLISTED PERSONNEL CLASSIFICATION, PROMOTION, AND REDUCTION (1 Sept. 1994) [hereinafter AR 140-158].

(2) Phase II: 71D technical track, consisting of primary technical legal subjects in a two-week course conducted at Fort Jackson, South Carolina; and

(3) Post-AIT: nonresident course, consisting of fourteen subcourses.

Basic Noncommissioned Officer Course

Completion of the Basic Noncommissioned Officer Course (BNCOC) for 71Ds is mandatory for promotion to E6.⁸ For reserve soldiers, it consists of two phases plus the new Pre-BNCOC course. The combination of the three courses comprise the same hours and the same subjects as the active duty course (in accordance with TATS guidelines). Soldiers must have completed 71D AIT (including the Post-AIT course) to be eligible for attendance at BNCOC. Soldiers who were selected for attendance prior to 1 October 1997 are grandfathered for one year, and they are not required to complete either the Post-AIT nonresident course or the Pre-BNCOC course.

The three components of 71D BNCOC for reserve soldiers are:

(1) Pre-BNCOC nonresident course, which includes fourteen subcourses of technical legal subjects for active duty and reserve soldiers;

(2) Phase I: common core, taught at a National Guard training facility during Inactive Duty Training (IDT); and

(3) Phase II: 71D technical track, consisting of primary legal subjects taught in a two-week course by personnel from the Office of the Staff Judge Advocate, Fifth Army, in San Antonio, Texas.

Advanced Noncommissioned Officer Course

Completion of the 71D Advanced Noncommissioned Officer Course (ANCOC) is mandatory for promotion to E7.⁹ The course consists of two phases plus the new Pre-ANCOC course, which combine to comprise the same hours and the same subjects as the active duty course (in accordance with TATS guidelines). Soldiers must have completed all of AIT and BNCOC to be eligible for attendance at ANCOC. Soldiers selected for attendance prior to 1 October 1997 are grandfathered for one year, and they are not required to complete either

the Post-AIT nonresident course, the Pre-BNCOC course, or the Pre-ANCOC nonresident course.

The three components of 71D ANCOC for reserve soldiers are:

(1) Pre-ANCOC nonresident course, which includes fourteen subcourses of technical legal subjects for active duty and reserve soldiers;

(2) Phase I-common core, which is taught at a National Guard training facility during IDT; and

(3) Phase II-71D technical track, which consists of two weeks of classes on advanced legal subjects conducted by the Office of the Staff Judge Advocate, First Army, Fort Gillem, Georgia.

Court Reporter Course

Attendance at the Court Reporter Course (RC) is mandatory for the awarding of additional skill identifier C5.¹⁰ It is a two-week resident course taught by RC personnel at the Naval Justice School in Newport, Rhode Island. Currently, this course is being reviewed to determine how it can be changed to comply with TATS and to determine how best to incorporate the closed mask system of court reporting.

Training for Active Duty Soldiers in MOS 71D Has Changed

As a result of the December 1996 Task Training and Site Review Board, the courses that active duty soldiers in MOS 71D are required to attend have changed. The new courses (Post-AIT nonresident course, Pre-BNCOC nonresident course, and Pre-ANCOC nonresident course), which became effective on 1 October 1997, are required in addition to the previously required courses. Soldiers can register for the courses by sending a completed Department of the Army Form 145¹¹ to: Commandant, The Judge Advocate General's School, U.S. Army, ATTN: Correspondence Course Office (JAGS-ODC), 600 Massie Road, Charlottesville, Virginia 22903.

Training for active duty soldiers in MOS 71D now consists of four courses.

8. See U.S. DEP'T OF ARMY, REG. 600-8-19, ENLISTED PROMOTIONS AND REDUCTIONS (1 Nov. 1991) (IOI 8 Apr. 1996) [hereinafter AR 600-8-19]; AR 140-158, *supra* note 7.

9. See AR 600-8-19, *supra* note 8; AR 140-158, *supra* note 7.

10. See AR 611-201, *supra* note 7; AR 140-158, *supra* note 7.

11. See *supra* note 6.

Advanced Individual Training

Completion of 71D AIT is mandatory for the awarding of MOS 71D.¹² The course, which is conducted in accordance with the TATS guidelines, consists of eight weeks of training in primary technical legal subjects. It is conducted at the Soldiers Support Institute, Fort Jackson, South Carolina. In addition, soldiers are now required to complete the Post-AIT nonresident course. It includes fourteen subcourses and can be completed in one year.

Basic Noncommissioned Officer Course

Completion of the BNCOC for 71Ds is mandatory for promotion to E6.¹³ Soldiers must have completed 71D AIT (including the Post-AIT course) to be eligible for attendance. Soldiers who were selected for BNCOC prior to 1 October 1997 are grandfathered for one year and are not required to complete either the Post-AIT nonresident course or the Pre-BNCOC nonresident course.

The 71D BNCOC now consists of a three-week phase of common core and a three-week technical track. Both phases are conducted at the NCO Academy at Fort Jackson, South Carolina. The technical track portion soon will change to a two-week track to meet TATS requirements. Prior to attending BNCOC at the NCO Academy, soldiers must complete the Pre-BNCOC nonresident course. It includes fourteen subcourses of technical legal subjects. Information on, and the prerequisites for, each subcourse are listed in the TJAGSA Annual Bulletin (1997-1998 edition).

Advanced Noncommissioned Officer Course

Completion of 71D ANCOC is mandatory for promotion to E7.¹⁴ Soldiers must have completed all of AIT and BNCOC to be eligible for attendance. Soldiers who were selected for ANCOC prior to 1 October 1997 are grandfathered for one year and are not required to complete the Post-AIT nonresident course, the Pre-BNCOC nonresident course, or the Pre-ANCOC nonresident course.

The course of instruction for 71D ANCOC now consists of a three-week phase of common core and a two-week technical track comprised of advanced legal subjects. Both phases are taught at the NCO Academy, Fort Jackson, South Carolina. Prior to attending ANCOC at the NCO Academy, soldiers must

complete the Pre-ANCOC nonresident course, which includes fourteen subcourses of technical legal subjects.

Court Reporter Course

Completion of the Court Reporter Course is mandatory for the awarding of additional skill identifier C5.¹⁵ It is a five-week resident course taught by the Army Representative at the Naval Justice School in Newport, Rhode Island. Currently, course instructors teach the open mike system of court reporting; however, efforts are underway to incorporate the closed mask system of court reporting into all future training.

Additional Courses for Soldiers in MOS 71D

a. *EJATT*. The Enlisted Judge Advocate Triennial Training (EJATT) consists of eighty hours of 71D technical legal subjects. It is conducted by the Office of the Staff Judge Advocate, Fifth Army, in San Antonio, Texas. The course is intended as refresher training.

b. *CLNCO*. The Chief Legal Noncommissioned Officers Course (CLNCO) is a two-phase course intended to prepare a soldier (active duty and reserve component) for the position of Chief Legal NCO. It is open to all new CLNCO's.

(1) Phase I: the Pre-CLNCO nonresident course includes ten subcourses for active duty and reserve soldiers. This course can be completed in one year.

(2) Phase II: the CLNCO resident course consists of one week of classes at TJAGSA on the duties and responsibilities of a CLNCO.

c. *Senior Legal NCO Management Course*. The Senior Legal Noncommissioned Officers Management Course is a one-week resident course at TJAGSA. The course will focus on NCO management issues and is open to all NCOs in the ranks E-7 and above who currently hold MOS 71D.

d. *Law for Legal NCO Course*. This is the first functional course in the new 71D training plan. It is a one-week resident course at TJAGSA for 71D's in the grades E5 and E6, and it focuses on criminal law. The Law for Legal Specialists correspondence course (now called the Post-AIT nonresident course) is a prerequisite. Registration for both of the older courses (Law for Legal Specialists and Law for Legal NCO correspondence courses) ended on 1 October 1997. The courses that replaced them (the Post-AIT nonresident course and the

12. See AR 611-201, *supra* note 7. See also U.S. DEP'T OF ARMY, PAM. 351-4, U.S. ARMY FORMAL SCHOOLS CATALOG (31 Oct. 1995) [hereinafter DA PAM 351-4] (listing the components of AIT and the prerequisites for enrollment).

13. See AR 600-8-19, *supra* note 8. See also DA PAM 351-4, *supra* note 12 (listing the components of BNCOC and the prerequisites for enrollment).

14. See AR 600-8-19, *supra* note 8. See also DA PAM 351-4, *supra* note 12 (listing the components of ANCOC and the prerequisites for enrollment).

15. See AR 611-201, *supra* note 7.

Pre-BNCOC nonresident course) became effective on 1 October 1997.

Points of Contact for Training

| | |
|---------------------------------------|--|
| AIT (for both active duty & reserve): | Resident 71D AIT Course Director (SFC Durden) Headquarters, 369th Adjutant General Battalion Fort Jackson, South Carolina 29207 (803) 738-0326 |
| | Nonresident 71D AIT Course Manager (SFC Willers) Enlisted Training Development Department The Judge Advocate General's School, U.S. Army Charlottesville, Virginia 22903 (804) 972-6319/6447 |
| BNCOC/ANCOC (active duty): | Team PERSCOM |
| BNCOC/EJATT (reserve): | Fifth Army, Fort Sam Houston, Texas 78234 SGM Terry Jackson/SFC Cardenas-Miller (800) 531-1114, ext 1329 or (210) 221-1515 |
| ANCOC/Court Reporter (reserve): | First Army, Fort Gillem, Georgia 30297 SGM Linda Hearon (404) 362-3343 |
| Court Reporter Course (active duty): | Army Representative (SFC Sexton) Naval Justice School Newport, Rhode Island 02841 (401) 841-3808 |
| Nonresident Courses: | The Judge Advocate General's School, U.S. Army 600 Massie Road ATTN: JAGS-ODC, Mr. Beauchamp, Charlottesville, VA 22903 (804) 972-6308; (804) 972-6338 (Fax) |

The proponent for training development, course design and development, evaluation, and the Army Course is the Commandant, The Judge Advocate General's School, U.S. Army, 600 Massie Road, Charlottesville, Virginia 22903. The Commandant, TJAGSA, may grant constructive credit for courses taken.¹⁶ To receive credit for the following new courses, the

previously completed course must not be more than four years old, and the soldier must first request constructive credit. Send requests to the address for correspondence courses.

RECEIVE CREDIT FOR

Post-AIT nonresident course

Pre-BNCOC course

Pre-ANCOC course

IF YOU COMPLETED

Admin & Law for Legal Specialists Course

Admin & Law for Legal NCO Course

Military Paralegal Program

16. See U.S. DEP'T OF ARMY, PAM. 351-20, ARMY CORRESPONDENCE COURSE PROGRAM CATALOG (1 Oct. 1996).

The Total Army Training System is intended to ensure that active duty and reserve component soldiers receive the same training on course critical tasks. The tasks may be trained at different sites and may involve the use of different methods.¹⁷

Anyone who has questions about the courses (waivers, attendance at, or constructive credit for) should contact Sergeant Major Garry Mullins, (804)972-6446 or (800) 552-3978, ext. 446.

17. TRAINING AND DOCTRINE COMMAND, PAM. 350-70-8, TRAINING TRAINING REQUIREMENTS ANALYSIS SYSTEM (TRAS) (1 Nov. 1996).

Guard and Reserve Affairs Items

Guard and Reserve Affairs Division

Office of The Judge Advocate General, U.S. Army

The Judge Advocate General's Reserve Component (On-Site) Continuing Legal Education Program

The following is the current schedule of The Judge Advocate General's Reserve Component (on-site) Continuing Legal Education Program. *Army Regulation 27-1, Judge Advocate Legal Services*, paragraph 10-10a, requires all United States Army Reserve (USAR) judge advocates assigned to Judge Advocate General Service Organization units or other troop program units to attend on-site training within their geographic area each year. All other USAR and Army National Guard judge advocates are encouraged to attend on-site training. Additionally, active duty judge advocates, judge advocates of other services, retired judge advocates, and federal civilian attorneys are cordially invited to attend any on-site training session.

1997-1998 Academic Year On-Site CLE Training

On-site instruction provides updates in various topics of concern to military practitioners as well as an excellent opportunity to obtain CLE credit. In addition to instruction provided by two professors from The Judge Advocate General's School, United States Army, participants will have the opportunity to obtain career information from the Guard and Reserve Affairs Division, Forces Command, and the United States Army Reserve Command. Legal automation instruction provided by personnel from the Legal Automation Army-Wide System Office and enlisted training provided by qualified instructors from Fort Jackson will also be available during the on-sites. Most on-site locations supplement these offerings with excellent local instructors or other individuals from within the Department of the Army.

Additional information concerning attending instructors, GRA representatives, general officers, and updates to the schedule will be provided as soon as it becomes available.

If you have any questions about this year's continuing legal education program, please contact the local action officer listed

below or call Major Juan J. Rivera, Chief, Unit Liaison and Training Officer, Guard and Reserve Affairs Division, Office of The Judge Advocate General, (804) 972-6380 or (800) 552-3978, ext. 380. You may also contact Major Rivera on the Internet at riveraju@otjag.army.mil. Major Rivera.

USAR Vacancies

A listing of JAGC USAR position vacancies for judge advocates, legal administrators, and legal specialists can be found on the Internet at <http://www.army.mil/usar/vacancies.htm>. Units are encouraged to advertise their vacancies locally, through the LAAWS BBS, and on the Internet. Dr. Foley.

GRA On-Line!

You may contact any member of the GRA team on the Internet at the addresses below.

COL Tom Tromeu,.....tromeyto@otjag.army.mil
Director

COL Keith Hamack,.....hamackke@otjag.army.mil
USAR Advisor

Dr. Mark Foley,.....foleymar@otjag.army.mil
Personnel Actions

MAJ Juan Rivera,.....riveraju@otjag.army.mil
Unit Liaison & Training

Mrs. Debra Parker,.....parkerde@otjag.army.mil
Automation Assistant

Ms. Sandra Foster,fostersa@otjag.army.mil
IMA Assistant

Mrs. Margaret Grogan,.....groganma@otjag.army.mil
Secretary

| <u>DATE</u> | <u>CITY, HOST UNIT, AND TRAINING SITE</u> | <u>AC GO/RC GO</u> <u>SUBJECT/INSTRUCTOR/GRA REP*</u> | <u>ACTION OFFICER</u> | |
|------------------|---|--|---|--|
| 10-11 Jan 98 | Long Beach, CA 78th MSO Hyatt Regency Long Beach 200 South Pine Avenue Long Beach, CA 90802 (562) 491-1234 | AC GO RC GO Criminal Law Int'l - Ops Law GRA Rep | MG John Altenburg BG John F. DePue MAJ Martin Sitler CDR Mark Newcomb MAJ Juan Rivera | LTC Andrew Bettwy 5241 Spring Mountain Road Las Vegas, NV 89102 (702) 876-7107 |
| 31 Jan-1 Feb | Seattle, WA 6th MSO University of Washington School of Law Condon Hall 1100 NE Campus Parkway Seattle, WA 22903 (206) 543-4550 | AC GO RC GO Criminal Law Contract Law GRA Rep | MG Walter Huffman BG Richard M. O'Meara MAJ Charles Pede MAJ David Wallace COL Thomas Tromeay | LTC David F. Morado 909 1st Avenue, #200 Seattle, WA 98199 (206) 220-5190, ext. 3531 email: david_morado@hud.gov |
| 7-8 Feb | Columbus, OH 9th MSO/OH ARNG Clarion Hotel 7007 North High Street Columbus, OH 43085 (614) 436-5318 | AC GO RC GO Ad & Civ Law Int'l - Ops Law GRA Rep | MG John Altenburg BG John F. DePue MAJ Stephanie Stephens MAJ Geoffrey Corn MAJ Juan Rivera | LTC Tim Donnelly 1832 Milan Road Sandusky, OH 44870 (419) 625-8373 e-mail: tdonne2947@aol.com |
| 21-22 Feb | Salt Lake City, UT 87th MSO University Park Hotel 480 Wakara Way Salt Lake City, UT 84108 (801) 581-1000 or outside UT (800) 637-4390 | AC GO RC GO Ad & Civ Law Criminal Law GRA Rep | BG Michael Marchand BG Thomas W. Eres MAJ Stephen Parke LTC James Lovejoy COL Keith Hamack | MAJ John K. Johnson 382 J Street Salt Lake City, UT 84103 (801) 468-2617 |
| 28 Feb- 1 Mar | Charleston, SC 12th LSO Charleston Hilton 4770 Goer Drive North Charleston, SC 29406 (800) 415-8007 | AC GO RC GO Ad & Civ Law Criminal Law GRA Rep | MG Walter Huffman BG Richard M. O'Meara LTC Mark Henderson MAJ John Einwechter COL Thomas Tromeay | COL Robert P. Johnston Office of the SJA, 12th LSO Bldg. 13000 Fort Jackson, SC 29207-6070 (803) 751-1223 |
| 14-15 Mar | Washington, DC 10th MSO National Defense University Fort Lesley J. McNair Washington, DC 20319 | AC GO RC GO Contract Law Int'l - Ops Law GRA Rep | BG Michael Marchand BG John F. DePue MAJ Stewart Moneyemaker MAJ Scott Morris COL Thomas Tromeay | CPT Patrick J. LaMoure 6233 Sutton Court Elkridge, MD 21227 (202) 273-8613 e-mail: lampat@mail.va.gov |

| | | | | |
|-----------|---|--|--|---|
| 14-15 Mar | San Francisco, CA 75th LSO | AC GO RC GO Ad & Civ Law Criminal Law GRA Rep | MG Walter Huffman BG Thoms W. Eres MAJ Christopher Garcia MAJ Norman Allen Dr. Mark Foley | LTC Allan D. Hardcastle Judge, Sonoma County Courts Hall of Justice Rm 209-J 600 Administration Drive Santa Rosa, CA 95403 (707) 527-2571 fax (707) 517-2825 email: avbwh4727@aol.com |
| 21-22 Mar | Chicago, IL 91st LSO Rolling Meadows Holiday Inn 3405 Algonquin Road Rolling Meadows, IL 60008 (708) 259-5000 | AC GO RC GO Contract Law Int'l - Ops Law GRA Rep | BG John Cooke BG John F. DePue MAJ Thomas Hong MAJ Geoffrey Corn Dr. Mark Foley | MAJ Ronald C. Riley 20825 Brookside Blvd. Olympia Fields, IL 60464 (312) 603-6064 |
| 28-29 Mar | Indianapolis, IN IN ARNG Indiana National Guard 2002 South Holt Road Indianapolis, IN 46241 | AC GO RC GO Contract Law Criminal Law GRA Rep | BG Michael Marchand BG Thomas W. Eres MAJ David Freeman MAJ Edye Moran COL Thomas Tromey | LTC George Thompson Indiana National Guard 2002 South Holt Road Indianapolis, IN 46241 (317) 247-3449 |
| 4-5 Apr | Gatlinburg, TN 213th MSO Days Inn-Glenstone Lodge 504 Airport Road Gatlinburg, TN 37738 (423) 436-9361 | AC GO RC GO Ad & Civ Law Contract Law GRA Rep | MG John Altenburg BG Thomas W. Eres MAJ Fred Ford MAJ Warner Meadows Dr. Mark Foley | MAJ Barbara Koll Office of the Cdr 213th LSO 1650 Corey Blvd. Decatur, GA 30032-4864 (404) 286-6330/6364 |
| 25-26 Apr | Newport, RI 94th RSC Naval Justice School at Naval Education & Trng Ctr 360 Elliott Street Newport, RI 02841 | AC GO RC GO Ad & Civ Law Criminal Law GRA Rep | MG John Altenburg BG Richard M. O'Meara MAJ Maurice Lescault LTC Stephen Henley Dr. Mark Foley | MAJ Lisa Windsor Office of the SJA 94th RSC 50 Sherman Avenue Devens, MA 01433 (508) 796-2140/2143 or SSG Jent, e-mail: jentd@usarc-emh2.army.mil |
| 2-3 May | Gulf Shores, AL 81st RSC/AL ARNG Gulf State Park Resort Hotel 21250 East Beach Blvd. Gulf Shores, AL 36547 (334) 948-4853 or (800) 544-4853 | AC GO RC GO Ad & Civ Law Int'l - Ops Law GRA Rep | BG Joseph Barnes BG Thomas W. Eres LTC John German MAJ Michael Newton COL Keith Hamack | CPT Scott E. Roderick Office of the SJA 81st RSC ATTN: AFRC-CAL-JA 255 West Oxmoor Road Birmingham, AL 35209 (205) 940-9304 |
| 15-17 May | Kansas City, MO 89th RSC Westin Crown Center 1 Pershing Road Kansas City, MO 64108 (816) 474-4400 | AC GO RC GO Ad & Civ Law Int'l - Ops Law GRA Rep | BG Joseph Barnes BG Richard M. O'Meara LTC Paul Conrad LTC Richard Barfield COL Keith Hamack | LTC James Rupper 89th RSC ATTN: AFRC-CKS-SJA 2600 N. Woodlawn Wichita, KS 67220 (316) 681-1759, ext 228 or CPT Frank Casio (800) 892-7266, ext. 397 |

*Topics and attendees listed are subject to change without notice.

CLE News

1. Resident Course Quotas

Attendance at resident continuing legal education (CLE) courses at The Judge Advocate General's School, United States 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 nonunit reservists, through the United States Army Personnel Center (ARPERCEN), ATTN: ARPC-ZJA-P, 9700 Page Avenue, St. Louis, MO 63132-5200. Army National Guard personnel must request reservations through their unit training offices.

When requesting a reservation, you should know the following:

TJAGSA School Code—**181**

Course Name—133d **Contract Attorneys Course** 5F-F10

Course Number—133d Contract Attorney's Course **5F-F10**

Class Number—**133d** Contract Attorney's 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 is an approved sponsor of CLE courses in all states which require mandatory continuing legal education. These states include: AL, AR, AZ, CA, CO, CT, DE, FL, GA, ID, IN, IA, KS, KY, LA, MN, MS, MO, MT, NV, NC, ND, NH, OH, OK, OR, PA, RH, SC, TN, TX, UT, VT, VA, WA, WV, WI, and WY.

2. TJAGSA CLE Course Schedule

December 1997

| | |
|---------------|--|
| 1-5 December | 145th Senior Officer Legal Orientation Course (5F-F1). |
| 1-5 December | USAREUR Operational Law CLE (5F-F47E). |
| 8-12 December | Government Contract Law Symposium (5F-F11). |

15-17 December 1st Tax Law for Attorneys Course (5F-F28).

1998

January 1998

| | |
|---------------------|---|
| 5-16 January | JAOAC (Phase 2) (5F-F55). |
| 6-9 January | USAREUR Tax CLE (5F-F28E). |
| 12-15 January | PACOM Tax CLE (5F-F28P). |
| 12-16 January | USAREUR Contract Law CLE (5F-F15E). |
| 20-22 January | Hawaii Tax CLE (5F-F28H). |
| 20-30 January | 145th Basic Course (Phase 1, Fort Lee) (5-27-C20). |
| 21-23 January | 4th RC General Officers Legal Orientation Course (5F-F3). |
| 26-30 January | 146th Senior Officer Legal Orientation Course (5F-F1). |
| 31 January-10 April | 145th Basic Course (Phase 2, TJAGSA) (5-27-C20). |

February 1998

| | |
|----------------|---|
| 9-13 February | 68th Law of War Workshop (5F-F42). |
| 9-13 February | Maxwell AFB Fiscal Law Course (5F-12A). |
| 23-27 February | 42nd Legal Assistance Course (5F-F23). |

March 1998

| | |
|-------------|---|
| 2-13 March | 29th Operational Law Seminar (5F-F47). |
| 2-13 March | 140th Contract Attorneys Course (5F-F10). |
| 16-20 March | 22d Admin Law for Military Installations Course (5F-F24). |
| 23-27 March | 2d Contract Litigation Course |

| | | | |
|-------------------|--|----------------------------|--|
| | (5F-F102). | 1 July | Seminar. |
| 23 March-3 April | 9th Criminal Law Advocacy Course (5F-F34). | July 1998 | |
| 30 March-3 April | 147th Senior Officer Legal Orientation Course (5F-F1). | 6-10 July | 9th Legal Administrators Course (7A-550A1). |
| April 1998 | | 6-17 July | 146th Basic Course (Phase 1, Fort Lee) (5-27-C20). |
| 20-23 April | 1998 Reserve Component Judge Advocate Workshop (5F-F56). | 7-9 July | 29th Methods of Instruction Course (5F-F70). |
| 27 April-1 May | 9th Law for Legal NCOs Course (512-71D/20/30). | 13-17 July | 69th Law of War Workshop (5F-F42). |
| 27 April-1 May | 50th Fiscal Law Course (5F-F12). | 18 July-25 September | 146th Basic Course (Phase 2, TJAGSA) (5-27-C20). |
| May 1998 | | 22-24 July | Career Services Directors Conference. |
| 4-22 May | 41st Military Judges Course (5F-F33). | August 1998 | |
| 11-15 May | 51st Fiscal Law Course (5F-F12). | 3-14 August | 10th Criminal Law Advocacy Course (5F-F34). |
| June 1998 | | 3-14 August | 141st Contract Attorneys Course (5F-F10). |
| 1-5 June | 1st National Security Crime and Intelligence Law Workshop (5F-F401). | 10-14 August | 16th Federal Litigation Course (5F-F29). |
| 1-5 June | 148th Senior Officer Legal Orientation Course (5F-F1). | 17-21 August | 149th Senior Officer Legal Orientation Course (5F-F1). |
| 1-12 June | 3d RC Warrant Officer Basic Course (Phase 1) (7A-550A0-RC). | 17 August 1998-28 May 1999 | 47th Graduate Course (5-27-C22). |
| 1 June-10 July | 5th JA Warrant Officer Basic Course (7A-550A0). | 24-28 August | 4th Military Justice Managers Course (5F-F31). |
| 8-12 June | 2nd Chief Legal NCO Course (512-71D-CLNCO). | 24 August-4 September | 30th Operational Law Seminar (5F-F47). |
| 8-12 June | 28th Staff Judge Advocate Course (5F-F52). | September 1998 | |
| 15-19 June | 9th Senior Legal NCO Course (512-71D/40/50). | 9-11 September | 3d Procurement Fraud Course (5F-F101). |
| 15-26 June | 3d RC Warrant Officer Basic Course (Phase 2) (7A-55A0-RC). | 9-11 September | USAREUR Legal Assistance CLE (5F-F23E). |
| 29 June- | Professional Recruiting Training | 14-18 September | USAREUR Administrative Law CLE (5F-F24E). |

3. Civilian-Sponsored CLE Courses

1997

December

5 Dec Employment Law
ICLE Atlanta, GA

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

AAJE: American Academy of Judicial
 Education
 1613 15th Street, Suite C
 Tuscaloosa, AL 35404
 (205) 391-9055

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

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

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

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

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

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

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

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

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

FB: Florida Bar
 650 Apalachee Parkway
 Tallahassee, FL 32399-2300

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

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

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

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

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

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

MICLE: Institute of Continuing Legal

Education
 1020 Greene Street
 Ann Arbor, MI 48109-1444
 (313) 764-0533
 (800) 922-6516

P.O. Box 248087
 Coral Gables, FL 33124
 (305) 284-4762

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

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

NCDA: National College of District Attorneys
 University of Houston Law Center
 4800 Calhoun Street
 Houston, TX 77204-6380
 (713) 747-NCDA

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

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

**3. Mandatory Continuing Legal Education Jurisdictions
 and Reporting Dates**

NJC: National Judicial College
 Judicial College Building
 University of Nevada
 Reno, NV 89557
 (702) 784-6747

| <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 | 31 July biennially |
| Florida** | Assigned month triennially |
| Georgia | 31 January annually |
| Idaho | Admission date triennially |
| Indiana | 31 December annually |
| Iowa | 1 March annually |
| Kansas | 30 days after program |
| Kentucky | 30 June annually |
| Louisiana** | 31 January annually |
| Michigan | 31 March annually |
| Minnesota | 30 August triennially |
| Mississippi** | 1 August annually |
| Missouri | 31 July annually |

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

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

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

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

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

UMLC: University of Miami Law Center

| | | | |
|------------------|---|---------------|-----------------------------------|
| Montana | 1 March annually | Tennessee* | 1 March annually |
| Nevada | 1 March annually | Texas | 31 December annually |
| New Hampshire** | 1 August annually | Utah | End of two-year compliance period |
| New Mexico | prior to 1 April annually | Vermont | 15 July biennially |
| North Carolina** | 28 February annually | Virginia | 30 June annually |
| North Dakota | 31 July annually | Washington | 31 January triennially |
| Ohio* | 31 January biennially | West Virginia | 31 July annually |
| Oklahoma** | 15 February annually | Wisconsin* | 1 February annually |
| Oregon | Anniversary of date of birth—new admittees and reinstated members report after an initial one-year period; thereafter triennially | Wyoming | 30 January annually |
| Pennsylvania** | 30 days after program | | |
| Rhode Island | 30 June annually | | |
| South Carolina** | 15 January annually | | |

* Military Exempt

** Military Must Declare Exemption

For addresses and detailed information, see the July 1997 issue of *The Army Lawyer*.

Current Materials of Interest

1. Web Sites of Interest to Judge Advocates

a. Air Force Ethics Site (<http://www.afmc.wpafb.af.mil/organizations/HQAFMC/JA/lojaf/ethics>).

This is a very comprehensive ethics site. In addition to the searchable database of OGE opinions added last month, this site contains DOD SOCO advisories, ethics materials organized by subject, and many on-line resources such as the JER and useful links to other ethics sites.

b. Foreign and International Law Web (<http://lawlib.wuacc.edu/forint/forintmain.html>).

The foreign and international law web is a service of the Washburn University School of Law Library. The site features a search engine and provide links to primary foreign and international legal resources, research aids, and sites useful in conducting research in international law.

c. Zip Codes and Maps (<http://www.cedar.buffalo.edu/adserv.html>).

Given a valid U.S. postal address, this server attempts to rewrite the address in the proper format along with the ZIP+4 code. If it is successful, you can retrieve a Postscript or a GIF file of the address for printing, with a barcode! You can also view a street map of the address, from two different Internet map sites (MapBlast and MapQuest). This site may come in handy for the legal assistance practitioner trying to find someone for a client.

d. Switchboard (<http://www.switchboard.com/>).

This is another non-legal site which may come in handy for the legal assistance practitioner trying to locate, for example, a soldier who has PCS'ed and who owes his divorced wife child support. The Switchboard allows you to search for e-mail and regular addresses and phone numbers based upon the name you provide. It has 106 million residential listings and 11 million business listings which increase every week. Over nine million searches a week are performed on this site.

2. TJAGSA Materials Available through the Defense Technical Information Center

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

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

If only unclassified information is required, simply call the DTIC Registration Branch and register over the phone at (703) 767-8273. If access to classified information is needed, then a registration form must be obtained, completed, and sent to the Defense Technical Information Center, 8725 John J. Kingman Road, Suite 0944, Fort Belvoir, Virginia 22060-6218; telephone (commercial) (703) 767-9087, (DSN) 427-9087, toll-free 1-800-225-DTIC, menu selection 6, option 1; fax (commercial) (703) 767-8228; fax (DSN) 426-8228; or e-mail to reghelp@dtic.mil.

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

Prices for the reports fall into one of the following four categories, depending on the number of pages: \$6, \$11, \$41, and \$121. The majority of documents cost either \$6 or \$11. Lawyers, however, who need specific documents for a case may obtain them at no cost.

For the products and services requested, one may pay either by establishing a DTIC deposit account with the National Technical Information Service (NTIS) or by using a VISA, MasterCard, or American Express credit card. Information on establishing an NTIS credit card will be included in the user packet.

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

Those who wish to receive more information about the DTIC or have any questions should call the Product and Services Branch at (703)767-9087, (DSN) 427-8267, or toll-free 1-800-225-DTIC, menu selection 6, option 1; or send an e-mail to bcorders@dtic.mil.

(136 pgs).

Contract Law

AD A301096 Government Contract Law Deskbook, vol. 1, JA-501-1-95 (631 pgs).

AD A301095 Government Contract Law Deskbook, vol. 2, JA-501-2-95 (503 pgs).

AD A265777 Fiscal Law Course Deskbook, JA-506-93 (471 pgs).

Legal Assistance

AD A263082 Real Property Guide—Legal Assistance, JA-261-93 (293 pgs).

AD A323770 Uniformed Services Worldwide Legal Assistance Directory, JA-267-97 (59 pgs).

AD A313675 Uniformed Services Former Spouses' Protection Act, JA 274-96 (144 pgs).

AD A326316 Model Income Tax Assistance Guide, JA 275-97 (106 pgs).

AD A282033 Preventive Law, JA-276-94 (221 pgs).

AD A303938 Soldiers' and Sailors' Civil Relief Act Guide, JA-260-96 (172 pgs).

AD A297426 Wills Guide, JA-262-97 (150 pgs).

AD A308640 Family Law Guide, JA 263-96 (544 pgs).

*AD A280725 Legal Assistance Office Administration Guide, JA 271-97 (206 pgs).

AD A283734 Consumer Law Guide, JA 265-94 (613 pgs).

AD A322684 Tax Information Series, JA 269-97 (110 pgs).

AD A276984 Deployment Guide, JA-272-94 (452 pgs).

Administrative and Civil Law

AD A327379 Military Personnel Law, JA 215-97 (174 pgs).

AD A310157 Federal Tort Claims Act, JA 241-97

AD A301061 Environmental Law Deskbook, JA-234-95 (268 pgs).

AD A311351 Defensive Federal Litigation, JA-200-96 (846 pgs).

AD A255346 Reports of Survey and Line of Duty Determinations, JA-231-92 (89 pgs).

AD A311070 Government Information Practices, JA-235-96 (326 pgs).

AD A259047 AR 15-6 Investigations, JA-281-96 (45 pgs).

Labor Law

AD A323692 The Law of Federal Employment, JA-210-97 (288 pgs).

AD A318895 The Law of Federal Labor-Management Relations, JA-211-96 (330 pgs).

Developments, Doctrine, and Literature

AD A254610 Military Citation, Fifth Edition, JAGS-DD-92 (18 pgs).

Criminal Law

AD A302674 Crimes and Defenses Deskbook, JA-337-94 (297 pgs).

AD A302672 Unauthorized Absences Programmed Text, JA-301-95 (80 pgs).

AD A302445 Nonjudicial Punishment, JA-330-93 (40 pgs).

AD A302312 Senior Officer Legal Orientation, JA-320-95 (297 pgs).

AD A274407 Trial Counsel and Defense Counsel Handbook, JA-310-95 (390 pgs).

AD A274413 United States Attorney Prosecutions, JA-338-93 (194 pgs).

International and Operational Law

AD A284967 Operational Law Handbook, JA-422-95 (458 pgs).

Reserve Affairs

AD B136361 Reserve Component JAGC Personnel Policies Handbook, JAGS-GRA-89-1 (188 pgs).

The following United States Army Criminal Investigation Division Command publication is also available through the DTIC:

AD A145966 Criminal Investigations, Violation of the U.S.C. in Economic Crime Investigations, USACIDC Pam 195-8 (250 pgs).

* Indicates new publication or revised edition.

3. Regulations and Pamphlets

a. The following provides information on how to obtain Manuals for Courts-Martial, DA Pamphlets, Army Regulations, Field Manuals, and Training Circulars.

(1) The United States Army Publications Distribution Center (USAPDC) at St. Louis, Missouri, stocks and distributes Department of the Army publications and blank forms that have Army-wide use. Contact the USAPDC at the following address:

Commander
U.S. Army Publications
Distribution Center
1655 Woodson Road
St. Louis, MO 63114-6181
Telephone (314) 263-7305, ext. 268

(2) Units must have publications accounts to use any part of the publications distribution system. The following extract from *Department of the Army Regulation 25-30, The Army Integrated Publishing and Printing Program*, paragraph 12-7c (28 February 1989), is provided to assist Active, Reserve, and National Guard units.

b. The units below are authorized [to have] publications accounts with the USAPDC.

(1) *Active Army.*

(a) *Units organized under a Personnel and Administrative Center (PAC).* A PAC that supports battalion-size units will request a consolidated publications account for the entire battalion except when subordinate units in the battalion are geographically remote. To establish an account, the PAC will forward a DA Form 12-R (Request for Establishment of a Publications Account) and supporting DA 12-series forms through their Deputy Chief of Staff for Information Management (DCSIM) or DOIM (Director of Information Management), as appropriate, to the St. Louis USAPDC, 1655

Woodson Road, St. Louis, MO 63114-6181. The PAC will manage all accounts established for the battalion it supports. (Instructions for the use of DA 12-series forms and a reproducible copy of the forms appear in *DA Pam 25-33, The Standard Army Publications (STARPUBS) Revision of the DA 12-Series Forms, Usage and Procedures (1 June 1988)*).

(b) *Units not organized under a PAC.* Units that are detachment size and above may have a publications account. To establish an account, these units will submit a DA Form 12-R and supporting DA Form 12-99 forms through their DCSIM or DOIM, as appropriate, to the St. Louis USAPDC, 1655 Woodson Road, St. Louis, MO 63114-6181.

(c) *Staff sections of Field Operating Agencies (FOAs), Major Commands (MACOMs), installations, and combat divisions.* These staff sections may establish a single account for each major staff element. To establish an account, these units will follow the procedure in (b) above.

(2) *Army Reserve National Guard (ARNG) units that are company size to State adjutants general.* To establish an account, these units will submit a DA Form 12-R and supporting DA Form 12-99 through their State adjutants general to the St. Louis USAPDC, 1655 Woodson Road, St. Louis, MO 63114-6181.

(3) *United States Army Reserve (USAR) units that are company size and above and staff sections from division level and above.* To establish an account, these units will submit a DA Form 12-R and supporting DA Form 12-99 forms through their supporting installation and CONUSA to the St. Louis USAPDC, 1655 Woodson Road, St. Louis, MO 63114-6181.

(4) *Reserve Officer Training Corps (ROTC) Elements.* To establish an account, ROTC regions will submit a DA Form 12-R and supporting DA Form 12-99 forms through their supporting installation and Training and Doctrine Command (TRADOC) DCSIM to the St. Louis USAPDC, 1655 Woodson Road, St. Louis, MO 63114-6181. Senior and junior ROTC units will submit a DA Form 12-R and supporting DA 12-series forms through their supporting installation, regional headquarters, and TRADOC DCSIM to the St. Louis USAPDC, 1655 Woodson Road, St. Louis, MO 63114-6181.

Units not described above also may be authorized accounts. To establish accounts, these units must send their requests through their DCSIM or DOIM, as appropriate, to Commander, USAPPC, ATTN: ASQZ-LM, Alexandria, VA 22331-0302.

c. Specific instructions for establishing initial distribution requirements appear in *DA Pam 25-33*.

If your unit does not have a copy of DA Pam 25-33, you may request one by calling the St. Louis USAPDC at (314) 263-7305, extension 268.

(1) Units that have established initial distribution re-

quirements will receive copies of new, revised, and changed publications as soon as they are printed.

(2) Units that require publications that are not on their initial distribution list can requisition publications using the Defense Data Network (DDN), the Telephone Order Publications System (TOPS), the World Wide Web (WWW), or the Bulletin Board Services (BBS).

(3) Civilians can obtain DA Pams through the National Technical Information Service (NTIS), 5285 Port Royal Road, Springfield, VA 22161. You may reach this office at (703) 487-4684 or 1-800-553-6487.

(4) Air Force, Navy, and Marine Corps judge advocates can request up to ten copies of DA Pamphlets by writing to USAPDC, 1655 Woodson Road, St. Louis, MO 63114-6181.

4. The Legal Automation Army-Wide System Bulletin Board Service

a. The Legal Automation Army-Wide System (LAAWS) operates an electronic on-line information service (often referred to as a BBS, Bulletin Board Service) primarily dedicated to serving the Army legal community, while also providing Department of Defense (DOD) wide access. Whether you have Army access or DOD-wide access, all users will be able to download the TJAGSA publications that are available on the LAAWS BBS.

b. Access to the LAAWS BBS:

(1) Access to the LAAWS On-Line Information Service (OIS) is currently restricted to the following individuals (who can sign on by dialing commercial (703) 806-5772 or DSN 656-5772 or by using the Internet Protocol address 160.147.194.11 or Domain Names jagc.army.mil):

(a) Active Army, Reserve, or National Guard (NG) judge advocates,

(b) Active, Reserve, or NG Army Legal Administrators and enlisted personnel (MOS 71D);

(c) Civilian attorneys employed by the Department of the Army,

(d) Civilian legal support staff employed by the Army Judge Advocate General's Corps;

(e) Attorneys (military or civilian) employed by certain supported DOD agencies (e.g., DLA, CHAMPUS, DISA, Headquarters Services Washington),

(f) All DOD personnel dealing with military legal issues;

(g) Individuals with approved, written exceptions

to the access policy.

(2) Requests for exceptions to the access policy should be submitted to:

LAAWS Project Office
ATTN: Sysop
9016 Black Rd., Ste. 102
Fort Belvoir, VA 22060

c. Telecommunications setups are as follows:

(1) The telecommunications configuration for terminal mode is: 1200 to 28,800 baud; parity none; 8 bits; 1 stop bit; full duplex; Xon/Xoff supported; VT100/102 or ANSI terminal emulation. Terminal mode is a text mode which is seen in any communications application other than World Group Manager.

(2) The telecommunications configuration for World Group Manager is:

Modem setup: 1200 to 28,800 baud
(9600 or more recommended)

Novell LAN setup: Server = LAAWSBBS
(Available in NCR only)

TELNET setup: Host = 134.11.74.3
(PC must have Internet capability)

(3) The telecommunications for TELNET/Internet access for users not using World Group Manager is:

IP Address = 160.147.194.11

Host Name = jagc.army.mil

After signing on, the system greets the user with an opening menu. Users need only choose menu options to access and download desired publications. The system will require new users to answer a series of questions which are required for daily use and statistics of the LAAWS OIS. Once users have completed the initial questionnaire, they are required to answer one of two questionnaires to upgrade their access levels. There is one for attorneys and one for legal support staff. Once these questionnaires are fully completed, the user's access is immediately increased. *The Army Lawyer* will publish information on new publications and materials as they become available through the LAAWS OIS.

d. Instructions for Downloading Files from the LAAWS OIS.

(1) Terminal Users

(a) Log onto the OIS using Procomm Plus, Enable, or some other communications application with the com-

munications configuration outlined in paragraph c1 or c3.

(b) If you have never downloaded before, you will need the file decompression utility program that the LAAWS OIS uses to facilitate rapid transfer over the phone lines. This program is known as PKUNZIP. To download it onto your hard drive take the following actions:

(1) From the Main (Top) menu, choose "L" for File Libraries. Press Enter.

(2) Choose "S" to select a library. Hit Enter.

(3) Type "NEWUSERS" to select the NEWUSERS file library. Press Enter.

(4) Choose "F" to find the file you are looking for. Press Enter.

(5) Choose "F" to sort by file name. Press Enter.

(6) Press Enter to start at the beginning of the list, and Enter again to search the current (NEWUSER) library.

(7) Scroll down the list until the file you want to download is highlighted (in this case PKZ110.EXE) or press the letter to the left of the file name. If your file is not on the screen, press Control and N together and release them to see the next screen.

(8) Once your file is highlighted, press Control and D together to download the highlighted file.

(9) You will be given a chance to choose the download protocol. If you are using a 2400 - 4800 baud modem, choose option "1". If you are using a 9600 baud or faster modem, you may choose "Z" for ZMODEM. Your software may not have ZMODEM available to it. If not, you can use YMODEM. If no other options work for you, XMODEM is your last hope.

(10) The next step will depend on your software. If you are using a DOS version of Procomm, you will hit the "Page Down" key, then select the protocol again, followed by a file name. Other software varies.

(11) Once you have completed all the necessary steps to download, your computer and the BBS take over until the file is on your hard disk. Once the transfer is complete, the software will let you know in its own special way.

(2) Client Server Users.

(a) Log onto the BBS.

(b) Click on the "Files" button.

(c) Click on the button with the picture of the diskettes and a magnifying glass.

(d) You will get a screen to set up the options by which you may scan the file libraries.

(e) Press the "Clear" button.

(f) Scroll down the list of libraries until you see the NEWUSERS library.

(g) Click in the box next to the NEWUSERS library. An "X" should appear.

(h) Click on the "List Files" button.

(i) When the list of files appears, highlight the file you are looking for (in this case PKZ110.EXE).

(j) Click on the "Download" button.

(k) Choose the directory you want the file to be transferred to by clicking on it in the window with the list of directories (this works the same as any other Windows application). Then select "Download Now."

(l) From here your computer takes over.

(m) You can continue working in World Group while the file downloads.

(3) Follow the above list of directions to download any files from the OIS, substituting the appropriate file name where applicable.

e. To use the decompression program, you will have to decompress, or "explode," the program itself. To accomplish this, boot-up into DOS and change into the directory where you downloaded PKZ110.EXE. Then type PKZ110. The PKUNZIP utility will then execute, converting its files to usable format. When it has completed this process, your hard drive will have the usable, exploded version of the PKUNZIP utility program, as well as all of the compression or decompression utilities used by the LAAWS OIS. You will need to move or copy these files into the DOS directory if you want to use them anywhere outside of the directory you are currently in (unless that happens to be the DOS directory or root directory). Once you have decompressed the PKZ110 file, you can use PKUNZIP by typing PKUNZIP <filename> at the C:\> prompt.

5. TJAGSA Publications Available Through the LAAWS BBS

The following is a current list of TJAGSA publications available for downloading from the LAAWS BBS (note that the date UPLOADED is the month and year the file was made

available on the BBS; publication date is available within each publication):

| <u>FILE NAME</u> | <u>UPLOADED</u> | <u>DESCRIPTION</u> | | | |
|------------------|-----------------|---|--------------|---------------|--|
| | | | CHILDSPT.TXT | February 1996 | A Guide to Child Support Enforcement Against Military Personnel, February 1996. |
| 8CLAC.EXE | September 1997 | 8th Criminal Law Advocacy Course Deskbook, September 1997. | CHILDSPT.WP5 | February 1996 | A Guide to Child Support Enforcement Against Military Personnel, February 1996. |
| 97CLE-1.PPT | July 1997 | Powerpoint (vers. 4.0) slide templates, July 1997. | CLAC.EXE | March 1997 | Criminal Law Advocacy Course Deskbook, April 1997. |
| 97CLE-2.PPT | July 1997 | Powerpoint (vers. 4.0) slide templates, July 1997. | CACVOL1.EXE | July 1997 | Contract Attorneys Course, July 1997. |
| 97CLE-3.PPT | July 1997 | Powerpoint (vers. 4.0) slide templates, July 1997. | CACVOL2.EXE | July 1997 | Contract Attorneys Course, July 1997. |
| 97CLE-4.PPT | July 1997 | Powerpoint (vers. 4.0) slide templates, July 1997. | CRIMBC.EXE | March 1997 | Criminal Law Deskbook, 142d JAOBC, March 1997. |
| 97CLE-5.PPT | July 1997 | Powerpoint (vers. 4.0) slide templates, July 1997. | EVIDENCE.EXE | March 1997 | Criminal Law, 45th Grad Crs Advanced Evidence, March 1997. |
| ADCNSCS.EXE | March 1997 | Criminal Law, National Security Crimes, February 1997. | FLC_96.ZIP | November 1996 | 1996 Fiscal Law Course Deskbook, November 1996. |
| 96-TAX.EXE | March 1997 | 1996 AF All States Income Tax Guide. | FTCA.ZIP | January 1996 | Federal Tort Claims Act, August 1995. |
| ALAW.ZIP | June 1990 | <i>The Army Lawyer/ Military Law Review</i> Database ENABLE 2.15. Updated through the 1989 <i>The Army Lawyer</i> Index. It includes a menu system and an explanatory memorandum, ARLAWMEM.WPF. | FOIA1.ZIP | January 1996 | Freedom of Information Act Guide and Privacy Act Overview (Part 1), November 1995. |
| | | | FOIA2.ZIP | January 1995 | Freedom of Information Act Guide and Privacy Act Overview (Part 2), November 1995. |
| BULLETIN.ZIP | May 1997 | Current list of educational television programs maintained in the video information library at TJAGSA and actual class instructions presented at the school (in Word 6.0, May 1997). | FSO201.ZIP | October 1992 | Update of FSO Automation Program. Download to hard only source disk, unzip to floppy, then A:INSTALLA or B:INSTALLB. |

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|--------------|----------------|---|------------|----------------|---|
| 21ALMI.EXE | April 1997 | Administrative Law for Military Installations Deskbook, March 1997. | JA235.EXE | January 1997 | Government Information Practices, August 1996. |
| | | | JA241.EXE | June 1997 | Federal Tort Claims Act, May 1997. |
| 50FLR.EXE | June 1997 | 50th Federal Labor Relations Deskbook, May 1997. | JA250.EXE | April 1997 | Readings in Hospital Law, January 1997. |
| | | | JA260.ZIP | April 1997 | Soldiers' and Sailors' Civil Relief Act Guide, January 1996. |
| 97JAOACA.EXE | September 1997 | 1997 Judge Advocate Officer Advanced Course, August 1997. | JA262.ZIP | June 1997 | Legal Assistance Wills Guide, June 1997. |
| 97JAOACB.EXE | September 1997 | 1997 Judge Advocate Officer Advanced Course, August 1997. | JA263.ZIP | October 1996 | Family Law Guide, May 1996. |
| 97JAOACC.EXE | September 1997 | 1997 Judge Advocate Officer Advanced Course, August 1997. | JA265A.ZIP | January 1996 | Legal Assistance Consumer Law Guide—Part I, June 1994. |
| 137_CAC.ZIP | November 1996 | Contract Attorneys 1996 Course Deskbook, August 1996. | JA265B.ZIP | January 1996 | Legal Assistance Consumer Law Guide—Part II, June 1994. |
| JA200.EXE | September 1997 | Defensive Federal Litigation, August 1997. | JA267.ZIP | April 1997 | Uniformed Services Worldwide Legal Assistance Office Directory, April 1997. |
| JA210DOC.ZIP | April 1997 | Law of Federal Employment, May 1997. | JA269.DOC | December 1996 | Tax Information Series, December 1996. |
| JA211.EXE | February 1997 | Law of Federal Labor-Management Relations, November 1996. | JA271.EXE | September 1997 | Legal Assistance Office Administration Guide, August 1997. |
| JA215.EXE | June 1997 | Military Personnel Law Deskbook, June 1997. | JA272.ZIP | January 1996 | Legal Assistance Deployment Guide, February 1994. |
| JA221.EXE | September 1996 | Law of Military Installations (LOMI), September 1996. | JA274.ZIP | August 1996 | Uniformed Services Former Spouses Protection Act Outline and References, June 1996. |
| JA230.EXE | April 1997 | Morale, Welfare, Recreation Operations, August 1996. | JA275.EXE | June 1997 | Model Income Tax Assistance Guide, June 1997. |
| JA231.ZIP | January 1996 | Reports of Survey and Line of Duty Determinations—Programmed Instruction, September 1992 in ASCII text. | JA276.ZIP | January 1996 | Preventive Law Series, June 1994. |
| JA234.ZIP | January 1996 | Environmental Law Deskbook, September 1995. | | | |

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|-------------|---------------|---|--------------|--------------|--|
| JA281.EXE | February 1997 | 15-6 Investigations, December 1996. | JA501-1.ZIP | March 1996 | TJAGSA Contract Law Deskbook, Volume 1, March 1996. |
| JA280P1.EXE | February 1997 | Administrative and Civil Law Basic Handbook (Part 1, (LOMI), February 1997. | JA501-2.ZIP | March 1996 | TJAGSA Contract Law Deskbook, volume 2, March 1996. |
| JA280P2.EXE | February 1997 | Administrative and Civil Law Basic Handbook (Part 2, Claims), February 1997. | JA501-3.ZIP | March 1996 | TJAGSA Contract Law Deskbook, Volume 3, March 1996. |
| JA280P3.EXE | February 1997 | Administrative and Civil Law Basic Handbook (Part 3, Personnel Law), February 1997. | JA501-4.ZIP | March 1996 | TJAGSA Contract Law Deskbook, Volume 4, March 1996. |
| JA280P4.EXE | February 1997 | Administrative and Civil Law Basic Handbook (Parts 4 & 5, Legal Assistance/Reference), February 1997. | JA501-5.ZIP | March 1996 | TJAGSA Contract Law Deskbook, volume 5, March 1996. |
| JA285V1.EXE | June 1997 | Senior Officer Legal Orientation, Vol. 1, June 1997. | JA501-6.ZIP | March 1996 | TJAGSA Contract Law Deskbook, Volume 6, March 1996. |
| JA285V2.EXE | June 1997 | Senior Officer Legal Orientation, Vol. 2, June 1997. | JA501-7.ZIP | March 1996 | TJAGSA Contract Law Deskbook, Volume 7, March 1996. |
| JA301.ZIP | January 1996 | Unauthorized Absence Programmed Text, August 1995. | JA501-8.ZIP | March 1996 | TJAGSA Contract Law Deskbook, Volume 8, March 1996. |
| JA310.ZIP | January 1996 | Trial Counsel and Defense Counsel Handbook, May 1996. | JA501-9.ZIP | March 1996 | TJAGSA Contract Law Deskbook, Volume 9, March 1996. |
| JA320.ZIP | January 1996 | Senior Officer's Legal Orientation Text, November 1995. | JA506.ZIP | January 1996 | Fiscal Law Course Deskbook, May 1996. |
| JA330.ZIP | January 1996 | Nonjudicial Punishment Programmed Text, August 1995. | JA508-1.ZIP | January 1996 | Government Materiel Acquisition Course Deskbook, Part 1, 1994. |
| JA337.ZIP | January 1996 | Crimes and Defenses Deskbook, July 1994. | JA508-2.ZIP | January 1996 | Government Materiel Acquisition Course Deskbook, Part 2, 1994. |
| JA422.ZIP | May 1996 | OpLaw Handbook, June 1996. | JA508-3.ZIP | January 1996 | Government Materiel Acquisition Course Deskbook, Part 3, 1994. |
| | | | JA509-1.ZIP | January 1996 | Federal Court and Board Litigation Course, Part 1, 1994. |
| | | | 1JA509-2.ZIP | January 1996 | Federal Court and Board Litigation Course, Part 2, 1994. |

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|--------------|--------------|--|--------------|----------------|--|
| 1JA509-3.ZIP | January 1996 | Federal Court and Board Litigation Course, Part 3, 1994. | OPLAW1.ZIP | September 1996 | Operational Law Handbook, Part 1, September 1996. |
| 1JA509-4.ZIP | January 1996 | Federal Court and Board Litigation Course, Part 4, 1994. | OPLAW2.ZIP | September 1996 | Operational Law Handbook, Part 2, September 1996. |
| 1PFC-1.ZIP | January 1996 | Procurement Fraud Course, March 1995. | OPLAW3.ZIP | September 1996 | Operational Law Handbook, Part 3, September 1996. |
| 1PFC-2.ZIP | January 1996 | Procurement Fraud Course, March 1995. | TJAG-145.DOC | October 1997 | TJAGSA Correspondence Course Enrollment Application, October 1997. |
| 1PFC-3.ZIP | January 1996 | Procurement Fraud Course, March 1995. | | | |
| JA509-1.ZIP | January 1996 | Contract Claims, Litigation, and Remedies Course Deskbook, Part 1, 1993. | YIR93-1.ZIP | January 1996 | Contract Law Division 1993 Year in Review, Part 1, 1994 Symposium. |
| JA509-2.ZIP | January 1996 | Contract Claims, Litigation, and Remedies Course Deskbook, Part 2, 1993. | YIR93-2.ZIP | January 1996 | Contract Law Division 1993 Year in Review, Part 2, 1994 Symposium. |
| JA510-1.ZIP | January 1996 | Sixth Installation Contracting Course, May 1995. | YIR93-3.ZIP | January 1996 | Contract Law Division 1993 Year in Review, Part 3, 1994 Symposium. |
| JA510-2.ZIP | January 1996 | Sixth Installation Contracting Course, May 1995. | YIR93-4.ZIP | January 1996 | Contract Law Division 1993 Year in Review, Part 4, 1994 Symposium. |
| JA510-3.ZIP | January 1996 | Sixth Installation Contracting Course, May 1995. | YIR93.ZIP | January 1996 | Contract Law Division 1993 Year in Review Text, 1994 Symposium. |
| JAGBKPT1.ASC | January 1996 | JAG Book, Part 1, November 1994. | | | |
| JAGBKPT2.ASC | January 1996 | JAG Book, Part 2, November 1994. | YIR94-1.ZIP | January 1996 | Contract Law Division 1994 Year in Review, Part 1, 1995 Symposium. |
| JAGBKPT3.ASC | January 1996 | JAG Book, Part 3, November 1994. | | | |
| JAGBKPT4.ASC | January 1996 | JAG Book, Part 4, November 1994. | YIR94-2.ZIP | January 1996 | Contract Law Division 1994 Year in Review, Part 2, 1995 Symposium. |
| K-BASIC.EXE | June 1997 | Contract Law Basic Course Deskbook, June 1997. | YIR94-3.ZIP | January 1996 | Contract Law Division 1994 Year in Review, Part 3, 1995 Symposium. |
| NEW DEV.EXE | March 1997 | Criminal Law New Developments Course Deskbook, November 1996. | YIR94-4.ZIP | January 1996 | Contract Law Division 1994 Year in Review, Part 4, 1995 Symposium. |
| OPLAW97.EXE | May 1997 | Operational Law Handbook 1997. | | | |

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| YIR94-5.ZIP | January 1996 | Contract Law Division 1994 Year in Review, Part 5, 1995 Symposium. |
| YIR94-6.ZIP | January 1996 | Contract Law Division 1994 Year in Review, Part 6, 1995 Symposium. |
| YIR94-7.ZIP | January 1996 | Contract Law Division 1994 Year in Review, Part 7, 1995 Symposium. |
| YIR94-8.ZIP | January 1996 | Contract Law Division 1994 Year in Review, Part 8, 1995 Symposium. |
| YIR95ASC.ZIP | January 1996 | Contract Law Division 1995 Year in Review, 1995 Symposium. |
| YIR95WP5.ZIP | January 1996 | Contract Law Division 1995 Year in Review, 1995 Symposium. |

Reserve and National Guard organizations without organic computer telecommunications capabilities and individual mobilization augmentees (IMA) having bona fide military needs for these publications may request computer diskettes containing the publications listed above from the appropriate proponent academic division (Administrative and Civil Law; Criminal Law; Contract Law; International and Operational Law; or Developments, Doctrine, and Literature) at The Judge Advocate General's School, Charlottesville, VA 22903-1781.

Requests must be accompanied by one 5 1/4 inch or 3 1/2 inch blank, formatted diskette for each file. Additionally, requests from IMAs must contain a statement verifying the need for the requested publications (purposes related to their military practice of law).

Questions or suggestions on the availability of TJAGSA publications on the LAAWS BBS should be sent to The Judge Advocate General's School, Literature and Publications Office, ATTN: JAGS-DDL, Charlottesville, VA 22903-1781. For additional information concerning the LAAWS BBS, contact the System Operator, SSG James Stewart, Commercial (703) 806-5764, DSN 656-5764, or at the following address:

LAAWS Project Office
 ATTN: LAAWS BBS SYSOPS
 9016 Black Rd, Ste 102
 Fort Belvoir, VA 22060-6208

6. *The Army Lawyer* on the LAAWS BBS

The Army Lawyer is available on the LAAWS BBS. You may access this monthly publication as follows:

a. To access the LAAWS BBS, follow the instructions above in paragraph 4. The following instructions are based on the Microsoft Windows environment.

(1) Access the LAAWS BBS "Main System Menu" window.

(2) Double click on "Files" button.

(3) At the "Files Libraries" window, click on the "File" button (the button with icon of 3" diskettes and magnifying glass).

(4) At the "Find Files" window, click on "Clear," then highlight "Army_Law" (an "X" appears in the box next to "Army_Law"). To see the files in the "Army_Law" library, click on "List Files."

(5) At the "File Listing" window, select one of the files by highlighting the file.

a. Files with an extension of "ZIP" require you to download additional "PK" application files to compress and decompress the subject file, the "ZIP" extension file, before you read it through your word processing application. To download the "PK" files, scroll down the file list to where you see the following:

PKUNZIP.EXE
 PKZIP110.EXE
 PKZIP.EXE
 PKZIPFIX.EXE

b. For each of the "PK" files, execute your download task (follow the instructions on your screen and download each "PK" file into the same directory. *NOTE: All "PK" files and "ZIP" extension files must reside in the same directory after downloading.* For example, if you intend to use a WordPerfect word processing software application, you can select "c:\wp60\wpdocs\ArmyLaw.art" and download all of the "PK" files and the "ZIP" file you have selected. You do not have to download the "PK" each time you download a "ZIP" file, but remember to maintain all "PK" files in one directory. You may reuse them for another downloading if you have them in the same directory.

(6) Click on "Download Now" and wait until the Download Manager icon disappears.

(7) Close out your session on the LAAWS BBS and go to the directory where you downloaded the file by going to the "c:\\" prompt.

For example: c:\wp60\wpdocs
or C:\msoffice\winword

Remember: The "PK" files and the "ZIP" extension file(s) must be in the same directory!

(8) Type "dir/w/p" and your files will appear from that directory.

(9) Select a "ZIP" file (to be "unzipped") and type the following at the c:\ prompt:

PKUNZIP DECEMBER.ZIP

At this point, the system will explode the zipped files and they are ready to be retrieved through the Program Manager (your word processing application).

b. Go to the word processing application you are using (WordPerfect, MicroSoft Word, Enable). Using the retrieval process, retrieve the document and convert it from ASCII Text (Standard) to the application of choice (WordPerfect, Microsoft Word, Enable).

c. Voila! There is the file for *The Army Lawyer*.

d. In paragraph 4 above, *Instructions for Downloading Files from the LAAWS OIS* (section d(1) and (2)), are the instructions for both Terminal Users (Procomm, Procomm Plus, Enable, or some other communications application) and Client Server Users (World Group Manager).

e. Direct written questions or suggestions about these instructions to The Judge Advocate General's School, Literature and Publications Office, ATTN: DDL, Mr. Charles J. Strong, Charlottesville, VA 22903-1781. For additional assistance, contact Mr. Strong, commercial (804) 972-6396, DSN 934-7115, extension 396, or e-mail chstrong@otjag-smtp1.army.pentagon.mil.

7. Articles

The following information may be useful to judge advocates:

Gordon L. Vaughn, *United States v. Scheffer: The United*

States Supreme Court Considers Admissibility of Polygraph Evidence, 26 POLYGRAPH 127 (1997).

James P. Rhea & Patrick L. "Booter" Imhof, *An Overview of the 1996 Administrative Procedure Act*, 48 FLA. L. REV. 1 (1996).

8. TJAGSA Information Management Items

The Judge Advocate General's School, United States Army, continues to improve capabilities for faculty and staff. We have installed new projectors in the primary classrooms and pentiums in the computer learning center. We have also completed the transition to Win95 and Lotus Notes and are now preparing to upgrade to Microsoft Office 97 throughout the school.

The TJAGSA faculty and staff are available through the MILNET and the Internet. Addresses for TJAGSA personnel are available by e-mail at tjagsa@otjag.army.mil or by calling the Information Management Office.

Personnel desiring to call TJAGSA can dial via DSN 934-7115 or use our toll free number, 800-552-3978, and the receptionist will connect you with the appropriate department or directorate. For additional information, please contact our Information Management Office at extension 378. Lieutenant Colonel Godwin.

9. The Army Law Library Service

With the closure and realignment of many Army installations, the Army Law Library Service (ALLS) has become the point of contact for redistribution of materials purchased by ALLS which are contained in law libraries on those installations. *The Army Lawyer* will continue to publish lists of law library materials made available as a result of base closures.

Law librarians having resources purchased by ALLS which are available for redistribution should contact Ms. Nelda Lull, JAGS-DDL, The Judge Advocate General's School, United States Army, 600 Massie Road, Charlottesville, VA 22903-1781. Telephone numbers are DSN: 934-7115, ext. 394, commercial: (804) 972-6394, or facsimile: (804) 972-6386.